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S. HRG. 118–29, Part 4

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

APRIL 18, 2023

Serial No. J–118–2

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

TUESDAY, APRIL 18, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Blumenthal, Padilla, Ossoff, Welch, Graham, Lee, Hawley, Kennedy, and Blackburn.

Also present: Senators Cardin, Van Hollen, and Cassidy.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. Today we will hear from three judicial nominees: Jeremy Daniel, nominated to the Northern District of Illinois; Judge Brendan Hurson, nominated to the District of Maryland; and Darrel Papillion, nominated to the Eastern District of Louisiana. Congratulations to the nominees, and their families.

The nominees before us today have each received blue slips from both of their home State Senators, including Mr. Papillion, who has the support of both Senators Cassidy and Kennedy, both here today. I'd like to thank these Senators for working in good faith to identify nominees for vacancies in their States. The blue slip process has a long history, but there have been instances of success and failure in that process. We have an illustration of success today, and we're happy to see evidence of it at the Committee.

There are many Members, Senator Graham, and his predecessor, Senator Grassley, have demonstrated that they can work with a White House of another faith to identify well-qualified nominees who are acceptable to Members of both sides of the aisle. I might add, parenthetically, that during the 4 years of President Trump, I was able to fill every vacancy by sitting down with the White House and negotiating, basically giving and taking, back and forth. And I believe excellent nominees came out as a result.

We have several issues still pending before the Committee that I will not go into at this time. But I hope that I can urge all of my colleagues on both sides of the aisle to try to find common ground when it comes to these issues.

Now, for today's panel, we have several Senators who've joined us for introductions, and I'm honored to be able to introduce the nominee from Illinois, Jeremy Daniel. But first, let me say to Sen-

ator Graham, welcome back from the Middle East and I'd give you an opportunity for opening remarks.

OPENING STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman. I'm glad to be back. I think we're going to have a markup here fairly soon about a lot of bipartisan proposals regarding social media. Many of the Members here have worked together to find solutions to the problems that face America. So I look forward to working with you on that and see if we can start the process for the Congress as a whole.

In terms of the blue slip process, we're trying very hard to be reasonable. We may not always get there in your mind, but we're trying really hard. I was in your shoes. I never entertained changing the blue slip process, and I hope that never happens. I did meet with the White House Counsel's office. I want to thank them for coming over and I had a very good, productive meeting.

Chair DURBIN. Good. Now we'll hear introductions of our nominees and beginning with Senator Cardin of Maryland who's introducing Judge Hurson.

STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND, INTRODUCING HON. BRENDAN ABELL HURSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Senator CARDIN. Well, Chairman Durbin, Senator Graham, Members of the Committee, it's a real pleasure to be back before the Judiciary Committee to introduce U.S. Magistrate Judge Brendan Hurson, who's been nominated by President Biden to serve on the District Court of Maryland.

Senator Van Hollen and I have a process, like many of the Members of the Senate, we have a bipartisan professional committee that interviews all applicants that are interested in serving in our district court. We have many applications. I must tell you that Judge Hurson rose to the top as one of the most qualified individuals we could ever recommend for the District Court of Maryland. So, I'm very proud to recommend his nomination along with Senator Van Hollen. And I thank him for his continued public service.

He lives in Baltimore, and I must tell you, he has devoted his entire professional career to serving the public, to strengthen our legal system, to strengthen our rule of law.

Let me just give you a little bit of background about Judge Hurson. He received his undergraduate degree in 2000 from Providence College in Providence, Rhode Island, where he majored in public and community service studies, with a minor in Black studies.

After college, he served in the Jesuit Volunteer Corps in California as an advocate for the poor and marginalized communities in San Francisco's Tenderloin neighborhood. In 2005, Judge Hurson graduated Order of the Coif from the University of Maryland School of Law, an outstanding school of law since I'm an alumni of that school also.

After completing his judicial clerkship in 2007, Judge Hurson joined the Office of the Federal Public Defender in Baltimore,

where he defended individuals charged with felony and misdemeanor offenses in Maryland's Federal court. He was named Senior Litigation Counsel in 2015.

In 2017, Judge Hurson joined the Office of the Federal Public Defender for the United States Virgin Islands where he represented people charged with violating Federal and territorial laws on the islands of St. John, St. Thomas, and St. Croix.

In 2018, he returned to the Public Defender's Office in Baltimore, and in February 2022, Judge Hurson was sworn in as United States magistrate judge and sits in Baltimore. As a sitting magistrate judge, Judge Hurson presides over both preliminary criminal proceedings and civil lawsuits by consent of the parties and also coordinates the District of Maryland Social Security Appeals docket. Judge Hurson therefore brings remarkable experience to this position, having served as a Federal Public Defender for a decade and a half, and now serves as a magistrate judge for over a year.

Confirmed, he would continue to serve in the same court where he now sits as a magistrate judge and where he's practiced as a public defender for many years.

I also want to acknowledge, as we all understand, that public service is a family commitment. I want to welcome many members of his family that are with us today, including his parents, his wife, Abby, his daughter, Mary, his son, Patrick, and other extended families that are here today. We thank them for understanding the sacrifice that Judge Hurson makes for his public service.

Chair DURBIN. Thanks, Senator Cardin. We'll now recognize Senator Van Hollen, who has just walked through the door. A dramatic entrance, as usual.

[Laughter.]

Chair DURBIN. Senator Van Hollen.

STATEMENT OF HON. CHRIS VAN HOLLEN, A U.S. SENATOR FROM THE STATE OF MARYLAND, INTRODUCING HON. BRENDAN ABELL HURSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Senator VAN HOLLEN. Thank you, Mr. Chairman, Ranking Member Graham, Members of the Committee. I know that Senator Cardin has covered Judge Hurson's record well—Magistrate Judge Hurson's record well. So, I do want to associate myself with all the remarks he made. And I want to just say I strongly encourage this Committee to support the President's nomination.

In Judge Hurson, we have somebody whose peers have repeatedly described as somebody who's deeply committed to ensuring that everybody who comes before him in the courtroom gets a just and fair hearing. And if you look at his record, both as a magistrate judge and his previous record as a public defender, you see that very clearly. In addition to the service he's provided in many other forums.

Just to give you an idea of what his colleagues have described him as, a, quote, "fountain of empathy, a fountain of knowledge, and a thoroughly good person devoted to Baltimore." In this case, he will be devoted to the people of Maryland, and of the United States.

I just want to say to him, and his family, who I understand have been introduced, congratulations on your nominations and I fully second Senator Cardin's statement and his endorsement. I urge the Committee to act quickly to support the President's nomination.

Chair DURBIN. Thank you, Senator Van Hollen. I'll now recognize Senator Cassidy to introduce Mr. Papillion.

STATEMENT OF HON. BILL CASSIDY, A U.S. SENATOR FROM THE STATE OF LOUISIANA, INTRODUCING DARREL JAMES PAPILLION, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Senator CASSIDY. Thank you, Mr. Chairman. It's an honor to introduce Darrel Papillion to the Committee today and to recommend him for appointment to the Eastern District of Louisiana. Darrel is an accomplished lawyer, a Louisiana native, a fellow LSU Tiger, and will be an excellent Federal judge.

I also welcome Mr. Papillion's family, here to support him. He's joined by his children, Jude, Anna, Liam, and Juliana, his wife, Lauren, and his sister, Kimberly. And his law partners, J. Cullens and Abboud Thomas are also here.

You know, I'm not an attorney. So, way back when I said I'm not going to try and be one—no matter if I slept in a Holiday Inn. And so, what I do is, I have attorneys, and they go around and ask their fellow attorneys, their peers, who is good?

So, this is what you hear about Darrel: intelligent, caring, hard-working, experienced, honest, fair-minded, knows the law. It's clear to me, and to everyone that my team spoke to, that Darrel has the experience and temperament to be an outstanding Federal judge. His knowledge of the law and his thoughtful approach to the law was on display during his time as the president of the Louisiana State Bar Association, and as a fellow for the American College for Trial Lawyers. This college is a group of top lawyers well represented by both sides of the aisle and who are known for being selected for their temperament and legal expertise.

I'm confident that Mr. Papillion's commitment to fairness to all who may come before him, and to the law, will become clear to the Committee during this hearing. I look forward to his approval by the panel, and by the entire Senate. Thank you, Mr. Chair. And with that, I yield.

Chair DURBIN. Thanks, Senator Cassidy. And Senator Kennedy, you'll be recognized. Though I might say to my colleagues, I know you have a busy schedule if you have to leave, but thank you for coming, joining us today. Senator Kennedy.

OPENING STATEMENT OF HON. JOHN KENNEDY, A U.S. SENATOR FROM THE STATE OF LOUISIANA, INTRODUCING DARREL JAMES PAPILLION, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Senator KENNEDY. Thank you, Mr. Chairman. I have watched, observed Mr. Papillion for years, really decades. We've both been around a while, both in his community and in our courts. He's a former president of our State bar association. He has tried, I think, 33 cases in State court and Federal court to verdict. He's been for

the longest time, he was a professor, an adjunct professor at LSU Law School in Baton Rouge.

I'm pretty sure—I haven't looked it up—but I'm pretty sure Darrel is a Democrat. I say that because President Biden nominated him. And, I mention it only because I have gotten so many letters in support of Mr. Papillion from Republican public officials, including most Republican members of our Louisiana Supreme Court, and this is only a portion of them [holds up a bundle of papers]. The real list of letters that I've gotten in support, you could—you could stand on them and paint the ceiling. That's not much of an exaggeration.

Darrel is not a politician. I don't even know if he's ever made any campaign contributions.

Senator GRAHAM. That's terrible.

[Laughter.]

Senator KENNEDY. He's not an activist. He's a lawyer. He understands the magistery, the complexity, the nuances, the utility, the beauty of the law. In every community of any size in America, there are always two, maybe three lawyers that I call lawyers' lawyers. These are lawyers, they're not necessarily the ones in the paper every day, and they're not necessarily the loudest, but these are the lawyers that other lawyers hire if the other lawyers need a lawyer.

[Laughter.]

Senator KENNEDY. And they're never more than two or three. And Darrel's one of those lawyers. I mean, he's one of those lawyers that if you're a lawyer and you need a lawyer, it doesn't matter what it's for, you're going to call him and say, "What do you think?" So, I'm going to support him. Have been supporting him. I hope you will, too. He's a real lawyer's lawyer.

Chair DURBIN. Thanks, Senator Kennedy. And I want to personally thank you because I nudged from time to time and urged that you try to find some common ground with the White House. And, you and Senator Cassidy have done an extraordinary job of reaching that goal. So, thank you for your leadership in that regard.

Senator KENNEDY. I like your use of that word, "nudge," Mr. Chairman.

[Laughter.]

Senator KENNEDY. Very artful.

Chair DURBIN. Thank you. Thanks to all the introducers.

I'd like to introduce Jeremy Daniel. He's been nominated to the Northern District of Illinois. A native Chicagoan, Mr. Daniel received his bachelor's degree from Illinois Wesleyan University, which is in the Bloomington-Normal area. His law degree, from Loyola University School of Law.

He's served his country in more ways than one. As an undergraduate student, he served in the Marine Corps as a reservist. After he graduated, he served as a Marine captain and completed tours in Japan and South Korea. Following law school, Mr. Daniel worked in private practice on intellectual property cases for a number of years before clerking for U.S. Judge Virginia Kendall for the Northern District.

Since 2014, Mr. Daniel has served as an Assistant U.S. Attorney in the Northern District. As an Assistant U.S. Attorney, he has

prosecuted a wide range of Federal crimes: violations of drug and firearm laws, gang investigations, and financial crimes.

Since 2019, Mr. Daniel has served as Deputy Chief of Narcotics and Money Laundering. In addition to investigating and prosecuting his own cases, he also supervises other attorneys in that section. He has a wealth of courtroom experience and a career that has been characterized by public service.

I want to welcome him, and his family, here today. I had a chance to meet him, and I look forward to hearing from Mr. Daniel.

I also want to take a moment to thank the judicial screening committee that Senator Duckworth and I established to review candidates for these judgeships. Chaired by former U.S. Federal Judge David Coar, the committee has done outstanding work, and they thought very highly of Mr. Daniel.

Senator Duckworth couldn't join us today, but believe me, she's totally supportive of Mr. Daniel, and I'll have her statement entered into the record.

[The prepared statement of Senator Duckworth appears as a submission for the record.]

Chair DURBIN. Now, I ask the three nominees if they would please approach the table for their testimony before the Committee. Please remain standing for just a moment.

[Witnesses are sworn in.]

Chair DURBIN. Let the record indicate that all three have answered in the affirmative, which spares us some real headaches. So, Mr. Daniel, I'm going to let you kick it off. Please proceed.

STATEMENT OF JEREMY C. DANIEL, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. DANIEL. Thank you, Chair Durbin, Ranking Member Graham, and Members of the Committee, for the opportunity to appear before you today. I would like to thank you, Senator Durbin, as well as Senator Duckworth, for recommending me to the President. I would like to thank President Biden for this nomination. I am humbled and honored by it.

I would like to introduce the members of my family here with me today, starting with my wife, Silver, and my three daughters. I thank them for their love, and support, and for the joy that they bring me every day. I would also like to introduce my Aunt Phyllis. Throughout my life, she's been a pillar of support for me. She may not know it, but she's here today as a mother figure, to both me and my wife.

I'd be remiss if I didn't mention my mother and my mother-in-law. Neither could be here today. We lost my mother to pancreatic cancer in November of 2021, and my mother-in-law to colon cancer 3 months later. Our mothers worked hard to provide for, and raise, their families. My mother, as a single mother and a banquet waitress, raising five children on Chicago's West Side, and my mother-in-law, a nurse who immigrated to the United States from Trinidad. I'm forever thankful for their tireless efforts in raising us.

Finally, I would like to thank those family members, friends, judges, mentors, colleagues, and staff through the years, who have supported me in some form or another. I only hope that they have

benefited as much as I have from our interactions. Senators, I welcome your questions, and thank you.

Chair DURBIN. Thank you very much, Mr. Daniel. Judge Hurson.

STATEMENT OF HON. BRENDAN ABELL HURSON, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Judge HURSON. Thank you, Chair Durbin, Ranking Member Graham, and all the Members of the Committee, for allowing me to appear before you this morning. I want to first thank President Biden for the trust he has placed in me. I'd also like to thank my home State Senators, Senator Ben Cardin, Senator Chris Van Hollen, for supporting my nomination, and for their kind words today.

I'd like to thank my many amazing former colleagues, particularly those at the Federal Public Defender in Maryland, and in the United States Virgin Islands, as well as my current colleagues on the United States District Court for the District of Maryland. And, I'd particularly like to recognize my chambers staff and my law clerks.

I'd like to acknowledge the Honorable Margaret B. Seymour, and her career law clerk, Deborah Morgan. They provided stellar role models for me and for dozens of other law clerks who had the privilege to serve in Judge Seymour's chambers. To my friends in Baltimore and beyond, I want to thank you for all you have given me.

I'm also blessed to come from a very large family, some of whom are here today. Others are watching at home. I wish I had the time to list all my siblings, my in-laws, my nieces, nephews, aunts, and uncles by name, but I don't. But please know that I love each of you, and I wouldn't be here today without you.

I would like to personally acknowledge my amazing in-laws, Mike and Martha, who are watching from home. I'm also blessed to have my parents here, Dan and Meg. I credit my parents with inspiring me to pursue what has been a richly rewarding career in public service. I'd also like to thank my beautiful children, who sit behind me, and made, what I'm sure was a very tough decision, to not go to school today, but to come here and sit with me. I love you both, and I'm very proud of you.

And finally, I'd like to acknowledge my wife, Abby. Abby is my partner in service and in life. Her commitment to our family and to me, all while juggling her own career, makes it possible for me to sit here today. I love you, and I thank you so much for always being in my corner. Thank you.

Chair DURBIN. Thank you, Judge Hurson. Mr. Papillion.

STATEMENT OF DARREL JAMES PAPILLION, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Mr. PAPILLION. Thank you. Good morning, Chairman Durbin, Ranking Member Graham, Members of the Committee. I would like to express my sincere thanks to President Biden for nominating me, and I'm tremendously grateful to my home State Senators, John Kennedy and Bill Cassidy, for recommending me to the President, and for the kind words they've said today.

I am deeply honored to have been nominated to serve my country as a United States district judge. With me today are my wife, Lauren, and four of our five children, all of whom are missing school: Jude is a college senior; Anna, a college sophomore; Liam, a sixth-grader; Juliana, a third-grader. Last but not least, hopefully, behaving for his grandparents, and watching from home, is our one-year-old, V.L.

Also here with me today are my sister, Kimberly Charles, and my law partners and dear friends, J. Cullens and Abboud Thomas. With me in my heart are my late father, Francis Papillion, who inspired me to become a lawyer, and my late wife, Shirley. Their sacrifices, support, and example are a substantial factor in why I sit before you today. Also with me, in spirit and love, is my mother, Rita, who is watching from home, my in-laws, Warren and Arlene Byrd, Marita Cezar, and all the members of our family.

Finally, I say, bonjour a la Louisiane, and good morning in Louisiana, to my mentor at Walters, and everyone who mentored me, and all of my colleagues at Walters, Papillion, Thomas, Cullens, my friends from the Federal and State bench and bar, and the entire legal community in my home State, and, most of all, my students at the LSU Law School. Senators, I'm happy to answer your questions.

Chair DURBIN. Thank you very much. You wouldn't have reached this moment and be seated at this table had you not been able to check some important boxes in terms of training, education, life experience, seeking a position which is a lifetime appointment, which is rare under our Federal law. And, it certainly calls into question what kind of role models you may have in your mind.

Each of you has appeared before many judges, over the course of your career, and undoubtedly drawn conclusions about those who were your favorites, and those who weren't, whether they ruled against you, or for you.

So, starting with Mr. Papillion, you can name names if you wish, but in your mind, what is the role model of a Federal judge that you think about as you aspire to this position?

Mr. PAPILLION. Thank you, Chairman Durbin. There are many judges, and I've had the opportunity in my career to be before many. I believe the universal theme is hard work, judges who are fair and honest, and who treat both sides equally and with respect. Who do their homework, who study the law, and essentially work to just decide cases based on the merits. And, that's what I would hope to do.

Chair DURBIN. Magistrate Hurson, you've been on both sides of the bench.

Judge HURSON. I have, and I have, in my career, had the privilege of appearing before dozens of Federal judges, and many State judges, too. And, I will name a name: Judge Margaret Seymour, who I was blessed to clerk for in Columbia, South Carolina, has always been a role model for me. Her temperament, her commitment to the law, and the way that she made sure that every single person who came into her courtroom knew what was happening and why it was happening.

And that's a lesson that I take to the bench every single day, that I'm privileged to serve as a magistrate judge in Maryland.

And, if I were so fortunate as to be confirmed, I would take that to the district court bench as well.

Chair DURBIN. Thank you. Mr. Daniel.

Mr. DANIEL. Chair Durbin, I've seen many of the qualities in the judges, that my colleagues here on the panel have seen in their respective districts, on the bench in my district. I would like to add that one of the best qualities I've had in the judges I've seen and the judges I've appeared in front of, were in those instances where the judge ruled against me and leaving the courtroom with full respect and appreciation for the decision.

I think it's imperative for judges to be impartial and to be willing to explain their positions, and in that, that's what we all ask of our legal system. And, I'd be remiss, not to mention Judge Kendall, whom I clerked for, and has helped me tremendously in patterning my career and my practice.

Chair DURBIN. I'm glad you mentioned Judge Kendall. She's, of course, a nominee that we were able to help and support through this Committee and was one of the early appointments when I was a Member of this Judiciary Committee. So, thank you for that. Senator Graham.

Senator GRAHAM. Congratulations, to you all. A lot of nice things said about each of you, and I'm sure they're deserved. And to your families, congratulations. It's a very big deal.

Mr. Daniel, what did you do in the Marines?

Mr. DANIEL. When I was enlisted in the Reserves, I was a motor vehicle operator. When I became an officer after graduation, I was a combat engineer officer, Ranking Member.

Senator GRAHAM. Excellent. So, you've been in the prosecution lane, U.S. Attorney's Office. Is that correct?

Mr. DANIEL. Correct.

Senator GRAHAM. So, what's your interaction in terms of the fentanyl problem in the country? Have you had much of a chance to deal with fentanyl cases?

Mr. DANIEL. I have, Senator. Back in 2014, I believe it was, I was assigned an investigation following a rash of overdose deaths in Chicago. That investigation turned into a year-long wire investigation, where we were able to identify the source of that fentanyl that resulted in the overdoses, and then charged the organization responsible for distributing it. By organization, the organization in the Chicago area.

Senator GRAHAM. So, during that—why do these drug groups, cartels, organizations, why do they put fentanyl in drugs without people knowing? What conclusion did you come to?

Mr. DANIEL. Senator, this investigation I'm referring to, in that investigation, we learned, for the first time, that it was being mixed locally.

Senator GRAHAM. Right.

Mr. DANIEL [continuing]. My understanding, based on that investigation, and from some of the testimony we received from witnesses and some of the defendants who were both users and distributors, were that the fentanyl was being added to increase the potency of the drugs. It's more profitable to dilute substances, and when they dilute, users may complain that the drugs are weak, in

their words. And so, the fentanyl is added, oftentimes unknowingly—unknowing to the users, to increase the potency.

Senator GRAHAM. So, Secretary Mayorkas said, before the Committee, that he thought fentanyl problem in America is one of the greatest threats we face as a Nation. Do you agree with that?

Mr. DANIEL. I agree that fentanyl poses a risk to all who encounter it. I've had cases involving fentanyl-related deaths and it is very dangerous, Senator.

Senator GRAHAM. Okay. Do you agree with that, Mr. Hurson?

Judge HURSON. I agree with my colleague that it is a significant issue that faces this country, and it's one that I see every day in my courtroom.

Senator GRAHAM. Yes. So, what kind of cases do you have involving fentanyl?

Judge HURSON. Well, as a United States magistrate judge, we handle the preliminary proceedings in all criminal cases. And sitting in Baltimore, which is a city like many others in this country that faces a significant heroin and fentanyl problem, we do see a lot of drug and drug-related cases.

Senator GRAHAM. How would you describe it in terms of the scope of the problem for Baltimore? Is it at the top of the list, middle of the list?

Judge HURSON. I'm not familiar with numbers nationwide, but I can say, anecdotally, it's a significant issue in our city, and it's one that when I am faced with cases presenting defendants charged with distribution of drugs, oftentimes they themselves are users of drugs. And, I can say, without any hesitation, that our pretrial services department works very hard to try to find treatment for those individuals. And I know firsthand, there are a large number of people in the city working very hard to address the problem, from the top to the bottom.

Senator GRAHAM. Where does most of the fentanyl come from in Baltimore? Do you know?

Judge HURSON. I do not know. I know as much as anyone who reads the paper. I understand there are foreign sources. I hear from my colleague, there may be domestic sources.

Senator GRAHAM. Okay. But, would you understand why this Committee would want to do more, both of you, to deter fentanyl use and distribution? Does that make sense to you, given your interaction with the drug?

Mr. DANIEL. Thank you, Ranking Member Graham. I think—I can't speak for what the Committee would want to do, Ranking Member, but my office in Chicago, the U.S. Attorney's Office for the Northern District of Illinois, has identified fentanyl as a priority. And, since that case back in 2014, it's remained a priority.

Senator GRAHAM. Mr. Papillion, last question. There's a—on occasion, a district court judge will issue an order that affects the entire Nation. Under what circumstances do you think that's appropriate, and how would you handle that issue?

Mr. PAPILLION. Thank you, Senator. National injunctions—injunctions are governed by Rule 65 of the Federal Rules of Civil Procedure. It's a very serious issue in the Fifth Circuit. The Fifth Circuit has held that district judges have the authority, because they are judges of the United States, to issue those. I can tell you that

if faced with that, I would study it very carefully, follow the applicable precedents, and try to make the right decision.

Because obviously, when one issues an injunction beyond the four corners of a case, that is of tremendous magnitude, and is to be treated very seriously. And, I would.

Chair DURBIN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. Congratulations, to the three of you, for the nominations, and I appreciate your participation in the hearing today. You know, the topic of judicial ethics is one that's top of mind right now, for me, I know for several of my colleagues, and, I think, for people across the country. And, I know I'm disturbed by the recent reports detailing potentially unethical, even potentially illegal, conduct at the highest levels of our judiciary. I mean, it should go without saying that judges at all levels should be held to strict and enforceable ethical standards.

I have a question for you, Mr. Papillion. While you were serving as special master, you identified a potential conflict of interest and made the decision to recuse yourself from a matter. Why do you believe it's important that judges take the responsibility of recusing themselves when there's even just the potential for a conflict of interest?

Mr. PAPILLION. Thank you, Senator. As a Federal judge, as a judge of any kind, but particularly in this context, there are canons that govern our conduct, even as nominees. And, the reason I believe for these canons is to promote confidence in our judiciary. And so, the public needs to understand that judges who will decide their cases are fair, impartial, and won't pick favorites of any kind on either side. And, that would be what I would do, if I were so fortunate as to be confirmed.

Senator PADILLA. Thank you. I mean it's—I'm sure additional reasons, but confidence in the judiciary, confidence in outcomes, confidence in the system overall, is important.

Another dynamic that this Committee has been prioritizing to help strengthen confidence in the judiciary is by advancing diversity. Not just diversity in ethnic or racial backgrounds, but in life experience, work, and professional experience of the nominees that are recommended to the White House, that are nominated by the White House, that are considered, and confirmed, by the Committee, and the Senate.

But, I want to take this prioritization of diversity one step further. I mean, as we know, judges are not the only ones who work in courtrooms. Judges are assisted by a wide array of assistants, particularly law clerks. And, as I believe, each one of you can attest, serving as a law clerk can be pivotal. A good experience, a good assignment can be pivotal in a successful, longer-term career, whether it's in the public sector or the private sector.

And so, I'd like to hear from each of you if you agree with my premise that improving diversity is part of improving the judiciary, and public confidence in the judiciary, and what you might do, if confirmed, to advance diversity in your courtroom. So, we'll start with Mr. Daniel.

Mr. DANIEL. Thank you, Senator. The first time I encountered the benefits of diversity was when I was an officer in the Marine Corps. We drew Marines from all over the country with varied ex-

periences, and you'd be surprised at how wonderful it is to ask a group of people, "Has anyone ever seen something like this?" And having someone raise their hand because they just had a different life experience.

So, I've valued diversity of all sorts since, and I think it's important. As—I was set on my current path as a extern for a judge in the Northern District of Illinois, and I was introduced to that externship through the ABA's Judicial Intern Opportunity Program. I later went on to clerk. And as far as implementation, I think you just have to be cognizant of where you're looking, because opportunity is often the touchstone of increasing diversity. Just making sure that you're identifying qualified candidates from all areas.

Senator PADILLA. Okay.

Judge HURSON. Thank you very much. I agree that law clerk service is critically important. It was important to me in my career, and I wouldn't be where I was without my own law clerk, Nancy Dordal, who's actually sitting behind me. I agree with both of my colleagues, and I think it really starts with the judge and casting a wide net. Getting out in the community, meeting with law students, doing mock interviews with law students, trying to generate interest in the position, and keeping a wide net for diversity of all kinds: geographic, the school that you attended, your career ambitions. And that's something I've tried to do as a United States magistrate judge, and would continue to do, if I was blessed to become a district court judge.

Senator PADILLA. Thank you.

Mr. PAPILLION. One of the great highlights of my career was to clerk for Justice Catherine Kimball of the Louisiana Supreme Court, and I know that diversity was important to her. What I would do, Senator, is I would work to find the best and the brightest law clerks that I could, and that would include, as my colleagues have said, casting a very wide net to get the best and the brightest people from every background possible.

Senator PADILLA. Thank you all, very much. Thank you, Mr. Chair.

Chair DURBIN. Thank you, Senator Padilla. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Congratulations, gentlemen.

Mr. Papillion, tell me the definition of a "motion in limine."

Mr. PAPILLION. A motion in limine, in some law books, it doesn't exist, Senator. But what it is is, it is a motion filed, in advance of trial, to get a ruling in limine, which means in advance of some issue that may come up in the trial, usually an evidentiary issue.

Senator KENNEDY. I thought you might know.

Mr. PAPILLION. Thank you.

Senator KENNEDY. Judge Hurson, explain to me the various definitions that the U.S. Supreme Court has used to define a fundamental right?

Judge HURSON. In *Glucksberg*, and even recently in *Dobbs*, the Supreme Court has really focused on two major issues. One, whether the right in question is deeply rooted in our history and tradition. And, the Court is also focused on whether it is implicit in the

concept of ordered liberty. And, I also believe that in *Glucksberg*, they describe the need for the right to be clearly defined.

Senator KENNEDY. How does that relate to the discussion in *Griswold* of a penumbra?

Judge HURSON. Well, obviously, *Griswold*, as you state, points out this concept of the penumbra, rights that are not explicitly enumerated, but that the Court has otherwise found. As a sitting magistrate judge, and if I was fortunate to become a district judge, I would, of course, follow the guidance of the Supreme Court, who has identified just a few relatively small number of those rights. Obviously, the right to privacy perhaps being the most well-known.

Senator KENNEDY. Well, can you have—what has the Supreme Court said about the existence of a fundamental right that is not part of our history and tradition? For example, when the Court delved into the Second Amendment, it was really—the opinions were almost written as if they were historians, as opposed to judges. But, part of our history and tradition was a fundamental part of their discussion. Does a right have to be part of our history and tradition to be fundamental?

Judge HURSON. Well, I can say this, that in *Heller*, *McDonald*, and *Bruen*, that was the focus. That's what the Court looked at. Now, there are other cases throughout history that have recognized a few other rights, the right to marry, for example, and I can't speak to the specific methodology that was used, but I will say, at least in the Second Amendment context, that focus on history was critically important.

Senator KENNEDY. Okay. All right. Let me move to Mr. Daniel. Can a police officer—well, let me try this another way. If I'm walking down the street and a police officer wants to stop and talk to me, can he just stop and talk to me for any reason?

Mr. DANIEL. Senator, he can seek your consent to stop and talk to you.

Senator KENNEDY. What if I don't consent?

Mr. DANIEL. If you don't consent, then the officer needs to have a reasonable, articulable suspicion that a crime has been committed, will be committed, and be able to articulate that to justify the stop.

Senator KENNEDY. Okay. Then how come police officers can set up a roadblock and stop 500 people to see if they have liability insurance?

Mr. DANIEL. My understanding is that the Supreme Court has ruled that those types of stops, when generally applied, are conducive to good order and policing.

Senator KENNEDY. Why? They're still stops, aren't they?

Mr. DANIEL. Senator, in my 8½ years as a prosecutor, I've not had to litigate the adequacy——

Senator KENNEDY. I know. I'm just asking you what you think. I mean, isn't that pretty intrusive? What if I'm in a hurry to pick up my kid from school and I don't have time to wait for 10 minutes, and I don't want to wait anyway? Why? If a cop can't just stop me on the street, why can they stop me and check my insurance?

Mr. DANIEL. Senator, as far as my personal belief, I haven't encountered that.

Senator KENNEDY. I'm just asking you legally, why can they do that?

Mr. DANIEL. Again, I don't—I haven't encountered that issue. So, I don't have the research on that, Senator.

Senator KENNEDY. Okay. Thank you. Thank you, gentlemen.

Chair DURBIN. Senator Welch.

Senator WELCH. Thank you. Thank you all. It's really pretty nice to have these folks here with their families and the history, and I appreciate all of you introducing them, and acknowledging the big role that they played. A couple of you suggested it might be a burden for some of your kids to miss school. I think you might be fibbing on that, but it's good to have you, and congratulations on your nominations, and congratulations on all the public service that you've provided.

Mr. Hurson, I was a public defender and then went into private practice, like you, Mr. Papillion. And just—sometimes there's folks in the public that get a little concerned about a public defender and make the connection that if you're assigned to a client who's done something that you obviously think is terrible, how is it you can do it? And, I've had to answer that question many times.

You're sitting next to a prosecutor, and I guess you were a former prosecutor, as well. You feeling a little uncomfortable? You want to just give us an answer of how you contend with that?

Judge HURSON. Well, first, I'm not feeling uncomfortable, at all. I'm very happy to be sitting between these two gentlemen and I, every day as a United States magistrate judge, sit on a court that has both former prosecutors and former public defenders, and I can say, we get along quite well. As for my former career as an advocate in the public defender's office, I, too, encountered that question quite a bit.

But I'll tell you that the answer that I gave was always that my duty, my obligation was to uphold the Sixth Amendment, hold the government to their burden, and ensure that not just my clients' rights, but in that sense, everyone's rights were protected.

Senator WELCH. Right.

Judge HURSON [continuing]. It also brought me in touch with all sorts of aspects of the criminal justice system from pretrial service officers, probation officers, corrections officers, the United States Marshals, and of course, prosecutors.

And those relationships that I built during those days have helped me so much as a judge, which, as you know, is a very different role.

Senator WELCH. Right. Well, thank you. Mr. Daniel, I'm sure you had to work with a lot of public defenders when you were a prosecutor, and you're on the other side of it. You're prosecuting. Sometimes prosecutors go overboard, but most of the time they're upholding the public good, and law, and order. Maybe you could comment on your role in the criminal justice system, making certain that people get a fair trial.

Mr. DANIEL. Thank you, Senator. The criminal justice process begins with the investigative agencies and the prosecutor's office. And in the Northern District of Illinois, we make a point to make sure that we're thorough in our collection of evidence and that we iden-

tify individuals, and charges, as appropriate. We appreciate and understand that it is a significant thing to charge someone——

Senator WELCH. Right.

Judge HURSON [continuing]. Federally. And so, we are very diligent and careful in our approach to prosecution.

Senator WELCH. I appreciate that because when you have that awesome power as a prosecutor, the quality I've admired, in the prosecutors I've watched, is restraint. They're really careful about the use of that authority. You seem to be reflecting that.

Mr. DANIEL. It's important, Senator. There's also an imperative to keep victims in mind, as well as the overall common good. At the end of the day, I think prosecutors, Federal defenders, all involved in the process, including judges, are just looking to get to a just result. Or, they should be.

Senator WELCH. Thank you. I just want to end with you, Mr. Papillion. You were a defense attorney for—insurance defense attorney, as I understand, for a while, and then you became a plaintiff's attorney. One of the challenges we have is getting access to the courts that are backlogged in many situations, so people who have claims can have them heard. Any thoughts on how to facilitate access to the courts for civil litigation?

Mr. PAPILLION. Well, I think that one of the best ways is to have scheduling orders and have judges really focus on trying to move the cases in their particular court. The Eastern District of Louisiana, the court to which I've been nominated, does a fantastic job of that, and I would hope to be a part of it.

Senator WELCH. So, there's a big administrative role that the presiding judge has to play to push the attorneys along to get to an outcome?

Mr. PAPILLION. Yes.

Senator WELCH. And, you're prepared from having served on both sides, plaintiff and defendant?

Mr. PAPILLION. That's, I believe, absolutely my job, if I were so fortunate as to be confirmed, to really move cases to conclusion and give people their day in court.

Senator WELCH. Well, thank you, all, and congratulations on your nomination. Thank you.

Chair DURBIN. Thank you, Senator Welch. Senator Lee.

Senator LEE. Thanks to all of you for being here today. Judge—Mr. Papillion, let's start with you. Got ahead of myself there. Tell me about the *Erie* doctrine. What's your understanding of that doctrine?

Mr. PAPILLION. Thank you, Senator. The *Erie* doctrine is a doctrine that when a Federal district court is sitting in diversity jurisdiction, it applies State substantive law and it applies the Federal procedural law, the Federal Rules of Civil Procedure, the Federal Rules of Evidence.

Senator LEE. What's worse, in your view, invalidating as unconstitutional a statute whose unconstitutionality is sketchy, or upholding a statute whose application is, in fact, unconstitutional?

Mr. PAPILLION. That's a difficult question, Senator. Obviously, if a law is unconstitutional, it is inappropriate and is something that should—you know, going back to *Marbury v. Madison* in a different context obviously——

Senator LEE. Let's look at it as applied challenge. It'll make it a little simpler.

Mr. PAPILLION. Yes. Can you tell me what you're asking?

Senator LEE. As applied challenge meaning, it's—you're not dealing with something that's facially unconstitutional, but what's worse in that circumstance? Upholding the application of a statute as to which it might be an unconstitutional application and is, or improperly holding something unconstitutional as applied when it's not. Is either one more defensible than the other?

Mr. PAPILLION. I don't believe either is defensible. So, it's hard to—when things are indefensible, it's hard to rank them. So, I would say they're both wrong.

Senator LEE. A few years ago, there was an executive order issued by Governor John Bel Edwards dealing with COVID in a lawsuit involving Pastor Tony Spell. The pastor argued, among other things, that he was protected by the First Amendment and that the law shouldn't apply, couldn't apply to his decision to hold church services.

When you were asked about this at oral argument, you were reported to have said, quote, "The law is not about one person, whether a pastor or a churchgoer. We're a nation and a state of laws." Would you make that same argument today? Or, was that—did you, in fact, make that argument?

Mr. PAPILLION. That sounds like a familiar argument. I think I would argue a lot of things differently, I think, in that particular case. That was a very difficult and challenging case for the State of Louisiana, and for religious liberty, Senator.

Senator LEE. Okay. You said that sounds like a familiar argument. Sounds like something you might have said, in other words?

Mr. PAPILLION. Yes.

Senator LEE. Why is that appropriate? I mean, the First Amendment is there almost entirely for people making the argument as just one person, as the challenger. The whole reason we even need it is because it's there to protect people in expressing unpopular beliefs, in believing unpopular things.

So, I don't understand why you would think that was a good argument to make. The law isn't about one person. We're a Nation and a state of laws. I mean, that's the whole point is to, in some circumstances, penetrate the law to protect the individual. Is it not?

Mr. PAPILLION. Senator, in that particular case, to add context, this was a case that the State of Louisiana brought against a man of faith during the pandemic——

Senator LEE. Who just wanted to have church.

Mr. PAPILLION. Yes.

Senator LEE [continuing]. He wanted to have church services, and you prosecuted him for that.

Mr. PAPILLION. And, there was an executive order issued by the governor at a time, as you're aware, when the *Lukumi* decision and the *Jacobson v. Massachusetts* decisions were not necessarily in that particular context, the most helpful tools for States, and my role——

Senator LEE. Right. Not the most helpful tools because they went against the State's interests.

Mr. PAPILLION. In some contexts. But, in other contexts, the Fifth Circuit, for example, used it in another way. And so, when States were forming their response on the ground, it would have been wonderful to have, for example, the benefit of *Tandon v. Newsom*, at the time that this prosecution was brought.

Senator LEE. That part is concerning to me because it's the whole reason we've got them. It's the only reason we have them.

Judge Hurson, what's the standard for diversity jurisdiction?

Judge HURSON. In Federal court, the diversity jurisdiction—forgive me [turns on microphone], I pledged not to do that—in Federal court, the parties need to be from separate States and the amount of controversy needs to be $75,000 or more.

Senator LEE. Thank you very much. I see my time's expired.

Chair DURBIN. Thank you very much, Senator Lee.

We're going to make an exception to our procedure because our colleague, Senator Blumenthal was injured last week, has returned to Washington to duty with a broken femur, and has asked for permission to ask questions from his office. Senator Blumenthal, are you on board?

Senator BLUMENTHAL. I am on board. And, thank you so much, Mr. Chairman, for accommodating me. I've been at a couple of other hearings this morning and really appreciate the opportunity to question the very qualified candidates and nominees for the court at a time when I think our public trust and credibility in the judiciary is more threatened than ever due to recent controversy involving the Supreme Court, and I thank the Chairman for committing to have hearings on a standard of accountability and ethics for the Supreme Court.

I'd like to ask each of these nominees, what you will do to assure that trust and credibility in the judiciary is preserved and, in fact, enhanced, both in your private dealings and in the appearance of ethical standards in the way you conduct yourself?

Chair DURBIN. Would you like to direct that question to any particular nominee?

Senator BLUMENTHAL. To the entire panel. To each of the nominees.

Chair DURBIN. Mr. Papillion, why don't you start?

Mr. PAPILLION. Thank you. Thank you, Senator. If I were so fortunate as to be confirmed to be a U.S. district judge, I would work every day to uphold the integrity of the judiciary. We have a strict code of ethics that I would follow, scrupulously, and I would try to conduct my dealings, in all ways, to comport with that, to inspire, and to promote confidence in the Federal judiciary, in the way that I would run my courtroom, the way that I would treat litigants, the way that I would deal with the world outside of court, as well. Thank you.

Chair DURBIN. Magistrate Hurson.

Judge HURSON. Thank you. As a sitting magistrate judge, I already follow the code of ethics, the judicial canons, and I do agree that trust in the courts is very important. And every day that I do my job, I do my best to ensure that I follow all recusal requirements, and that I interact with the litigants and the public in a way that does nothing but engender trust. And, I agree with everything else that my colleague, Mr. Papillion, said.

Chair DURBIN. Mr. Daniel.

Mr. DANIEL. Thank you. I would, of course, follow the code of judicial ethics. I would conduct myself in a way that comports with the position, I think it's an important position in the Nation, and that the Nation—I think it's imperative that the Nation have trust in its courts, and it would be incumbent upon me to conduct myself in a manner that was beyond reproach in all respects.

Senator BLUMENTHAL. Thank you, each of you, for your commitment to follow those high ethical standards. Not just the ethical standards that apply to all district court judges and all courts of appeal judges, but also a standard of integrity that comports with public trust and credibility, which, I think, is so very important at this point in our Nation's history. And, I think your testimony is very, very reassuring to me that the awareness of the importance of those standards will be with you when you are confirmed, as I hope you will be, to the United States district courts. Thank you very much, Mr. Chairman.

Chair DURBIN. Thank you Senator Blumenthal. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Congratulations to each of you, and to your families. We're delighted that you all are here with us today.

Mr. Papillion, I want to come to you and go back to this case with Pastor Spell. That is a thing that concerns me, because at the time, Governor Edwards thanked the protesters. So, it was okay for protesters to assemble in Louisiana, but not okay for people of faith to assemble?

So, that is, in my opinion, and I would think, to you, that that would have been the unconstitutional part of this approach of going against Pastor Spell and ruling against Pastor Spell. So, what I'd like to hear from you is, why you would see this as not being that restriction on free speech? Why did you think that was acceptable, and what was the legal basis that you went to, for that decision?

Mr. PAPILLION. Thank you, Senator. I'm not familiar with the part about the protesters, but I'm very familiar with the *Spell* case.

Senator BLACKBURN. Well, it's a quote that I have in front of me: "He thanked the protesters at the time and stated that they were appropriately expressing their concerns and exercising their First Amendment rights."

Mr. PAPILLION. All right. Again, it's just something—my role was in the *Spell* prosecution. But let me explain that, if I may. It is that in the very early stages of the pandemic, States were faced with the very difficult collision of the very important right to religious expression and the State's power to protect the public. And the law clearly protects religious liberty, but it also gave the State the power that it did.

And, we later got guidance from the United States Supreme Court in some very important cases. And, I believe that, had those cases been decided earlier, the order that the governor wrote, which I didn't write, would likely have been written differently. And, I didn't choose to prosecute the pastor. But as a lawyer, I represented my client, the State of Louisiana.

If I were to be confirmed as a United States district judge, I would very scrupulously follow the First Amendment and the tests

that our Supreme Court and the U.S. Fifth Circuit have made very clear, that when a secular institution is treated more favorably than religion, strict scrutiny applies. And, the State needs to show that whatever remedy it wants to apply is narrowly tailored to achieve the result.

And, we can't assume the worst, as the courts have said, when people go to church, and the best, when they go someplace else, like work or the mall. And that is today, I think, a very clear principle of law that I would follow as a judge.

Senator BLACKBURN. Okay. Well, I will tell you, that's the thing that really concerns me, is the way that—I appreciate your explanation, but the free exercise of religion is very important to Tennesseans. It's important to the religious organizations that call Nashville, Tennessee, home. And, I'm sure you're aware that there are many.

And, to have a case where it seems there is a subjective opinion that allows one type place of gathering, allows another type place of gathering, but disadvantages and disallows the exercise of religion, that causes tremendous concern. It seems like an inconsistency of the approach. And, I've been—as I've reviewed your record, have been concerned about that.

My time has just about expired. Mr. Hurson, I'm going to come to you, and Mr. Daniel, with a written question pertaining to your judicial philosophy, and your approach on some issues. I was concerned, Mr. Hurson, of the remarks you made to Senator Graham on fentanyl, and the awareness of fentanyl, and the impact that has on our community. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blackburn. And thank you, to the nominees. Senator Welch, did you have any follow-up questions?

Thank you, very much, for being here this morning, and the process will continue from this point, and you may receive written questions in a few days. Prompt reply gives us an opportunity to move forward ourselves.

I thank you all for being here, and especially thank your family and friends for the sacrifice of joining you and supporting you. And we look forward to pursuing your nominations to a satisfactory conclusion, as quickly as possible. This meeting of the Senate Judiciary Committee stands adjourned.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List
Hearing before the
Senate Committee on the Judiciary

"Nominations"

Tuesday, April 18, 2023
Dirksen Senate Office Building, Room 226
10:00 a.m.

Jeremy C. Daniel, to be United States District Judge for the Northern District of Illinois

Brendan Abell Hurson, to be United States District Judge for the District of Maryland

Darrel James Papillion, to be United States District Judge for the Eastern District of Louisiana

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Jeremy Christen Daniel

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Northern District of Illinois

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States Attorney's Office, Northern District of Illinois
   219 South Dearborn Street, 5th Floor
   Chicago, Illinois 60604

   Residence: Oak Park, Illinois

4. **Birthplace**: State year and place of birth.

   1978; Chicago, Illinois

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   2004 – 2007, Loyola University Chicago School of Law; J.D., 2007

   1996 – 2000, Illinois Wesleyan University; B.S., 2000

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2014 – present; Spring 2007
   United States Attorney's Office, Northern District of Illinois
   219 South Dearborn Street, 5th Floor
   Chicago, Illinois 60604
   Deputy Chief, Narcotics and Money Laundering (2019 – present)

Assistant United States Attorney (2014 – present)
Intern (uncompensated) (Spring 2007)

Fall 2019; Fall 2018
Loyola University Chicago School of Law
25 East Pearson Street
Chicago, Illinois 60611
Workshop Leader

2013 – 2014; Summer 2005
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk for the Honorable Virginia M. Kendall (2013 – 2014)
Extern for the Honorable Mark Filip (uncompensated) (Summer 2005)

2007 – 2013; Summer 2006
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, Illinois 60661
Associate (2007 – 2013)
Summer Associate (Summer 2006)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   2000 – 2004
   United States Marine Corps
   1st Lieutenant
   Honorably Discharged in 2004

   1997 – 2000
   United States Marine Corps Reserve
   Lance Corporal
   Honorably Discharged in 2000

   I registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Drug Enforcement Administration, Certificate of Appreciation (2017)

   Federal Bureau of Investigation, Certificate of Appreciation (2017)

Loyola University Chicago School of Law, President's Medallion (2007)

Loyola Law Journal, Member (2006 – 2007)

Federal Circuit Bar Association, Howard T. Markey Scholarship (2006)

Schiff Hardin, John J. Waldron Scholarship (2006)

Katten Muchin Rosenman LLP, Diversity Scholarship (2006)

Marine Corps Engineer School, Academic Honor Graduate (2002)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Federal Circuit Bar Association

Illinois State Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Illinois, 2007

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Federal Circuit, 2009
United States District Court for the Northern District of Illinois, 2007
United States Patent and Trademark Office, 2012

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chicago Committee on Minorities in Large Law Firms, Member (2007 – 2013)

Institute for Inclusion in the Legal Profession, Volunteer (2009 – 2014)

Jack and Jill of America, Inc., Western Cook County Chapter, Father's Auxiliary (2015 – present)

Lawndale Community Academy, Mock Trial Volunteer Instructor (2018)

Magistrate Judge Merit Selection Panel, United States District Court for the Northern District of Illinois (2021 – present)

Richard Linn American Inn of Court, Member (2009 – 2013)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and

a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

October 31, 2022: Panelist, Federal Bar Association, Northwestern Pritzker School of Law, Chicago, Illinois. I participated in a panel for law students about careers as a federal prosecutor and federal defender. I have no notes, transcript, or recording. The address of Northwestern Pritzker School of Law is 375 East Chicago Avenue, Chicago, Illinois 60611.

August 3, 2022: Panelist, "Beyond the Books," Just the Beginning Foundation, Chicago, Illinois. I participated in a panel for law students about activities and opportunities outside of the law school classroom. I have no notes, transcript, or recording. The address of Just the Beginning Foundation is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

March 16, 2022: Panelist, "Prosecutorial Discretion: Charging Decisions and the Influence of Community Pressure," Loyola University Chicago School of Law, Chicago, Illinois. Recording available at https://luc.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=f48c002a-007c-4d9e-b46a-ae5b01177c98.

August 11, 2021: Panelist, "Beyond the Books," Just the Beginning Foundation, Chicago, Illinois. I participated in a panel for law students about activities and opportunities outside of the law school classroom. I have no notes, transcript, or recording. The address of Just the Beginning Foundation is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

September 16, 2020: Panelist, "Federal Careers Night," Loyola University Chicago School of Law, Chicago, Illinois. I participated in a panel for law

students about legal career opportunities with the federal government. I have no notes, transcript, or recording. The address of Loyola University Chicago School of Law is 25 East Pearson Street, Chicago, Illinois 60611.

August 13, 2020: Panelist, "Beyond the Books," Just the Beginning Foundation, Chicago, Illinois. I participated in a panel for law students about activities and opportunities outside of the law school classroom. I have no notes, transcript, or recording. The address of Just the Beginning Foundation is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

August 13, 2019: Panelist, "Beyond the Books," Just the Beginning Foundation, Chicago, Illinois. I participated in a panel for law students about activities and opportunities outside of the law school classroom. I have no notes, transcript, or recording. The address of Just the Beginning Foundation is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

June 14, 2017: Panelist, "JIOP Alumni Mentoring and Professional Development," American Bar Association, Chicago, Illinois. I participated in a panel for Judicial Intern Opportunity Program participants about mentoring and professional development. I have no notes, transcript, or recording. The address for the JIOP Program Director is American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

June 1, 2016: Panelist, "JIOP Alumni Mentoring and Professional Development," American Bar Association, Chicago, Illinois. I participated in a panel for Judicial Intern Opportunity Program participants about mentoring and professional development. I have no notes, transcript, or recording. The address for the JIOP Program Director is American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

February 2014 (specific date unknown): Panelist, "Meet the Lawyers," Loyola University Chicago School of Law, Chicago, Illinois. I participated in a panel for law students about litigation and practice in federal courts. I have no notes, transcript, or recording. The address of Loyola University Chicago School of Law is 25 East Pearson Street, Chicago, Illinois 60611.

October 11, 1998: Speaker, Illinois Wesleyan University Black Student Union Thirtieth Anniversary Celebration, Bloomington, Illinois. I gave remarks about the thirtieth anniversary of the Black Student Union at Illinois Wesleyan University. I have no notes, transcript, or recording. The address of Illinois Wesleyan University is 1312 Park Street, Bloomington, Illinois 61701.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Loyola Law, Student Profile: President's Medallion Winner Jeremy C. Daniel, Spring 2007. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these cases, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

ii. Of these cases, approximately what percent were:

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 2013 to 2014, I clerked for the Honorable Virginia M. Kendall of the United States District Court for the Northern District of Illinois.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2007 – 2013
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, Illinois 60661
Associate

2014 – present
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
Deputy Chief, Narcotics and Money Laundering (2019 – present)
Assistant United States Attorney (2014 – present)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 2007 to 2013, I was an associate in Katten Muchin Rosenman's intellectual property department. My cases primarily involved patent litigation. I participated in document review, issuing and responding to

written discovery, taking and defending depositions, trials, and appeals. My practice consisted entirely of civil matters during this time.

From 2013 to 2014, I served as a judicial law clerk, assisting with research, writing, and drafting legal opinions.

Since 2014, I have served as an Assistant United States Attorney. From 2014 to 2019, I worked in the General Crimes, Narcotics and Money Laundering, and Health Care Fraud Sections, handling all aspects of criminal investigation and prosecution, including grand jury proceedings, discovery matters, pretrial motion practice, trials, post-trial motions, sentencings, and appeals. I have prosecuted a wide variety of federal crimes that increased in complexity over time, including violations of drug and firearm laws, gang investigations, and financial crimes. I became a supervisor in 2019, and have since continued to investigate and prosecute my own cases while also supervising other attorneys in the Narcotics and Money Laundering Section. My practice has consisted entirely of criminal matters during this time.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Katten Muchin Rosenman, I primarily represented corporations in patent litigation matters. At the United States Attorney's Office, I represent the United States in criminal prosecutions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 13 criminal cases to verdict in federal district court. I tried each of those cases with at least one other Assistant United States Attorney. I have tried

three civil cases to verdict in federal district court. I was associate counsel in each of those cases, supervised by lead counsel. I tried one civil case to final decision before an administrative body. I was associate counsel in that case, supervised by lead counsel. I have also presented oral argument in four appeals before the U.S. Court of Appeals for the Seventh Circuit.

i. What percentage of these trials were:
   1. jury: 71%
   2. non-jury: 29%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Pareja et al.*, 19 CR 638 (N.D. Ill.) (Leinenweber, J.)

Six individuals were charged in this case with wire fraud and perjury. The charges stemmed from a mortgage fraud scheme in which the defendants recruited straw purchasers to apply for and receive mortgages to purchase residential properties. I was assigned this investigation after the initial prosecutor left the U.S. Attorney's Office. I continued the investigation, to include interviewing witnesses and presenting matters to the grand jury. I have handled all aspects of the prosecution, from indictment to pleas to sentencing. Defendant Murrell pled guilty and received a sentence of time-served. Defendant Karvelas pled guilty and received a sentence of time-served. Defendant Vaghasiya pled guilty and received a sentence of probation. Defendants Howard and Frimpong pled guilty and await sentencing. Defendant Pareja scheduled a change of plea for April 2023.

Dates of representation: 2018 – present

Opposing Counsel
Jonathan S. Bedi (for Mr. Frimpong)
Dena M. Singer
Bedi & Singer, LLP
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Chicago, IL 60604
(312) 525-2017

James A. McGurk (for Mr. Howard)
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20 South Clark Street, Suite 1710
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Terrence P. LeFevour (for Mr. Murrell)
Law Offices of Terrence P. LeFevour
190 South LaSalle Street, #520
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Michael Z. Gurland (for Mr. Karvelas)
The Gurland Law Firm
414 North Clay Street
Hinsdale, IL 60521
(312) 420-8812

Amir Mohabbat (for Mr. Pareja)
The Chicagoland and Suburban Law Firm
248 South Marion Street, Suite 104
Oak Park, IL 60302
(815) 501-1345

Michael J. Monaco (for Mr. Vaghasiya)
53 West Jackson Boulevard, Suite 1105
Chicago, IL 60604
(312) 697-0007

2. *United States v. Mir et al.*, 19 CR 52 (N.D. Ill.) (Shah, J.)

This case charged eight individuals with health care fraud, conspiracy to commit money laundering, concealment of money laundering, false statements relating to health care matters, and engaging in monetary transactions in criminally derived property of greater than $10,000 in value. The charges stemmed from a fraud scheme in which the defendants acquired home health agencies using fake aliases and nominee owners and then submitted fraudulent claims to Medicare for home health services that were never

rendered. I, along with co-counsel, worked on all aspects of the investigation and prosecution. This includes the initial investigation, which involved obtaining search warrants, interviewing witnesses, and presenting matters to the grand jury, as well as the prosecution, which involved discussing potential resolution of the case with opposing counsel, working with cooperating defendants, pretrial matters, and trial. At trial, I presented several witnesses, argued motions, and presented the government's closing argument. Defendant Ateeq pled guilty and received a sentence of 144 months' imprisonment. Defendant Malik proceeded to trial, which resulted in a hung jury. Mr. Malik subsequently pled guilty and received a sentence of time served. Defendant Ramos pled guilty and received a sentence of one year of probation. Defendant Cochran pled guilty and received a sentence of two years of probation. Defendants N. Mir and Chatat have pled guilty and await sentencing. Defendants A. Mir and Jamal remain fugitives.

Dates of representation: 2018 – present

Co-counsel
Patrick Mott
United States Attorney's Office, Northern District of Illinois
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(312) 469-6052

Sarah Wilson Rocha
Fraud Section, United States Department of Justice
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Opposing Counsel
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Kevin P. Bolger (for Mr. Ateeq)
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Harold Mark Garfinkel (for Ms. Chatat)
Law Offices of Hal M. Garfinkel LLC
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Michael Irving Leonard (for Mr. Malik)
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Susan M. Pavlow (for Mr. N. Mir)
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Lisa A Rasmussen (for Mr. N. Mir)
Law Offices of Kristina Wildeveld & Associates
550 East Charleston Boulevard
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(702) 222-0007

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(312) 236-8708

3. *United States v. R. Kowalski et al.*, 19 CR 226 (N.D. Ill.) (Kendall, J.)

This case charged 14 individuals with conspiracy, embezzlement, bankruptcy fraud, and tax violations. The charges followed the failure of a community bank declared insolvent in December 2017, and stemmed from an embezzlement scheme in which bank employees transferred funds to individuals outside the bank. I, along with co-counsel, worked on all aspects of the investigation and prosecution. This includes the initial investigation, which involved obtaining search warrants, interviewing witnesses, and presenting matters to the grand jury, as well as the prosecution, which involved discussing potential resolution of the case with opposing counsel, pretrial matters, and trial preparation. Defendants J. Kowalski, Corvite, Iriondo, Mandujano, Torres, Crotty, and Kasprowicz have pled guilty and await sentencing. Defendant W. Kowalski entered a pretrial diversion agreement. Defendant R. Kowalski was convicted following a jury trial and awaits sentencing. Defendants Krejza, Matczuk, Mahon, Weston, and Kozdemba await trial.

Dates of representation: 2017 – present

Co-counsel
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Kristin Pinkston
Jeffrey Snell
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Ekl Williams & Provenzale LLC
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Lawrence H. Hyman & Associates

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Gal Pissetzky (for Mr. Matczuk)
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Adam J. Sheppard (for Mr. Kasprowicz)
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Stephen R. Shanin (standby counsel for Mr. R. Kowalski)
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Steven H. Fine (for Mr. Kozdemba)
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Michael B. Nash (for Mr. Krejza)
650 North Dearborn Street, Suite 700
Chicago, IL 60654
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Brendan Shiller (for Mr. Krejza)
601 South California Avenue

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Marc M. Barnett (for Ms. Torres)
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4. *United States v. Lowe*, 19 CR 548 (N.D. Ill.) (Bucklo, J.), *aff'd*, 2 F.4th 652 (7th Cir. 2021) (Kanne, Kirsch, and Scudder, JJ.)

This case charged defendant Lowe with being a felon in possession of a firearm. The charges stemmed from a shooting in Chicago, Illinois. Police officers who responded to the shooting recovered a firearm from a dumpster in an alley. Surveillance video in that alley showed Mr. Lowe discarding the firearm in that dumpster. I joined this case as co-counsel after indictment and tried the case with co-counsel. In this role, I drafted and responded to pretrial motions, argued motions, presented witnesses at trial, and presented the government's closing argument at trial. A jury convicted Mr. Lowe and he received a sentence of 90 months' imprisonment. Mr. Lowe appealed. I was not counsel for the government on appeal. The Seventh Circuit affirmed.

Dates of representation: 2020 – 2021

Co-Counsel
Erika Gilliam-Booker (former Special Assistant United States Attorney)
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Counsel for Defendant
Jonathan S. Bedi
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5. *United States v. Hines et al.*, 17 CR 135 (N.D. Ill.) (Pallmeyer, J.)

This case charged three individuals with narcotics conspiracy and narcotics distribution.

The charges stemmed from a long-term wire investigation launched after a series of fentanyl-related overdoses in Chicago, Illinois. The investigation resulted in charges against more than 65 individuals in federal and state courts, and this was the lead case. I, along with co-counsel, worked on all aspects of the investigation and prosecution. This includes the initial investigation, which involved obtaining search warrants, interviewing witnesses, obtaining authorization to intercept voice and text communications, and presenting matters to the grand jury, as well as the prosecution, which involved discussing potential resolution of the case with opposing counsel, responding to pretrial motions, and sentencing. Defendant Hines pled guilty and received a sentence of 144 months' imprisonment. Defendant Funches pled guilty and received a sentence of 60 months' imprisonment. Defendant Thomas pled guilty and received a sentence of 120 months' imprisonment.

Dates of representation: 2016 – 2019

Co-counsel
Jeannice Appenteng
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Opposing Counsel
Angela Lockett (for Mr. Funches)
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Damon M. Cheronis (for Mr. Hines)
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Stephen F. Hall (for Mr. Hines)
The Law Office of Stephen F. Hall
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Chicago, IL 60604
(312) 858-4400

Michael P. Gillespie (for Mr. Thomas)
Gillespie & Gillespie
53 West Jackson Boulevard, Suite 1062
Chicago, IL 60604
(312) 588-1281

6. *United States v. Ramirez-Alferez*, 17 CR 5 (N.D. Ill.) (Feinerman, J.), *aff'd*, 935 F.3d 540 (7th Cir. 2019) (Bauer, Hamilton, and St. Eve, JJ.)

This case charged two individuals with narcotics conspiracy and narcotics distribution. The charges stemmed from the arrest of an individual who became a cooperating source for law enforcement. The defendants agreed to sell narcotics to the cooperating source. At that planned transaction, law enforcement officers arrested the defendants. I worked on all aspects of the investigation. This includes obtaining search warrants, interviewing witnesses, and presenting matters to the grand jury. I, along with co-counsel, also worked on all aspects of the prosecution, to include discussing potential resolution of the case with opposing counsel, trial, and sentencing. Defendant Ramirez-Alferez pled guilty and received a sentence of 21 months' imprisonment. A jury convicted defendant Marchan and he received a sentence of 60 months' imprisonment. Mr. Marchan appealed the conviction. I briefed and argued the appeal. The Seventh Circuit affirmed.

Dates of representation: 2017 – 2019

Co-Counsel
Devlin Su (former Assistant United States Attorney)
U.S. Securities and Exchange Commission
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Opposing Counsel
Damon M. Cheronis (for Mr. Marchan)
Ryan J. Levitt
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Jack P. Rimland (for Mr. Ramirez)
900 West Jackson Boulevard
Chicago, IL 60607
(312) 831-1500

7. *United States v. Edgeworth*, 15 CR 15 (N.D. Ill.) (Norgle, J.), *aff'd*, 889 F.3d 350 (7th Cir. 2018) (Easterbrook, Flaum, and Wood, JJ.)

This case charged defendant Edgeworth with bank robbery. Mr. Edgeworth entered a bank, brandished a firearm, demanded money, and then fled. As he fled, he led law enforcement officers pursuing him on a chase through downtown Chicago, Illinois, and into the subway. I worked on all aspects of the investigation, from Mr. Edgeworth's arrest and the filing of the criminal complaint, to interviewing witnesses and presenting

matters to the grand jury. I tried this case with co-counsel, and drafted and responded to pretrial motions, presented witnesses, and presented the government's opening and rebuttal arguments in connection with that trial. A jury convicted Mr. Edgeworth, who received a sentence of 108 months' imprisonment. Mr. Edgeworth appealed. I briefed and argued the appeal. The Seventh Circuit affirmed.

Dates of representation: 2015 – 2017

Co-Counsel
Shoba Pillay (former Assistant United States Attorney)
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2605

Opposing Counsel
Joshua B. Adams
Law Offices of Joshua B. Adams P.C.
900 West Jackson Boulevard, Suite 7-East
Chicago, IL 60607
(312) 566-9173

8. *United States v. Taylor*, 15 CR 159 (N.D. Ill.) (Pallmeyer, J.)

This case charged defendant Taylor with filing false tax returns. This case stemmed from a series of seminars in which individuals recruited others to file fraudulent trust tax returns. I worked on all aspects of the investigation, to include interviewing witnesses and presenting matters to the grand jury. I tried this case with co-counsel, and drafted and responded to pretrial motions, presented witnesses, and presented the government's opening and rebuttal arguments in connection with that trial. A jury convicted Mr. Taylor, and he received a sentence of 24 months' imprisonment.

Dates of representation: 2015 – 2017

Co-Counsel
Julie B. Porter (former Assistant United States Attorney)
Salvatore Prescott Porter & Porter PLLC
1010 Davis Street
Evanston, IL 60201
(312) 283-5711

Opposing Counsel
Gregory T. Mitchell
Gregory T. Mitchell Law Office
18141 Dixie Highway, Suite 115
Homewood, IL 60430

(708) 799-9325

9. *Pfizer et al. v. Teva et al.*, 9 CV 307 (D. Del.) (Sleet, J.), *aff'd*, 555 F. App'x 961 (Fed. Cir. 2014) (Moore, Prost, and Rader, JJ.)

This was a patent litigation case concerning an abbreviated new drug application for pregabalin, a pharmaceutical used to treat fibromyalgia. I, along with co-counsel, represented the Sun defendants, generic pharmaceutical manufacturers seeking authority to market a generic version of pregabalin and sued by the patent holder. The plaintiffs filed a complaint against several generic drug companies that sought approval to launch a generic version of Lyrica (pregabalin). I participated in all aspects of this case through trial. I drafted and responded to written discovery, deposed witnesses, and drafted pretrial motions. At the bench trial in this case, I presented witnesses and argued motions. Following trial, I drafted post-trial filings. The district court ruled in favor of the plaintiffs. The defendants appealed. The Federal Circuit affirmed. I did not participate in the appeal.

Dates of representation: 2009 – 2011

Co-Counsel
Robert B. Breisblatt (retired)

Opposing Counsel
Dimitrios T. Drivas
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 819-8286

10. *Apotex v. Cephalon et al.*, 6 CV 2768 (E.D. Pa.) (Goldberg, J.), *aff'd*, 500 F. App'x 959 (Fed. Cir. 2013) (per curiam)

This was a patent litigation case concerning an abbreviated new drug application for modafinil, a pharmaceutical used to treat narcolepsy. My client filed a civil complaint against the defendants alleging that a patent related to modafinil was invalid and unenforceable, and that the defendants had violated antitrust laws. I joined this case after the complaint had been filed and prior to trial. I, along with counsel, drafted pretrial filings and prepared witnesses for trial. At the bench trial in this case, I presented witnesses. Following trial, I helped draft post-trial filings. The district court found the patent invalid and unenforceable. The defendant appealed. The Federal Circuit affirmed. I did not participate in the appeal.

Dates of representation: 2010 – 2011

Co-Counsel
Robert B. Breisblatt (retired)

Brian J. Sodikoff
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661
(312) 902-5462

Opposing Counsel
Peter J. Kolovos
WilmerHale LLP
60 State Street
Boston, MA 02109
(617) 526-6493

Robert J. Gunther, Jr.
WilmerHale LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8830

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have spent the last three years in the United States Attorney's Office as a supervisor, during which time I have supervised dozens of cases in a strategic and advisory capacity rather than as counsel of record. For example, I had immediate supervisory responsibility for *United States v. Lee et al.*, which charged defendant Lee and others with a racketeering conspiracy that included at least 19 murders and 19 attempted murders, as well as armed robberies, assaults, and narcotics trafficking. My responsibilities included reviewing investigative and charging materials, as well as consulting and advising on the appropriate disposition of defendants who chose to cooperate against their co-defendants. As a supervisor, I regularly advise Assistant United States Attorneys on their investigations, and review their written work prior to filing. I regularly participate in trial strategy conferences, and occasionally advise other Assistant United States Attorneys during their trials. I also periodically serve as a duty supervisor, during which time I field calls from law enforcement officers seeking to open criminal investigations.

In 2018, I participated in a mock trial program sponsored by the U.S. Attorney's Office at Lawndale Middle School. Each week for approximately eight weeks, prosecutors visited students at the school to teach basic trial skills using a mock bank robbery problem. At the conclusion of the program, the students performed a mock trial at the Dirksen Federal

Building in Chicago, Illinois.

I have also served as a mentor for the American Bar Association's Judicial Intern Opportunity Program. In 2016, 2019, 2020, and 2022, while serving as a mentor, I met periodically with my mentees during their summer internships. In 2015, I also interviewed candidates for the program

I have never performed any lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    Professional Identity Formation (Fall 2018; Fall 2019), Loyola University Chicago School of Law: I served as a Workshop Leader with another lawyer. This 5-week required course introduced first-year law students to techniques and tools that would allow them to successfully engage with legal issues in the workplace. Syllabi supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would follow the Code of Conduct for United States Judges, and all other applicable rules covering recusal. I would anticipate recusal from any matter in which I ever played a role while at the United States Attorney's Office or Katten Muchin Rosenman LLP. I do not anticipate family members who are likely to present potential conflicts-of-interest, but would evaluate any other conflicts or relationships that might give rise to the need for recusal on a case-by case basis to determine the appropriate action for any real or perceived conflicts.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult and follow the guidance set forth in the Code of Conduct for United States Judges, 28 U.S.C. § 455, as well as any other relevant canons, statutes, and rules. As appropriate, I would also seek advice and guidance from judicial colleagues, and solicit the views of the relevant parties to determine whether to recuse myself.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since becoming a law clerk to the Honorable Virginia M. Kendall, and continuing through my time with the United States Attorney's Office, the nature of my employment has precluded me from providing pro bono legal services.

I have volunteered my time in other respects, however. In 2018, I participated in a mock trial program sponsored by the U.S. Attorney's Office at Lawndale Middle School. Each week for approximately eight weeks, prosecutors visited students at the school to teach basic trial skills using a mock bank robbery problem. At the conclusion of the program, the students performed a mock trial at the Dirksen Federal Building in Chicago, Illinois.

I have also served as a mentor for the American Bar Association's Judicial Intern Opportunity Program. In 2016, 2019, 2020, and 2022, while serving as a mentor, I met periodically with my mentees during their summer internships. In 2015, I also interviewed candidates for the program.

While in private practice, I completed between 25 and 50 hours of pro bono legal services

each year. During this time, I represented a local artist in a copyright matter, counseled a local charitable organization concerning its name and securing intellectual property protections with respect to that name, represented tenants facing eviction in housing court, volunteered at the Cook County Clerk's expungement help desk, and helped a Holocaust survivor apply for increased reparation payments from the German government.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In October 2021, Senators Durbin and Duckworth issued a public announcement seeking applicants to fill a vacancy created after a District Judge announced his intention to assume senior status. On October 25, 2021, I submitted my application to the Senators' 12-member Screening Committee. On November 13, 2021, I interviewed with the Screening Committee. On November 30, 2021, I interviewed with Senator Durbin. On December 7, 2021, I interviewed with Senator Duckworth. On December 16, 2021, my name was on a list of seven candidates that Senators Durbin and Duckworth submitted to the White House for consideration. On December 16, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Brendan Abell Hurson

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Maryland

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States District Court for the District of Maryland
   101 West Lombard Street, Chambers 7B
   Baltimore, Maryland 21201

4. **Birthplace**: State year and place of birth.

   1977; Washington, DC

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   2002 – 2005, The University of Maryland Francis King Carey School of Law; J.D. (with honors), 2005

   1998 – 2000, Providence College; B.A. (*cum laude*), 2000

   1996 – 1997, The University of Texas at Austin; no degree received

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2022 – present
   United States District Court for the District of Maryland

101 West Lombard Street, Chambers 7B
Baltimore, Maryland 21201
United States Magistrate Judge

2007 – 2017; 2018 – 2022
Office of the Federal Public Defender for the District of Maryland
100 South Charles Street, Tower II, Ninth Floor
Baltimore, Maryland 21201
Senior Litigation Counsel (2015 – 2017; 2019 – 2022)
Assistant Federal Public Defender (2007 – 2014; 2018)

2017 – 2018
Office of the Federal Public Defender for the Virgin Islands
1336 De Beltjen Road, Suite 202
Saint Thomas, Virgin Islands 00802
Assistant Federal Public Defender

2015 – 2017
Themis Bar Review
1501 Sulgrave Avenue, Suite 300
Baltimore, Maryland 21209
Lecturer

2011 –2016
University of Maryland Francis King Carey School of Law
500 West Baltimore Street
Baltimore, Maryland 21201
Adjunct Professor

2006 – 2007
Schulman, Hershfield, and Gilden, PA
(formerly Schulman, Treem, Kaminkow, Gilden, and Ravenell, PA)
401 East Pratt Street, Suite 1800
Baltimore, Maryland 21202
Associate

January 2006 – May 2006
Midlands Technical College
316 South Beltline Boulevard
Columbia, South Carolina 29205
Adjunct Professor

2005 – 2006
United States District Court for the District of South Carolina
901 Richland Street
Columbia, South Carolina 29201

Law Clerk to the Honorable Margaret B. Seymour

Summer 2004
Public Defender Service for the District of Columbia
633 Indiana Avenue, Northwest
Washington, DC 20004
Law Clerk

Spring 2004
United States Attorney's Office for the District of Maryland
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201
Law Clerk

2003 – 2005
Barbri Bar Review
1501 Sulgrave Avenue, Suite 300
Baltimore, Maryland 21209
Student Representative

2001 – 2002
Saint Thomas More Catholic School
4265 Fourth Street, Southeast
Washington, DC 20032
Teacher

2000 – 2001
General Assistance Advocacy Project (GAAP)
276 Golden Gate Avenue
San Francisco, California
Staff Member/Jesuit Volunteer

Summer 2000, 2002
Tabor Academy Summer Program
66 Spring Street
Marion, Massachusetts 02738
Director, Sailing Program (2002)
Instructor, Sailing Program (2000)

Other Affiliations (Uncompensated)

2015 – 2017, 2019 – 2021
Corpus Christi Catholic Parish
110 West Lafayette Avenue
Baltimore, Maryland 21217
Member, Parish Council

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I registered for the selective service upon turning 18.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Fred Warren Bennett Defender Award, Office of the Federal Public Defender, District of Maryland (2013)

   University of Maryland Francis King Carey School of Law
   - Juris Doctor, with honors (2005)
   - Order of the Coif (2005)
   - Order of the Barristers (2005)
   - Elizabeth Maxwell Carroll Chesnut Prize (2005)
   - Co-Recipient, Martin Luther King Jr. Diversity Recognition Award (2005)
   - Recipient, Dean's Partial Scholarship (2005)
   - Member, Mock Trial Team (2003 – 2005)
   - *The University of Maryland Law Journal of Race, Religion, Gender and Class* (formerly *Margins*) (Staff Member, 2003 – 2004; Associate Editor, 2004 – 2005)

   Honorable Mention, Public Service Law Network, National Pro Bono Publico Award (2004)

   Providence College
   - B.A., *cum laude* (2000)
   - Best Paper in Black Studies Program's Class of 2000 (2000)
   - Highest Grade Point Average in Black Studies Program's coursework in the Class of 2000 (2000)
   - Dean's List (Spring 1998, Fall 1998, Fall 1999, Spring 2000)

   University of Texas
   - University Honors (Fall 1996)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   Barristers' Law Club of Baltimore, Maryland

   Maryland Criminal Defense Attorneys' Association

Maryland State Bar Association

The Rule Day Law Club of Baltimore, Maryland

Serjeants' Inn Law Club of Baltimore, Maryland

United States District Court for the District of Maryland
Criminal Justice Act Committee, Member (2022 – present)
Probation Committee, Member (2022 – present)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Maryland, 2005

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Third Circuit, 2017
United States Court of Appeals for the Fourth Circuit, 2006
United States District Court for the District of Maryland, 2006
United States District Court of the Virgin Islands, 2017

My membership in the United States District Court of the Virgin Islands terminated when I left the jurisdiction in 2018. There have been no other lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Corpus Christi Catholic Parish
Parish Council (2015 – 2017, 2019 – 2021)
Social Justice Committee (2010 – 2017, 2019 – 2021)

Jesuit Volunteers Corps, Baltimore Community Support Team (2011 – 2013)

Lawyers Alliance for the Public Justice Center (2016)

Providence College Class of 2000 Reunion Committee (2015)

University of Maryland Carey School of Law, Class of 2005 Reunion Committee (2010, 2015)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to Question 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin through either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Letter to the Editor, The Cowl, Oct. 28, 1999. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

As a first-year law student, I was signatory to an amicus brief filed on behalf of over 13,000 law students authored by Julie Sullivan and Peter Rubin in *Grutter v. Bollinger*, 539 U.S. 306 (2003). *Grutter v. Bollinger*, No. 02-241, Brief of Amici Curiae 13,922 Current Law Students at Accredited American Law Schools in Support of Respondents, 2003 WL 554404 (U.S. Feb. 18, 2003).

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my personal files and the internet to identify all events responsive to this question, but I may have omitted events inadvertently.

January 13, 2023: Speaker, Attorney Admissions, United States District Court for the District of Maryland (Virtual). I delivered brief remarks to newly admitted attorneys about civility and pro bono practice. I have no notes, transcript, or recording. The address for the United States District Court for the District of Maryland is 101 West Lombard Street, Baltimore, Maryland 21201.

December 6, 2022: Speaker, Loyola University Maryland, Baltimore, Maryland. I spoke to a graduate level business law course about federal criminal law and white-collar crime, and answered questions. I have no notes, transcript, or recording. The address for Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland 21210.

November 10, 2022: Speaker, Loyola University Maryland Pre-Law Society, Baltimore, Maryland. I provided introductory remarks about my educational and professional background to undergraduate pre-law students with another judge and then moderated a panel. I have no notes, transcript, or recording. The address for Loyola University Maryland is 4501 North Charles Street Baltimore, Maryland 21210.

November 4, 2022: Speaker, Attorney Admissions, United States District Court for the District of Maryland (Virtual). I delivered brief remarks to newly admitted attorneys about civility and pro bono practice. I have no notes, transcript, or recording. The address for the United States District Court for the District of Maryland is 101 West Lombard Street, Baltimore, Maryland 21201.

October 17, 2022: Speaker, High School Government Course, The Lawrenceville

School (Virtual). I spoke about the federal criminal justice system and my service as a United States Magistrate Judge in two informal virtual question and answer sessions with high school students interested in careers in the law. I have no notes, transcript, or recording. The address of the Lawrenceville School is 2500 Main Street, Lawrenceville, New Jersey 08648.

October 10, 2022: Speaker, Loyola University Maryland, Baltimore, Maryland. I spoke to an undergraduate business law course about federal criminal law, search warrants, and search and seizure law. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland.

September 22, 2022: Speaker, University of Maryland Carey School of Law, Baltimore, Maryland. I spoke to law school students in a criminal procedure course about topics including federal pretrial release statutes and my career as a federal public defender. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

August 25, 2022: Speaker, Formal Investiture as United States Magistrate Judge, United States District Court for the District of Maryland, Baltimore, Maryland. Transcript supplied.

August 5, 2022: Speaker, Attorney Admissions, United States District Court for the District of Maryland (Virtual). I delivered brief remarks to newly admitted attorneys about civility and pro bono practice. I have no notes, transcript, or recording. The address for the United States District Court for the District of Maryland is 101 West Lombard Street, Baltimore, Maryland 21201.

July 19, 2022: Panelist, Maryland Chapter of the Federal Bar Association, Virtual Speaker Series for Summer Associates and Interns (Virtual). I gave brief remarks about my career to summer law clerks. I have no notes, transcript, or recording. The Federal Bar Association has no physical address.

May 20, 2022: Speaker, Maryland Chapter of the Federal Bar Association, Annual Lunch, Hyatt Regency Hotel, Baltimore, Maryland. I gave brief remarks thanking attendees at an annual lunch honoring newly-appointed judges. I have no notes, transcript, or recording. The Maryland Chapter of the Federal Bar Association has no physical address.

April 19, 2022: Speaker, Fireside Chat, Maryland Chapter of the Federal Bar Association (Virtual). I answered questions about my background, my transition to the bench, and my practice preferences. I have no notes, transcript, or recording. The Maryland Chapter of the Federal Bar Association has no physical address.

April 8, 2022: Speaker, Attorney Admissions, United States District Court for the District of Maryland (Virtual). I delivered brief remarks to newly admitted attorneys about civility and pro bono practice. I have no notes, transcript, or recording. The address for the United States District Court for the District of Maryland is 101 West Lombard Street, Baltimore, Maryland 21201.

March 23, 2022: Speaker, Loyola University Maryland, Baltimore, Maryland. I spoke to an undergraduate business law course about federal criminal law, search warrants, and search and seizure law. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland.

February 17, 2022: Speaker, University of Maryland Carey School of Law, Baltimore, Maryland. I spoke to law students in a criminal procedure course about topics including federal pretrial release statutes and my career as a federal public defender. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

November 5, 2021: Speaker, Loyola University Maryland, Baltimore, Maryland. I spoke to an undergraduate business law course about federal criminal law, search warrants, and search and seizure law. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland.

May 7, 2019: Speaker, Federal Defender Investigator and Paralegal Seminar, Administrative Office of the United States Courts, Office of Defender Services Training Branch, Baltimore, Maryland. I presented brief welcome remarks to conference attendees on behalf of Maryland's Office of the Federal Public Defender. I have no notes, transcript, or recording. The address for the Administrative Office of the United States Courts, Defender Services Training Branch is One Columbus Circle, Northeast, Washington, DC 20544.

June 26, 2018: Speaker, Criminal Justice Act Panel Training, Federal Public Defender for the Virgin Islands, St. Croix, United States Virgin Islands. I spoke to attendees about a recent case where I had litigated the alleged failure to disclose *Brady* material. I have no notes, transcript, or recording. The address of the Federal Public Defender for the Virgin Islands is 1336 De Beltjen Road, Suite 202, Saint Thomas, United States Virgin Islands 00802.

September 1, 2017: Speaker, Criminal Justice Act Panel Training, Federal Public Defender for the Virgin Islands, Buccaneer Resort, St. Croix, United States Virgin Islands. I introduced another speaker at the panel training with short remarks. I have no notes, transcript, or recording. The address of the Federal Public Defender for the Virgin Islands is 1336 De Beltjen Road, Suite 202, Saint Thomas, United States Virgin Islands 00802.

September 27 – 30, 2016: Speaker, Criminal Justice Act Panel Training, Federal Public Defender for the Virgin Islands, Office of the Federal Public Defender, St. Thomas, United States Virgin Islands. I introduced a co-panelist, answered questions about using expert witnesses, and discussed changes to federal recidivist enhancements. I have no notes, transcript, or recording. The address of the Federal Public Defender for the Virgin Islands is 1336 De Beltjen Road, Suite 202, Saint Thomas, United States Virgin Islands 00802.

September 22, 2016: Guest Speaker, The Boys' Latin School of Maryland, Baltimore, Maryland. I spoke to high school students about my work as a public defender and the federal criminal justice system. I have no notes, transcript, or recording. The address of The Boys' Latin School of Maryland is 822 West Lake Avenue, Baltimore, Maryland 21210.

December 7, 2015: Guest Speaker, Lawrence Academy "Winterim" course entitled "The System," Washington, DC. I spoke to high school students about my experience as a public defender and about the criminal justice system and answered questions. I have no notes, transcript, or recording. The address of Lawrence Academy is 26 Powderhouse Road, Groton, Massachusetts 01450.

April 15, 2015: Commenter, Department of Justice Community Forum, Coppin State University, Baltimore, Maryland. I gave a statement about internal affairs complaints to a Department of Justice panel investigating complaints of unconstitutional policing. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Department of Justice is 950 Pennsylvania Avenue, Northwest, Washington, DC 20530.

March 30, 2015: Speaker, Benjamin Franklin High School at Masonville Cove, Baltimore, Maryland. I spoke to high school students about careers in the law and the criminal justice system, and I answered questions. I have no notes, transcript, or recording. The address of Benjamin Franklin High School is 1201 Cambria Street, Baltimore 21225.

June 23, 2014: Speaker, Informal Lunch, United States District Court for the District of Maryland, Baltimore, Maryland. I made informal remarks and answered questions at a lunch for summer law clerks at the United States District Court. I have no notes, transcript, or recording. The address of the United States District Court is 101 West Lombard Street, Baltimore, Maryland 21201.

June 19, 2014: Speaker, Informal Lunch, Maryland Office of the Public Defender, Baltimore, Maryland. I made informal remarks and answered questions at a lunch for summer interns for the state public defender. I have no notes, transcript, or recording of the presentation. The address of the Maryland Office of the Public Defender is 201 Saint Paul Place, Baltimore, Maryland 21202.

April 20, 2014: Presenter, Pre-Cana Retreat, Loyola University Maryland, Baltimore, Maryland, 2009 – 2014. My spouse and I spoke about marital communication and conflict resolution to engaged couples seeking to be married at Loyola University. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland 21210.

March 10, 2014: Guest Speaker, Lawrence Academy "Winterim" course entitled "The System," Washington, DC. I spoke to high school students on a field trip for an experiential education course about my experience as a public defender and about the criminal justice system and answered questions. I have no notes, transcript, or recording. The address of Lawrence Academy is 26 Powderhouse Road, Groton, Massachusetts 01450.

February 13, 2014: Panelist, "Careers in Criminal Law," University of Baltimore School of Law, Baltimore, Maryland. I spoke on a panel about careers in criminal law and answered questions. I have no notes, transcript, or recording. The address of the University of Baltimore School of Law is 1401 North Charles Street, Baltimore, Maryland 21201.

December 4, 2013: Speaker, Benjamin Franklin High School at Masonville Cove, Baltimore, Maryland. I spoke to high school students about careers in the law, the criminal justice system, and I answered questions. I have no notes, transcript, or recording. The address of Benjamin Franklin High School is 1201 Cambria Street, Baltimore 21225.

November 22, 2013: Participant, Open Doors Program, United States District Court for the District of Maryland, Baltimore, Maryland. I gave brief remarks to high school students at annual event at Baltimore's federal courthouse where students from Baltimore public high schools observe presentations from judges and attorneys and serve as jurors in mock trials. I have no notes, transcript, or recording. The address of the United States District Court is 101 West Lombard Street, Baltimore, Maryland 21201.

October 2013 (specific date unknown): Co-presenter, "Responding to Claims of Ineffective Assistance of Counsel," Greenbelt, Maryland. I co-presented to a training of federal public defenders and panel attorneys about ways to respond to claims of ineffective assistance of counsel and on ethical ways to protect cooperating witnesses from harm while in custody. I have no notes, transcript, or recording. The address of the Federal Public Defender is 100 South Charles Street, Tower II, Ninth Floor, Baltimore, Maryland 21201.

August 12, 2013: Panelist, Jesuit Volunteer Corps (JVC) Orientation, Waynesboro, Pennsylvania. I shared thoughts about the topic of community involvement as a panelist at a JVC retreat. I have no notes, transcript, or recording. The Jesuit Volunteer Corps is headquartered at 801 Saint Paul Street,

2, Baltimore, Maryland 21202.

July 19, 2013: Speaker, Informal Lunch, United States District Court for the District of Maryland, Baltimore, Maryland. I made informal remarks and answered questions at a lunch for summer law clerks at the United States District Court. I have no notes, transcript, or recording. The address of the United States District Court is 101 West Lombard Street, Baltimore, Maryland 21201.

June 13, 2013: Speaker, Informal Lunch, Federal Public Defender for the District of Maryland, Baltimore, Maryland. I made informal remarks and answered questions about my career path at a lunch for law clerks and summer interns from the Federal Public Defender and United States Attorney's Office. I have no notes, transcript, or recording. The address of the Federal Public Defender is 100 South Charles, Tower II, Ninth Floor, Baltimore, Maryland 21201.

April 20, 2013: Presenter, Pre-Cana Retreat, Loyola University Maryland, Baltimore, Maryland, 2009 – 2014. My spouse and I spoke about marital communication and conflict resolution to engaged couples seeking to be married at Loyola University. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland 21210.

November 11, 2012: Panelist, "Careers in Criminal Law," University of Maryland Carey School of Law, Baltimore, Maryland. I spoke on a panel about careers in criminal law and answered questions. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

October 16, 2012: Panelist, "Having it All, Balancing Work and Life as an Attorney," The Catholic University of America Columbus School of Law, Washington, DC. Notes supplied.

July 12, 2012: Speaker, Informal Lunch, Federal Public Defender for the District of Maryland, Baltimore, Maryland. I made informal remarks and answered questions about my career path at a lunch for law clerks and summer interns from the Federal Public Defender and United States Attorney's Office. I have no notes, transcript, or recording. The address of the Federal Public Defender is 100 South Charles, Tower II, Ninth Floor, Baltimore, Maryland 21201.

November 9, 2011: Panelist, "Careers in Criminal Law," University of Maryland Carey School of Law, Baltimore, Maryland. I spoke on a panel about careers in criminal law and answered questions. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

July 8, 2011: Speaker, Informal Lunch, Federal Public Defender for the District

of Maryland, Baltimore, Maryland. I made informal remarks and answered questions about my career path at a lunch for law clerks and summer interns from the Federal Public Defender and United States Attorney's Office. I have no notes, transcript, or recording. The address of the Federal Public Defender is 100 South Charles, Tower II, Ninth Floor, Baltimore, Maryland 21201.

April 10, 2011: Presenter, Pre-Cana Retreat, Loyola University Maryland, Baltimore, Maryland, 2009 – 2014. My spouse and I spoke about marital communication and conflict resolution to engaged couples seeking to be married at Loyola University. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland 21210.

November 5, 2010: Participant, Open Doors Program, United States District Court for the District of Maryland, Baltimore, Maryland. I gave brief remarks to high school students about my career as a public defender at an annual event at Baltimore's federal courthouse where students from Baltimore public high schools observe presentations from judges and attorneys and serve as jurors in mock trials. I also served as a prosecutor in a mock trial. I have no notes, transcript, or recording. The address of the United States District Court is 101 West Lombard Street, Baltimore, Maryland 21201.

November 3, 2010: Speaker, University of Maryland Carey School of Law, Baltimore, Maryland. I spoke to law students about my experience as a public defender and answered questions. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

August 5, 2010: Panelist, Jesuit Volunteer Corps (JVC) Closing Retreat, Waynesboro, Pennsylvania. I addressed the topic of community involvement after JVC. I have no notes, transcript, or recording. The Jesuit Volunteer Corps is headquartered at 801 Saint Paul Street # 2, Baltimore, Maryland 21202.

March 5, 2010: Guest Speaker, Lawrence Academy "Winterim" course entitled "The System," Washington, DC. I spoke to high school students about my experience as a public defender and about the criminal justice system and answered questions. I have no notes, transcript, or recording. The address of Lawrence Academy is 26 Powderhouse Road, Groton, Massachusetts 01450.

November 7, 2009: Presenter, Pre-Cana Retreat, Loyola University Maryland, Baltimore, Maryland, 2009 – 2014. My spouse and I spoke about marital communication and conflict resolution to engaged couples seeking to be married at Loyola University. I have no notes, transcript, or recording. The address of Loyola University Maryland is 4501 North Charles Street, Baltimore, Maryland 21210.

February 5, 2009: Speaker, University of Maryland Carey School of Law, Baltimore, Maryland. I spoke to law students about my experience as a public defender and answered questions. I have no notes, transcript, or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

March 20, 2007: Speaker, Mock Trial Team Practice, Eastern Technical High School, Essex, Maryland. I spoke to high school students about trial tactics and careers in the law, and answered questions. I have no notes, transcript, or recording. The address of Eastern Technical High School is 1100 Mace Avenue, Essex, Maryland 21221.

February 27, 2000: Speaker, Providence College "Milestones to the Millennium" Black Studies Program Annual Banquet, Providence, Rhode Island. I provided remarks about my experience in the Black Studies program. I have no notes, transcript, or recording, but press coverage is supplied. The address of Providence College is 1 Cunningham Square, Providence, Rhode Island 02918.

October 28, 1999: Remarks, Providence College Forum on Racism, Providence, Rhode Island. I gave remarks at an event addressing incidents of discrimination on campus. I have no notes, transcript, or recording, but press coverage is supplied. The address of Providence College is 1 Cunningham Square, Providence, Rhode Island 02918.

October 1999 (specific date unknown): Speaker, Providence College Student Congress, Providence, Rhode Island. I addressed the Student Congress regarding diversity issues on campus. I have no notes, transcript, or recording, but press coverage is supplied. The address of Providence College is 1 Cunningham Square, Providence, Rhode Island 02918.

March 1999 (specific date unknown): Presenter, "State of Community Service," Campus Outreach Opportunity League (C.O.O.L) Annual Conference, Salt Lake City, Utah. I co-presented a workshop on the present and future state of thoughtful community service and civic engagement. I have no notes, transcript, or recording. C.O.O.L. has no physical address.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Daniel Moore, *Judicial Profile*, Federal Bar Association Newsletter, Summer 2022. Copy supplied.

McKenna Oxenden, *35-year-old Baltimore man sentenced to 12½ years in prison for bank, convenience store armed robberies*, The Baltimore Sun, Feb. 24, 2020.

Copy supplied.

Ralph R. Ortega, *Man, 34, pleads guilty to creating the world's biggest darknet hosting service for child porn that allowed 7,700 users anonymous access to hundreds of thousands of images and videos*, Daily Mail Online, Feb. 7, 2020. Copy supplied.

Justin Fenton, *Baltimore man served time for having gun he says was planted by a corrupt city police officer. Now he wants his record cleared*, The Baltimore Sun, June 29, 2018. Copy supplied.

Jeré Longman, *Empty Seats in a Game Full of Meaning for Baltimore*, The New York Times, Apr. 30, 2015. Copy supplied (reprinted in multiple outlets).

Victoria Macchi, *Baltimore Residents Peacefully Observe Second Day of Curfew*, Voice of America, Apr. 30, 2015. Copy supplied (reprinted in multiple outlets).

Dan Gelston, *Outta Here: Fans locked out of old ballgame when Orioles-White Sox play in front of no fans*, Canadian Press, Apr. 29, 2015. Copy supplied (reprinted in multiple outlets).

David Steele, *No fans inside Camden Yards, but a few showed up anyway*, Sporting News, Apr. 29, 2015. Copy supplied (reprinted in multiple outlets).

Chris Korman, *Baltimore fans try to make sense of game from outside the stadium*, USA Today, Apr. 29, 2015. Copy supplied (reprinted in multiple outlets).

Scott Pelly and Chip Reid, *Today's Baltimore Orioles game with the Chicago White Sox was closed to fans*, CBS Evening News, Apr. 29, 2015. Transcript supplied.

Ian Duncan, *Baltimore Crime Beat: Officer sentenced to five years in tax scam, heroin case*, The Baltimore Sun, Feb. 7, 2014. Copy supplied.

Brendan Kearney, *Brotha Workitout*, The Daily Record, Jan. 28, 2010. Copy supplied.

Jennifer Surface, *Warrants at issue in abuse trials*, Columbia Flier, Mar. 29, 2007. Copy supplied.

Brent Jones, *BSO Pricing Strikes a Chord; $25 Seating Attracts Crowd at Meyerhoff Eager for Season*, The Baltimore Sun, Mar. 4, 2007. Copy supplied.

Fox 45 10:00 News, Baltimore, Maryland, 2007. I am unable to obtain a recording.

Robert Siegel, *Brendan Hurson, Julie Reddick, Elizabeth Carmichael and Brian Furlong discuss their work on the Arvinger case and what they hope to do once they finish law school*, NPR's All Things Considered, Dec. 15, 2004. Transcript supplied.

Michelle Norris, Robert Siegel, *Case of Walter Arvinger, who spent 36 years in prison for a murder he did not commit*, NPR's All Things Considered, Dec. 15, 2004. Transcript supplied.

Jenifer Levitz, *PC brochure photo at issue - To lure minority students, some colleges alter images*, The Providence Journal, Nov. 14, 2000. Copy supplied.

Alicia Nidetz, *World Bank protests; PC students participate in demonstrations against IMF*, The Cowl, Apr. 27, 2000. Copy supplied.

WPRO News, Providence Rhode Island, 2000. I am unable to obtain a recording.

D. Morgan McVicar, *Students protest lack of diversity at PC*, The Providence Journal, Feb. 17, 2000. Copy supplied.

Kristin DiQuollo, *Protest draws local media to campus*, The Cowl, Feb. 17, 2000. Copy supplied.

Elizabeth Waterfall, *Looking ahead: Five visions for PC's future*, The Cowl, Dec. 9, 1999. Copy supplied.

Kristin DiQuollo, *Over 90 march for diversity*, The Cowl, Nov. 11, 1999. Copy supplied.

Melissa Gage, *Swastikas spur concern; Campus reels from latest racial incident*, The Cowl, Oct. 28, 1999. Copy supplied.

Caylen Macera, *Unicco Workers Continue to Rally; No date set for new negotiations*, The Cowl, Mar. 25, 1999. Copy supplied.

Carrie Spiros and M.F. Stauff, *Students Protest on Huxley*, The Cowl, Feb. 4, 1999. Copy supplied.

Ken Martin, *Athletic Rally Takes On Positive Tone*, The Cowl, Oct. 29, 1998. Copy supplied.

Janelle McDonald, *UT students debate relevance of being politically correct*, The Daily Texan, Mar. 6, 1998. Copy supplied.

Marc Duchen, *UT must attempt to bring more prominent speakers*, The Daily

Texan, Nov. 14, 1997. Copy supplied.

Editorial Staff, *Election Guide '97*, The Daily Texan, Feb. 24, 1997. Copy supplied.

Mike Carr, *3 arrested protesting KKK rally in San Antonio*, The Daily Texan, July 1, 1996. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

The District Judges of the United States District Court for the District of Maryland appointed me in February 2022 to serve as a United States magistrate judge. The District Court has jurisdiction over civil matters raising federal questions, civil matters with diversity of citizenship, and federal criminal matters. As a United States magistrate judge, my jurisdiction is governed by 28 U.S.C. § 636. I preside over all aspects of civil lawsuits by consent of the parties, decide civil discovery disputes and motions referred to me by district judges, and conduct settlement conferences in civil cases assigned to other district and magistrate judges. I also coordinate the District of Maryland's Social Security appeals docket. I preside over preliminary criminal proceedings, including initial appearances, detention hearings, arraignments, and attorney inquiry hearings. I preside over all proceedings involving federal misdemeanor offenses. I also review applications for search and arrest warrants, pen registers and trap and trace devices, and other miscellaneous criminal orders.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

One.

i. Of these cases, approximately what percent were:

jury trials:	100%
bench trials:	0%

ii. Of these cases, approximately what percent were:

civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

Orlando M. v. Kijakazi, No. 22-1585-BAH, 2023 WL 2561221 (D. Md. Mar. 17, 2023).

Candace V.-R v. Kijakazi, No. 22-1359-BAH, 2023 WL 2500353 (D. Md. Mar. 14, 2023).

XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC, No. 21-3068-BAH, 2023 WL 2499855 (D. Md. Mar. 14, 2023).

Rebecca C. v. Kijakazi, No. 22-0609-BAH, 2023 WL 2500288 (D. Md. Mar. 14, 2023).

Renard P. v. Kijakazi, No. 22-975-BAH, 2023 WL 2374975 (D. Md. Mar. 6, 2023).

Yonas A. v. Kijakazi, No. 22-775-BAH, 2023 WL 2264643 (D. Md. Feb. 28, 2023).

Melissa B. v. Kijakazi, No. 22-661-BAH, 2023 WL 2307146 (D. Md. Feb. 28, 2023).

Terry Q. v. Kijakazi, No. 22-943-BAH, 2023 WL 2036751 (D. Md. Feb. 16, 2023).

Laura G. v. Kijakazi, No. 22-1380-BAH, 2023 WL 1865618 (D. Md. Feb. 9, 2023).

Audlica D. v. Kijakazi, No. 22-1046-BAH, 2023 WL 1769665 (D. Md. Feb. 3, 2023).

Kaitlyn R. v. Kijakazi, No. 22-1010-BAH, 2023 WL 1419629 (D. Md. Jan. 31, 2023).

Jackie T. v. Kijakazi, No. 22-1309-BAH, 2023 WL 1424573 (D. Md. Jan. 30, 2023).

Christopher V. v. Kijakazi, No. 22-828-BAH, 2023 WL 1070541 (D. Md. Jan. 26, 2023).

Tracey M. v. Kijakazi, No. 22-0967-BAH, 2023 WL 206937 (D. Md. Jan. 17, 2023).

Melissa J. v. Kijakazi, No. 22-1003-BAH, 2023 WL 206686 (D. Md. Jan. 13, 2023).

Andrew E. v. Kijakazi, No. 22-1348-BAH, 2023 WL 144763 (D. Md. Jan. 10, 2023).

William C. v. Kijacki, No. 21-02768-BAH, 2022 WL 17850362 (D. Md. Dec. 22, 2022).

Victor F. v. Kijacki, No. 22-00359-BAH, 2022 WL 17822687 (D. Md. Dec. 20, 2022).

Valerie S. v. Kijakazi, No. 22-0916-BAH, 2022 WL 17822658 (D. Md. Dec. 19, 2022).

Donald W. v. Kijakazi, No. 21-2869-BAH, 2022 WL 17812742 (D. Md. Dec. 19, 2022).

Jennifer F. v. Kijakazi, No. 22-209-BAH, 2022 WL 17584916 (D. Md. Dec. 12, 2022).

Flaubert M. v. Kijakazi, No. 21-3141-BAH, 2022 WL 17540366 (D. Md. Dec. 8, 2022).

Millard B. v. Kijakazi, No. 21-2761-BAH, 2022 WL 17456053 (D. Md. Dec. 6, 2022).

Erini F. v. Kijakazi, No. 22-577-BAH, 2022 WL 17405160 (D. Md. Dec. 1, 2022).

Timothy S. v. Kijakazi, No. 21-3056-BAH, 2022 WL 17253756 (D. Md. Nov. 28, 2022).

Angela B. v. Kijakazi, No. 21-3181-BAH, 2022 WL 17251227 (D. Md. Nov. 28, 2022).

XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC, No. 21-3068-BAH, 2022 WL 17177650 (D. Md. Nov. 23, 2022).

Michael C. v. Kijakazi, No. 22-392-BAH, 2022 WL 17094936 (D. Md. Nov. 21, 2022).

Tiara A. v. Kijakazi, No. 22-00097-BAH, 2022 WL 17094933 (D. Md. Nov. 21, 2022).

Dorothy B. v. Kijakazi, No. 21-3307-BAH, 2022 WL 16964804 (D. Md. Nov. 16, 2022).

Maxine C. v. Kijakazi, No. 22-0528-BAH, 2022 WL 16856272 (D. Md. Nov. 10, 2022).

Catisha W. v. Kijakazi, No. 21-1567-BAH, 2022 WL 16839564 (D. Md. Nov. 9,

2022).

Krystal M. v. Kijakazi, No. 21-2929-BAH, 2022 WL 16701171 (D. Md. Nov. 3, 2022).

Roger B. v. Kijakazi, No. 21-2888-BAH, 2022 WL 16701201 (D. Md. Nov. 3, 2022).

Orion G. v. Kijakazi, No. 21-2425-BAH, 2022 WL 16541285 (D. Md. Oct. 28, 2022).

Michael C. v. Kijakazi, No. 22-0029-BAH, 2022 WL 13945281 (D. Md. Oct. 24, 2022).

Walter G. v. Kijakazi, No. 21-2400-BAH, 2022 WL 12036530 (D. Md. Oct. 20, 2022).

Mary O. v. Kijakazi, No. 21-2797-BAH, 2022 WL 12039528 (D. Md. Oct. 20, 2022).

Shawn S. v. Kijakazi, No. 21-3180-BAH, 2022 WL 6200648 (D. Md. Oct. 7, 2022).

Cassandra P. v. Kijakazi, No. 21-3109-BAH, 2022 WL 5247186 (D. Md. Oct. 6, 2022).

Temescal Wellness of Maryland, LLC v. Emp. Tools & Sols., Inc., No. 20-3650-JRR, 2022 WL 4969305 (D. Md. Oct. 3, 2022).

Sherie W. v. Kijakazi, No. 22-0100-BAH, 2022 WL 4551965 (D. Md. Sept. 29, 2022).

Njoroge v. PrimaCare Partners, LLC, No. 22-0425-BAH, 2022 WL 4465894 (D. Md. Sept. 26, 2022).

Roshelle S. B. v. Kijakazi, No. 21-2842-BAH, 2022 WL 4448924 (D. Md. Sept. 23, 2022).

Holman v. Greyhound Lines, Inc., No. 21-0112-BAH, 2022 WL 4368148 (D. Md. Sept. 20, 2022).

Davis v. Kim, No. 19-3605-BAH, 2022 WL 4290574 (D. Md. Sept. 16, 2022).

Gideon T. v. Kijakazi, No. 21-2843-BAH, 2022 WL 4290716 (D. Md. Sept. 16, 2022).

Robert S. v. Kijakazi, No. 21-0927-BAH, 2022 WL 4236583 (D. Md. Sept. 13, 2022).

William B. v. Kijakazi, No. 21-2350-BAH, 2022 WL 4120767 (D. Md. Sept. 9, 2022).

Janice M. v. Kijakazi, No. 21-1715-BAH, 2022 WL 4120790 (D. Md. Sept. 9, 2022).

Towanna G. v. Kijakazi, No. 21-1711-BAH, 2022 WL 4017417 (D. Md. Sept. 2, 2022).

April J. v. Kijakazi, No. 21-1584-BAH, 2022 WL 4017381 (D. Md. Sept. 2, 2022).

Shannon P. v. Kijakazi, No. 21-1404-BAH, 2022 WL 3994460 (D. Md. Sept. 1, 2022).

Orion G. v. Kijakazi, No. 21-2425-BAH, 2022 WL 3986783 (D. Md. Sept. 1, 2022).

Theresa C. v. Kijakazi, No. 21-2026-BAH, 2022 WL 3649965 (D. Md. Aug. 24, 2022).

Lisa N. v. Kijakazi, No. 21-1486-BAH, 2022 WL 3587809 (D. Md. Aug. 22, 2022).

Casey S. v. Kijakazi, No. 21-2014-BAH, 2022 WL 3579588 (D. Md. Aug. 19, 2022).

Beth Ann O. v. Kijakazi, No. 21-1877-BAH, 2022 WL 3360277 (D. Md. Aug. 15, 2022).

Lashar W. v. Kijakazi, No. 21-2331-BAH, 2022 WL 3215099 (D. Md. Aug. 9, 2022).

Karen O. v. Kijakazi, No. 21-0626-BAH, 2022 WL 2954783 (D. Md. July 26, 2022).

Michelle A. v. Kijakazi, No. 21-1200-BAH, 2022 WL 2918143 (D. Md. July 25, 2022).

Abdul K. v. Kijakazi, No. 21-2434-BAH, 2022 WL 2789363 (D. Md. July 15, 2022).

Clinton H. v. Kijakazi, No. 21-2310-BAH, 2022 WL 2793049 (D. Md. July 15,

2022).

April K. v. Kijakazi, No. 21-1538-BAH, 2022 WL 2793048 (D. Md. July 15, 2022).

Elizabeth T. v. Kijakazi, No. 21-1046-BAH, 2022 WL 2649055 (D. Md. July 8, 2022).

Sherie S. v. Kijakazi, No. 21-1032-BAH, 2022 WL 2649093 (D. Md. July 8, 2022).

Catisha W. v. Kijacki, No. BAH-21-1567, 2022 WL 2483582 (D. Md. July 6, 2022).

XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC, No. 21-3068-BAH, 2022 WL 2105925 (D. Md. June 10, 2022).

Joseph J. v. Kijakazi, No. 21-2194-BAH, 2022 WL 2069283 (D. Md. June 8, 2022).

Lori S. v. Kijakazi, No. 21-2034-BAH, 2022 WL 1721192 (D. Md. May 27, 2022).

Holman v. Greyhound Lines, Inc., No. 21-112-BAH, 2022 WL 1720152 (D. Md. May 27, 2022).

Lavera C. v. Kijakazi, No. 21-2341-BAH, 2022 WL 1693537 (D. Md. May 26, 2022).

Andrew D. v. Kijakazi, No. 21-2104-BAH, 2022 WL 1462889 (D. Md. May 9, 2022).

Shayna R. v. Kijakazi, No. 21-1803-BAH, 2022 WL 1239876 (D. Md. Apr. 27, 2022).

Cheryl M. v. Kijakazi, No. 21-1974-BAH, 2022 WL 1174740 (D. Md. Apr. 19, 2022).

Topp v. James River Ins. Co., No. 20-1822-BAH, 2022 WL 1127903 (D. Md. Apr. 15, 2022).

Freda T. v. Saul, No. 21-1630-BAH, 2022 WL 1122831 (D. Md. Apr. 14, 2022).

Clara M. v. Kijakazi, No. 20-2581-BAH, 2022 WL 903457 (D. Md. Mar. 28, 2022).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *United States v. Pitts*, 22-mj-02306-BAH and 22-300-GLR (D. Md. Nov. 23, 2022) (ECF # 69) (Opinion supplied).

Mr. Pitts is charged with sex trafficking of a minor in violation of 18 U.S.C. § 1591 and related offenses. I signed the criminal complaint in the case and handled preliminary matters related to detention. Mr. Pitts was ultimately indicted. After a detention hearing pursuant to 18 U.S.C. § 3142, I ordered that Mr. Pitts be detained pending trial due to, among other factors, substantiated allegations of witness intimidation and the nature and circumstances of the offense charged. Mr. Pitts filed a motion to reopen his detention hearing pursuant to 18 U.S.C. § 3142(f) or, in the alternative, for temporary release under 18 U.S.C. § 3142(i). I issued a written opinion denying both requests for a variety of factors including substantiated allegations that Mr. Pitts was contacting potential witnesses while in custody. The case remains pending.

Counsel for Plaintiff:

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2. *Temescal Wellness of Maryland, LLC v. Emp. Tools & Sols., Inc.*, No. 20-3650-JRR, 2022 WL 4969305 (D. Md. Oct. 3, 2022).

The plaintiff filed a lawsuit alleging that the defendants engaged in a fraudulent scheme to steal payroll funds designated for the benefit of the plaintiff's employees. The plaintiff sought default judgment against one defendant who failed to answer the complaint. The plaintiff also sought an award of attorney's fees. The matter was assigned to me by District Judge Julie Rubin for a report and recommendation and, if necessary, a hearing on damages. I recommended that Judge Rubin deny the motion without prejudice for several reasons including that the plaintiff failed to justify an order of damages in excess of what was demanded in the plaintiff's complaint and also failed to articulate why an award of attorney's fees was appropriate. Judge Rubin adopted the report and recommendation without objection from the plaintiff. The case remains pending.

Counsel for Plaintiff:

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(410) 332-0850

Counsel for Defendants:

None

3. *Njoroge et al. v. PrimaCare Partners, LLC, et al.*, No. 22-0425-BAH, 2022 WL 4465894 (D. Md. Sept. 26, 2022).

The plaintiffs worked for a company that provides in-home care for elderly clients. All plaintiffs were employed as caregivers, some as hourly employees and some as live-in caregivers. The plaintiffs filed a lawsuit against their employer and related parties alleging violations of the Fair Labor Standards Act (FLSA) and similar Maryland labor laws claiming that the defendants engaged in minimum wage, overtime, and recordkeeping violations. The plaintiffs filed a motion for conditional certification of a collective action of caregivers employed by the defendants. The defendants opposed the motion. I wrote an opinion holding that the plaintiffs had shown that they and other potential plaintiffs are similarly situated and thus I deemed conditional certification to be proper. I approved notice to be sent to potential additional plaintiffs. The case remains pending.

Counsel for Plaintiffs:

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4. *Davis v. Kim et al.*, No. 19-3605-BAH, 2022 WL 4290574 (D. Md. Sept. 16, 2022).

This case stemmed from a physical altercation between the plaintiff and the employees of a liquor store in Prince George's County, Maryland. Officers from the Prince George's County Police Department (PGPD) responded and the plaintiff was handcuffed, detained, and issued a citation for disorderly conduct. After that citation was dismissed, the plaintiff sued the liquor store, its employees, PGPD, and several PGPD officers, alleging a variety of state tort law claims and violations of constitutional rights. After nearly all parties filed motions for summary judgement or dismissal, I wrote an opinion granting relief in favor of the defendant officers. I ruled that dismissal against the specific officers was appropriate because the plaintiff had failed to prove service of process. I granted summary judgment in favor of the liquor store employees on the 18 U.S.C. § 1983 claims because the plaintiff had failed to allege that the liquor store employees were state actors. I also granted summary judgment on the 42 U.S.C. § 1983 claim against the PGPD because the plaintiff had failed to properly allege liability in accordance with *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978). Having dismissed all claims over which the federal court had original jurisdiction, I exercised my discretion to remand the remaining state law claims to state court. The case is now closed.

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5. *Holman v. Greyhound Lines, Inc.*, No. 21-112-BAH, 2022 WL 1720152 (D. Md. May 27, 2022); 2022 WL 4368148 (D. Md. Sept. 20, 2022).

This case stemmed from a bus accident on an interstate highway in Maryland. The plaintiff was a passenger on a bus operated by a co-defendant (Greyhound) that was allegedly travelling above the posted speed limit. An 18-wheel tractor trailer owned and operated by a co-defendant (Just On Time) changed lanes into the path of the bus. The bus swerved to avoid a collision with the tractor trailer and left the roadway, causing injuries to the plaintiff. The parties filed multiple motions in the case including Just On Time's challenge to a settlement reached between the plaintiff and Greyhound, multiple motions to dismiss various counts and cross-claims, a motion for sanctions, and motions related to discovery. In a memorandum opinion, I held that the settlement comported with the Maryland Uniform Contribution Among Joint Tortfeasors Act and thus, given the settlement between Greyhound and the plaintiff, several claims and cross-claims must be dismissed. I also held that Just On Time lacked standing to challenge the settlement agreement between the plaintiff and Greyhound. I denied the request for sanctions. Following my ruling, Greyhound was dismissed from the action by the plaintiff. After ordering additional briefing, I entered another opinion addressing the discovery disputes.

Following the dismissal of Greyhound, additional passengers on the bus at the time of the incident sought to intervene in the case. Just On Time opposed the request. I wrote an opinion applying Federal Rule of Civil Procedure 24 and ultimately denying the request to intervene because it was untimely. The plaintiff has now settled its claims against all parties in the case for an undisclosed sum and the case is closed.

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6. *Clinton H. v. Kijakazi*, No. 21-2310-BAH, 2022 WL 2793049 (D. Md. July 15, 2022).

This case was an appeal of a denial of benefits by the Social Security Administration (SSA). The plaintiff moved to remand the matter back to the SSA on the ground that the defendant erroneously assessed the plaintiff's ability to perform work-related tasks. I reviewed the voluminous administrative record, applied relevant precedent, and determined that substantial evidence did not exist

to support the defendant's determination that despite the plaintiff's limitations, the plaintiff could perform several jobs available in the national economy. I remanded the matter to the SSA for further proceedings. Neither party appealed the decision, and the case is now closed.

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Counsel for Defendant:

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7. *XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC*, No. 21-3068-BAH, 2022 WL 17177650 (D. Md. Nov. 23, 2022); 2022 WL 2105925 (D. Md. June 10, 2022); 2023 WL 2499855 (D. Md. Mar. 14, 2023).

This case stemmed from a dispute between the plaintiff, an insurance company that issues performance and payment bonds on behalf of construction contractors, and the defendants, eight corporations and three individuals involved in the construction business. The case centered on two construction projects involving the defendants, who entered into agreements to perform work on both projects and retained multiple subcontractors and vendors to complete that work. The defendants were required to secure payment and performance bonds, which they did through an agreement with the plaintiff. When the defendants allegedly stopped working on both projects and failed to pay multiple subcontractors and other vendors, the plaintiff received notices of claims against the bonds it issued. The plaintiff alleged that defendants breached its bond agreement obligations when the defendants allegedly failed to deposit collateral with the plaintiff upon the plaintiff's demand. The plaintiff also alleged that the defendants failed to provide the plaintiff with access to the defendants' financial statements, books, records, and accounts. I wrote an opinion granting a motion for a preliminary injunction by applying the factors outlined in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). The plaintiff later moved for summary judgment on all but one count. I applied New York law and wrote another opinion finding that the plaintiff was entitled to judgment as a matter of law on five of the six claims for which it moved for summary judgment. I ruled that the final claim seeking *quia*

timet relief was moot. I ordered the defendants to deposit collateral and indemnify the plaintiff pursuant to the terms of the indemnity agreement. I also ordered that the defendants must permit inspection of their books and records. The plaintiff ultimately dismissed the remaining claim. The case was closed. The plaintiff recently filed a motion for post-judgment discovery, which I granted by written opinion.

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8. *Ovations Food Services, L.P. v. MD Acad. of Sciences*, 21-2838-BAH (D. Md. June 3, 2022).

This case stemmed from a contract dispute. The plaintiff provides food management services to large entertainment facilities across the country. The plaintiff entered into a contract with the defendant, a Maryland museum, granting the plaintiff an exclusive license to manage and operate the food and beverage, concessions, and catering services at the museum. The agreement was amended several times. The plaintiff alleged that the defendant ultimately breached the agreement and caused the plaintiff significant losses. The plaintiff sued in federal court alleging breach of contract and unjust enrichment. The defendant filed a counterclaim alleging that the plaintiff had breached the terms of the agreement. The case was assigned to me for trial. I wrote two letter orders addressing discovery disputes related to requests for protective orders and extensions to the discovery deadlines. After these discovery disputes were decided, the matter settled, and the case was closed.

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9. *Topp v. James River Ins. Co.*, No. 20-1822-BAH, 2022 WL 1127903 (D. Md. Apr. 15, 2022).

This case stemmed from a car accident in which the plaintiff was injured when the ride-sharing vehicle he was a passenger in was struck by another car. The plaintiff sued James River Insurance Company for allegedly breaching its contract to provide the plaintiff with underinsured motorist coverage. The case was assigned to me for trial. I decided motions *in limine* addressing the admissibility of evidence of the plaintiff's partial leg and toe amputations, evidence that the plaintiff had filed multiple prior lawsuits, evidence related to any other injuries and illnesses suffered by the plaintiff that were not alleged to be caused by the accident at issue, evidence of any prior automobile accidents involving the plaintiff, and evidence regarding the plaintiff's receipt of Social Security Disability Insurance Benefits. After a jury trial over which I presided, the jury awarded the plaintiff $300,000 in past medical expenses and non-economic damages. The case is now closed.

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10. *Whitman, Requardt & Associates L.L.P. v. ARGO Systems, LLC et al.*, 21-2107-BAH (D. Md. Mar. 23, 2022) (ECF #'s 38 and 45) (Opinions supplied).

This case stems from a subcontract between the plaintiff and a co-defendant. The co-defendant was awarded a project on Fort Meade, Maryland, and secured a performance bond from another co-defendant pledging to indemnify the United States government if issues arose preventing the completion of the project. The plaintiff and another co-defendant entered into an agreement for the plaintiff to provide architectural and engineering designs for the project. The plaintiff allegedly began performing services pursuant to that agreement but was not paid for that work. The plaintiff sued in federal court alleging a breach of the performance bond, breach of contract, and, in the alternative, unjust enrichment/*quantum meruit*. One co-defendant filed a counterclaim alleging breach of contract. The case was assigned to me for trial.

I wrote two letter orders addressing various disputes related to the disclosure of expert witnesses. The first opinion addressed what was effectively a motion to strike an expert designation pursuant to Fed. R. of Civ. P. 37(c)(1). I applied the factors outline in *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592 (4th Cir. 2003) and held that a short extension to discovery deadlines was the appropriate remedy. I later wrote a second order addressing a motion for leave to serve a Fed. R. Civ. P. 26(a)(2) expert report outside of the time prescribed in an amended scheduling order. I granted the motion for multiple reasons, including the fact that the report had already been disclosed and because prejudice to the objecting party was minimal. The parties recently settled the case after a mediation and the matter is closed.

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *United States v. Pitts*, 22-300-GLR (D. Md. Nov. 23, 2022) (ECF # 69) (Order previously supplied in response to Question 13c).

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2. *XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC*, No. 21-3068-BAH, 2022 WL 17177650 (D. Md. Nov. 23, 2022).

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3. *Temescal Wellness of Maryland, LLC v. Emp. Tools & Sols., Inc.*, No. 20-3650-JRR, 2022 WL 4969305 (D. Md. Oct. 3, 2022).

Counsel for Plaintiff:

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(410) 332-0850

Counsel for Defendants:

None

4. *Njoroge et al. v. PrimaCare Partners, LLC, et al.*, No. 22-0425-BAH, 2022 WL 4465894 (D. Md. Sept. 26, 2022).

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5. *Holman v. Greyhound Lines, Inc.*, No. 21-112-BAH, 2022 WL 4368148 (D. Md. Sept. 20, 2022).

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6. *Davis v. Kim et al.*, No. 19-3605-BAH, 2022 WL 4290574 (D. Md. Sept. 16, 2022).

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7. *XL Specialty Ins. Co. v. Bighorn Constr. & Reclamation, LLC*, No. 21-3068-BAH, 2022 WL 2105925 (D. Md. Jun. 10, 2022).

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8. *Holman v. Greyhound Lines, Inc.*, No. 21-112-BAH, 2022 WL 1720152 (D. Md. May 27, 2022).

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9. *Topp v. James River Ins. Co.*, No. 20-1822-BAH, 2022 WL 1127903 (D. Md. Apr. 15, 2022).

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10. *Whitman, Requardt & Associates L.L.P. v. ARGO Systems, LLC et al.*, 21-2107-BAH (D. Md. March 23, 2022) (ECF # 38) (Opinion previously supplied in response to Question 13c).

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e. Provide a list of all cases in which certiorari was requested or granted.

Upon searching legal databases, I did not find any of my cases in which certiorari has been requested or granted in any of my cases.

f. Provide a brief summary of and citations for all of your opinions where your

decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Upon searching legal databases, I did not find any such cases.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have issued many written decisions resolving non-dispositive and dispositive matters. To my knowledge, all of these decisions are unpublished. However, all of my decisions are available on the District of Maryland's electronic case management system (ECF/CM), which is accessible to the public. My formal memorandum opinions are available electronically on Westlaw and LexisNexis.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not written any significant opinions on state or federal constitutional issues.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action

taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I ensure that no conflict of interest exists before I preside over any matter. Like all judges in my district, I maintain with the clerk's office a list of attorneys, companies, individuals, or organizations with whom I have family business relationships or close personal friendships. The clerk's office relies on this list to "automatically" screen for conflicts of interest before assigning any matter to me. Additionally, before I preside over any criminal or civil matter, the clerk's office, as well as my staff and I, screen for conflicts of interest. In criminal cases, if I personally represented a defendant in the past or the Office of the Federal Public Defender was appointed to represent the defendant in the matter while I worked at the office, I recuse myself. Recusals of this kind occur without written order. Generally, I advise the Chief Magistrate Judge about the conflict and request that the case be assigned to, or the proceeding handled by, another magistrate judge. Sometimes I simply ask an available colleague if they can preside over the matter. I do not keep a record of these situations.

I have never been asked by a party or litigant to recuse myself from a criminal or civil case.

15. **Public Office, Political Activities and Affiliations**:

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

       None.

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

       None.

16. **Legal Career:** Answer each part separately.

    a. Describe chronologically your law practice and legal experience after graduation from law school including:

       i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Margaret B. Seymour of the United States District Court for the District of South Carolina from 2005 to 2006.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2006 – 2007
Schulman, Hershfield, and Gilden, PA
(formerly Schulman, Treem, Kaminkow, Gilden, and Ravenell, PA)
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Associate

2007 – 2017; 2018 – 2022
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Senior Litigation Counsel (2015 – 2016; 2019 – 2022)
Assistant Federal Public Defender (2007 – 2015; 2019 – 2020)

2017 – 2018
Office of the Federal Public Defender for the Virgin Islands
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Assistant Federal Public Defender

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Upon completion of my federal clerkship in 2006, I accepted a position as an associate at small law firm in Baltimore. While there, I assisted

partners and senior associates in a variety of civil and criminal litigation matters by preparing for depositions, answering and drafting interrogatories, reviewing discovery, drafting motions and sentencing memoranda, reviewing contracts, and preparing for trials and motions hearings.

In November 2007, I joined the Office of the Federal Public Defender in Baltimore as a trial attorney. I was later promoted to Senior Litigation Counsel. In both roles I defended individuals charged with federal felony and misdemeanor offenses beginning at their initial appearance and continuing through their sentencing, if one occurred. I also represented a few clients prior to indictment. I tried many cases to verdict and handled several appeals. I also handled numerous evidentiary hearings, argued motions, and represented clients at hundreds of sentencings. I appeared in state courts across Maryland on post-conviction and probation matters related to my clients' federal matters. From January 2017 through October 2018, I served in a similar role in the United States Virgin Islands before returning to Maryland's Federal Public Defender to resume my service in a trial attorney position.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The clients of the small firm where I worked included individuals, small businesses, and small to mid-sized corporations.

As a public defender, I represented criminal defendants who lacked the means to hire private counsel. My area of specialty was federal criminal defense.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an attorney, my practice was exclusively devoted to litigation and I frequently appeared in court. As a federal public defender, I appeared in court at least monthly, and often several times a week. I tried 18 federal cases to verdict or a mistrial after a hung jury or a motion by the defense. I litigated substantive motions in close to 40 federal cases. I also represented clients on three direct appeals and two interlocutory appellate matters. I advocated on behalf of clients in state court across Maryland in matters related to their federal cases. I also represented clients in numerous alleged probation and supervised release violation matters.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%

2. state courts of record: 5%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 5%
2. criminal proceedings: 95%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 18 trials to a verdict or a mistrial due to a hung jury or on a motion by the defense (16 jury trials and two bench trials). Another trial I assisted in settled while the jury was deliberating. In 10 trials, I was either chief or sole counsel. In nine trials, I was associate counsel.

i. What percentage of these trials were:
1. jury: 90%
2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

United States v. Aidoo, 670 F.3d 600 (4th Cir. 2012), *cert. denied*, 568 U.S. 1017 (2012) (petition for certiorari, 2010 WL 4281320; reply brief, 2011 WL 233934).

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Heckstall*, 18-587-RDB (D. Md.).

Mr. Heckstall was charged with possession with the intent to distribute heroin and fentanyl. His case began when he was pursued by police after leaving a known drug "stash-house" in Baltimore carrying a small black bag. Mr. Heckstall tossed the bag while running from officers and was arrested. The bag was located and found to contain illegal drugs in a quantity indicative of distribution. Mr. Heckstall qualified as a "career offender," a designation under the United States Sentencing Guidelines that raises the recommended punishment for offenders with certain types of prior convictions who are convicted of narcotics charges. Mr. Heckstall, who suffered from a debilitating addiction to narcotics, was released prior to trial to participate in an inpatient drug treatment program.

I worked with Mr. Heckstall's care providers and frequently visited him at his treatment program. Mr. Heckstall graduated to an intensive outpatient drug treatment program, ultimately becoming a mentor to new participants in that program. After negotiating a plea agreement with the government, I presented Mr. Heckstall's history to the presiding judge in both a lengthy written submission and through allocution at sentencing. Mr. Heckstall was sentenced to time served and a three-year period of supervised release.

Dates of Representation: 2018 – 2020

Judge and Court: The Hon. Richard D. Bennet, United States District Court for the District of Maryland

Opposing Counsel:

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Annapolis, MD 21404
(667) 260-7133

2. *United States v. James*, Case No. 15-cr-0042-CVG, 2017 WL 4873496 (D.V.I. Oct. 26, 2017), *aff'd*, 888 F. 3d 42 (3d Cir. 2018).

Mr. James, a former senator in the Virgin Islands Legislature, was charged with wire fraud offenses related to the alleged misuse of government funds. Mr. James was accused of submitting requests to the Virgin Islands Legislature for funds to pay for research, copying, and translation of historical documents housed at the Danish National Archives. The Government alleged that Mr. James received some documents from Denmark, but unlawfully kept them for his own benefit. The Government also alleged that Mr. James submitted fake invoices to the Virgin Islands Legislature for copying and translations that were never performed. When those invoices were paid, the Government alleged that Mr. James used the funds for his own personal benefit.

I entered my appearance as co-counsel just weeks before Mr. James' trial was scheduled to begin. I researched, drafted, and argued pretrial motions. The most significant of these raised a challenge to Mr. James' indictment and was based on the Speech or Debate clause of the Virgin Islands Revised Organic Act, 48 U.S.C. § 1572(d). I argued that the clause barred Mr. James' federal prosecution or, at minimum, severely limited the admissible evidence the Government could introduce before the grand jury to secure an indictment and to prove its case at trial.

After several hearings and significant briefing, the district judge agreed that 48 U.S.C. § 1572(d) prevented prosecutors from introducing evidence of the legislative activities of members of the Legislature of the Virgin Islands before a grand or petit jury. The judge did not, however, agree that Mr. James' alleged conduct represented legislative activity and denied the motion.

I raised an interlocutory appeal of the trial judge's ruling to the Court of Appeals for the Third Circuit and drafted the briefs. The case was originally remanded for the district court to better memorialize its ruling. Ultimately, the district judge's decision was affirmed after I argued the case at oral argument. Mr. James was eventually convicted at a trial handled by then-Federal Public Defender Omodare Jupiter. I was not involved in the drafting or argument of a motion for a new trial, on Mr. James' sentencing, or the appeal of Mr. James' final conviction. Mr. James was sentenced to serve two and a half years in federal prison followed by a term of supervised release. Mr. James was also ordered to pay to pay $77,964 in restitution.

Dates of Representation: 2017 – 2018

Judges and Courts:

The Hon. Curtis V. Gomez (retired), District Court of the Virgin Islands (Motions and Trial)

The Hon. D. Brooks Smith, Chief Judge, The Hon. Theodore McKee, and The Hon. Anthony J. Scirica, Circuit Judges, The United States Court of Appeals for the Third Circuit (Appeal)

Co-Counsel:

(in district court)
Omodare Jupiter
Federal Public Defender for the Northern and Southern Districts of Mississippi
City Centre Building
200 South Lamar Street, Suite 200N
Jackson, MS 39201
(601) 948-4284

Opposing Counsel:

(in district court)
Amanda R. Vaughn
(formerly of U.S. Department of Justice, Criminal Division, Public Integrity Section)
United States Attorney's Office
555 Fourth Street, Northwest
Washington, DC 20530
(202) 252-1793

Justin D. Weitz
(formerly of U.S. Department of Justice, Criminal Division, Public Integrity Section)
Morgan Lewis
1111 Pennsylvania Avenue, Northwest
Washington, DC 20004
(202) 739-5932

Delia L. Smith
United States Attorney's Office
5500 Veterans Drive, Suite 260
St. Thomas, VI 00802
(340) 774-0640

(on appeal)
The Hon. Vijay Shanker
(formerly of the Appellate Section, United States Department of Justice Criminal Division)
Associate Judge
District of Columbia Court of Appeals
430 E Street, Northwest
Washington, DC 20001
(202) 879-1010

3. *United States v. Matthias*, 17-36-WAL (D.V.I.) and 16-25-WAL (D.V.I.).

Mr. Matthias was charged with the unlawful possession of a firearm, using a firearm during a violent crime, three counts of attempted first-degree murder, and one count of first-degree reckless endangerment. The case stemmed from the alleged shooting of a sport utility vehicle with multiple occupants near a bar in Estate Grove Place in Frederiksted, St. Croix. Mr. Matthias was alleged to have fired into the victims' car from the passenger seat of a passing vehicle. After assuming role of sole counsel for Mr. Matthias from a colleague, I handled pre-trial motions, motions *in limine*, *voir dire*, jury selection, jury instructions, witness examinations and cross-examinations, opening statement, and closing argument. The trial was the first held on St. Croix after hurricanes Irma and Maria badly damaged the federal courthouse. The alleged failure to timely disclose DNA evidence led to a motion to dismiss on the eve of trial and a lengthy hearing addressing both the alleged violation and the appropriate sanction. The trial also presented a dispute over the admissibility of several out of court statements and a debate

concerning jury instructions discussing eyewitness identification. After a week-long trial, Mr. Matthias was found not guilty on all counts.

Dates of Representation: 2017 – 2018

Judge and Court: The Hon. Wilma Lewis, United States District Court for the Virgin Islands.

Opposing Counsel:

The Honorable Alphonso G. Andrews
(former Assistant United States Attorney)
Superior Court of the Virgin Islands
P.O. Box 929
Christiansted, VI 00821
(340) 778-9750

Daniel H. Huston
United States Attorney's Office
1108 King Street Suite 201
Christiansted, VI 00820
(340) 773-3920

4. *United States v. Johnson*, 17-38-CVG (D.V.I.).

Mr. Johnson was charged with the possession with the intent to distribute marijuana. The marijuana was allegedly discovered after the positive alert of a drug-detecting canine led authorities to conduct a warrantless search of Mr. Johnson's backpack. Mr. Johnson's cell phone was also seized and searched without a warrant. The searches in question occurred at the Cyril King Airport in St. Thomas after Mr. Johnson disembarked from a flight from Miami, Florida. I took over Mr. Johnson's representation from a colleague after a motions hearing was scheduled. I raised a challenge to the search of Mr. Johnson's luggage and phone and argued that the so-called "customs border search" exception to the Fourth Amendment announced in *United States v. Hyde*, 37 F.3d 116 (3d Cir. 1994) should not apply to direct flights originating on the United States mainland and ending in the United States Virgin Islands. I also argued that a canine sniff of Mr. Johnson's luggage did not provide probable cause or reasonable suspicion that Mr. Johnson's luggage contained illegal drugs because the Government failed to establish that the canine was properly certified as required by *Florida v. Harris*, 568 U.S. 237 (2013). Following an evidentiary hearing and post-hearing briefing that I handled, the Government moved to dismiss the charges against Mr. Johnson before the Court ruled on my motion. The motion to dismiss was granted and Mr. Johnson was released from custody. The arguments regarding the border search were later raised in a number of cases until the Third Circuit Court of Appeals clarified in that the border exception to the Fourth Amendment applies to the Virgin Islands' customs border, regardless of the direction of crossing. *United States v. Baxter*, 951 F.3d 128 (3d Cir. 2020).

Dates of Representation: 2018

Judge and Court: The Hon. Curtis V. Gomez, United States District Court for the Virgin Islands.

Opposing Counsel:

Anna A. Vlasova
(former Assistant United States Attorney)
Dudley Newman Feuerzeig LLP
P.O. Box 756
St. Thomas, VI 00804
(340) 774-4422

5. *United States v. Patterson*, 15-470-RDB (D. Md.).

Mr. Patterson was charged with robbery in violation of the federal Hobbs Act, the unlawful possession of a firearm, and brandishing a firearm during the commission of a crime of violence. The charges stemmed from an incident during which Mr. Patterson and an accomplice allegedly used a firearm to rob a drug dealer of two small bags of heroin worth approximately $20. The incident was witnessed by police officers who were stationed in a nearby covert location monitoring drug activity and Mr. Patterson was arrested soon after the alleged incident occurred. I took over the case as it was headed to trial when Mr. Patterson's original counsel left my former office. As sole counsel, I authored and argued numerous pre-trial motions.

I litigated all aspects of the trial including numerous motions *in limine*, *voir dire*, jury selection, witness cross-examinations, and jury instructions. The trial presented numerous evidentiary issues that required briefing and argument. I also gave opening statements and closing arguments. Mr. Patterson was found not guilty of possessing a firearm but convicted of robbery. I represented Mr. Patterson at sentencing where he was sentenced to serve 17 years in federal prison followed by a term of supervised release. I did not handle a subsequent appeal or a motion for compassionate release.

Dates of Representation: 2015 – 2016

Judge and Court: The Hon. Richard D. Bennett, United States District Court for the District of Maryland

Opposing Counsel:

Aaron Simcha Jon Zelinsky
Lauren E. Perry
Assistant United States Attorneys
United States Attorney's Office

36 South Charles Street, Fourth Floor
Baltimore, MD 21201
(410) 209-4800

6. *United States v. Giddins*, 14-116-JKB (D. Md.).

Mr. Giddins was charged with robbing three banks and also charged with conspiracy to commit bank robbery. He came to police attention after his car was stopped soon after one of the robberies. Though Mr. Giddins was not in the car, its two occupants were suspected of committing the robbery. They were interviewed by police, implicated Mr. Giddins in their crimes, and a warrant was issued for Mr. Giddins' arrest. Mr. Giddins was later called to the police station ostensibly to recover his car. Instead, he was interviewed by police after waiving his *Miranda* rights and provided incriminating statements that were used against him at trial. I was not involved in the drafting or argument of pre-trial motions challenging the admissibility of these statements. I represented Mr. Giddins as co-counsel at trial and participated in *voir dire* and jury selection, examined several witnesses (including experts), and presented closing argument to the jury. After several days of deliberations, Mr. Giddins was found guilty of one count of bank robbery and one count of conspiracy to commit bank robbery. He was found not guilty on the remaining two counts. Mr. Giddins was sentenced to serve seventeen and a half years in federal prison followed by a term of supervised release. Following an appeal that I did not handle, Mr. Giddins' conviction was overturned after a divided panel of the Court of Appeals for the Fourth Circuit held that his *Miranda* waiver and statements to police were coerced and involuntary. Mr. Giddins subsequently entered into a plea agreement with the government and was sentenced to five years in federal prison followed by a term of supervised release.

Dates of Representation: 2014 – 2015

Judge and Court: The Hon. William D. Quarles (Ret.) and The Hon. James K. Bredar, United States District Court for the District of Maryland

Co-Counsel:

Gary Christopher (retired)
First Assistant Federal Public Defender
Office of the Federal Public Defender
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
(410) 962-3962

Opposing Counsel:

The Hon. Debra Lynn Dwyer
(former Assistant United States Attorney)
Associate Judge, Montgomery County Circuit Court

50 Maryland Avenue
Rockville, MD 20850
(240) 777-9197

The Hon. A. David Copperthite
(former Assistant United States Attorney)
United States Magistrate Judge
101 West Lombard Street, Chambers 8B
Baltimore, MD 21201
(410) 962-0946

7. *United States v. Younger*, 12-538-JKB (now GLR) (D. Md.).

Mr. Younger was charged with robbery in violation of the federal Hobbs Act and the use of a firearm in furtherance of a crime of violence stemming from the alleged robbery of an art supply store in Baltimore. I served as co-counsel for Mr. Younger throughout the case. I drafted and argued a motion to suppress pre-trial identifications and to prevent in-court identifications. I also filed and argued motions to suppress evidence seized pursuant to a search warrant. At Mr. Younger's jury trial, I gave the opening statement, argued objections, and cross examined several witnesses. The trial concluded with the Court's granting of Mr. Younger's motion for a mistrial after the Court ruled that information concerning the amount of currency found on Mr. Younger's person at the time of his arrest was inadvertently not disclosed to the defense prior to trial. Following the appointment of new counsel, Mr. Younger pleaded guilty to Hobbs Act robbery and was sentenced to five years in prison followed by a term of supervised release.

Dates of Representation: 2012 – 2013

Judge and Court: The Hon. James K. Bredar, United States District Court for the District of Maryland

Co-counsel:
Douglas Ryan Miller
Assistant Federal Public Defender and Detailee Counsel, Senate Committee on the Judiciary
United States Senate Committee on the Judiciary
Senator Richard J. Durbin, Chair
Dirksen Senate Office Building, Room 226
Washington, DC 20002
(202) 224-7703

or

Office of the Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, MD 20770

(301) 344-0600

Opposing Counsel:

Gerald Akida Asim Collins
U.S. Department of Justice
Criminal Division
1301 New York Avenue, Northwest, Seventh Floor
Washington, DC 20005
(202) 262-6484

The Hon. Debra Lynn Dwyer
(former Assistant United States Attorney)
Associate Judge, Montgomery County Circuit Court
50 Maryland Avenue
Rockville, MD 20850
(240) 777-9197

8. *United States v. Lucas*, 09-560-RDB (D. Md.).

Mr. Lucas was charged with the unlawful possession of a firearm by a prohibited person. He was alleged to have fled from police and discarded a firearm from his waistband while running. I argued a pre-trial motion to suppress evidence and I shared trial responsibilities with a colleague. I gave the opening statement and cross-examined expert witnesses. The jury could not reach a unanimous verdict and the Court declared a mistrial. Mr. Lucas then entered into a plea agreement with the government and was sentenced to 63 months in custody.

Dates of Representation: 2010

Judge and Court: The Hon. Benson E. Legg (Ret.), United States District Court for the District of Maryland.

Co-Counsel:

Katherine Tang Newberger
Office of the Federal Public Defender
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
(410) 962-3962

Opposing Counsel:

Clinton Jacob Fuchs
Office of the United States Attorney
36 South Charles Street Fourth Floor

Baltimore, MD 21201
(410) 209-4916

9. *United States v. Robinson*, 08-586-CCB (D. Md.).

Mr. Robinson was charged with the unlawful possession of a firearm by a prohibited person. The charges stemmed from a car stop in West Baltimore during which police allegedly found a handgun under a backpack sitting on the passenger seat. Mr. Robinson was the driver and sole occupant of the car. I served as lead counsel throughout the case. I drafted and argued several motions, including a challenge to the stop of Mr. Robinson's car. I also argued objections, cross examined witnesses, and gave the closing argument at trial. Mr. Robinson was convicted and sentenced to serve more than nine years in federal prison followed by a term of supervised release.

Dates of Representation: 2008 – 2010

Judge and Court: The Hon. Catherine C. Blake, United States District Court for the District of Maryland.

Co-counsel:

Lucius Turner Outlaw, III
(former Assistant Federal Public Defender)
Howard Law School
Room 106, Houston Hall
2900 Van Ness Street, Northwest
Washington, DC 20008
(202) 806-8123

Opposing Counsel:
Clinton Jacob Fuchs
Office of the United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
(410) 209-4916

Traci Robinson
(former Special Assistant United States Attorney)
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, MD 21202
(443) 984-6000

10. *United States v. Colon*, 08-19-WDQ (D. Md.).

Mr. Colon was charged with bank robbery after he was alleged to have entered a bank

and demanded money from a teller. He fled and was later arrested driving a newly-purchased car with no license plates. I represented Mr. Colon with a colleague and served as lead counsel in the case. I handled nearly all phases of discovery review, investigation, and pretrial motions, including unsuccessful challenges to the admissibility of Mr. Colon's alleged confession. I also handled significant portions of Mr. Colon's trial including *voir dire*, jury selection, cross-examination of several witnesses, evidentiary challenges, jury instructions, and I gave the closing argument. Mr. Colon was found not guilty after trial. He returned to New Jersey where he faced a violation of supervised release in an unrelated federal case.

Dates of Representation: 2008

Judge and Court: Hon. William D. Quarles (Ret.), United States District Court for the District of Maryland

Co-counsel:

Jeffrey Risberg
(former Assistant Federal Public Defender)
Risberglaw
1719 Falls Road
Parkton, MD 21120
(443) 850-4775

Opposing Counsel:

Ty Kelly
(former Assistant United States Attorney)
Baker Donaldson
100 Light Street, 19th Floor
Baltimore, MD 21202
(410) 862-1049

Bonnie Greenberg
(former Assistant United States Attorney)
Executive Office for United States Attorneys
United States Department of Justice
950 Pennsylvania Avenue, Northwest, Room 2242
Washington, DC 20530
(202) 514-2000

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the matters listed above, I represented hundreds of clients during plea negotiations and at sentencing.

As Senior Litigation Counsel at the Office of the Federal Public Defender, I served in a leadership role within the office and mentored new hires. I also served as a mentor to new members of the Criminal Justice Act Panel. I regularly speak on panels for law students and law clerks. I also currently serve on two committees of the United States District Court for the District of Maryland, one that advises the court on issues related to the Criminal Justice Act Panel and the other that advises the court on issues related to probation and pretrial services.

Additionally, as a Jesuit Volunteer placed at the General Assistance Advocacy Project in San Francisco from 2000 to 2001, I served as a non-lawyer advocate for clients experiencing homelessness and appeared at administrative hearings on their behalf. I also worked to meet other needs of my clients by, for example, arranging housing, planning medical appointments, and facilitating travel to family out of state.

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Criminal Procedure: The University of Maryland Carey School of Law; Summer 2014, Summer 2015 (co-taught), Fall 2015, and Summer 2016. This course focused on pretrial law enforcement investigatory practices including searches and seizures, interrogations, and pretrial identifications. The course also addressed the right to counsel and other applications of the Bill of Rights to criminal investigations and prosecutions. Summer 2016 syllabus supplied, which is substantially similar to the syllabus I used in every other semester I taught the course.

Written and Oral Advocacy: The University of Maryland Carey School of Law, Spring 2011 to 2014. I taught the second course in a required two-semester sequence of first year legal writing courses. The focus of the course was on persuasive writing and oral advocacy. Students drafted a trial brief and an appellate brief. Students also engaged in a mock oral argument. Spring 2013 syllabus supplied, which is substantially similar to the syllabus I used in every other semester I taught the course.

Torts: Midlands Technical College, Columbia, South Carolina, Spring 2006. I taught an introductory course in tort law to paralegal students at a community college. I am unable to locate a syllabus for this course.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       If confirmed as a district judge, I would continue to recuse myself from cases in which counsel, a witness, or a party is a relative or close friend. I would also recuse myself in any other instance identified by the Code of Conduct for United States Judges and the Advisory Opinions issued by the Committee on Codes of Conduct. In criminal cases, I would continue to recuse myself from cases involving any person I personally represented or in those cases where the Office of the Federal Public Defender was appointed to represent the defendant while I worked for that employer.

    b. Explain how you will resolve any potential conflict of interest, including the

procedure you will follow in determining these areas of concern.

If confirmed as a district court judge, I would continue to resolve any potential conflicts through strict adherence to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a public defender from 2007 through 2022, I represented hundreds of indigent clients. I also routinely engaged in non-legal community service, primarily through my faith community. I twice participated in the Open Doors Program at the United States District Court in Baltimore. This program welcomes area youth to the federal courthouse for mock trial activities and presentations on the law. I also volunteered my time on numerous occasions to speak to students at an area college, high schools, and law schools about public service and careers in the law.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On December 11, 2020, I submitted an application to the judicial selection committee established by Senators Cardin and Van Hollen for a position on the United States District Court for the District of Maryland. I interviewed with the committee on December 21, 2020. On December 20, 2022, I was interviewed by Senators Cardin and Van Hollen for a newer vacancy on the court. On December 22, 2022, I learned from Senator Cardin's office that my name would be submitted to the White House for further consideration. On December 23, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee

discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Darrel James Papillion

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Eastern District of Louisiana

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Walters, Papillion, Thomas, Cullens, LLC
   12345 Perkins Road, Building One
   Baton Rouge, Louisiana 70810

4. **Birthplace**: State year and place of birth.

   1968; Eunice, Louisiana

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1991 – 1994, Paul M. Hebert Law Center, Louisiana State University; J.D., 1994

   1988 – 1990, Louisiana State University and A&M College; B.A., 1990

   1986 – 1988, Louisiana State University at Eunice; no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2009 – present
   Walters, Papillion, Thomas, Cullens, LLC
   12345 Perkins Road, Building One

Baton Rouge, Louisiana 70810
Partner

2020 – present
East Baton Rouge District Attorney's Office
222 Saint Louis Street, Suite 550
Baton Rouge, Louisiana 70802
Special Prosecutor (uncompensated)

2013 – present
Perry Dampf Dispute Solutions
721 Government Street, Suite 102
Baton Rouge, Louisiana 70802
Mediator

2001 – 2009
Moore, Walters, Thompson, Thomas, Papillion & Cullens, A.P.L.C.
6513 Perkins Road
Baton Rouge, Louisiana 70808
Partner

1999 – 2001
Moore, Walters & Thompson, A.P.L.C.
6513 Perkins Road
Baton Rouge, Louisiana 70808
Associate Attorney

1995 – 1999; Summer 1993
McGlinchey Stafford, PLLC
601 Poydras Street, Suite 1200
New Orleans, Louisiana 70130
Associate Attorney (1995 – 1999)
Summer Associate (Summer 1993)

1994 – 1995
Louisiana Supreme Court
400 Royal Street
New Orleans, Louisiana 70130
Law clerk to Associate Justice Catherine D. Kimball

1993 – 1994
Hoffman, Sutterfield, Ensenat & Bankston (dissolved)
Law Clerk

Summer 1993
Gelpi, Sullivan, Carroll & Laborde (dissolved)

Summer Associate

1992 – 1993
Paul M. Hebert Law Center Library, Louisiana State University
1 East Campus Drive
Baton Rouge, Louisiana 70802
Student Worker

Summer 1992
Law Offices of I. Jackson Burson
220 North Second Street
Eunice, Louisiana 70535
Law Clerk

Spring 1991
Office of the Louisiana State Treasurer
900 North Third Street
Baton Rouge, Louisiana 70802
Student Worker

1990 – 1991
Saint Landry Parish District Attorney's Office
231 South Union Street
Opelousas, Louisiana 70570
Student Worker

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I registered for selective service upon turning 18.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Fellow, American College of Trial Lawyers (2020 – present)

   Baton Rouge Area Volunteer Activist Award from The Emerge Center and The Emerge Foundation (2019)

   International Society of Barristers (2019 – present)

   Louisiana "Super Lawyer" (2008 – 2022)

Best Lawyers in America (2015 – present)

Best Lawyers in America Personal Injury "Lawyer of the Year" Baton Rouge Area (2019)

Paul M. Hebert Law Center, Louisiana State University, Black Law Students Association, Alumnus of the Year (2014)

Top 40 Under 40, Baton Rouge Business Report (2006)

Michaelle Pitard Wynne Professionalism Award, Louisiana State Bar Association (June 2005)

Law Fellows Fund Scholar, Paul M. Hebert Law Center, Louisiana State University (1992 – 1993, 1993 – 1994)

Phi Kappa Phi Honor Society, Louisiana State University (1994)

Shell Foundation Scholar, Paul M. Hebert Law Center, Louisiana State University (1991 – 1992)

Louisiana State University Alumni Association Scholar, Louisiana State University (1988 – 1990)

Louisiana State University Board of Supervisors Scholar, Louisiana State University (1988 – 1990)

Phi Alpha Theta Honor Society, Louisiana State University (1988 – 1990)

Order of Omega, Louisiana State University (1989)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
House of Delegates (2016 – 2017)
Louisiana State Delegate (2022 – present)
Nominating Committee (2022 – present)

American Bar Foundation
Louisiana State Co-Chair (2022 – present)

American Counsel Association (2019 – present)

Baton Rouge Bar Association

President (2013 – 2014)
Board of Directors (2004 – 2015)

Federal Bar Association, Baton Rouge Chapter (2012 – present)

Louis A. Martinet Legal Society – Baton Rouge Chapter (2014 – 2019)

Louisiana Bar Foundation Fellow (2009 – 2016)
Board of Directors (2009 – 2016)
Gala Committee, Co-Chair (2010 – 2011)

Louisiana State Bar Association
President (2016 – 2017)
President-Elect (2015 – 2016)
Rules of Professional Conduct Committee (2018 – present)
Legislation Committee Chair (2020 – 2022)
Continuing Legal Education Committee Co-Chair (2009 – 2014)
Bar Governance Committee Chair (2018 – 2021)
Ethics Advisory Service Committee Chair (2002 – 2004)

National Bar Association (2021 – present)

Wex Malone Chapter of the American Inns of Court (1999 – 2009)
President (2006 – 2007)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Louisiana, 1994

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2003

United States Court of Appeals for the Fifth Circuit, 2013
United States District Court for the Eastern District of Louisiana, 1994
United States District Court for the Middle District of Louisiana, 1994
United States District Court for the Western District of Louisiana, 1994
United States Court of Federal Claims, 1999

My admission to the United States Fifth Circuit lapsed due to inactivity in 2018 and was reinstated in 2022. My admission to the United States District Court for the Western District of Louisiana lapsed in 2020, while I had no matters pending in that court, and was reinstated in 2022. There have been no other lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Academy of the Sacred Heart School, Grand Coteau, Louisiana
Board of Trustees (2019 – 2022)

Alpha Phi Alpha Fraternity, Inc.
Nu Psi Chapter, Louisiana State University (1989 – 1990)
National Board of Directors (1990 – 1991)
Xi Nu Lambda Chapter, Baton Rouge, Louisiana (1991 – 1994)

American Association of Justice, Member (1998 – present)

Friends of Louisiana Public Broadcasting
Board of Directors (2013 – 2015)

Foundation for Louisiana Public Broadcasting
Board of Directors (2015 – 2021)

Franciscan Diocesan High School, Baton Rouge, Louisiana
Board of Directors (2020 – present)

Innocence Project of New Orleans
Board of Directors (2020 – present)

Legatus, Baton Rouge Chapter, Member (2020 – 2022)

Louisiana Art & Science Museum
Board of Directors (2016 – 2018)

Louisiana Association of Justice
Member (2000 – present)
Board of Governors (2001 – 2010)

Executive Committee (2020 – present)

Louisiana Bar Foundation
Board of Directors Member (2009 – 2017)
Gala Committee Co-Chair (2010 – 2011)

Louisiana Law Institute
Council Member (2019 – present)

New Orleans Legal Aid Bureau
Board of Directors (1997 – 1999)

Paul M. Hebert Law Center, Louisiana State University
Diversity Task Force Chair (1994)
Dean Selection Committee (2022 – 2023)

Rotary Club of Baton Rouge
President (2013 – 2014)
President-Elect (2012 – 2013)
Vice-President (2011 – 2012)
Secretary (2010 – 2011)
Board of Directors (2009 – 2015)
Young Hero Committee Chair (2007)

Rotary District 6200
Assistant District Governor (2014 – 2016)

Saint George Catholic Church, Baton Rouge, Louisiana
Finance Committee (2018 – present)
Committee for New Church Construction (2014 – 2017)
Men's Club (2000 – 2006)
Knights of Columbus (2000 – 2006)

Sigma Pi Phi Fraternity, Member (2017 – present)

Teach for America, South Louisiana Region
Board of Directors (2008 – 2011)

Tiger Athletic Foundation – Louisiana State University
Board of Directors (2017 – present)
Executive Committee (2019 – present)

United States District Court, Middle District of Louisiana
Magistrate Selection Committee Member (2013, 2019)
Magistrate Retention Committee Member (2019)

United States Supreme Court Historical Society, Member (2017 – present)

Wex S. Malone American Inn of Court
President (2006 – 2007)
Member (2000 – 2009)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Prior to 1951, African Americans were not admitted to the Louisiana State University Law Center, and prior to 1953 African Americans were not admitted to Louisiana State University. At one point, prior to the 1970s, Rotary International and many of its member clubs, including the Rotary Club of Baton Rouge, did not admit women and did not admit African Americans in the United States. African Americans were not allowed admission to the Academy of the Sacred Heart at one time. Alpha Phi Alpha and Sigma Pi Phi are fraternities composed principally of African American men, although membership in these organizations is not limited to black men. To my knowledge, none of the organizations listed above discriminates or formerly discriminated, at any time I was involved with them, on the basis of race, sex, religion, or national origin through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Guest column: Renaming of Middleton Library Isn't Erasure. It's 'an evolution of history,' THE ADVOCATE, June 17, 2020. Copy supplied.

Put Down Your Phone and Pay Attention!, 64 LA. B.J. 408 (2017). Copy supplied.

Walter Cronkite and a New Color Television Set, 64 LA. B.J. 342 (2017). Copy supplied.

The Justice Gap Appears to be Getting Wider: How are we going to deal with it?, 64 LA. B.J. 256 (2017). Copy supplied.

L'eau Haute De Vingt-Sept., 64 LA. B.J. 102 (2016). Copy supplied.

Despite Challenges, This Profession Will Prevail. The Public Needs Us., 64 LA. B.J. 192 (2016). Copy supplied.

Sister Kathleen, Jerry Jones and the Jupiter Jump, AROUND THE BAR (Nov. 2014). Copy supplied.

Has it really been 30 years, AROUND THE BAR (Sept. 2014). Copy supplied.

Just try not to be a weirdo, AROUND THE BAR (June 2014). Copy supplied.

Summertime, AROUND THE BAR (Apr. 2014). Copy supplied.

Conversation with a stranger, AROUND THE BAR (Mar. 2014). Copy supplied.

Oh, what a long, strange trip it's been ... and it's far from over, AROUND THE BAR (Feb. 2014). Copy supplied.

Becoming a Baton Rouge Lawyer, AROUND THE BAR (Jan. 2014). Copy supplied.

Chief Justice Kimball: Through the Eyes of her Clerks, 60 LA. B.J. 306 (2012/2013). Copy supplied.

A few minutes with Judge Anthony Marabella, AROUND THE BAR (May 2007). Copy supplied.

History Part 2: Louisiana African American Lawyers from 1950 Forward, 53 LA. B.J. 110 (2005). Copy supplied.

An Interview with Judge Page McClendon, AROUND THE BAR (Jan. 2005). Copy supplied.

Attorney Spotlight: An Interview with Chuck Davoli, AROUND THE BAR (Dec. 2004). Copy supplied.

State Office of Risk Management still not paying road hazard claims, LOUISIANA ADVOCATES (Apr. 2003). Copy supplied.

Interview: Living the Dream: An Interview with Attorney and LSU Football Coach Derek Dooley, AROUND THE BAR (Dec. 2001). Copy supplied.

With Edward J. Walters, Jr., *Trial Notebook: Common Evidentiary Problems at Trial*, 48 LA. B.J. 97 (2000). Copy supplied.

With Edward J. Walters, Jr., *Appellate Review of Mixed Questions of Law and*

Fact: Due Deference to the Fact Finder, 60 LA L. REV. 541 (2000). Copy supplied.

Supreme Court expands police authority to search cars, LOUISIANA ADVOCATES (June 1999). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I served as President of the Louisiana State Bar Association from June 2016 to June 2017, and that entity may have issued policy statements while I was President, but I have no records or copies. I do not recall ever personally personally drafting or approving any such statements. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana, 70130.

On July 28, 2020, I joined a statement by the Deans of Louisiana's four law schools and 16 leaders of the Louisiana State Bar Association supporting the Louisiana Supreme Court's decision to waive the 2020 Louisiana bar exam for recent graduates because of the unprecedented challenges presented by the Covid-19 pandemic. Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I testified before the Louisiana legislature on behalf of the Louisiana State Bar Association's Justice Reinvestment Task Force on March 2, 2017. Notes supplied.

I believe, in addition to my March 2, 2017 testimony, I may have testified before the Louisiana legislature as Louisiana State Bar President, but I have no notes or specific recollection of testimony other than the March 2, 2017 testimony. The address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana, 70130.

I believe it is likely I testified before the Louisiana Legislature as a member of the Louisiana Association for Justice. I have no notes or specific recollection of any particular testimony, but any testimony I gave would have almost certainly related to pending or contemplated legislation related to Louisiana civil law or procedural issues. The address of the Louisiana Association for Justice is 442 Europe Street, Baton Rouge, Louisiana, 70802.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best efforts to identify the speeches or talks I have delivered since becoming a lawyer. To complete the list, I relied on my own records as well as internet sources. Despite my best efforts, there may be speeches or talks I have been unable to recall or identify. Over the past 25 years or more, I have been a frequent speaker and lecturer at continuing legal education seminars and legal conferences, and I have spoken regularly to groups, mostly associated with legal education and legal profession, as a local and state bar president. It is possible I may have spoken at some events for which I have no record. Similarly, particularly for the period preceding 2009, I have notes and materials for lectures, speeches, and seminars I gave, but I do not have records of the precise dates for those events. I have done my best to narrow the dates as much as possible.

February 28, 2023: Moderator, Breaking Barriers: A view from the Bench (interviewing Judge Freddie Pitcher, Jr.), African-American Heritage Program, United States District Courthouse, Baton Rouge, Louisiana. Written materials supplied.

January 26, 2023: Panelist, Winning at Trial – Advice from the Pros, McMahon Inn of Court, United States District Courthouse, Baton Rouge, Louisiana. Written materials supplied.

June 8, 2022: Speaker, Update on Federal Jurisdiction & Procedure, Louisiana State Bar Association, Sandestin, Florida. PowerPoint and written materials supplied.

April 22, 2022: Speaker, Pro Bono is Good for the Profession, Baton Rouge Bar Association, Fairhope, Alabama. PowerPoint supplied.

December 3, 2021: Panelist, COVID: Litigation Issues and Changes in the Practice of Law, Louisiana Association of Defense Counsel, Louisiana Association of Defense Counsel, New Orleans, Louisiana. The presentation was on Covid litigation issues. I have no notes, transcript, or recording. The address for Louisiana Association of Defense Counsel is P.O. Box 9430, Metairie, Louisiana 70055.

June 9, 2021: Panelist, Recent Developments in Federal Civil Law and Procedure, Louisiana State Bar Association, Sandestin, Florida. Written materials supplied.

April 23, 2021: Speaker, Boiling Down the Complex Case: Strategy and Planning, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

December 8, 2020: Speaker, Tort Reform and the Practice of Law, Louisiana State Bar Association, Webinar. Written materials supplied.

March 6, 2020: Panelist, Daubert Practice, Louisiana Judicial College and Louisiana Association for Justice, New Orleans, Louisiana. PowerPoint supplied.

October 19, 2019: Honoree, Emerge Center's 48th annual Volunteer Activist Luncheon, Emerge Center, Baton Rouge, Louisiana. Press coverage supplied.

June 5, 2019: Speaker, Federal Civil Procedure – What's New?, Louisiana State Bar Association, Sandestin, Florida. PowerPoint and written materials supplied.

March 27, 2019: Speaker, Louisiana Civil Law and Procedure Update, Louisiana State Bar Association, Quebec City, Canada. PowerPoint and written materials supplied.

March 5, 2019: Speaker, Disney Magic: Practical Considerations in Mediation from the Viewpoint of the Lawyer and the Mediator, Louisiana State Bar Association, Orlando, Florida. PowerPoint supplied.

June 6, 2018: Speaker, Federal Civil Procedure – What's New?, Sandestin, Florida. PowerPoint supplied.

February 27, 2018: Speaker, Mediation, Louisiana State Bar Association, Charleston, South Carolina. PowerPoint supplied.

December 15, 2017: Speaker, Louisiana Civil Law and Procedure Update, Baton Rouge Bar Association, Baton Rouge, Louisiana. PowerPoint supplied.

October 19, 2017: Speaker, Swearing-in Ceremony, Louisiana State Bar Association, New Orleans, Louisiana. Notes supplied.

September 15, 2017: Speaker, To Mediate or Not to Mediate, Louisiana Association for Justice, New Orleans, Louisiana. PowerPoint supplied.

June 7, 2017: Speaker, Federal Civil Procedure – What's New?, Louisiana State Bar Association, Sandestin, Florida. PowerPoint and written materials supplied.

May 1, 2017: Speaker, Louisiana Law Day, Louisiana State Bar Association, New

Orleans, Louisiana. Notes supplied.

April 12, 2017: Speaker, April 2017 Rotary Club Meeting, Baton Rouge Rotary Club, Baton Rouge, Louisiana. Notes supplied.

March 22, 2017: Speaker, Remarks to Shreveport Bar Association, Louisiana State Bar Association, Shreveport, Louisiana. Notes supplied.

March 10, 2017: Speaker, Professionalism, Things that will happen to you and what to do when they do, 64th Mineral Law Institute, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, Louisiana. Copy supplied.

March 1, 2017: Speaker, Louisiana Civil Law and Procedure Update, Louisiana State Bar Association, Orlando, Florida. PowerPoint and written materials supplied.

December 15, 2016: Speaker, Updates in Federal Substantive and Procedural Law, Louisiana State Bar Association, Rhine River Cruise. Presentation and written materials supplied.

December 10, 2016: Speaker, Ethics, Louisiana State Bar Association, Rhine River Cruise CLE. PowerPoint supplied.

December 7, 2016: Speaker, Recent Developments in Louisiana Civil Law and Procedure, Louisiana Association for Justice, Baton Rouge, Louisiana. Written materials supplied.

October 19, 2016: Speaker, On the Occasion of the Retirement of Louisiana Supreme Court Justice Jeannette Theriot Knoll, Louisiana Supreme Court, New Orleans, Louisiana. Presentation and written materials supplied.

October 2016 (specific date unknown): Speaker, Swearing-in Ceremony, Louisiana State Bar Association, New Orleans, Louisiana. Notes supplied.

September 12, 2016: Speaker, Ethics, Louisiana State Bar Association, Las Vegas, Nevada. PowerPoint and written materials supplied.

August 11, 2016: Speaker, Orientation Welcome Speech, Southern University Law Center, Baton Rouge, Louisiana. This presentation was for the welcoming of new students. I made informal comments and have no notes, transcript, or recording. The address for the Southern University Law Center is 2 Roosevelt Steptoe Drive, Baton Rouge, Louisiana 70813.

June 8, 2016: Speaker, Federal Substance and Procedure, Louisiana State Bar Association, Sandestin, Florida. PowerPoint and written materials supplied.

February 29, 2016: Speaker, Recent Developments in Louisiana Civil Law and Procedure, Louisiana State Bar Association, Sonoma, California. PowerPoint and written materials supplied.

December 29, 2015: Speaker, Recent Developments in Louisiana Civil Law and Procedure, Louisiana Association for Justice, Baton Rouge, Louisiana, December 2015. Written materials supplied.

December 29, 2015: Speaker, Recent Developments in Louisiana Civil Law and Procedure, Baton Rouge Bar Association, Baton Rouge, Louisiana. PowerPoint and written materials supplied.

December 29, 2015: Speaker, Ethics: The Bigger the Case, the Bigger the Ethical Issues, Louisiana Association for Justice, New Orleans, Louisiana. PowerPoint supplied.

December 18, 2015: Speaker, Commencement Ceremony, Louisiana State University at Eunice, Eunice, Louisiana. Notes supplied.

November 23, 2015: Speaker, Recent Developments in Louisiana Civil Law and Procedure, Louisiana State Bar Association, New York, New York. PowerPoint and written materials supplied.

November 10, 2015: Speaker, Proving Damages in Catastrophic Injury Cases, Louisiana State Bar Association, New Orleans, Louisiana. PowerPoint supplied.

June 10, 2015: Speaker, Recent Developments in Federal Civil Law and Procedure, Louisiana State Bar Association, Sandestin, Florida. PowerPoint and written materials supplied.

January 25, 2015: Speaker, Civil Recent Developments, Louisiana State Bar Association, Orlando, Florida. PowerPoint supplied.

January 5, 2015: Faculty, Managing the personal injury case, Paul M. Hebert Law Center's Apprenticeship Week, Baton Rouge, Louisiana. Press coverage supplied.

October 28, 2014: Black Law Students Association, Leadership Lecture series, Paul M. Hebert Law Center, Baton Rouge, Louisiana. My remarks focused on the legal profession and my work as an attorney. I have no notes, transcript, or recording. The address for the Paul M. Hebert Law Center is 1 East Campus Drive, Baton Rouge, Louisiana 70803.

June 25, 2014, Speaker, Recent Developments in Federal Civil Law and Procedure, Mr. Smith Goes to Washington: Federal Court Practice, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

June 4, 2014, Speaker, Recent Developments in Federal Civil Law and Procedure, Louisiana State Bar Association, Sandestin, Florida. Written materials supplied.

December 13, 2013: Speaker, Jury Mock Trial, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

December 10, 2013: Speaker, Laws of Motion: Navigating Motion Practice in the Courts, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

November 23–25, 2013: Speaker, Recent Developments in Louisiana Law and Procedure, Louisiana State Bar Association, New York, New York. My presentation at this multi-topic seminar focused on civil law and procedure updates. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

October 11, 2013: Program Chair and Moderator, Magnum PI: Winning the Big Personal Injury Case, Louisiana State Bar Association, New York, New York. This presentation was on how to successfully handle personal injury cases. I was the program chair and introduced the speakers. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

August 29, 2013: Welcome Speaker, International Hospitality Foundation Welcomes LSU's New International Students, The International Hospitality Foundation, Baton Rouge, Louisiana. I gave brief welcoming remarks at a reception honoring Louisiana State University's international students to the LSU campus for the Fall 2013 college semester in connection with my duties as President of the Rotary Club of Baton Rouge. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Louisiana State University International Hospitality Foundation is P. O. Box 22037, Baton Rouge, Louisiana, 70894.

June 5, 2013: Speaker, Recent Developments in the Civil Arena – Substance and Procedure, Louisiana State Bar Association, Sandestin, Florida. Written materials supplied.

May 3, 2013: Speaker, Recent Developments in Federal Civil Law and Procedure, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

December 2012 (specific date unknown): Speaker, Federal and Louisiana Civil Litigation Updates, Louisiana Association for Justice, New Orleans, Louisiana. Written materials supplied.

November 2012 (specific date unknown): Program Moderator, Louisiana State

Bar Association, New York, New York. I was the program moderator for this conference and introduced the speakers and programs to the audience. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

October 26, 2012: Panelist, Opening Statements – Clearing the Spider Webs, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

October 12, 2012: Speaker, Ethics: The Bigger the Case, the Bigger the Ethical Issues, Louisiana State Bar Association, New Orleans, Louisiana. PowerPoint supplied.

September 7, 2012: Speaker, Federal Civil Litigation, Paul M. Hebert Law Center, Baton Rouge, Louisiana. This presentation was on federal civil litigation. I have no notes, transcript, or recording. The address for the Paul M. Hebert Law Center is 1 East Campus Drive, Baton Rouge, Louisiana 70803.

June 6, 2012: Speaker, Recent Developments in Federal Civil Law and Procedure, Louisiana State Bar Association, Sandestin, Florida. This presentation was on civil law and procedure updates. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

October 14, 2011: Speaker, Your Case is Pending Where? Not So Fast, It's Been Removed! What the Civil Practitioner Needs to Know About Removal and Remand, Louisiana State Bar Association, New Orleans, Louisiana. The presentation was on removal and remand in federal court. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

September 23, 2011: Speaker, If It's Not a Workers' Comp Case, Is It a Tort Case? – Litigation and Liability in the Workplace, Paul M. Hebert Law Center, Baton Rouge. The presentation was on workers' compensation and tort cases. I have no notes, transcript, or recording. The address for the Paul M. Hebert Law Center is 1 East Campus Drive, Baton Rouge, Louisiana 70803.

September 2, 2011: Speaker: Changing the Rules in the Middle of the Game – Recent Changes in Federal and State Civil Procedure, Paul M. Hebert Law Center, Fort Worth, Texas. Written materials supplied.

September 2011 (specific date unknown): Speaker, Wait! The Appellate Court Did What? A Louisiana Civil Law and Litigation Update (with some lagniappe), 2011 Recent Developments by the Judiciary Seminar, New Orleans, Louisiana. Written materials supplied.

August 5, 2011: Speaker, Do I want this case? Why? What will I need to prove? How? . . . and what's it going to cost?: Analyzing the Merits of a Personal Injury Case, with Edward J. Walters, Jr., Baton Rouge Bar Association, Baton Rouge, Louisiana. This presentation was on analyzing tort cases. I have no notes, transcript, or recording. The address for the Baton Rouge Bar Association is 544 Main Street, Baton Rouge, Louisiana 70801.

June 8, 2011: Speaker, What, they've changed the rules again? Updates on Civil Law and Procedure, Louisiana State Bar Association, Sandestin, Florida. This presentation was on civil law and procedure updates. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

December 2010 (specific date unknown): Speaker, Civil Law and Procedure Updates 2010, Louisiana Association for Justice, New Orleans, Louisiana. Written materials supplied.

November 2010 (specific date unknown): Program Moderator, Louisiana State Bar Association, New York, New York. I was the moderator for this CLE. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

October 2–3, 2009: Panelist, Louisiana Association of Defense Counsel, Young Lawyers Training Program, Drafting and Responding to Written Discovery, Biloxi, Mississippi. Outline and materials supplied.

November 24, 2008: Speaker, Recent Developments in Civil Law and Litigation, Louisiana State Bar Association, New York, New York. This presentation was on recent developments in civil law and litigation. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

November 2008 (specific date unknown): Panelist, Insurance Litigation Issues (with Hon. Carl Barbier, Hon. Fredericka Wicker, and Hon. Wendell Manning), Paul M. Hebert Law Center, Baton Rouge, Louisiana. This presentation was on litigation issues. I have no notes, transcript, or recording. The address for the Paul M. Hebert Law Center is 1 East Campus Dr, Baton Rouge, Louisiana 70803.

July 2008 (specific date unknown): Speaker, Law Office Practice, Baton Rouge Bar Association, Baton Rouge, Louisiana. PowerPoint supplied.

June 2008(specific date unknown): Speaker, Your Case is Pending Where? Not So Fast, It's Been Removed! What the Civil Practitioner Needs to Know About Removal and Remand, Louisiana State Bar Association, Sandestin, Florida. This presentation was on removal and remand in federal courts. I have no notes, transcript, or recording. The address for the Louisiana State Bar Association is

601 St. Charles Avenue, New Orleans, Louisiana 70130.

May 2008 (specific date unknown): Speaker, Understanding and Proving Psychological Injuries and Damages, Louisiana Association for Justice, New Orleans, Louisiana. Written materials supplied.

February 2007 (specific date unknown): Speaker, What's New in Torts and Civil Procedure, Louisiana State Bar Association, Orlando, Florida. Written materials supplied.

May 1, 2006: Speaker, Ethics, St. Landry Parish Bar Association, Opelousas, Louisiana. Notes supplied.

2006 (specific date unknown): Speaker, Professionalism, 2006 Recent Developments in Legislation and Jurisprudence, Paul M. Hebert Law Center, Baton Rouge, Louisiana. Written materials supplied.

August 2, 2005: Speaker, How to Successfully Resolve Automobile Injury Cases in Louisiana, National Business Institute, Lafayette, Louisiana. Written materials supplied.

November 5, 2004: Speaker, Effective Handling of the Automobile Personal Injury Lawsuit: Plaintiff's Perspective, Louisiana State Bar Association, New Orleans, Louisiana. Written materials supplied.

April 3, 2004: Speaker, Professionalism, Baton Rouge Bar Association, Point Clear, Alabama. Written materials supplied.

December 4, 2003: Speaker with Thomas Morrow, Personal Injury Settlements in Louisiana: Practical Methods for Perfecting the Settlement of a Claim, NBI, Inc. Written materials supplied.

December 2003 (specific date unknown): Speaker, Handling Sex Abuse Cases, Louisiana Association for Justice, New Orleans, Louisiana. Written materials supplied.

May 21, 2003: Speaker, Basics of Legal Assisting in Louisiana, Halfmoon, LLC. Written materials supplied.

May 9, 2003: Speaker, Better Brief Writing, Advanced Appellate Practice Seminar, Paul M. Hebert Law Center, Baton Rouge. Written materials supplied.

January 16, 2003: Speaker, A Practical Refresher on Litigating the Louisiana Auto Injury Case, National Business Institute, Lafayette, Louisiana. Written materials supplied.

2003 (specific date unknown): Speaker, Trying the Automobile Injury Case in Louisiana, National Business Institute, Lafayette, Louisiana. Written materials supplied.

December 27, 2002: Speaker, Wrongful Death and Survival Actions, Louisiana Trial Lawyers Association, Baton Rouge, Louisiana. Written materials supplied.

December 6, 2002: Speaker, Louisiana Wrongful Death and Survival Actions, Southern University Law Center, Baton Rouge, Louisiana. Written materials supplied.

June 19, 2002: Speaker, Professionalism and Ethics, Lorman Educational Services, Baton Rouge, Louisiana. This presentation was on professionalism and ethics. I have no notes, transcript, or recording. The address for Lorman Educational Services is 2510 Alpine Road, Eau Claire, Wisconsin 54703.

May 17, 2002: Speaker, Professionalism, Louisiana Trial Lawyers Association, Baton Rouge, Louisiana. Written materials supplied. This presentation was on professionalism. I have no notes, transcript, or recording. The address for the Louisiana Trial Lawyers Association is 442 Europe Street, Baton Rouge, Louisiana 70802.

December 27, 2001: Speaker, Professionalism in the New Millennium, Louisiana Trial Lawyers Association, Baton Rouge, Louisiana. Written materials supplied.

2001 (specific date unknown): Speaker, Professionalism and Ethics, Lorman Educational Services, Baton Rouge, Louisiana. This presentation was on professionalism and ethics. I have no notes, transcript, or recording. The address for Lorman Educational Services is 2510 Alpine Road, Eau Claire, Wisconsin 54703.

December 2001 (specific date unknown): Speaker, Interactive Ethics, Louisiana Trial Lawyers Association, Baton Rouge, Louisiana. Written materials supplied.

March 3, 2001: Speaker, Traps for the Unwary Lawyer, Louisiana Judicial Council/National Bar Association, Lake Charles, Louisiana. Written materials supplied.

December 28, 2000: Speaker, Professionalism in a New Millennium, New Orleans Legal Aid Bureau, New Orleans, Louisiana. Written materials supplied.

December 2000 (specific date unknown): Speaker, Professionalism in a New Millennium, Louisiana Trial Lawyer Association, Baton Rouge, Louisiana. I used the same materials as for the December 28, 2000, event, which have been supplied.

December 2000 (specific date unknown): Speaker, Professionalism in a New Millennium, Baton Rouge Bar Association, Baton Rouge, Louisiana. This presentation was on professionalism. I have no notes, transcript, or recording. The address for the Baton Rouge Bar Association is 544 Main Street, Baton Rouge, Louisiana 70801.

December 2000 (specific date unknown): Speaker, Ethics, Louisiana Trial Lawyer Association, Baton Rouge, Louisiana. This presentation was on legal ethics. I have no notes, transcript, or recording. The address for the Louisiana Trial Lawyers Association is 442 Europe Street, Baton Rouge, Louisiana 70802.

2000 (specific date unknown): Speaker, Nursing Home Litigation, National Business Institute, Baton Rouge, Louisiana. This presentation was on nursing home litigation. I have no notes, transcript, or recording. The address for the National Business Institute is P.O. Box 3067, Eau Claire, Wisconsin 54702.

May 4, 2000: Speaker, Deriving at Loss Income in Louisiana, Lorman Educational Services, New Orleans, Louisiana. This presentation was on deriving a loss income in Louisiana. I have no notes, transcript, or recording. The address for Lorman Educational Services is 2510 Alpine Road, Eau Claire, Wisconsin 54703.

December 1999 (specific date unknown): Speaker, Nursing Home Litigation, New Orleans Legal Aid Bureau, New Orleans, Louisiana. This presentation was on nursing home litigation. I have no notes, transcript, or recording. The address for New Orleans Legal Aid Bureau is 1340 Poydras, Suite 600, New Orleans, Louisiana 70112.

1999 (specific date unknown): Speaker, Insurance Coverage Law in Louisiana, National Business Institute, Baton Rouge, Louisiana. This presentation was on insurance coverage in Louisiana. I have no notes, transcript, or recording. The address for the National Business Institute is P.O. Box 3067, Eau Claire, Wisconsin 54702

December 1998 (specific date unknown): Speaker, Recent Developments in Louisiana Civil Procedure, New Orleans Legal Aid Bureau, New Orleans, Louisiana. This presentation was on recent developments in Louisiana Civil Procedure. I have no notes, transcript, or recording. The address for New Orleans Legal Aid Bureau is 1340 Poydras, Suite 600, New Orleans, Louisiana 70112.

December 1997 (specific date unknown): Speaker, Recent Developments and Emerging Issues in Louisiana Products Liability Law, New Orleans Legal Aid Bureau, New Orleans, Louisiana. This presentation gave an overview of recent cases and trends in Louisiana Products Liability law. I have no notes, transcript, or recording. The address for New Orleans Legal Aid Bureau is 1340 Poydras, Suite 600, New Orleans, Louisiana 70112.

December 1997 (specific date unknown): Speaker, Louisiana Products Liability Law, Loyola University Law School, New Orleans, Louisiana. I have no notes, transcript, or recording. The address for Loyola University Law School is 526 Pine Street, New Orleans, Louisiana 70118.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Gyan, Joe, *Burned in 2016 Exxon refinery explosion, two workers can sue a valve-maker, court says*, THE ADVOCATE, Jan. 5, 2022, Baton Rouge, Louisiana. Copy supplied.

The Oral History of Darrel Papillion (2022). Video available at https://www.raisingthebar.org/homer-2/item/161-papillion-darrel-j-baton-rouge.

Ballard, Mark, *Former LSU law firm criticizes sexual misconduct report, says it harmed firm's reputation*, THE ADVOCATE, June 8, 2021, Baton Rouge, Louisiana. Copy supplied.

Burkes, Caite, *3 Things to know: Darrel Papillion*, BATON ROUGE BUSINESS REPORT, Nov. 2, 2020. Copy supplied.

Gyan, Jr., Joe, *In 2016 ExxonMobil explosion, two burned contractors reach settlement with company*, THE ADVOCATE, Nov. 4, 2019. Copy supplied.

Borghardt, Franz, *Darrel Papillion on the State of Lawyers*, (interview), Talk 107.3, July 10, 2019, Baton Rouge, Louisiana. Recording available at https://www.wrkf.org/show/talk-louisiana/2018-12-10/monday-december-10th-mike-lupica-darrel-papillion-brian-shaw.

Engster, Jim, *Lawyer Darrel Papillion on the Mueller investigation*, (Interview), WRKF.org, Dec. 10, 2018, Baton Rouge, Louisiana. Audio available at: https://www.wrkf.org/tags/darrel-papillion.

Issues Facing the Legal Community, Apr. 13, 2017, Baton Rouge, Louisiana. Video available at https://www.pbs.org/video/news-makers-041217-darryl-papillion-issues-facing-the-legal-profession-uclnnh.

Library partners with La. Bar Assoc. to host legal advice program, ABBEVILLE MERIDIONAL, Oct. 20, 2016, Abbeville, Louisiana. Copy supplied.

O'Donoghue, Julia, *Landry blocks contracts over anti-bias provisions*, TIMES PICAYUNE, Sept. 30, 2016, New Orleans, Louisiana. Copy supplied.

O'Donoghue, Julia, *AG Jeff Landry blocks state contracts that include language preventing LGBT discrimination*, THE TIMES-PICAYUNE, Sept. 29, 2016, New Orleans, Louisiana. Copy supplied.

Gyan, Jr., Joe, *Legal deadlines suspended following flooding*, THE ADVOCATE, Sept. 6, 2016, Baton Rouge, Louisiana. Copy supplied.

Parish native leads Louisiana Bar Association - Darrel Papillion grew up in Swords, EUNICE NEWS, June 26, 2016, Eunice, Louisiana. Copy supplied.

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Redman, Carl, *More Law Institute diversity urged*, THE ADVOCATE, Feb. 14, 2001, Baton Rouge, Louisiana. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office. I have served as a court appointed Special Master in the Nineteenth Judicial District Court in East Baton Rouge Parish, Louisiana on three occasions On all three occasions, I was not employed by the Nineteenth Judicial District Court; rather, I remained employed at Walters, Papillion, Thomas, Cullens, LLC, and the work I did as a Special Master was treated as any other client matter.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

I did not preside over any trials in my role as Special Master. I presided over

motions and conferences.

i. Of these cases, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

ii. Of these cases, approximately what percent were:

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

I issued Reports and Recommendations for the trial judge in my role as Special Master, but I have not written any judicial opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I did not preside over any cases in my role as Special Master. I made recommendations to the district judge who presided over the cases.

1. *Louisiana State Department of Health vs. Purdue Pharma, L.P. et al.*, No. 661638, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana

In September 2018, with the consent of the parties I was appointed as an Assistant Special Master and then very shortly thereafter as the Special Master in an action brought by Louisiana's Department of Health against a number of major prescription drug manufacturers and related entities in which the State of Louisiana was seeking a variety of damages against the defendants related to sums the state had paid on behalf of Louisiana citizens who were beneficiaries of state medical benefits and seeking associated penalties and other damages. My role in the action would have been to rule on motion and preliminary matters for the trial judge. Within a few weeks of my appointment, however, I became aware of a potential conflict of interest that I raised on my own and asked the court to be relieved of my duties as Special Master, and a new Special Master was appointed. I had no further involvement in the action after my recusal.

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2. *Krielow v. Louisiana State University Board of Supervisors, et al.*, No. 659594, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

In January 2018, I was appointed, by agreement of the parties, to serve as Special Master in a case arising out of a public records dispute involving potentially privileged documents in the possession of a major research university related to scientific research involving two species of rice. I was asked to review approximately 24,000 pages of documents and an accompanying privilege log and determine the legality and sufficiency of the university's response to a citizen's public records request. The trial court accepted the substantive part of my findings on the privilege issue and the applicable law but chose not to accept my conclusions on some legal questions he deemed unnecessary. The court also rejected my recommendation that each party bear its own attorney's fees, and instead assessed attorney's fees against the university. The matter was appealed to the Louisiana First Circuit Court of Appeal in *Krielow v. Bd. of Supervisors of L.S.U.*, 290 So.3d 1194 (La. App. 1 Cir. 11/15/15), and the Court of Appeal affirmed.

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3. *M&R Drywall, Inc. et al. vs. Mapp Construction, LLC et al.*, No. 529,351 c/w *Southgate Residential Towers, LLC et al. vs. Mapp Construction et al.*, No. 550,534, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

In December 2011, by agreement of the parties, I was appointed by the trial court to serve as Special Master in a complex, multimillion dollar civil action pending in state court in Baton Rouge, Louisiana. The litigation involved allegations of construction defects in the Southgate Towers Complex, a large residential apartment complex in Baton Rouge. I presided over multiple hearings involving insurance, construction, summary judgment, expert, evidentiary, and other issues. All or almost all of my Reports and Recommendations were accepted by the trial judge. In September 2015, the case went to trial before a jury, and the jury found in favor of the apartment complex in some respects and against it in others. Ultimately, the owners of the

apartment complex recovered less damages than were sought in the suit. The apartment complex appealed. The Louisiana First Circuit Court of Appeal, the state's intermediate appellate court with jurisdiction over the trial court, reversed the trial court judgment in part, and affirmed in part. *M&R Drywall, Inc. v. MAPP Construction*, 280 So.3d 260 (La. App. 1 Cir. 2019).

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I have never written a judicial opinion.

e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have never rendered a judgment as a judge. I have, as noted above, served as a Special Master making recommendations to a state district court judge who, in his discretion and based upon his own judgment, adopted my recommendations as part of the court's judgment.

In the *M&R Drywall* matter, almost all of the roughly 50 recommendations of mine that were adopted by the trial court were either unchallenged or not part of the appeal. The major issues analyzed by the court of appeal that related to my reports and recommendations, in that large and complex case, were my recommendation: (1) that an arbitration award be admitted into evidence by the trial court, which the appellate court upheld; (2) regarding the applicability of certain insurance credits, which the appellate court vacated in part and affirmed in part; (3) to deny a motion for summary judgment on a professional services exclusion, which was upheld; and (4) that the trial court grant summary judgment in favor of Southgate on the issue of manifestation of its claimed damages, which the court reversed. *M&R Drywall, Inc. v. MAPP Construction*, 280 So.3d 260 (La. App. 1 Cir. 2019).

In *Krielow v. Bd. of Supervisors of L.S.U.*, the trial court accepted the substantive part of my findings on a privilege issue but chose not to accept my conclusions on legal questions he deemed unnecessary. The trial court also rejected my recommendation that each party bear its own attorney's fees, and assessed attorney's fees against the university. R & R and orders supplied. The matter was appealed to the Louisiana First Circuit Court of Appeal in *Krielow v. Bd. of Supervisors of L.S.U.*, 290 So.3d 1194 (La. App. 1 Cir. 11/15/15), and the Court of Appeal affirmed the decision of the trial court.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have not issued any published or unpublished opinions, but the reports and recommendations I prepared as Special Master should be available as part of the electronic records of Louisiana's Nineteenth Judicial District Court in the respective matters.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge. While serving as a special master in the matter of *Louisiana State Department of Health vs. Purdue Pharma, L.P. et al.*, No. 661638, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, I voluntarily recused myself after becoming aware of a potential conflict of interest when I became aware of the involvement of an attorney in the matter who had made a recommendation in his role as an administrator in another, unrelated matter involving my law firm that was financially beneficial to my law firm. Upon making the connection between the lawyer's involvement in the two unrelated matters, I asked to be relieved of my duties because I thought it could create the appearance of impropriety.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In approximately 2004, I qualified to run for the Louisiana State Democratic Central Committee, but I yielded in favor of another candidate.

I served as Campaign Chair for East Baton Parish District Attorney Hillar Moore, III, in his most recent campaign in 2020.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1994 to 1995, I clerked for Associate Justice Catherine D. Kimball of the Louisiana Supreme Court.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

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2020 – present
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Special Prosecutor

2013 – present
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Mediator

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Since 2013, I have served as a mediator with the Perry Dampf Firm, a mediation firm with multiple offices in South Louisiana. I am not a partner, owner, or employee of Perry Dampf. I typically mediate about 20 cases a year. Mediation is typically a confidential process in Louisiana, and there is a Louisiana statute that precludes a mediator from being subpoenaed to testify about what transpired during a mediation. Most of my mediations are subject to a confidentiality agreement. The overwhelming majority of the cases in which I have served as a mediator have been personal injury cases, both state and federal, usually with damages ranging from $250,000 to $500,000.

b. Describe the general character of your law practice and indicate by date when its character has changed over the years.

When I was a law clerk, from 1994 to 1995, at the Louisiana Supreme Court, I did research and writing for Associate Justice Catherine Kimball.

I joined McGlinchey Stafford's New Orleans office in 1995, where I

worked in the Products Liability Section until 1999. At McGlinchey, my work consisted almost entirely of defense of products liability actions in state and federal court.

In 1999, I moved from New Orleans to Baton Rouge, where I worked at Moore Walters Thompson and its successor firms, before starting my own firm with three of my partners in 2009. My main areas of practice have been personal injury and wrongful death litigation. I have handled products liability, highway, industrial, medical negligence, and other injury and death cases. I have also handled commercial litigation matters and have sometimes defended corporations and businesses. I have also served as a mediator and a Special Master. Finally, I have served as a Special Prosecutor in the East Baton Rouge Parish District Attorney's Office in an uncompensated capacity.

i. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Since 1999, I have primarily represented individuals and families in injury and death cases, and I also sometimes represent businesses and corporations.

When I was at McGlinchey Stafford, I represented Ford Motor Company, Chrysler Corporation, Toyota Motor Corporation, Caterpillar, BMW, and other manufacturers in a variety of cases, mostly having to do with allegations that an injury or death was caused by an allegedly defective product. I also did some general casualty, maritime, and commercial litigation work.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I have had an extremely busy trial and litigation practice for nearly 30 years. Almost of my legal work involves litigation. During my first few years as a lawyer, I argued in court several times a month because pretrial motions, particularly in state court, were heard in open court more often than today. For the last 15 years or so, I have appeared regularly in court on behalf of my clients in civil cases. I argue in open court two to three times per month and participate in a similar number of pretrial or preliminary conferences in state or federal court, either in person or electronically, each month.

i. Indicate the percentage of your practice in:
   1. federal courts: 45%
   2. state courts of record: 53%
   3. other courts: 1%

4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 98%
2. criminal proceedings: 2%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried at least 33 cases to verdict. I was chief counsel 24 times and associate counsel 9 times.

i. What percentage of these trials were:
1. jury: 40%
2. non-jury: 60%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never argued before the United States Supreme Court. I filed cert-stage pleadings in *Line v. Alonso*, 540 U.S. 967 (2003) (cert. denied), for the respondent. Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Daigrepont v. Exxon Mobil et al.*, Docket No. C657026 c/w C658372, Sec. 27, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana

This case arose out of a massive explosion at the Exxon Mobil Refinery in Baton Rouge,

Louisiana. I represented Mr. Daigrepont, one of four workers who were seriously burned as a result of an isobutane release, explosion, and fire at the refinery. East Baton Rouge Parish Judge Trudy White granted plaintiff's motion for partial summary judgment against Exxon, finding the organizational culture at the Exxon refinery knowingly created a hazard, and Exxon knew Daigrepont's injuries were substantially certain to follow from Exxon's conduct. This ruling was later reversed, sending the matter back to the trial court for trial, *Daigrepont v. Exxon Mobil Corp.*, 2021-0534 (La. App. 1 Cir. 12/30/21). However, a confidential settlement was reached with Exxon on the first day of the trial. Plaintiff also settled with several other parties. Judge White also granted the motion for summary judgment regarding liability filed on behalf of the valve manufacturer, and the Louisiana First Circuit Court of Appeal reversed, finding in favor of the workers. *Daigrepont v. Exxon Mobil Corp.*, 2021-0534 (La.App. 1 Cir. 12/30/21); 340 So.3d 1018, *amended on reh'g* (to address costs), 2021-0534 (La.App. 1 Cir. 4/27/22), *writ denied sub nom. Daigrepont v. Exxon Mobile Corp.*, 2022-00852 (La. 9/27/22); 347 So.3d 151. The case against the valve manufacturer is currently pending in Louisiana's Nineteenth Judicial District Court.

Judge: Trudy White
Date of Representation: 2016 – present

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2. *Mays v. Chevron Pipeline Co., et al.*, No. 14-cv-3098 (W.D. La)

Along with co-counsel from Texas, I represented the surviving widow and adult children of a contract employee who was killed as a result of an explosion on an offshore natural gas platform owned by Chevron Pipeline Company. The case turned on the important legal and factual issues related to whether there was a substantial nexus between the worker's death and extractive operations on the Outer Continental Shelf, such that the Longshore and Harbor Workers' Compensation Act, via the Outer Continental Shelf Lands Act, would apply to the plaintiffs' claims instead of the Louisiana Workers' Compensation Act, which would have immunized Chevron from our clients' claims. Along with Texas co-counsel, I tried the case before a federal jury that found in our clients' favor. In addition to awarding damages, the court found the worker's death was caused by Chevron's Outer Continental Shelf activities such that Chevron did not enjoy state immunity. The case was appealed to the Fifth Circuit, which affirmed, 968 F.3d 44 (5th Cir. 2020), but I did not personally argue the appeal.

Judge: U.S. District Judge Brian Jackson, Middle District of Louisiana (sitting by appointment)
Date of Representation: 2017 – 2019

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3. *Gainey and Hill v. Furmanite America, Inc., et al.*, Docket No. 181057, Thirty-

Second Judicial District Court, Parish of Terrebonne, State of Louisiana

The *Hill/Gainey* case stemmed from an October 8, 2015, pipeline explosion that killed four people and seriously injured at least two others at Transcontinental Gas Pipe Line Company's Compressor Station 62 in Gibson, Louisiana. I represented the three surviving children of Mr. Hill, a maintenance worker who was killed in the explosion, and Mr. Hill's co-worker, Mr. Gainey, who was badly burned in the explosion. I also represented Mr. Gainey's spouse in a claim for loss of consortium with her husband in the aftermath of his severe burn injuries. The case involved extensive discovery, investigation, expert witness work, and motion practice. My clients' claims against the several parties sued after the explosion were resolved by settlement.

Judge: David W. Arceneaux
Date of Representation: 2015 – 2019

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4. *Bethel et al. vs. National Indem. Ins. Co., J.D. & Billy Hines Trucking, Inc. et al.*, No. 15-cv-391 (M.D. La.)

On May 5, 2014, Ms. Bethel, a college student from Baton Rouge, suffered severe injuries when an 18-wheeler entered her lane of travel and struck her car, causing her car to spin, leave the interstate, and collide with a tree on the side of the road. I filed suit on behalf of Ms. Bethel and her parents, and the case was removed to federal court where I handled the case to conclusion against the at-fault trucking company and its insurance companies. Prior to the scheduled trial, I was successful in getting the trial court to grant a motion for partial summary judgment on the issue of the fault of the defendant tractor trailer driver, leaving damages as a sole issue in the case. The damage issues were resolved by settlement prior to trial.

Judge: U.S. District Judge Shelly D. Dick
Date of Representation: 2014 – 2017

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5. *Frickey and Frickey, v. Kobelco Stewart Bolling, Inc., Kobe Steel, Ltd., Jacobs Field Services North America, Inc., the Dow Chemical Company and Union Carbide*, No. 14-cv-00002 (E.D. La.)

This was a products liability case that arose out of an explosion and flash fire at Dow Chemical Company's Union Carbide Plant in Taft, Louisiana. Mr. Frickey was badly burned, and sprayed with molten polymer as a result of defects in a pelletizer unit in the plant. I represented Mr. Frickey in this case that involved many complex motions, service under the Hague Convention, and special orders obtained from the federal court in Louisiana to allow the taking of a deposition on Japanese soil, something that can typically only be done in a U.S. Embassy or Consulate. I spent several days in Japan in 2015, deposing representatives of Kobe Steel, LTD, the Japanese parent corporation, regarding the design and manufacture of the subject pelletizer equipment. A confidential settlement was reached in 2015 after I represented Mr. Frickey in multiple settlement and related conferences presided over by U.S. District Judge Lance Africk and U.S. Magistrate Judge Joseph Wilkinson.

Judge: U.S. District Judge Lance Africk

Date of Representation: 2013 – 2015

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6. *Croft et al. v. Liberty Mutual Insurance Company et al.*, No. C581732, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana

This case arose out of a tractor-trailer and automobile crash on May 4, 2009, in Jefferson Davis Parish, near Jennings, Louisiana, in which Mr. Croft, a Houston lawyer, sustained severe injuries. He suffered a traumatic brain injury as well as serious spinal and other injuries. The defendants in the lawsuit were the UPS driver, UPS, and Liberty Mutual Insurance Company. I represented Mr. Croft in this case that involved fact and expert depositions all over the country, followed by extensive pretrial motions on liability and damages. The case settled shortly before trial.

Judge: William Morvant
Date of Representation: 2009 – 2014

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7. *Parsons and Parsons v. Great West Casualty Company, et al.*, No. 09-cv-4502, (E.D. La.)

On December 17, 2008, Mr. Parsons, a Baton Rouge-based investment advisor, was involved in a severe interstate highway crash, just outside New Orleans, when a tractor trailer traveling toward New Orleans, lost two of the wheels on its trailer. One of the wheels became lodged under a second 18-wheeler, causing cargo from the second 18-wheeler in the form of metal bars to puncture the trailer in which they were being transported and to fly onto the interstate ultimately injuring Mr. Parsons. I represented Mr. Parsons and his family in this case that presented complex issues of liability, causation, and damages requiring assessment and proof of fault of the two involved 18 wheelers, including the parties responsible for operation and maintenance of the first 18-wheeler as well as the parties responsible for operating and loading the second 18-wheeler. The case also involved depositions in multiple states related to the packing of the metal bars in Mexico prior to their shipment to the United States as well as a host of expert depositions regarding packaging of cargo, safe operation and maintenance of tractor trailers and comprehensive discovery regarding proof of Mr. Parsons' career-ending injuries and proof of the associated economic losses for a person in his line of work. After nearly two years of extensive discovery and pretrial litigation, all of which I handled or oversaw for the plaintiffs, the case was resolved by a settlement agreement and dismissal of the case a month prior to the scheduled trial.

Judge: U.S. District Judge Martin L.C. Feldman (deceased)
Date of Representation: 2009 – 2011

Co-Counsel:

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John W. Waters, Jr.
Bienvenu Foster Ryan & O'Bannon, LLC
1100 Poydras Street, Suite 2870
New Orleans, LA 70163
(504) 310-1560

Sidney W. Degan, III
Degan Blanchard & Nash
Texaco Center
400 Poydras Street, Suite 2600
New Orleans, LA 70130
(504) 529-3337

8. *Picard et al. v. Kirk Key Interlock Company, LLC, et al.*, No. 65627, Eighteenth Judicial District Court, Parish of West Baton Rouge, State of Louisiana

This case arose from catastrophic burn injuries caused when an electrical switchgear powered up a motor that closed a 2,400-volt electrical circuit during preventive maintenance in a refinery. An arc flash and resulting fire severely burned a young electrician. I was lead counsel for the plaintiff electrician and his family against the manufacturer and was responsible for conducting extensive pretrial fact and expert discovery including numerous depositions of engineering and other experts, followed by motion practice. and motion practice and numerous depositions. The case settled shortly before its scheduled trial date.

Judge: Robin Free (retired)
Date of Representation: 2008 – 2010

Opposing Counsel:

Nelson W. Wagar
(Formerly with Chopin, Wagar, Richard & Kutcher, LLP)
Wagar Hickman
1425 West Causeway Approach
Mandeville, LA 70971
(985) 888-8740

9. *Hackler, M.D. v. P & O Ports Louisiana, Inc., et al.*, No. 3:08-cv-43 (E.D. La.)

The *Hackler* case involved the Mesothelioma-related death of a Baton Rouge cardiac surgeon who had been exposed to raw asbestos at the Port of Greater Baton Rouge many years earlier when he was a Louisiana State University student working his way through college as a longshoreman. This case presented novel issues of Louisiana and maritime law as a "twilight zone" maritime asbestos case. I was lead counsel for Dr. Hackler and his wife and surviving children in this matter, which involved extensive investigation and

discovery that included Rule 30(b)(6) depositions of shipping entities in New York and South Africa, and a multitude of motions in federal court in the Eastern District of Pennsylvania, followed by additional litigation in the Middle District of Louisiana. During the pendency of the case, I traced the origin of shipments of raw asbestos into Baton Rouge from Durban, South Africa as well as its handling and storage in the United States by the federal government. The case was finally resolved through an out-of-court settlement reached through a court-ordered mediation with a federal magistrate judge prior to trial.

Middle District of Louisiana; Eastern District of Pennsylvania
Judge: James J. Brady (deceased); Eduardo Robrino
Date of Representation: 2005 – 2013

Opposing Counsel:

Stephen Glusman
Glusman, Broyles & Glusman
701 North Street
Baton Rouge, LA 70802
(225) 387-5551

Patrick E. Costello
Mouledoux, Bland, Legrand & Brackett, LLC
701 Poydras Street, Suite 600
New Orleans, LA 70139
(504) 595-3000

10. *John and Jane Doe, individually, and on behalf of their minor children, James Doe and Richard Doe v. Sacred Heart Catholic School, Matherne, and The Archdiocese of New Orleans*, No. 99-15259, Civil District Court, Parish of Orleans, State of Louisiana

The *Doe v. Archdiocese* case was the largest of several cases I handled for more than a decade after 1999 arising out of the sexual abuse of mostly child victims by Catholic priests or employees of Catholic schools or other Catholic institutions throughout Louisiana. In this particular case, I represented five boys or young men who had been sexually abused in elementary school or up to the eighth grade by a teacher and coach at Sacred Heart of Jesus Catholic School in Norco, Louisiana. In some of the five cases, I represented the boys' parents because they were too young to sue in their individual capacities. Roughly a dozen lawsuits of boys abused by this teacher and coach, including my five cases, were consolidated for discovery and trial in Civil District Court in Orleans Parish, where the Roman Catholic Archdiocese of New Orleans is domiciled. My clients included the victim whose family first reported his abuse to Archdiocesan officials and whose reports of abuse to his therapist led to the arrest and eventual conviction, in a separate criminal proceeding in which I was not directly involved, of the teacher and coach. I participated in and oversaw extensive discovery including the depositions of at

least four current, future, or former Archbishops of New Orleans, multiple school officials, priests, and others involved in the operation of the subject Catholic School, as well as expert discovery and depositions related to school supervision and management, and motion practice related to the statute of limitations and legal obligations owed by the various parties, I was able to resolve my five cases prior to trial as part of a global settlement of multiple claims by abuse victims.

Judge: Nadine Ramsey (retired)
Date of Representation: 1999 – 2008

Opposing Counsel:

Don Richard
Attorney at Law
3939 Gentilly Boulevard, Box 28
New Orleans, LA 70126
(504) 816-8583

Michele Gaudin
Attorney at Law
433 Metairie Road, Suite 100
Metairie, LA 70005
(504) 525-7727

Dan E. West (retired)
McGlinchey Stafford, PLLC
301 Main Street, Suite 1400
Baton Rouge, LA 70801
(225) 383-9000

Lisa McLachlan
Musgrave, McLachlan & Penn
1515 Poydras Street, Suite 2380
New Orleans, LA 70112
(504) 799-4300

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Outside of my litigation practice, I have served as President of the Baton Rouge Bar Association, an organization with nearly 3,000 members in the Greater Baton Area, and

as President of the roughly 23,000-member Louisiana State Bar Association. During my tenure as Louisiana State Bar President, I had the difficult but important task of helping our courts and legal system function in the aftermath of catastrophic flooding that affected South Louisiana in 2016. I worked closely with the Office of the Governor, the State Supreme Court, and the Chief Judges of all three of Louisiana's federal district courts to ensure that affected lawyers and litigants had access to court, or relief from the ordinary rules of court, in those instances when they were unable to access their offices or clients due to flood-related problems. In addition to my service to the local and state bar, I have been active in the American Bar Association, where I currently serve as Louisiana's State Delegate to the ABA House of Delegates and as a member of the nominating committee.

Finally, I have greatly enjoyed teaching lawyers and law students at the many continuing legal education seminars I have taught and as an Adjunct Professor of Law at Louisiana's two state law schools. One of the things I have enjoyed most is teaching an annual continuing legal education seminar with United States Magistrate Judge Mark Hornsby of Louisiana's Western District at the annual Summer School for Lawyers Program, hosted by the Louisiana State Bar Association. The annual seminar session focuses on recent and upcoming changes in federal civil law and procedure and the rules of evidence and appellate procedure, along with useful practice tips and pointers for federal court practitioners, regardless of their level of expertise.

I have never engaged in lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught various courses as an adjunct professor of law at the Paul M. Hebert Law Center, Louisiana State University, from 2000 until the present. These courses are Appellate Advocacy, Advanced Appellate Advocacy, Trial Practice, and Civil Pretrial Litigation. These courses covered basic principles of trial and appellate practice. The general syllabus I use in connection with my pretrial litigation course is supplied.

From 2012 through 2018, I served as an adjunct professor during the Paul M. Hebert Law Center's Apprenticeship Week. This course provides an introduction to law practice in a variety of areas and is taught in small groups by faculty selected by the Law Center based on their particular expertise in a given area of practice. I taught a section of this course called "Anatomy of a Personal Injury Case" and "Handling the Personal Injury Case" with my law partner. I cannot locate a syllabus for this program. The address for the Paul M. Hebert Law Center is 1 East Campus Drive, Baton Rouge, Louisiana 70803

From 2008 through 2011, I was an instructor at the annual NITA Trial Advocacy Program, at the Paul M. Hebert Law Center in Baton Rouge, Louisiana. This roughly week-long course provided a comprehensive, interactive introduction to trial practice for

third-year law school students. I have no notes, transcript, or recordings. The address for the Paul M. Hebert Law Center is 1 East Campus Drive, Baton Rouge, Louisiana 70803.

I taught Civil Pretrial Litigation at Southern University Law Center from 2004 to 2006 as part of the adjunct faculty. This course covered the basic principles of pretrial practice. I am unable to obtain a syllabus. The address for the Southern University Law Center is 2 Roosevelt Steptoe Drive, Baton Rouge, Louisiana 70813.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I would be owed money from my law firm and its related building partnerships, subject to the terms of our operating agreement, for my interest in those entities and my interest in fees from cases handled during my tenure at the firm.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife is an attorney who works for the Louisiana State Board of Nursing. While it would be unlikely that she or her agency would have a matter that would come before me, I would recuse myself in any matter involving my wife or her agency and, for an appropriate period of time, from any matter involving my law firm in accordance with all applicable rules, codes or standards.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review and address any real or potential conflicts of interest by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances. I would also consult relevant judicial decisions and opinions by the Judicial Conference of the United States.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Over the past 24 years, I have been primarily a contingent fee lawyer, charging no fee unless I recovered for my clients. Over the years, I have represented numerous clients for free and have reduced many thousands of dollars in fees for clients of limited financial means. While working as an hourly lawyer at a big firm, I handled pro bono cases through a local pro bono organization. I have supported legal aid organizations in my state in many ways including, but not limited to, providing financial support to, and serving on the board of, the Innocence Project of New Orleans and the New Orleans Legal Aid Bureau. I have been a board member of the Louisiana Bar Foundation and the Baton Rouge Bar Foundation, both of which help fund the legal needs of the poor. I also served as the Honorary Co-Chair of the Fiftieth Anniversary Advisory Committee of Southeast Louisiana Legal Services in 2017. Moreover, as a State Bar President and Bar leader, I have given seminars and speeches that have addressed the need for lawyers to serve the less fortunate, and I have always tried to advocate for funding for legal services corporations and organizations that serve the legal needs of the poor.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of

Investigation personnel concerning your nomination.

I was contacted by United States Senator John Kennedy's office on April 7, 2022, inviting me to a meeting with Senator Kennedy. I met with Senator Kennedy on April 12, 2022, and he indicated an interest in recommending me to the White House for an opening on the United States Fifth Circuit Court of Appeals. On April 18, 2022, after learning my name had been submitted to the While House by my home state senators, I sent my CV and biography to the White House Counsel's Office. On May 16, 2022, Senator Kennedy's office inquired about my interest in serving on the United States District Court for the Eastern District of Louisiana. I indicated I would be interested in serving. I met with Senator Bill Cassidy on May 25, 2022, about my potential service as a federal judge. On January 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since January 13, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice, the White House Counsel's Office, and the Offices of United States Senators John Kennedy and Bill Cassidy. On March 20, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Jeremy Christen Daniel
Nominee to be United States District Judge for the Northern District of Illinois

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

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

3. Please define the term "living constitution."

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

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

6. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

7. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

8. Please identify a Seventh Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

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

10. Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

11. 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?
    b. Was *Loving v. Virginia* correctly decided?
    c. Was *Griswold v. Connecticut* correctly decided?
    d. Was *Roe v. Wade* correctly decided?
    e. Was *Planned Parenthood v. Casey* correctly decided?

f. Was *Gonzales v. Carhart* correctly decided?
g. Was *District of Columbia v. Heller* correctly decided?
h. Was *McDonald v. City of Chicago* correctly decided?
i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?

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

13. 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?

14. 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 Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

15. 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.

16. 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?

17. 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?

18. 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).

19. 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?

20. 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?

21. 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.

22. 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?

23. 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?

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

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

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Jeremy Christen Daniel, nominee to be United States District Court Judge for the Northern District of Illinois

You spent two years clerking for Judge Virginia M. Kendall in the same court where you are now nominated to serve. Judge Kendall was appointed by President George W. Bush and still serves on the Northern District of Illinois.

- What were the qualities that made Judge Kendall effective, and how will you emulate those qualities if you are confirmed?

Senator Hirono's Written Questions for Jeremy Christian Daniel
Nominee to the United States District Court for the Northern District of Illinois
April 18, 2023

1. As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

   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?**

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

Senator Mike Lee
Questions for the Record
Jeremy Daniel, Nominee to the United States District Court for the Northern District of Illinois

1. How would you describe your judicial philosophy?

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

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

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

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

   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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

Senator Josh Hawley
Questions for the Record

Jeremy Daniel
Nominee, U.S. District Court for the Northern District of Illinois

1. **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.**

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

3. **Do you consider legislative history when interpreting legal texts?**
   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?**
   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

4. **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?**

5. **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?**

6. **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?**

7. **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?**

8. **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.**

9. 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.

10. 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?

11. 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)?

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.

12. 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?

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

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

14. 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?

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

15. 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?

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

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.

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

17. 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?
   a. Do you believe that identical texts should be interpreted identically?
   b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

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

19. Do federal courts have the legal authority to issue nationwide injunctions?
   a. If so, what is the source of that authority?
   b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

20. 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?

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

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

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

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

25. 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?
   b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?
   c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?
   d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

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?
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.

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

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).
    a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?
    b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?
    c. If you disagree with either of these statements, please explain why and provide examples.

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.
    a. Do you believe it is appropriate for courts to issue "unpublished" decisions?
    b. If yes, please explain if and how you believe this practice is consistent with the rule of law.
    c. If confirmed, would you treat unpublished decisions as precedential?
    d. If not, how is this consistent with the rule of law?
    e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?
    f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.
    g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

29. In your legal career:
- **a. How many cases have you tried as first chair?**
- **b. How many have you tried as second chair?**
- **c. How many depositions have you taken?**
- **d. How many depositions have you defended?**
- **e. How many cases have you argued before a federal appellate court?**
- **f. How many cases have you argued before a state appellate court?**
- **g. How many times have you appeared before a federal agency, and in what capacity?**
- **h. How many dispositive motions have you argued before trial courts?**
- **i. How many evidentiary motions have you argued before trial courts?**

30. If any of your previous jobs required you to track billable hours:
- **a. What is the maximum number of hours that you billed in a single year?**
- **b. What portion of these were dedicated to pro bono work?**

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?**

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."
- **a. What do you understand this statement to mean?**
- **b. Do you agree or disagree with this statement?**

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."
- **a. What do you think Justice Holmes meant by this?**
- **b. Do you agree or disagree with Justice Holmes? Please explain.**

34. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?
- **a. If yes, please provide appropriate citations.**

35. 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.

36. What were the last three books you read?

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

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

39. Have you ever taken a position in litigation that conflicted with your personal views?
- **a. How did you handle the situation?**

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

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

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

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

43. Do you now or have you ever owned a firearm?

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

45. 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.

46. 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)?**
- **b. The Supreme Court's substantive due process precedents?**
- **c. Systemic racism?**
- **d. Critical race theory?**

47. Do you currently hold any shares in the following companies:
- **a. Apple?**
- **b. Amazon?**
- **c. Google?**
- **d. Facebook?**
- **e. Twitter?**

48. 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.**

49. Have you ever confessed error to a court?
- **a. If so, please describe the circumstances.**

50. 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.

Senator John Kennedy
Questions for the Record

Mr. Jeremy Daniel

1. Please describe your judicial philosophy. Be as specific as possible.

2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?

3. Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?

4. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?

5. What First Amendment restrictions can the owner of a shopping center place on private property?

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

8. At what point is a human life entitled to equal protection of the law under the Constitution?

9. A federal district court judge in Washington, D.C. recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

    a. Do you agree?

    b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

    a. How many factors are necessary to provide a special justification for overturning precedent?

    b. Is one factor alone ever sufficient?

14. Please explain the difference between judicial review and judicial supremacy.

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

    a. Who is included within the meaning of *'the people'*?

    b. Is the term's meaning consistent in each amendment?

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

26. How does the Constitution limit the powers of Congress? Please provide examples.

27. Please describe the modern understanding and limits of the Commerce Clause.

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

34. Do you believe the death penalty is constitutional?

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Questions from Senator Thom Tillis
for Jeremy C. Daniel
Nominee to be United States District Judge
for the Northern District of Illinois

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

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

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

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

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

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

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

8. 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?

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

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

11. 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?

12. Do you believe the current patent eligibility 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?

13. 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?

b. Please describe any particular experiences you have had involving 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?

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?

14. 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 reported that 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?

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?

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?

15. 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?

16. 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 this practice.

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?

17. 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?

18. 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?

Senate Judiciary Committee

"Nominations"

Questions for the Record

for Jeremy Daniel

to be United States District Judge for the Northern District of Illinois

QUESTIONS FROM SENATOR BLACKBURN

1. **Please describe your understanding of an originalist judicial philosophy.**

2. **When, if ever, is it appropriate for a judge to take into account his or her lived experience when interpreting the law?**

3. **What is your understanding of the definition of "original public meaning"?**

4. **When, if ever, is it appropriate for a judge to consider legislative history when interpreting a statutory provision?**

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Brendan A. Hurson
Nominee to be United States District Judge for the District of Maryland

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

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

3. Please define the term "living constitution."

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

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

6. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

7. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

8. Please identify a Fourth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

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

10. Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

11. 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?
    b. Was *Loving v. Virginia* correctly decided?
    c. Was *Griswold v. Connecticut* correctly decided?
    d. Was *Roe v. Wade* correctly decided?
    e. Was *Planned Parenthood v. Casey* correctly decided?

f. Was *Gonzales v. Carhart* correctly decided?
g. Was *District of Columbia v. Heller* correctly decided?
h. Was *McDonald v. City of Chicago* correctly decided?
i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?

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

13. 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?

14. 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 Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

15. 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.

16. 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?

17. 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?

18. 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).

19. 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?

20. 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?

21. 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.

22. 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?

23. 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?

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

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

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Judge Brendan Abell Hurson, nominee to be United States District Court Judge for the District of Maryland

You were appointed to serve as a U.S Magistrate Judge by the sitting district court judges of the District of Maryland which includes judges appointed by presidents of both parties. During your service as a magistrate you have written approximately 77 opinions and presided over a civil trial that has gone to verdict or judgment.

- How has your experience as a magistrate judge informed your view on the role of a federal district court judge?

Senator Hirono's Written Questions for Judge Brendan Abell Hurson
Nominee to the United States District Court for the District of Maryland
April 18, 2023

1. As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

   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?**

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

Senator Mike Lee
Questions for the Record
Brendan Hurson, Nominee to the United States District Court for the District of Maryland

1. How would you describe your judicial philosophy?

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

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

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

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

   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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

Senator Josh Hawley
Questions for the Record

Brendan Hurson
Nominee, U.S. District Court for the District of Maryland

1. **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.**

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

3. **Do you consider legislative history when interpreting legal texts?**
   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?**
   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

4. **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?**

5. **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?**

6. **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?**

7. **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?**

8. **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.**

9. 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.

10. 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?

11. 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)?

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.

12. 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?

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

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

14. 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?

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

15. 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?

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

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.

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

17. 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?
   a. Do you believe that identical texts should be interpreted identically?
   b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

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

19. Do federal courts have the legal authority to issue nationwide injunctions?
   a. If so, what is the source of that authority?
   b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

20. 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?

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

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

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

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

25. 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?
   b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?
   c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?
   d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

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?
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.

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

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).
   a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?
   b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?
   c. If you disagree with either of these statements, please explain why and provide examples.

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.
   a. Do you believe it is appropriate for courts to issue "unpublished" decisions?
   b. If yes, please explain if and how you believe this practice is consistent with the rule of law.
   c. If confirmed, would you treat unpublished decisions as precedential?
   d. If not, how is this consistent with the rule of law?
   e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?
   f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.
   g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

29. In your legal career:
- **a. How many cases have you tried as first chair?**
- **b. How many have you tried as second chair?**
- **c. How many depositions have you taken?**
- **d. How many depositions have you defended?**
- **e. How many cases have you argued before a federal appellate court?**
- **f. How many cases have you argued before a state appellate court?**
- **g. How many times have you appeared before a federal agency, and in what capacity?**
- **h. How many dispositive motions have you argued before trial courts?**
- **i. How many evidentiary motions have you argued before trial courts?**

30. If any of your previous jobs required you to track billable hours:
- **a. What is the maximum number of hours that you billed in a single year?**
- **b. What portion of these were dedicated to pro bono work?**

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?**

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."
- **a. What do you understand this statement to mean?**
- **b. Do you agree or disagree with this statement?**

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."
- **a. What do you think Justice Holmes meant by this?**
- **b. Do you agree or disagree with Justice Holmes? Please explain.**

34. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?
- **a. If yes, please provide appropriate citations.**

35. 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.

36. What were the last three books you read?

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

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

39. Have you ever taken a position in litigation that conflicted with your personal views?
- **a. How did you handle the situation?**

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

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

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

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

43. Do you now or have you ever owned a firearm?

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

45. 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.

46. 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)?**
- **b. The Supreme Court's substantive due process precedents?**
- **c. Systemic racism?**
- **d. Critical race theory?**

47. Do you currently hold any shares in the following companies:
- **a. Apple?**
- **b. Amazon?**
- **c. Google?**
- **d. Facebook?**
- **e. Twitter?**

48. 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.**

49. Have you ever confessed error to a court?
- **a. If so, please describe the circumstances.**

50. 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.

Senator John Kennedy
Questions for the Record

Judge Brendan Hurson

1. Please describe your judicial philosophy. Be as specific as possible.

2. Do you believe the meaning of the Constitution is immutable or does it evolve over time?

3. Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?

4. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?

5. What First Amendment restrictions can the owner of a shopping center place on private property?

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

8. At what point is a human life entitled to equal protection of the law under the Constitution?

9. A federal district court judge in Washington, D.C. recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

    a. Do you agree?

    b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

    a. How many factors are necessary to provide a special justification for overturning precedent?

    b. Is one factor alone ever sufficient?

14. Please explain the difference between judicial review and judicial supremacy.

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

    a. Who is included within the meaning of *'the people'*?

    b. Is the term's meaning consistent in each amendment?

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

26. How does the Constitution limit the powers of Congress? Please provide examples.

27. Please describe the modern understanding and limits of the Commerce Clause.

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

34. Do you believe the death penalty is constitutional?

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Questions from Senator Thom Tillis
for Brendan Abell Hurson
Nominee to be United States District Judge for the District of Maryland

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

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

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

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

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

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

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

8. 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?

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

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

11. 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?

12. Do you believe the current patent eligibility 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?

13. 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?

b. Please describe any particular experiences you have had involving 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?

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?

14. 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 reported that 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?

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?

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?

15. 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?

16. 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 this practice.

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?

17. 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?

18. 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?

Senate Judiciary Committee

"Nominations"

Questions for the Record

for Brendan Hurson

to be United States District Judge for the District of Maryland

QUESTIONS FROM SENATOR BLACKBURN

1. **Please describe your understanding of an originalist judicial philosophy.**

2. **When, if ever, is it appropriate for a judge to take into account his or her lived experience when interpreting the law?**

3. **What is your understanding of the definition of "original public meaning"?**

4. **When, if ever, is it appropriate for a judge to consider legislative history when interpreting a statutory provision?**

5. **At your confirmation hearing, Ranking Member Graham asked you a number of questions regarding the scourge of fentanyl in our society and, specifically, in Baltimore where you currently preside as a federal magistrate judge. Please research each of the following questions and answer according to the data available to you.**

    a. **How many fentanyl related deaths occurred in Baltimore last year?**

    b. **Recently, there has been a massive spike in fentanyl related deaths in the United States. What is your understanding of the cause of this spike in deaths?**

    c. **What is your understanding of the origins of the increase of fentanyl in the United States?**

    d. **What is the origin of the chemicals used to make most of the fentanyl consumed in the United States?**

    e. **What is the average age of fentanyl overdose victims in the United States?**

    f. **What is your understanding of the drug trafficking network in Baltimore?**

    g. **What is your understanding of the drug trafficking network in the United States as a whole?**

    h. **How many cases have you seen over the course of your career as a federal magistrate judge involving distribution of drugs?**

i. During your testimony, you referenced cases on your docket involving defendants charged with distribution of drugs and how these defendants are often drug users. In what circumstances do you believe that drug users who are charged with distribution of drugs should be given alternatives to incarceration?

j. What is the recidivism rate of drug dealers who are given alternatives to incarceration in Maryland?

k. What is the recidivism rate of drug dealers who are given alternatives to incarceration across the United States?

Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Darrel James Papillion
Nominee to be United States District Judge, Eastern District of Louisiana

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

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

3. Please define the term "living constitution."

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

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

6. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

7. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

8. Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

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

10. Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

11. 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?
    b. Was *Loving v. Virginia* correctly decided?
    c. Was *Griswold v. Connecticut* correctly decided?
    d. Was *Roe v. Wade* correctly decided?
    e. Was *Planned Parenthood v. Casey* correctly decided?

f. Was *Gonzales v. Carhart* correctly decided?
g. Was *District of Columbia v. Heller* correctly decided?
h. Was *McDonald v. City of Chicago* correctly decided?
i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?

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

13. 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?

14. 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 Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?

15. 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.

16. 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?

17. 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?

18. 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).

19. 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?

20. 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?

21. 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.

22. 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?

23. 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?

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

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

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Darrel James Papillion, nominee to be United States District Court Judge for the Eastern District of Louisiana

During your nearly three decades as a practitioner, you have tried over 30 cases to verdict, including over a dozen jury trials. You served as chief counsel in nearly two dozen cases and have a broad practice ranging from civil rights cases to commercial litigation.

- Can you describe your work in private practice and how that has prepared you to serve as a federal district court judge?

Senator Hirono's Written Questions for Darrel J. Papillion
Nominee to the United States District Court for the Eastern District of Louisiana
April 18, 2023

1. As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

   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?**

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

Senator Mike Lee
Questions for the Record
Darrel Papillion, Nominee to the United States District Court for the Eastern District of Louisiana

1. How would you describe your judicial philosophy?

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

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

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

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

   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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

Senator Josh Hawley
Questions for the Record

Darrel Papillion
Nominee, U.S. District Court for the Eastern District of Louisiana

1. **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.**

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

3. **Do you consider legislative history when interpreting legal texts?**
   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?**
   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

4. **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?**

5. **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?**

6. **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?**

7. **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?**

8. **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.**

9. 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.

10. 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?

11. 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)?

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.

12. 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?

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

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

14. 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?

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

15. 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?

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

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.

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

17. 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?
   a. Do you believe that identical texts should be interpreted identically?
   b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

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

19. Do federal courts have the legal authority to issue nationwide injunctions?
   a. If so, what is the source of that authority?
   b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

20. 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?

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

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

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

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

25. 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?
   b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?
   c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?
   d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

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?
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.

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

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).
   a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?
   b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?
   c. If you disagree with either of these statements, please explain why and provide examples.

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.
   a. Do you believe it is appropriate for courts to issue "unpublished" decisions?
   b. If yes, please explain if and how you believe this practice is consistent with the rule of law.
   c. If confirmed, would you treat unpublished decisions as precedential?
   d. If not, how is this consistent with the rule of law?
   e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?
   f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.
   g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

29. In your legal career:
- **a. How many cases have you tried as first chair?**
- **b. How many have you tried as second chair?**
- **c. How many depositions have you taken?**
- **d. How many depositions have you defended?**
- **e. How many cases have you argued before a federal appellate court?**
- **f. How many cases have you argued before a state appellate court?**
- **g. How many times have you appeared before a federal agency, and in what capacity?**
- **h. How many dispositive motions have you argued before trial courts?**
- **i. How many evidentiary motions have you argued before trial courts?**

30. If any of your previous jobs required you to track billable hours:
- **a. What is the maximum number of hours that you billed in a single year?**
- **b. What portion of these were dedicated to pro bono work?**

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?**

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."
- **a. What do you understand this statement to mean?**
- **b. Do you agree or disagree with this statement?**

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."
- **a. What do you think Justice Holmes meant by this?**
- **b. Do you agree or disagree with Justice Holmes? Please explain.**

34. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?
- **a. If yes, please provide appropriate citations.**

35. 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.

36. What were the last three books you read?

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

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

39. Have you ever taken a position in litigation that conflicted with your personal views?
- **a. How did you handle the situation?**

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

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

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

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

43. Do you now or have you ever owned a firearm?

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

45. 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.

46. 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)?**
- b. **The Supreme Court's substantive due process precedents?**
- c. **Systemic racism?**
- d. **Critical race theory?**

47. Do you currently hold any shares in the following companies:
- a. **Apple?**
- b. **Amazon?**
- c. **Google?**
- d. **Facebook?**
- e. **Twitter?**

48. 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.**

49. Have you ever confessed error to a court?
- a. **If so, please describe the circumstances.**

50. 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.

Senator John Kennedy
Questions for the Record

Mr. Darrel Papillion

1. Please describe your understanding of the First Amendment's guarantee of religious liberty.

2. As a Special Prosecutor, were you in any way involved in the decision to prosecute Pastor Tony Spell in early 2020?

3. The COVID-19 pandemic revealed that law related to emergency state powers in the United States lacked clarity until the United States Supreme Court provided guidance, especially when emergency state action restricted certain constitutional rights and liberties. One year into the pandemic, for example, the Court in *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) stated that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." The Court released this decision as the Spell case remained unresolved.

    a. Please describe how this decision, among others, impacted your approach to the Spell case.

    b. Had the law been clearer at earlier stages in the pandemic, do you believe the State could have brought a case against Pastor Tony Spell?

4. Pastor Tony Spell's attorney offered statements in support of your nomination to local media following your confirmation hearing. Do you believe, in light of the law at the time, that you handled your involvement with the case neutrally and fairly?

5. Please detail any leadership position you hold or have held with a religious organization.

Questions from Senator Thom Tillis
for Darrel James Papillion
Nominee to be United States District Judge
for the Eastern District of Louisiana

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

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

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

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

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

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

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

8. 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?

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

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

11. 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?

12. Do you believe the current patent eligibility 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?

13. 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?

b. Please describe any particular experiences you have had involving 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?

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?

14. 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 reported that 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?

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?

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?

15. 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?

16. 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 this practice.

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?

17. 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?

18. 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?

Senator Lindsey Graham, Ranking Member
Questions for the Record
Jeremy Christen Daniel
Nominee to be United States District Judge for the Northern District of Illinois

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

   Response: I am not familiar with this statement or the context in which it was made. To the extent it suggests that a judge should exercise his or her own value judgment when interpreting the Constitution, I disagree with this statement. If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution.

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

   Response: I am not familiar with this statement or the context in which it was made. If confirmed, I understand that I must (and would) follow Supreme Court and Seventh Circuit precedent when writing opinions.

3. **Please define the term "living constitution."**

   Response: Black's Law Dictionary (11th ed. 2019) defines "living constitution" as "A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values."

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

   Response: I am not familiar with this statement or the context in which it was made. I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I further understand that the Constitution can be modified by amendment, as laid out in Article V of the Constitution.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines an "attack" as "The act of assailing either with physical violence or with sharp words." It further defines an "ad hominem attack" as "A personal dig or affront; specif., the criticism of an adversary's character as opposed to the substance of the adversary's arguments." If confirmed and

such an issue came before me, I would research and apply Supreme Court and Seventh Circuit precedent to the record before me.

6. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

Response: I do not understand any of the listed purposes of sentencing to be more important than any other. According to 18 U.S.C. § 3551, a defendant "shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in [18 U.S.C. § 3553(a)(2)(A-D)] to the extent that they are applicable in light of all the circumstances of the case." If confirmed, Supreme Court and Seventh Circuit precedent, 18 U.S.C. § 3553(a), and the relevant provisions of the United States Sentencing Guidelines would guide my approach to sentencing defendants based on the circumstances of the case.

7. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I cannot identify a Supreme Court decision from the last 50 years that provides a typical example of my judicial philosophy. But my judicial philosophy is this: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor.

8. **Please identify a Seventh Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I cannot identify a Seventh Circuit opinion from the last 50 years that provides a typical example of my judicial philosophy. But my judicial philosophy is this: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor.

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

Response: 18 U.S.C. § 1507 states,

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in

or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

10. **Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: My research did not identify any Supreme Court or Seventh Circuit precedent finding this statute unconstitutional. In *Cox v. Louisiana*, the Supreme Court, reviewing a statute "modeled after a bill pertaining to the federal judiciary," explained, "Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association." 379 U.S. 559, 563 (1965).

11. **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 prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: As prior judicial nominees have noted, the legal issues presented in *Loving* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Loving* was correctly decided.

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

Response: *Griswold* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Roe* has been overruled by *Dobbs*. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply *Dobbs* and all other binding precedent.

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

Response: *Planned Parenthood* has been overruled by *Dobbs*. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply *Dobbs* and all other binding precedent.

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

Response: *Gonzales* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Heller* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *McDonald* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Hosanna-Tabor* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Bruen* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: *Dobbs* is binding precedent. As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent.

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

Response: In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold 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.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

15. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

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

    Response: No.

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

    Response: Not applicable.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: In October 2021, Senators Durbin and Duckworth issued a public announcement seeking applicants to fill a vacancy created after a District Judge announced his intention to assume senior status. On October 25, 2021, I submitted my application to the Senators' 12-member Screening Committee. On November 13, 2021, I interviewed with the Screening Committee. On November 30, 2021, I interviewed with Senator Durbin. On December 7, 2021, I interviewed with Senator Duckworth. On December 16, 2021, my name was on a list of seven candidates that Senators Durbin and Duckworth submitted to the White House for consideration. On December 16, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

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

    Response: No.

22. **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: No.

23. **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: No.

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

    Response: On December 16, 2022, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office regarding my nomination and the confirmation process.

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

    Response: I received these questions on April 25, 2023, from an attorney with the Office of Legal Policy at the Department of Justice. I received these questions, researched relevant case law where appropriate, and drafted my answers. I provided my answers to attorneys at the Office of Legal Policy, who reviewed my answers and provided me with limited feedback, which I considered before finalizing my responses.

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Jeremy Christen Daniel, nominee to be United States District Court Judge for the Northern District of Illinois

You spent two years clerking for Judge Virginia M. Kendall in the same court where you are now nominated to serve. Judge Kendall was appointed by President George W. Bush and still serves on the Northern District of Illinois.

- **What were the qualities that made Judge Kendall effective, and how will you emulate those qualities if you are confirmed?**

  Response: I clerked for Judge Kendall from August 2013 to September 2014. Some of the qualities that made her effective were her intelligence, her work ethic, her diligent study of the law, her willingness to listen, her efficient use of chambers staff, and her fair and impartial treatment of all who appeared before her. I learned a great deal from Judge Kendall, and am fortunate to count her as a mentor. I have used many of the insights I learned from her in the years following my clerkship, from how to approach legal questions to how to conduct myself in a courtroom and before a jury. If confirmed, I would faithfully apply binding precedent, approach each case with an open mind, make any factual determinations based only on the evidence presented, fully and fairly analyze legal arguments, and decide each case according to the rule of law, just as I saw Judge Kendall do when I served as her law clerk.

Senator Hirono's Written Questions for Jeremy Christian Daniel
Nominee to the United States District Court for the Northern District of Illinois
April 18, 2023

1. **As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

   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
Jeremy Daniel, Nominee to the United States District Court for the Northern District of Illinois

1. How would you describe your judicial philosophy?

Response: My judicial philosophy is: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

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

Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been interpreted in binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. If a constitutional provision has not been interpreted by the Supreme Court or Seventh Circuit, I would then seek to ascertain the plain meaning of the provision. If the text is ambiguous, Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution, including with respect to the role of the text and original meaning of a constitutional provision. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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: Please see my answer to Question 2.

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: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent on ascertaining the plain meaning of a statute or constitutional provision. In the absence of binding precedent, I would start with the text of the law to ascertain its plain meaning. For undefined terms, I would look to the ordinary, contemporary, common meaning at the time of enactment. *See United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

6. What are the constitutional requirements for standing?

Response: "[O]ne of the controlling elements in the definition of a case or controversy under Article III is standing. The requisite elements of Article III standing are well established: A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587 (2007) (internal quotations and citations omitted).

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

Response: "[T]he Necessary and Proper Clause grants Congress broad authority to enact federal legislation. Nearly 200 years ago, this Court stated that the Federal [G]overnment is acknowledged by all to be one of enumerated powers, which means that [e]very law enacted by Congress must be based on one or more of those powers. But, at the same time, a government, entrusted with such powers must also be entrusted with ample means for their execution. Accordingly, the Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are convenient, or useful or conducive to the authority's beneficial exercise." *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (internal quotations and citations omitted).

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent with respect to evaluating the constitutionality of a law that Congress enacted without reference to a specific Constitutional enumerated power. The Supreme Court has held that, the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (citation omitted).

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

Response: The Supreme Court has explained,

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."

Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997) (internal quotations and citations omitted). Examples of such rights that the Supreme Court has recognized include the right 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 control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. What rights are protected under substantive due process?

Response: Please see my answer to 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: If confirmed, I would follow Supreme Court and Seventh Circuit precedent with respect to whether substantive due process protects personal rights. In *Dobbs v.*

Jackson Women's Health Organization, 142 S. Ct. 2228 (2022), the Supreme Court held that the Due Process Clause does not protect the right to an abortion. I understand that the Supreme Court has explained, "[t]he doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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

Response: In *Graham v. Richardson*, 403 U.S. 365, 372-373 (1971), the Supreme Court identified "classifications based on alienage, like those based on nationality, or race" as "inherently suspect and subject to close judicial scrutiny." In *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), the Supreme Court described the "traditional indicia of suspectness" as applying to a class "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."

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

Response: The Supreme Court has described the role that checks and balances and separation of powers play in the Constitution's structure. "Time and again we have reaffirmed the importance in our constitutional scheme of the separation of governmental powers into the three coordinate branches. As we stated in *Buckley v. Valeo*, the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (internal quotations and citations omitted).

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: Please see my answer to Question 3. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability. Empathy would play no role in my consideration of cases.

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

Response: Both outcomes are suboptimal and should be avoided.

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 this issue. I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "1. A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional. 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary defines "judicial supremacy" as "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S.

Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: Article V of the Constitution provides, "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." The Supreme Court has explained that the Constitution is the supreme law of the land, that the judiciary interprets the Constitution, and that "[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law. It would not be my role to make law or enforce law.

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 courts are bound to follow Supreme Court and circuit precedent, and should do just that. If confirmed, I would follow Supreme Court and Seventh Circuit precedent regardless of whether the precedent has "questionable constitutional underpinnings" as referenced in this question.

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.

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: I am not familiar with this statement. I am not aware of any Supreme Court or Seventh Circuit precedent defining equity as such. Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing."

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

Response: Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019) defines "equality" as "The quality, state, or condition of being equal; esp., likeness in power or political status."

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

Response: The Fourteenth Amendment provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. I am not aware of any Supreme Court or Seventh Circuity precedent concerning the equity definition referenced in this question.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of this term. Merriam-Webster Dictionary defines it as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

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

Response: I do not have a personal definition for this term. Black's Law Dictionary (11th ed. 2019) defines "critical race theory" as "A reform movement within the legal

profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: I have not compared or otherwise studied "critical race theory" or "systemic racism."

Senator Josh Hawley
Questions for the Record

Jeremy Daniel
Nominee, U.S. District Court for the Northern District of Illinois

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

   Response: No.

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

      Response: Not applicable.

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

   Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. For example, Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting certain provisions of the Constitution. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

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

   Response: As the Supreme Court has instructed, "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.

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: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in determining what types of legislative history I am authorized to consider when interpreting a statutory provision for which there is no binding Supreme Court or Seventh Circuit precedent and no plain meaning that resolves the statute's interpretation. For example, the Supreme Court has identified committee reports as more probative than "passing comments" from legislators or comments from floor debates. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: I am not aware of any Supreme Court or Seventh Circuit precedent that instructs lower courts to consult the laws of foreign nations when interpreting the provisions of the Constitution.

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

Response: The Supreme Court has held that one must show that an execution protocol "creates a demonstrated risk of severe pain" and that "the risk is substantial when compared to known and available alternatives" to establish that the execution protocol violates the Eighth Amendment. *Glossip v. Gross*, 576 U.S. 863, 877–78, (2015).

5. 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.

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

Response: No.

7. 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.

8. 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: Under the Free Exercise clause, strict scrutiny applies to any government burden placed on the free exercise of religion unless the regulation is neutral and generally applicable. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1876 (2021). Congress enacted the Religious Freedom Restoration Act of 1993 ("RFRA") and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), which also implicate the exercise of religion. *See Holt v. Hobbs*, 574 U.S. 352, 356–57 (2015). RFRA, which applies to the federal government, provides that "[g]overnment 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." *Id.* at 860 (citing 42 U.S.C. §§ 2000bb–1(a)). RLUIPA, which applies to the States, is similar to RFRA in that it prohibits government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* The Supreme Court has held that forcing one to choose between his religious beliefs and severe economic consequences imposes a substantial burden. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014). The Seventh Circuit has held that "when the state forces a prisoner to give away his last dime so that his daily meals will not violate his religious practice, it is imposing a substantial burden." *Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019).

9. 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: Strict scrutiny applies where government action discriminates based on religious status. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2257 (2020). Accordingly, such a law would be permissible only if it is narrowly tailored to serve a compelling government interest.

10. 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: In the context of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), the Seventh Circuit has held that, while "RLUIPA bars inquiry into whether a particular belief or practice is central to a prisoner's religion," courts may inquire "into the sincerity of a prisoner's professed religiosity." *Koger v. Bryan*, 523 F.3d 789, 797 (7th Cir. 2008). In the context of the Religious Freedom Restoration Act of 1993 ("RFRA"), the Seventh Circuit has explained that although "[c]hecking for sincerity and religiosity is important to weed out sham claims," courts should focus primarily on the coercive effect of the government act on religious beliefs. *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013). When reviewing a district court's findings concerning the sincerity of an inmate's professed religious beliefs, the Seventh Circuit reasoned, "[b]ut the fact that a person does not adhere steadfastly to every tenet of his faith does not mark him as insincere. . . . We cannot determine from Judge Sharp's opinion whether he thought Reed's backsliding merely evidence of insincerity, which would be proper, or whether he thought it conclusive evidence of insincerity, which would be improper." *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988).

11. 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 Second Amendment conferred an individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 595 (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.

12. 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 the context of his dissent, I understand this sentence to reflect Justice Holmes' belief that the court should not replace the legislature's judgment

with its own. Justice Holmes went on to explain that "a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (dissenting opinion). I agree with the principle that a court should not substitute its own judgment for the legislature's.

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

Response: As a judicial nominee, it is not my place to opine as to whether the Supreme Court correctly decided a case. If confirmed, I will faithfully apply binding precedent. I understand that the Supreme Court has explained, "[t]he doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: I understand this phrase to reflect the Supreme Court's rationale for abrogating *Korematsu*.

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

Response: No.

a. If so, what are they?

Response: Not applicable.

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

Response: Yes.

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

a. Do you agree with Judge Learned Hand?

Response: If confirmed, I will follow Supreme Court and Seventh Circuit precedent. In one case, the Supreme Court held that market share of 80-95% of a service market was sufficient to survive summary judgement under § 2 of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). However, I am not aware of any Supreme Court precedent specifying a minimum market share for a monopoly under § 2 of the Sherman Act.

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

Response: Please see my answer to question 15.a.

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

Response: If confirmed, I will follow Supreme Court and Seventh Circuit precedent. In one case, the Supreme Court has held that market share of 80-95% of a service market was sufficient to survive summary judgement under § 2 of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). However, I am not aware of any Supreme Court precedent specifying a minimum market share for a monopoly under § 2 of the Sherman Act. The Seventh Circuit has held that "a substantial percentage of the sales is usually at least 50%." *Valley Liquors, Inc. v. Renfield Importers, Ltd.*, 822 F.2d 656, 666–67 (7th Cir. 1987).

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

Response: With few exceptions, "there is no federal general common law." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020). Those exceptions include admiralty disputes and certain controversies between the States. *Id.*

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

Response: The Supreme Court instructs lower courts to interpret a state's constitution consistent with the decisions of the state's highest court. *See, e.g., Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts").

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

Response: Please see my answer to Question 17.

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

Response: "State courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." *Arizona v. Evans*, 514 U.S. 1, 8, (1995).

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

Response: As prior judicial nominees have noted, the legal issues presented in *Brown* are unlikely to become the subject of litigation. Accordingly, I am comfortable expressing my view that *Brown* was correctly decided.

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

Response: Yes.

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

Response: Federal Rule of Civil Procedure 65 governs injunctions. The Seventh Circuit has explained that the authority to issue nationwide injunctions stems from federal courts' power to grant equitable relief. *See City of Chicago v. Barr*, 961 F.3d 882, 912-14 (7th Cir. 2020).

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

Response: 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). The Seventh Circuit has cautioned that nationwide "injunctions present real dangers, and will be appropriate only in rare circumstances." *City of Chicago v. Barr*, 961 F.3d 882, 916–17 (7th Cir. 2020) (internal quotations and citation omitted). But, the Seventh Circuit has explained that, "[i]n some circumstances, universal injunctions can be necessary to provide complete relief to plaintiffs, to protect similarly-situated nonparties, and to avoid the chaos and confusion that comes from a patchwork of injunctions." *Id.*

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

Response: Please see my answer to Question 19.b.

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

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

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

Response: "The Supreme Court has identified various circumstances in which federal courts must abstain from deciding cases otherwise within their jurisdiction." *J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021), reh'g denied (May 27, 2021).

The *Younger* abstention doctrine "directs federal courts to abstain from exercising jurisdiction over federal claims that seek to interfere with pending state court proceedings," and "applies in only three limited categories of cases . . . where federal court intervention would intrude into ongoing state criminal proceedings, into state-initiated civil enforcement proceedings akin to criminal prosecutions, or into civil proceedings implicating a state's interest in enforcing orders and judgments of its courts." *Id.*

The *Rooker-Feldman* abstention doctrine "precludes federal courts, save the Supreme Court under 28 U.S.C. § 1257, from adjudicating cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Id.* at 722-23.

The *Burford* abstention doctrine applies "when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar" or "where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Hammer v. United States Dep't of Health & Hum. Servs.*, 905 F.3d 517, 531 (7th Cir. 2018).

The *Colorado River* abstention doctrine, which "authorizes a federal court to abstain from exercising jurisdiction and stay a case to await the outcome of parallel state litigation when there is a substantial likelihood that the state case will resolve the

federal claim." *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 515 (7th Cir. 2021), reh'g denied (Nov. 16, 2021).

And the *Pullman* abstention doctrine, which is appropriate "only when (1) there is a substantial uncertainty as to the meaning of the state law and (2) there exists a reasonable probability that the state court's clarification of state law might obviate the need for a federal constitutional ruling." *Wisconsin Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 150 (7th Cir. 2011).

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

Response: Any determination as to an advantage or disadvantage in awarding damages versus injunctive relief would require a case-specific analysis based on the evidence presented by the parties concerning the harms the prevailing party experienced.

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

Response: The Supreme Court has explained,

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due-process cases a careful description of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."

Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997) (internal quotations and citations omitted). Examples of such rights that the Supreme Court has recognized include the right 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 control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

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

Response: Please see my answers to Questions 8, 9, and 10. "[T]he Free Exercise Clause protects religious exercises, whether communicative or not." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

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

Response: Black's Law Dictionary (11th ed. 2019) defines "worship" as "Any form of religious devotion, ritual, or service showing reverence, esp. for a divine being or supernatural power." The Supreme Court has explained that, "the Free Exercise Clause protects religious exercises, whether communicative or not." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022). Therefore, the Free Exercise Clause includes but is not limited to the freedom to worship.

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

Response: Please see my answer to Question 8.

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

Response: Please see my answer to Question 10.

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: The Supreme Court has held that, "a federal regulation's restriction on the activities of a for-profit closely held corporation must comply with RFRA." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014).

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.

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

Response: Seventh Circuit precedent does not allow trial courts or counsel to define reasonable doubt for the jury. *United States v. Bruce*, 109 F.3d 323, 329 (7th Cir. 1997) ("It is well established in this Circuit, however, that neither trial courts nor counsel should attempt to define 'reasonable doubt' for the jury."). I am not aware of any Supreme Court or Seventh Circuit precedent requiring courts to define reasonable doubt. *See, e.g.*, *Victor v. Nebraska*, 511 U.S. 1, 5 583 (1994) ("Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof.").

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

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me

if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

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

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

Response: Seventh Circuit Rule 32.1(b) states, "The court may dispose of an appeal by an opinion or an order. Opinions, which may be signed or per curiam, are released in printed form, are published in the Federal Reporter, and constitute the law of the circuit. Orders, which are unsigned, are released in photocopied form, are not published in the Federal Reporter, and are not treated as precedents." As a judicial nominee, it is not my place to agree or disagree with a higher court's rule.

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

Response: Please see my answer to Question 28.a.

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

Response: No; Seventh Circuit Rule 32.1(b) states that unpublished decisions are "not treated as precedents."

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

Response: Please see my answer to Question 28.a.

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

Response: Yes, but consistent with Seventh Circuit Rule 32.1(b), which prevents consideration of unpublished decisions as precedent.

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

Response: No.

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

Response: No.

29. In your legal career:

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

Response: Six.

b. How many have you tried as second chair?

Response: Seven.

c. How many depositions have you taken?

Response: I have taken more than ten depositions. I do not know the precise number.

d. How many depositions have you defended?

Response: I have defended more than ten depositions. I do not know the precise number.

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

Response: Four.

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

Response: None.

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

Response: None.

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

Response: Two.

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

Response: I have argued more than ten evidentiary motions before trial courts. I do not know the precise number.

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

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

Response: The maximum number of hours that I billed exceeded 2,200 hours. I do not know the precise number.

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

Response: I do not recall the precise number. During my six years in private practice, I performed between 25 and 100 hours of pro bono work each year.

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 am not familiar with this statement or the context in which it was made. I understand this statement to mean that judges who faithfully apply binding precedent, approach each case with an open mind, make any factual determinations based only on the evidence presented, fully and fairly analyze the legal arguments, and decide each case according to the rule of law, will reach outcomes that they may not like.

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

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges must faithfully apply the law as it is, regardless of any views they may have.

b. Do you agree or disagree with this statement?

Response: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence

presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law.

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

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this statement or the context in which it was made. I understand this statement to mean that judges should apply the law without regard to their personal sense of right or wrong.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "justice" as "1. The fair treatment of people. 2. The quality of being fair or reasonable. 3. The legal system by which people and their causes are judged; esp., the system used to punish people who have committed crimes. 4. The fair and proper administration of laws." If confirmed, I would treat parties appearing before me fairly and consistently by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law.

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

Response: No.

a. If yes, please provide appropriate citations.

Response: Not applicable.

35. 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.

36. What were the last three books you read?

Response: The Stone Sky by N.K. Jemisin; Kindred by Octavia E. Butler; and The Underground Railroad by Colson Whitehead.

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

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent. I would treat every litigant with dignity and respect. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

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

Response: I do not have a case that I am most proud of. As a federal prosecutor, it is an honor to represent the United States in criminal cases. Each case has been important to me.

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

Response: Yes.

a. How did you handle the situation?

Response: I set aside my personal views and fulfilled my duty to advocate for my client.

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

Response: Yes.

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

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

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

Response: There is no single Federalist Paper that most shaped my view of the law.

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

Response: I cannot identify a judicial opinion, law review article, or other legal opinion that made me change my mind. I read judicial opinions and other law-related materials to understand the legal framework that applies to the facts of the case I am considering.

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

Response: The Supreme Court explained, "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). I am not aware of any Supreme Court or Seventh Circuit precedent that addresses this question. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed.

44. 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: Yes. When I was in seventh grade, I was robbed at gunpoint. I testified about the robbery in a criminal trial in the Circuit Court of Cook County, Illinois. I do not recall the case name or number, and do not have a transcript of my testimony.

45. 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.

46. 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.

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

Response: To the best of my recollection, any brief that I primarily authored would have my name on it. As a supervisor in the U.S. Attorney's Office, I have proofread, edited, and authored portions of briefs filed by colleagues. I cannot recall with specificity the instances in which I assisted with briefs in this capacity.

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

Response: Please see my answer to Question 47.

48. Have you ever confessed error to a court?

Response: Yes.

a. If so, please describe the circumstances.

Response: In *United States v. Wallace*, the trial court calculated the defendant's advisory guidelines range based on the defendant having at least two felony convictions of either a crime of violence or a controlled substance offense. While the appeal was pending, I received documents showing that one of the predicate offenses relied on by the trial court did not qualify as a controlled substance offense because the defendant pled to a lesser charge, which was not reflected in the criminal history report available at the time of the defendant's sentencing. Consequently, the parties agreed that the appellate court should remand the case for resentencing in light of the documents received. The case number is 17-1768. The case was remanded and the defendant resentenced.

49. 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: I understand that judicial nominees must answer all questions truthfully and should be forthcoming in their responses to the best of their ability.

Senator John Kennedy
Questions for the Record

Mr. Jeremy Daniel

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: My judicial philosophy is: I understand that we are a nation of laws. If confirmed, I would serve the law by faithfully applying binding precedent, approaching each case with an open mind, making any factual determinations based only on the evidence presented, fully and fairly analyzing the legal arguments, and deciding each case according to the rule of law, without fear or favor, to the best of my ability.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I further understand that the Constitution can be modified by amendment, as laid out in Article V of the Constitution.

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been addressed by binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: I am not aware of any Supreme Court or Seventh Circuit precedent that instructs lower courts to consider statements made by a president as part of legislative history.

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

   Response: The Supreme Court held, for example, that a shopping center could prevent individuals from distributing handbills at the shopping center. *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551, 570 (1972) ("In addressing this issue, it must be remembered that

the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used nondiscriminatorily for private purposes only.").

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

Response: The Supreme Court has determined that, in certain instances, non-citizens unlawfully present in the United States "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990). "At a minimum, *Verdugo–Urquidez* governs the applicability of the Fourth Amendment to noncitizens. For Fourth Amendment rights to attach, the alien must show 'substantial connections' with the United States." *United States v. Meza-Rodriguez*, 798 F.3d 664, 670 (7th Cir. 2015).

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

Response: Please see my answer to Question 6.

8. **At what point is a human life entitled to equal protection of the law under the Constitution?**

Response: The Supreme Court explained, "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). I am not aware of any Supreme Court or Seventh Circuit precedent that addresses this question. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

9. **A federal district court judge in Washington, D.C. recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.**

   a. **Do you agree?**

   Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: No; lower courts have a duty and obligation to follow binding precedent.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No; lower courts have a duty and obligation to follow binding precedent.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: The Supreme Court instructs lower courts that, "evenhanded restrictions that protect the integrity and reliability of the electoral process itself are not invidious and satisfy the standard set forth in *Harper*. Rather than applying any litmus test that would neatly separate valid from invalid restrictions, we concluded that a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the hard judgment that our adversary system demands." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189–90 (2008) (internal quotations and citations omitted). In *Crawford*, the Supreme Court upheld the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government. *Id.*

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent. In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold 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.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: The Supreme Court has explained that, "Our cases identify factors that should be taken into account in deciding whether to overrule a past decision. Five of these are most important here: the quality of [the prior decision's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018). I am not aware of any Supreme Court precedent specifying how many factors must be present to overturn precedent.

b. Is one factor alone ever sufficient?

Response: Please see my answer to Question 13.a.

14. Please explain the difference between judicial review and judicial supremacy.

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "1. A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional. 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary defines "judicial supremacy" as "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: The Ninth Amendment provides, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742, 851 n.20 (2010) (citations omitted), Justice Thomas wrote, "[C]ertain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the

First Amendment's Establishment Clause, which 'does not purport to protect individual rights.'"

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Supreme Court has considered text that appears elsewhere in the Constitution when deciding the meaning of an Amendment. *See, e.g., United States v. Verdugo-Urquidez*, 494 U.S. 259, 265–66, (1990) (contrasting the use of the term "the people" in the Fourth Amendment and elsewhere in the Constitution with "person" in the Fifth and Sixth Amendments).

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: If confirmed, I would follow Supreme Court and Seventh Circuit precedent when interpreting the Constitution. Supreme Court precedent instructs lower courts to look to "historical practices and understandings" when interpreting provisions of the Constitution. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990), the Supreme Court defined the meaning of "the people" as used in the Fourth Amendment as those "within the territory of the United States and [who have] developed substantial connections with this country." In *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008), the Supreme Court defined the meaning of "the people" as used in the Second Amendment refers to "all members of the political community."

b. Is the term's meaning consistent in each amendment?

Response: Please see my answer to Question 19.a.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Please see my answer to Question 19.a.

21. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). The Supreme Court explained in *Glucksberg*, "First, the Court has regularly observed that the Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition. Second, the Court has required a 'careful description' of the asserted fundamental liberty interest." *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997) (citations omitted).

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: In *Dobbs*, the Supreme Court noted, "That [the Fourteenth Amendment does not protect the right to an abortion] is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2248 n.22 (2022) (citations omitted). In his concurring opinion, Justice Thomas wrote, "After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court's substantive due process cases are 'privileges or immunities of citizens of the United States' protected by the Fourteenth Amendment." *Id.* at 2301-02. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my answer to Question 22.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: The Chevron doctrine requires a court to grant deference to an agency's reasonable construction of an ambiguous statute even if the agency's reading differs from what the court believes is the best statutory interpretation. *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022).

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: The Supreme Court has explained that, "Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022). These delegations can be broad. *See, e.g., Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019) ("we have over and over upheld even very broad delegations. . . We have approved delegations to various agencies to regulate in the 'public interest.'"). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022).

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The Constitution limits the powers of Congress through the separation of powers and through federalism. Through the separation of powers, the Constitution divides power among three branches of federal government. Article I states, "all legislative Powers herein granted shall be vested in a Congress of the United States." Article II vests the executive power in the President, and Article III vests the judicial power of the United States in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Through federalism, the Constitution divides powers between the federal and state governments. "The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms. And conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018).

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: Congress cannot regulate the possession of a firearm in a local school zone. *United States v. Lopez*, 514 U.S. 549, 567 (1995).

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: The Supreme Court has applied similar analyses to due process claims arising under the Fifth and Fourteenth Amendments. *See, e.g.*, *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (noting that "standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments").

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: The Supreme Court set forth the applicable standard in *W. Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022). Courts should presume that "Congress intends to make major policy decisions itself, not leave those decisions to agencies," and administrative agencies must be able to point to clear congressional authorization when they claim the power to make decisions of vast economic and political significance. *Id.* at 2605-10.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: "[W]hile Congress has substantial power under the Constitution to encourage the States to [take an action], the Constitution does not confer upon Congress the ability simply to compel the States to do so." *New York v. United States*, 505 U.S. 144, 149 (1992); *see also Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."). "The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). "The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States." *Id.*

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). With respect to the Eighth Amendment, the Supreme Court has explained, "The standard itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008).

34. Do you believe the death penalty is constitutional?

Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 446, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If

confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my answer to Question 5. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: The Supreme Court has explained, "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. The reason is so obvious that it has rarely upon thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) (citations omitted). The Supreme Court has further explained that, under the Supremacy Clause, a judgment of a state court remains "subject to disturbance here only to the extent that it fails to honor federal rights and duties." *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981).

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: I am not aware of any Supreme Court or Seventh Circuit precedent addressing this issue. As a judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: Supreme Court decisions are the textual source for lower courts' application of strict scrutiny, intermediate scrutiny, and the rational basis test. *See*, *e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (applying strict scrutiny); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (applying intermediate scrutiny); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2283 (2022) (applying the rational basis test).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: The Supreme Court has instructed lower courts that, "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The Seventh Circuit has explained that the authority to issue nationwide injunctions stems from federal courts' power to grant equitable relief. *See City of Chicago v. Barr*, 961 F.3d 882, 912-14 (7th Cir. 2020). Though the Seventh Circuit has cautioned that, "[s]uch injunctions present real dangers, and will be appropriate only in rare circumstances," it explained that, "[i]n some circumstances, universal injunctions can be necessary to provide complete relief to plaintiffs, to protect similarly-situated nonparties, and to avoid the chaos and confusion that comes from a patchwork of injunctions." *City of Chicago v. Barr*, 961 F.3d 882, 916–17 (7th Cir. 2020) (internal quotations and citation omitted).

Questions from Senator Thom Tillis for Jeremy C. Daniel
Nominee to be United States District Judge for the Northern District of Illinois

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

   Response: Yes.

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

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

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

   Response: Impartiality is an expectation. Canon 2(A) of the Code of Conduct for United States Judges states, "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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

   Response: No.

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

   Response: Yes. If confirmed, I understand that any personal preferences that I may have play no role in the outcome of a given case. Rather, I must faithfully apply Supreme Court and Seventh Circuit precedent to the evidence presented by the parties.

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 would faithfully apply Supreme Court and Seventh Circuit

precedent. This includes the decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment," which protects the right to keep and bear arms for the purpose of self-defense), *McDonald v. Chicago*, 561 U.S. 742 (2010) ("we hold that the Second Amendment right is fully applicable to the States"), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court held, "In keeping with *Heller*, we hold 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.'" *Bruen*, 142 S. Ct. 2111, 2126 (2022) (citation omitted).

8. **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: I would faithfully apply Supreme Court and Seventh Circuit precedent. The Supreme Court has explained that, "officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every 'reasonable official would understand that what he is doing' is unlawful." *District of Columbia. v. Wesby*, 138 S. Ct. 577, 589 (2018) (internal quotations and citations omitted).

9. **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: As a judicial nominee, it is not my place to opine as to whether qualified immunity provides sufficient protection to law enforcement officers. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: Please see my answer to Question 9.

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

Response: As a judicial nominee, it is not my place to opine on the current state of the Supreme Court's patent eligibility jurisprudence. If confirmed and such an issue came before me, I would apply Supreme Court and Federal Circuit precedent to the record before me. The Supreme Court has explained, "we set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, '[w]hat else is there in the claims before us?' To answer that question, we consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application. We have described step two of this analysis as a search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014) (citations omitted).

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

Response: Please see my answer to Question 11.

13. **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: When in private practice, I counseled pro bono clients concerning copyright issues related to photographs. If confirmed and faced with matters concerning copyright law, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

    Response: I have not had any experiences involving the DMCA. If confirmed

and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

Response: None. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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: Please see my answer to Question 13.a. If confirmed and such issues came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

14. **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 reported that 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: As the Supreme Court has instructed, "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.

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: The Chevron doctrine requires a court to grant deference to an agency's reasonable construction of an ambiguous statute even if the agency's reading differs from what the court believes is the best statutory interpretation. *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). However, the Supreme Court subsequently explained in *W. Virginia v. Env't Prot. Agency* that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." 142 S. Ct. 2587, 2609 (2022). Moreover, interpretations that are not the product of formal adjudication or notice-and-comment rulemaking are relevant only for their persuasive authority. *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000).

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 judicial nominee, the Code of Conduct for United States Judges prohibits me from making public comments on matters that may come before me if confirmed. If confirmed and such an issue came before me, I would apply Supreme Court and Seventh Circuit precedent to the record before me.

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

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

Response: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to see whether the law's text has been addressed by binding precedent. If it hasn't, then I would determine whether the meaning of the statutory text is clear. If it is, then that ends the inquiry. If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction.

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: If confirmed, I would look to Supreme Court and Seventh Circuit precedent to determine the framework in which to consider the issue presented. Courts often take fixed meanings and apply them to circumstances beyond those anticipated at the time of adoption. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (explaining that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption).

16. **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 this practice.**

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

Response: Local Rule 40.1 in the Northern District of Illinois provides, "The rules of this Court and any procedures adopted by the Court that deal with the assignment and reassignment of cases shall be construed to secure an equitable distribution of cases, both in quantity and kind, among the judges. Except as specifically provided by the rules of this Court or by procedures adopted by the Court, the assignment of cases shall be by lot." There are more than twenty judges in the Northern District of Illinois, which prevents judge shopping.

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

Response: Please see my answer to Question 16.a.

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?**

Response: No.

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

Response: Please see my answer to Question 16.a. Moreover, Canon 2 of the Code of Conduct for United States Judges states, "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities." Canon 2(A) states, "A judge

should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3 states, "The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased." If confirmed, I would fairly and impartially adjudicate matters assigned to me by applying Supreme Court and Seventh Circuit precedent to the record before me.

17. **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: As a judicial nominee, it would be improper for me to offer an opinion concerning the practices of another court. If confirmed, I understand that cases would be randomly assigned to me.

18. **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: Please see my answer to Question 16.a.

Senate Judiciary Committee

"Nominations"

Questions for the Record

for Jeremy Daniel

to be United States District Judge for the Northern District of Illinois

QUESTIONS FROM SENATOR BLACKBURN

1. **Please describe your understanding of an originalist judicial philosophy.**

   Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "The doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. — Also termed doctrine of original public meaning; original-meaning doctrine; original public meaning."

2. **When, if ever, is it appropriate for a judge to take into account his or her lived experience when interpreting the law?**

   Response: If confirmed, I would not take into account my lived experience when interpreting the law. Rather, I would faithfully apply Supreme Court and Seventh Circuit precedent. In the absence of binding precedent, I would start with the text of the law to ascertain its plain meaning. For undefined terms, I would look to the ordinary, contemporary, common meaning at the time of enactment. *See United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020). If the text is ambiguous, then I would look to other sources authorized by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. I am not aware of any precedent that would authorize me to consider my lived experiences when interpreting the law.

3. **What is your understanding of the definition of "original public meaning"?**

   Response: Please see my answer to Question 1.

4. **When, if ever, is it appropriate for a judge to consider legislative history when interpreting a statutory provision?**

   Response: If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent in deciding when to consider legislative history when interpreting a statutory provision. Legislative history plays no role in interpreting a statutory provision where the meaning of the statute's terms are plain. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, then I would look to other sources authorized

by the Supreme Court and the Seventh Circuit, including Supreme Court and Seventh Circuit cases interpreting similar laws, cases from other jurisdictions as persuasive authority, and accepted canons of statutory construction. In some instances, legislative history may serve as a historical source concerning the meaning of a term at the time the statute was enacted. *See Bostock*, 140 S. Ct. at 1350.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Brendan A. Hurson
Nominee to be United States District Judge for the District of Maryland

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

   Response: I am not familiar with the statement or its context, however, I disagree with it. Judges must decide cases by fairly and impartially applying precedent to facts. A judge's personal opinions or values should not guide their decision-making. As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. If confirmed as a district judge, I would continue to do so.

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

   Response: I am not familiar with the statement or its context, however, I disagree with it. Judges of lower courts are bound to apply the binding precedent of the courts above them. As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Fourth Circuit Court of Appeals. If confirmed as a district judge, I would continue to do so.

3. **Please define the term "living constitution."**

   Response: Black's Law Dictionary (11th ed. 2019) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values."

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

   Response: I am not familiar with the statement or its context. However, assuming that Justice Jackson was articulating the view that the Constitution has a fixed meaning that can only be changed through the amendment process outlined in Article V, I agree. As the Supreme Court has noted, "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

   Response: Criticism of judicial opinions is to be expected and protected by the First Amendment. However, as a sitting United States Magistrate Judge, I am aware of the need for, and discussions surrounding, judicial security. Federal law prohibits threats against a judge made with the purpose of attempting to influence the "due administration of justice." 18 U.S.C. § 1503(a). Federal law also prohibits retaliation against a federal judge "by false claim or slander of title." 18 U.S.C. § 1521. If called upon to adjudicate a matter involving alleged threats to a member of the judiciary, I would fairly and impartially apply the law to the facts before me.

6. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

   Response: Federal law outlines the factors to be considered when imposing a sentence in 18 U.S.C. § 3553. This statute does not rank the purposes of sentencing or provide comment on the relative importance of each purpose. If confirmed, before imposing a sentence, I would consult those sources that both Congress and binding precedent have directed me to consult, including the factors outlined in 18 U.S.C. § 3553, the relevant sentencing guidelines, and any precedent from the Supreme Court and the Fourth Circuit Court of Appeals.

7. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

   Response: I have not reviewed Supreme Court decisions for the purpose of determining a judicial philosophy. However, as a United States Magistrate Judge, my judicial philosophy is to approach each case with a completely open mind and to treat all parties, witnesses, and counsel with respect. I thoroughly review the record, diligently research the applicable law, and then fairly and neutrally apply that law to the facts before me. I follow the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. I endeavor to treat all matters before me as though they are critically important as I recognize that each case is of the utmost importance to the parties involved. I also strive to ensure that I maintain a judicial temperament, that I remain humble, and that I do not allow emotion or ego to substitute for fair judgment. If confirmed as a district judge, I would continue to adhere to this judicial philosophy.

8. **Please identify a Fourth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: Please see my response to Question 7.

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

Response: This statute holds that:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 1507. If called upon to adjudicate a matter involving this statute, I would fairly and impartially apply the law to the facts before me.

10. **Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: I do not believe that the Supreme Court or the Court of Appeals have adjudicated the constitutionality of 18 U.S.C. § 1507. I am aware that the Supreme Court rejected a challenge to a similar state statute in *Cox v. Louisiana*. 379 U.S. 559, 564 (1965).

11. **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 United States Magistrate Judge, I ordinarily cannot comment on whether a case was correctly decided. However, as numerous prior judicial nominees have observed, the issues presented in *Brown v. Board of Education* are highly unlikely to be litigated in the future, and therefore I believe it is appropriate to express my view that the case was correctly decided. If confirmed as a district judge, I would faithfully apply *Brown v. Board of Education* and all other Supreme Court and Fourth Circuit precedent.

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

Response: As a sitting United States Magistrate Judge, I ordinarily cannot comment on whether a case was correctly decided. However, as numerous prior judicial nominees have observed, the issues presented in *Loving v. Virginia* are highly unlikely to be litigated in the future, and therefore I believe it is

appropriate to express my view that the case was correctly decided. If confirmed as a district judge, I would faithfully apply *Loving v. Virginia* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *Griswold v. Connecticut* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. That said, the Supreme Court overruled this case in *Dobbs v. Jackson Women's Health Organization*. 142 S. Ct. 2228, 2279 (2022). If confirmed as a district judge, I would faithfully apply *Dobbs* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. That said, the Supreme Court overruled this case in *Dobbs v. Jackson Women's Health Organization*. 142 S. Ct. 2228, 2279 (2022). If confirmed as a district judge, I would faithfully apply *Dobbs* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *Gonzales v. Carhart* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter

pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *District of Columbia v. Heller* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *McDonald v. City of Chicago* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *New York State Rifle & Pistol Association v. Bruen* and all other Supreme Court and Fourth Circuit precedent.

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

Response: Canon 3A(6) of the Code of Conduct for United States Judges provides that a judge should not make public comment on the merits of a matter pending or impending in any court. Therefore, I cannot comment on whether this case was correctly decided. If confirmed as a district judge, I would faithfully apply *Dobbs v. Jackson Women's Health Organization* and all other Supreme Court and Fourth Circuit precedent.

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

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court held that the proponent of such a regulation "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." 142 S. Ct. 2111, 2126 (2022). "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.* (citation omitted). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit, including *Bruen*.

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

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

       Response: No.

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

       Response: No.

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

       Response: No.

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

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

       Response: No.

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

Response: No.

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

Response: In early 2021, I recall registering for an online presentation on the judicial nomination process sponsored by a number of organizations that may have included the Alliance for Justice. Beyond listening to a short portion of that presentation, I have had no contact with anyone associated with the Alliance for Justice. I have never had contact with, nor do I know, the individuals listed.

15. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

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

Response: No.

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

Response: I have not had contact with anyone associated with these groups.

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

Response: No.

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

Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

18. **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 December 11, 2020, I submitted an application to the judicial selection committee established by Senators Cardin and Van Hollen for a position on the United States District Court for the District of Maryland. I interviewed with the committee on December 21, 2020. On December 20, 2022, I was interviewed by Senators Cardin and Van Hollen for a newer vacancy on the Court. On December 22, 2022, I learned from Senator Cardin's office that my name would be submitted to the White House for further consideration. On December 23, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2023, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

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

Response: No.

22. **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: No.

23. **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: No.

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

Response: Please see my answer to Question 18.

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

Response: The Office of Legal Policy at the Department of Justice (OLP) sent me these questions on April 25, 2023. I reviewed the questions, researched them, and then drafted my responses. The OLP provided limited feedback on my draft responses after which I submitted my responses.

Senate Judiciary Committee
Nominations Hearing
April 18, 2023
Questions for the Record
Senator Amy Klobuchar

For Judge Brendan Abell Hurson, nominee to be United States District Court Judge for the District of Maryland

You were appointed to serve as a U.S Magistrate Judge by the sitting district court judges of the District of Maryland which includes judges appointed by presidents of both parties. During your service as a magistrate you have written approximately 77 opinions and presided over a civil trial that has gone to verdict or judgment.

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

  Response: As a United States Magistrate Judge since February of 2022, my responsibilities have included conducting preliminary proceedings in felony criminal cases, adjudicating criminal misdemeanor cases, conducting various pretrial matters on delegation from the judges of the district, conducting settlement conferences in civil matters, and trying and disposing of civil cases upon consent of the litigants. I have also served on several court committees and attended monthly bench meetings with the other judges of my court. These experiences have informed my view of the role of a federal district court judge by exposing me to the wide variety of responsibilities of that position as well as by introducing me to the diversity of cases I will face if fortunate enough to be confirmed. I am familiar with the often fast-paced environment of a trial court's chambers. My service as a United States Magistrate Judge has given me familiarity with the unpredictability of the tasks, and the significant volume of the work, that a district judge is called upon to complete in a diligent manner. My service has also provided me with the rewarding opportunity to work with judicial law clerks and other courthouse staff in serving the litigants who appear in our court. In short, my role as a United States Magistrate Judge has provided me with an invaluable "front row seat" to the work of federal district court judges and has given me experience as a fair and neutral arbiter. If fortunate enough to be confirmed as a district court judge, I will apply the many lessons I have learned as a United States Magistrate Judge.

Senator Hirono's Written Questions for Judge Brendan Abell Hurson
Nominee to the United States District Court for the District of Maryland
April 18, 2023

1. **As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

   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
Brendan Hurson, Nominee to the United States District Court for the District of Maryland

1. How would you describe your judicial philosophy?

Response: As a United States Magistrate Judge, my judicial philosophy is to approach each case with a completely open mind and to treat all parties, witnesses, and counsel with respect. I thoroughly review the record, diligently research the applicable law, and then fairly and neutrally apply that law to the facts before me. I follow the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. I endeavor to treat all matters before me as though they are critically important as I recognize that each case is of the utmost importance to the parties involved. I also strive to ensure that I maintain a judicial temperament, that I remain humble, and that I do not allow emotion or ego to substitute for fair judgment. If confirmed as a district judge, I would continue to adhere to this judicial philosophy.

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

Response: In addressing cases that turn on the interpretation of a federal statute, I would first look to the text of that statute and any binding precedent from the Supreme Court or the Court of Appeals for the Fourth Circuit that interprets that statute. If this did not provide a satisfactory answer, I would consult relevant canons of construction and persuasive precedent from other circuits. I may then turn to legislative history, but only to the extent the Supreme Court has authorized and being mindful of the types of legislative history that the Supreme Court has found most relevant.

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

Response: "The first rule of constitutional interpretation is, of course, to apply the plain meaning of the text." *NLRB v. Enter. Leasing Co. Se., LLC*, 722 F.3d 609, 664 (4th Cir. 2013) (Duncan, J., concurring) (citing *McPherson v. Blacker*, 146 U.S. 1 (1892)). Therefore, I would begin by reviewing the text of the constitutional provision at issue and then turn to any binding precedent from the Supreme Court or the Court of Appeals for the Fourth Circuit interpreting the provision. This ordinarily ends the inquiry.

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

Response: The Supreme Court has held that original meaning and text play a critical role in interpreting the Constitution. S*ee District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed as a district judge,

I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret provisions of the Constitution.

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: My approach to reading statutes is to first read the plain text of the statute along with any binding precedent interpreting that statute. *See Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."). I also ensure that I review any relevant precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit that interprets the text of the statute at issue. If confirmed as a district judge, I would continue to adhere to the plain text of a statute along with any binding precedent interpreting that statute.

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: In interpreting the text of the Second Amendment, the Supreme Court was "guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). If confirmed as a district judge, I would continue to rely on precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret provisions of the Constitution

6. What are the constitutional requirements for standing?

Response: The three "irreducible minimum requirements" of Article III standing are:

> (1) an injury-in-fact (i.e., a concrete and particularized invasion of a legally protected interest); (2) causation (i.e., a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (i.e., it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit).

Beck v. McDonald, 848 F.3d 262, 269 (4th Cir. 2017) (quoting *David v. Alphin*, 704 F.3d 327, 333 (4th Cir. 2013); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

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

Response: Sections 8 and 9 of Article I specifically delineate the powers of Congress. Section 8 permits Congress "[t]o make all laws which shall be necessary and proper for carrying" these powers "into execution." Section 9 limits Congress's powers by, for example, forbidding Congress from passing an "ex post facto" law. In *McCulloch v. Maryland*, the Supreme Court held that Section 8 granted limited implied powers to Congress to pass laws that are "necessary and proper to carry into execution the powers of the government." 17 U.S. 316, 422 (1819) (internal quotation marks omitted).

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

Response: "The 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)). If faced with this question, I would evaluate the constitutionality of the challenged law by applying the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: Yes. In *Washington v. Glucksberg*, the Supreme Court affirmed that it has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed' . . . ." 521 U.S. 702, 720–21 (1997) (citations omitted). The *Glucksberg* Court described "the 'liberty' specially protected by the Due Process Clause" to include "the rights to marry," "to have children," "to direct the education and upbringing of one's children," "to marital privacy," "to use contraception," and "to bodily integrity." *Id.* at 720 (citations omitted); *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2257–58 (2022) (acknowledging the substantive due process rights previously recognized by the Supreme Court). As a United States Magistrate Judge, I faithfully follow binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit related to substantive due process. If confirmed as a district judge, I would continue to do so.

10. What rights are protected under substantive due process?

Response: Please see my answer to 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: As a sitting United States Magistrate Judge, it would be inappropriate to share my personal views, if any, on substantive due process rights. That said, "[t]he doctrine that prevailed in *Lochner*, . . . — that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). Also, the Supreme Court has held that there is no substantive due process right to an abortion. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit in all cases including those involving substantive due process rights.

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

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Lopez*, 514 U.S. 549, 558 (1995). These categories are: (1) "the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted).

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

Response: The Supreme Court looks to multiple factors to determine if a particular group qualifies as "suspect": (1) whether the class has been historically "subjected to discrimination"; (2) whether the class exhibits "obvious, immutable, or distinguishing characteristics that define them as a discrete group"; and (3) whether the class is "a minority or politically powerless." *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (citation omitted).

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

Response: "The Constitution's particular blend of separated powers and checks and balances was informed by centuries of political thought and experiences." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 116 (2015) (Thomas, J., concurring in the judgment). As the Supreme Court noted in *Buckley v. Valeo*, "[t]he Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." 424 U.S. 1, 122 (1976).

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 faced with this issue, I would review the text of the Constitution and apply any relevant binding precedent from the Supreme Court or the Court of Appeals for the Fourth Circuit. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring) (dividing "the exercises of Presidential power into three categories"); *Nixon v. United States*, 506 U.S. 224, 229 (1993) (examining "Art. I, § 3, cl. 6, to determine the scope of authority conferred upon the Senate by the Framers regarding impeachment"); *Bowsher v. Synar*, 478 U.S. 714, 730 (1986) ("The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty.").

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

Response: Judges must decide cases by fairly and impartially applying the law to facts. A judge's personal opinions or values should not guide their decision-making. As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. If confirmed as a district judge, I would continue to do so.

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

Response: Both present equally undesirable outcomes.

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 researched the trend referenced in the question and cannot intelligently comment on it. As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. If confirmed as a district judge, I would continue to do so.

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

Response: Judicial review refers to the bedrock principal that it is "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *see also* Black's Law Dictionary (11th ed. 2019) (defining "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp[ecially], the courts' power to invalidate legislative and executive actions as being unconstitutional"). Judicial supremacy is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the

coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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: The Constitution mandates that all "Senators and Representatives . . . , and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support th[e] Constitution . . . ." U.S. Const. art. VI, cl. 3. The Supreme Court has rejected the argument that "there is no duty on state officials to obey federal court orders resting on th[e Supreme] Court's considered interpretation of the United States Constitution." *Cooper v. Aaron*, 385 U.S. 1, 4 (1958). As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate to comment further on whether these obligations conflict and, if so, how an elected official should balance them.

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: Hamilton's opinion is rooted in the understanding that judges must approach each case with a completely open mind and must remain committed to fairly and neutrally applying the law. If confirmed, I would remain committed to interpreting and applying the law without regard for my personal views, if any, on the issue at hand.

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: As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit regardless of any opinion I might have of the higher court's decision. That is an obligation of a

lower court judge. If confirmed as a district judge, I would continue to apply binding precedent regardless of any opinion I may have of its constitutional underpinnings.

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: A defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) should play no role in the sentencing analysis. The factors a judge may consider at sentencing are set forth in 18 U.S.C. § 3553(a). Moreover, the United States Sentencing Guidelines contain a policy statement noting that "race, sex, national origin, creed, religion, and socioeconomic status are not relevant in the determination of a sentence." U.S. Sent'g Guidelines Manual § 5H1.10 (U.S. Sent'g Comm'n 2021).

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: I am unfamiliar with the quotation or the context in which it was provided. "Equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: "Equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). "Equality" is defined as "[t]he quality, state, or condition of being equal;" especially "likeness in power or political status." Black's Law Dictionary (11th ed. 2019).

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

Response: The Fourteenth Amendment guarantees "the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Amendment does not contain the term "equity" and I am not familiar with any binding precedent that has adopted the definition of "equity" contained in Question 24. If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret the Fourteenth Amendment.

27. How do you define "systemic racism?"

Response: Merriam-Webster's online dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster.com Dictionary, Merriam-Webster, available at https://www.merriam-webster.com/dictionary/systemic%20racism.

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

Response: Black's Law Dictionary defines "critical race theory" as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see the answers to Questions 27 and 28.

Senator Josh Hawley
Questions for the Record

Brendan Hurson
Nominee, U.S. District Court for the District of Maryland

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

   Response: No.

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

      Response: Please see my response to Question 1.

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

   Response: The Supreme Court has held that original meaning and text play a critical role in interpreting many constitutional provisions. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 47–50 (2004) (Sixth Amendment Confrontation Clause). If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret provisions of the Constitution.

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

   Response: In interpreting legal texts, I first look to the plain text at issue. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."). If the text is unclear or ambiguous and there is no judicial precedent on point, I may then turn to legislative history, but only to the extent the Supreme Court allows it. *Id.* (noting that legislative history may be helpful "when interpreting *ambiguous* statutory language").

   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: If called upon to consult legislative history to interpret a legal text, I would not treat all legislative history the same. The Supreme Court has explicitly noted that some forms of legislative history are more probative of legislative intent than others. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In

surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'") (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969))). If confirmed as a district judge, I would follow the directives of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: As a sitting United States Magistrate Judge I have never been called upon to utilize the laws of foreign nations to interpret the U.S. Constitution and I know of no circumstance where it would be appropriate to do so. If confirmed as a district judge, I would apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

4. 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: To prevail on a claim that a proposed method of execution violates the Eighth Amendment, a prisoner must (1) establish that the method of execution "presents a 'substantial risk of serious harm'—severe pain over and beyond death itself" —and (2) "'identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s]' the risk of harm involved." *Nance v. Ward*, 142 S. Ct. 2214, 2220 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)).

5. 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.

6. 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: In *District Attorney's Office for Third Judicial District v. Osborne*, the Supreme Court declined to "recognize a freestanding right to DNA evidence" as a "substantive due process right." 557 U.S. 52, 72 (2009).

7. 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.

8. 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: In *Kennedy v. Bremerton School District*, the Supreme Court affirmed that "a plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" 142 S. Ct. 2407, 2421–22 (2022) (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879–81 (1990)). If a plaintiff were to make such a showing, it would constitute "a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.* at 2422 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). "A plaintiff may also prove a free exercise violation by showing that 'official expressions of hostility' to religion accompany laws or policies burdening religious exercise; in cases like that [the Supreme Court has] 'set aside' such policies without further inquiry." *Id.* at 2422 n.1 (citing *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719, 1732 (2018)). "[L]aws 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) (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879-881 (1990)).

9. 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: "[L]aws 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) (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879-881 (1990)). However, "[a] law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531–32 (1993). Moreover, "[w]hen presented with a law that affects religious practice, even if indirectly, a court must look behind the law's text to determine if it was enacted 'because of' and not 'in spite of' its effect on religion." *Alive Church of the Nazarene, Inc. v. Prince William Cnty.*, 59 F.4th 92, 108 (4th Cir. 2023) (citing *Lukumi*, 508 U.S. at 540).

10. 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: First Amendment protection is afforded to those whose religious beliefs are "sincerely held." *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989). To determine whether a person's set of beliefs is sincerely held, a reviewing court's "narrow function . . . in this context is to determine" if the belief "reflects 'an honest conviction.'" *Burwell*, 573 U.S. 682, 725 (2014) (alteration in *Burwell*) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981)). Such beliefs "need not be confined in either source or content to traditional or parochial concepts of religion" in order to be deemed to be sincerely held. *Welsh v. United States*, 398 U.S. 333, 339 (1970).

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

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

Response: "In *Heller* and *McDonald*," the Supreme Court "held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2125 (2022) (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010)). The *Heller* Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as [did] its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." 554 U.S. at 635.

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.

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

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

Response: I believe that Justice Holmes clarified his statement by noting that "a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). He continued, "[a Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Id.* at 76. As a sitting United States Magistrate Judge, I cannot comment on whether a case was correctly decided or opine on what views, if any, I have on a dissenting opinion.

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

Response: As a sitting United States Magistrate Judge, I ordinarily cannot comment on whether a case was correctly decided. That said, "[t]he doctrine that prevailed in *Lochner*, . . . —that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed as a district judge, I would faithfully apply *Ferguson* and all other Supreme Court and Fourth Circuit precedent.

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

Response: I take this phrase to further emphasize what the Supreme Court observed as "already obvious: *Korematsu* was gravely wrong on the day it was decided" and "has no place in law under the Constitution." *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (internal quotation marks and citation omitted).

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

Response: I am unaware of any such Supreme Court opinions.

a. If so, what are they?

Response: Please see my answer to Question 14.

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

Response: Yes. If confirmed as a district judge, I will continue to faithfully apply the binding precedent of the Supreme Court.

15. 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: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. As such, it would be inappropriate to comment on the specific market share that may constitute a monopoly. I do note, however, that the Supreme Court previously held that "evidence that Kodak control[ed] nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes" was "sufficient to survive summary judgment" on a claim that Kodak violated Section 2 of the Sherman Act. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). The Court of Appeals for the Fourth Circuit has noted that "[a]lthough there is no fixed percentage market share that conclusively resolves whether monopoly power exists, the Supreme Court has never found a party with less than 75% market share to have monopoly power." *Kolon Indus. Inc. v. E.I. DuPont de Nemours & Co.*, 748 F.3d 160, 174 (4th Cir. 2014).

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

Response: Please see my answer to Question 15a.

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: Please see my answer to Question 15a.

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

Response: "Federal common law" is defined in Black's Law Dictionary as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." Black's Law Dictionary (11th ed. 2019). Generally speaking, however, "[t]here is no federal general common law." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The Supreme Court has recently remarked that "[t]he cases in which federal courts may engage in common lawmaking are few and far between." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 716 (2020). "Instead," the Court noted that "only limited areas exist in which federal judges

may appropriately craft the rule of decision," including "admiralty disputes and certain controversies between States." *Id.* at 717 (citations omitted).

17. 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: "[T]he views of [a] state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). Accordingly, I would defer to the determination of the scope of the state constitutional right as determined by the state's highest court.

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

Response: Please see my answer to Question 17a.

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

Response: "Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution." *Mills v. Rogers*, 457 U.S. 291, 300 (1982); *see also Arizona v. Evans*, 514 U.S. 1, 8 (1995) ("[S]tate courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.").

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

Response: As a sitting United States Magistrate Judge, I ordinarily cannot comment on whether a case was correctly decided. However, as numerous prior judicial nominees have observed, the issues presented in *Brown v. Board of Education* are highly unlikely to be litigated in the future, and therefore I believe it is appropriate to express my view that the case was correctly decided.

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

Response: "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017). The power to issue an injunction is found in Federal Rule of Civil Procedure 65. The Fourth Circuit has held that a federal district court has "wide discretion to fashion appropriate injunctive relief in a particular case," even if that injunction has "nationwide scope." *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992). If confirmed to serve as a district judge and called upon to address this

issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me, always recognizing than injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

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

Response: Please see my answer to Question 19.

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

Response: Please see my answer to Question 19.

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

Response: Please see my answer to Question 19.

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

Response: The Supreme Court has recognized that our system's "federalist structure of joint sovereigns preserves to the people numerous advantages." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). "It assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Id.* (citations omitted).

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

Response: In general, "[a]bstention rarely should be invoked, because the federal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). However, the Supreme Court has recognized a few extraordinary scenarios under which a federal court can abstain from resolving a pending legal issue in deference to adjudication by a state court.

One of these is so-called *Younger* abstention, named for *Younger v. Harris*, 401 U.S. 37 (1971), and applicable only in cases involving "ongoing state criminal prosecutions," "certain 'civil enforcement proceedings,'" and "pending 'civil proceedings involving certain orders . . . uniquely in furtherance of the state courts'

ability to perform their judicial functions.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989) (*NOPSI*)). If the federal court is considering one of these types of cases, the court must then, a federal court must ensure the presence of three factors before invoking *Younger* abstention: "(1) whether there is 'an ongoing state judicial proceeding'; (2) whether that state proceeding 'implicate[s] important state interests'; and (3) whether that state proceeding provides 'an adequate opportunity . . . to raise constitutional challenges.'" *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 96 (4th Cir. 2022) (quoting *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)). "But even when [the above criteria] are satisfied, *Younger* identifies three exceptions to the court's duty to abstain: (1) 'bad faith or harassment' by state officials responsible for the prosecution; (2) a statute that is 'flagrantly and patently violative of express constitutional prohibitions'; and (3) other 'extraordinary circumstances' or 'unusual situations.'" *Id.* (citing *Younger*, 401 U.S. at 49–54).

Another is *Pullman* abstention, named after the case of *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), and applicable when, "at a minimum . . . there is (1) an unclear issue of state law presented for decision (2) the resolution of which may moot or present in a different posture the federal constitutional issue such that the state law issue is 'potentially dispositive.'" *Educ. Servs., Inc. v. Md. State Bd. for Higher Educ.*, 710 F.2d 170, 174 (4th Cir. 1983) (citations omitted).

Burford abstention pertains to issues involving "difficult state question." *Burford v. Sun Oil Co.*, 319 U.S. 315, 331 (1943). "*Burford* permits abstention when federal adjudication would 'unduly intrude' upon 'complex state administrative processes' because either: (1) 'there are difficult questions of state law . . . whose importance transcends the result in the case then at bar'; or (2) federal review would disrupt 'state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007) (quoting *NOPSI*, 491, U.S. at 361–63).

Colorado River abstention gets its name from the case of *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). "Under the principles of *Colorado River*, federal courts may abstain from exercising their jurisdiction in the exceptional circumstances where a federal case duplicates contemporaneous state proceedings and '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation' clearly favors abstention[.]" *Vulcan Chem. Techs., Inc. v. Barker*, 297 F.3d 332, 340–41 (4th Cir. 2002) (quoting *Colo. River*, 424 U.S. at 817). "Although the prescribed analysis is not a 'hard-and-fast' one in which application of a 'checklist' dictates the outcome, six factors have been identified to guide the analysis for *Colorado River* abstention: (1) whether the subject matter of the litigation involves property where the first court may assume jurisdiction to the exclusion of others; (2) whether the federal forum is an inconvenient one; (3) the desirability of avoiding piecemeal litigation; (4) the relevant order in which the courts obtained jurisdiction and the progress achieved in each action; (5) whether state law or federal law provides the rule of decision on the merits; and (6) the adequacy of the state proceeding to protect the parties' rights." *Id.* (citations

omitted). The Fourth Circuit has reiterated that, "[a]t bottom, abstention should be the exception, not the rule, and it may be granted only when 'the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties.'" *Id.* (citation omitted).

"[U]nder what has come to be known as the *Rooker–Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). The doctrine derives its name from the cases of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The Supreme Court has explicitly noted that this doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

Finally, the *Brillhart/Wilton* doctrine, "articulated in *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491 (1942), and *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), . . . affords a federal court broad discretion . . . to abstain from deciding declaratory judgment actions when concurrent state court proceedings are under way." *VonRosenberg v. Lawrence*, 781 F.3d 731, 732–34 (4th Cir. 2015) (emphasis deleted) (citations omitted).

If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit as it pertains to these, or any other abstention doctrines.

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

Response: As a general matter, damages are designed to remedy past harm and injunctive relief is intended to prevent a future harm. In my experience, litigants tend to pursue the type of relief they determine would be most beneficial to them. The relative advantages or disadvantages of an award of damages or injunctive relief would depend on the facts of the case.

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

Response: In *Washington v. Glucksberg*, the Supreme Court affirmed that it has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed' . . . ." 521 U.S. 702, 720–21 (1997) (citations omitted). The *Glucksberg* Court described "the 'liberty' specially protected by the Due Process Clause" to include "the rights to marry," "to have children," "to direct the education and upbringing of one's children," "to marital privacy," "to use contraception," and "to bodily integrity." *Id.* at 720 (citations omitted); *see also Dobbs*

v. Jackson Women's Health Org., 142 S. Ct. 2228, 2257–58 (2022) (acknowledging the substantive due process rights previously recognized by the Supreme Court). As a United States Magistrate Judge, I faithfully follow binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit related to substantive due process. If confirmed as a district judge, I would continue to do so.

25. 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: In *Kennedy v. Bremerton School District*, the Supreme Court affirmed that "a plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" 142 S. Ct. 2407, 2421–22 (2022) (citing *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 879-881 (1990). If a plaintiff were to make such a showing, it would constitute "a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.* (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). "A plaintiff may also prove a free exercise violation by showing that 'official expressions of hostility' to religion accompany laws or policies burdening religious exercise; in cases like that [the Supreme Court has] 'set aside' such policies without further inquiry." *Id.* at 2422 n.1 (citing *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S.Ct. 1719, 1732, 201 L.Ed.2d 35 (2018)). Finally, the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act may place additional limitations on governmental burdens to the free exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 696 (2014).

"[L]aws 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) (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879-881 (1990)). However, "[a] law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531–32 (1993). Moreover, "[w]hen presented with a law that affects religious practice, even if indirectly, a court must look behind the law's text to determine if it was enacted 'because of' and not 'in spite of' its effect on religion." *Alive Church of the Nazarene, Inc. v. Prince William Cnty.*, 59 F.4th 92, 108 (4th Cir. 2023) (citing *Lukumi*, 508 U.S. at 540).

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 Free Exercise Clause embraces a freedom of conscience *and* worship . . . ." *Lee v. Weisman*, 505 U.S. 577, 591 (1992) (emphasis added). It "protects not only the right to harbor religious beliefs inwardly and secretly." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022). "It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Id.* (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 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: Please see my answer to Question 25a.

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

Response: Please see my answer to Question 10.

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: The Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise[.]" 42 U.S.C. § 2000bb-3(a). However, Congress may "exclude statutes from RFRA's protections" if those statutes are passed after RFRA's enactment. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (citing 42 U.S.C. § 2000bb-3(b)).

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.

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

Response: The Court of Appeals for the Fourth Circuit has a tradition of not defining "beyond a reasonable doubt," at least in absence of a request by a jury. *United States v. Hornsby*, 666 F.3d 296, 310–11 (4th Cir. 2012). This custom stems from the well-founded belief that "attempting to explain the words 'beyond a reasonable doubt' is more dangerous than leaving a jury to wrestle with only the words themselves." *Id.* (quoting *United States v. Lighty*, 616 F.3d 321, 380 (4th Cir. 2010)). I am also unaware of any jury instruction that provides a numerical "confidence threshold" for the establishment of reasonable doubt. As a sitting United States Magistrate Judge and a district court nominee, it would be inappropriate to contravene binding precedent by offering a numerical representation of reasonable doubt.

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

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

Response: The Supreme Court and the Court of Appeals for the Fourth Circuit have suggested that a circuit split may exist on this issue. *See White v. Woodall*, 572 U.S. 415, 422 n.3 (2014); *Horner v. Nines*, 995 F.3d 185, 202 n.2 (4th Cir. 2021). As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

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

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

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

Response: Please see my answers to question 27b.

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

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it would be inappropriate for me to provide an opinion on the wisdom of a higher court's practices and rules. I note that while the Court of Appeals for the Fourth Circuit issues unpublished opinions, it does "not prohibit or restrict the citation of" these opinions "issued on or after January 1, 2007." *See* FRAP 32.1(a). Under the Fourth Circuit's Local Rules, "[c]itation of [Fourth Circuit] unpublished dispositions issued prior to January 1, 2007, in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case." Loc. R. 32.1 (4th Cir. 2023). However, "[i]f a party believes, nevertheless, that an unpublished disposition of [the Fourth Circuit] issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP 32.1(b) [noting the requirement to provide copies] are met." *Id.* I am bound to follow these rules and would continue to do so if confirmed as a district judge.

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

Response: Please see my answer to Question 28a.

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

Response: Please see my answer to Question 28a.

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

Response: Please see my answer to Question 28a.

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

Response: Yes. Please see my answer to Question 28a.

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

Response: No.

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

Response: No.

29. In your legal career:

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

Response: Ten.

b. How many have you tried as second chair?

Response: Nine.

c. How many depositions have you taken?

Response: I do not recall taking any depositions.

d. How many depositions have you defended?

Response: I do not recall defending any depositions.

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

Response: I have argued three cases before a federal appellate court.

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

Response: I have argued one case before a state appellate court.

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

Response: Since becoming a licensed attorney, I do not recall appearing before a federal agency.

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

Response: Before my appointment as a United States Magistrate Judge, I worked as a litigator for over 15 years. In that role, I briefed and argued dozens of dispositive motions before trial courts.

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

Response: Before my appointment as a United States Magistrate Judge, I worked as a litigator for over 15 years. In that role, I briefed and argued dozens of evidentiary motions before trial courts.

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

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

Response: I last tracked my billable hours when I was a litigation associate in 2006–2007 and I cannot recall the number of hours I billed. The remainder of my career was spent as a public defender where I was not required to track billable hours since my clients did not pay for my services.

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

Response: I do not recall the amount of time spent on pro bono work in 2006–2007. The remainder of my career was spent as public defender representing the indigent accused.

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 am not familiar with this quote or its context, but I take it to mean that judges must disregard their personal beliefs when determining facts and applying the law.

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

a. What do you understand this statement to mean?

Response: I take this statement to mean that while it is the job of other branches of government to make the law, it is up to judges to fairly and neutrally apply it.

b. Do you agree or disagree with this statement?

Response: I agree that a judge must fairly and neutrally apply the law. If confirmed as a district judge, I would do so by applying the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this quote or its context, but I take it to mean that judges must disregard their personal beliefs and serve no personal agenda when determining facts and applying the law.

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

Response: I agree that judges must disregard their personal beliefs and serve no personal agenda when determining facts and applying the law. If confirmed as a district judge, I would do so by applying the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: Soon after the Supreme Court's decision *District of Columbia v. Heller*, 554 U.S. 570 (2008), I recall raising the argument that the prohibitions on the possession of firearms by convicted felons was unconstitutional. The argument was not successful.

a. If yes, please provide appropriate citations.

Response: The only case in which I remember raising the argument was *United States v. Hill*, No. Crim. WDQ-09-0446, 2010 WL 2038995 (D. Md. May 20, 2010), *aff'd*, 471 F. App'x 143 (4th Cir. 2012).

35. 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.

36. What were the last three books you read?

Response: *We Don't Know Ourselves: A Personal History of Modern Ireland* by Fintan O'Toole; *Animal Farm* by George Orwell; and *The Passenger* by Cormac McCarthy.

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

Response: I am deeply proud to be an American and have had the pleasure of living in multiple states and a United States territory. Respectfully, while I believe this question raises an important issue worthy of discussion, I believe it is ultimately one to be addressed by those who make policy. As a United States Magistrate Judge, I work to ensure that all litigants and counsel who appear before me are treated fairly and afforded equal justice under law. If a litigant were to raise an allegation that the country is systematically racist, I would neutrally apply the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the facts before me.

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

Response: Though no particular case stands out, I am proud of my service as an Assistant Federal Public Defender in the District of Maryland and the District of the Virgin Islands. I am equally proud of my work as a United States Magistrate Judge.

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

Response: Yes.

a. How did you handle the situation?

Response: Consistent with my ethical obligations as an advocate, I put aside my personal views and fulfilled my ethical and Sixth Amendment obligations to zealously advocate within the bounds of the law on behalf of my clients.

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

Response: Yes.

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

Response: I do not regularly read the works of any particular law professor.

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

Response: No single Federalist Paper has most shaped my views of the law.

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

Response: As a law student, a judicial law clerk, a practicing attorney, and a judge, I have always enjoyed reading legal opinions and articles on a variety of topics. I learn something new from nearly all of these works and each has informed my knowledge of

relevant statutes and precedent. I cannot, however, point to a particular opinion or article that "made [me] change [my] mind."

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

Response: In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court declined to express a "view about if and when prenatal life is entitled to any of the rights enjoyed after birth." 142 S. Ct. 2228, 2261 (2022). As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: I was called to testify to the details of a client's plea agreement in a case in the Circuit Court for Baltimore City. *See Cox v. State*, 194 Md. App. 629, 641–42, 5 A.3d 730, 737 (Md. Ct. Spec. App. 2010).

45. 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.

46. 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.

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

Response: I do not recall ever authoring a complete brief that was filed without my name on it. However, in over 15 years as an Assistant Federal Public Defender, I proofread, edited, or authored portions of countless briefs filed by colleagues. It was common in both public defender offices where I worked for colleagues to share their work without attribution. I cannot provide an accurate account of the number of times in which I assisted with filings in this capacity.

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

Response: Please see my answer to Question 47.

48. Have you ever confessed error to a court?

Response: In 2012, I authored an affidavit in support of a motion to vacate a former client's conviction in which I expressed the view that I had erred by failing to raise several issues at hearing on pre-trial motions. The Court never ruled on the motion, nor did it evaluate the claims I raised in the affidavit since my former client's sentence was vacated with the consent of the Government for unrelated reasons.

a. If so, please describe the circumstances.

Response: Please see my answer to Question 48.

49. 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: I swore an oath to tell the truth to the Senate Judiciary Committee prior to answering questions at a hearing on April 18, 2023. That oath obligates me to provide complete and truthful answers to all questions posed by the Senate Judiciary Committee, including those answered in writing.

Senator John Kennedy
Questions for the Record

Judge Brendan Hurson

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a United States Magistrate Judge, my judicial philosophy is to approach each case with a completely open mind and to treat all parties, witnesses, and counsel with respect. I thoroughly review the record, diligently research the applicable law, and then fairly and neutrally apply that law to the facts before me. I follow the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. I endeavor to treat all matters before me as though they are critically important as I recognize that each case is of the utmost importance to the parties involved. I also strive to ensure that I maintain a judicial temperament, that I remain humble, and that I do not allow emotion or ego to substitute for fair judgment. If confirmed as a district judge, I would continue to adhere to this judicial philosophy.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: I believe that the Constitution has a fixed meaning that can only be changed through the amendment process outlined in Article V. "Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (citations omitted).

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.").

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: The Supreme Court has explicitly noted that some forms of legislative history are more probative of legislative intent than others. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'") (quoting *Zuber v.*

Allen, 396 U.S. 168, 186 (1969))). If confirmed as a district judge, I would follow the directives of the Supreme Court and the Court of Appeals for the Fourth Circuit as they pertain to reviewing legislative history when construing the meaning of a statute.

5. What First Amendment restrictions can the owner of a shopping center place on private property?

Response: In *Lloyd Corp., Ltd. v. Tanner*, the Supreme Court held that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." 407 U.S. 551, 569 (1972). In *PruneYard Shopping Center v. Robins*, the Supreme Court upheld a California state constitutional provision that required the owner of a shopping center to allow individuals to exercise free speech and petition rights on the property of a privately owned shopping center, but also affirmed that the shopping center owner "may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." 447 U.S. 74, 83 (1980). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit, including *Lloyd Corp., Ltd. v. Tanner* and *PruneYard Shopping Center v. Robins*.

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

Response: In *Mathews v. Diaz*, the Supreme Court noted that "[t]here are literally millions of aliens within the jurisdiction of the United States." 426 U.S. 67, 77 (1976). The Court then observed that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law. . . . Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection." *Id.* (citations omitted). The *Mathews* Court also noted that "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 79–80. In *United States v. Verdugo-Urquidez*, the Supreme Court summarized a series of cases addressing whether "aliens enjoy certain constitutional rights" by observing that such persons "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." 494 U.S. 259, 271 (1990). I am unaware of any specific precedent of the Court of Appeals for the Fourth Circuit relating specifically to whether non-citizens unlawfully present in the United States are entitled to a right of privacy. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

Response: It is well-established "[t]hat searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *United States v. Ramsey*, 431 U.S. 606, 616 (1977). As such, "[r]outine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant . . . ." *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me. Also, please see my answer to question 6.

8. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court declined to express a "view about if and when prenatal life is entitled to any of the rights enjoyed after birth." 142 S. Ct. 2228, 2261 (2022). As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

9. A federal district court judge in Washington, D.C. recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health.*

a. Do you agree?

Response: I am not familiar with this judge's suggestion or the circumstances under which it was made. However, as a United States Magistrate Judge and a district judge nominee, it would be improper for me to comment on the wisdom of another court's ruling. If confirmed, I would faithfully apply the Supreme Court's binding precedent including *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Please see my answer to Question 9a.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. Judges must follow the precedent of the Supreme Court and of the Court of Appeals for the circuit in which the judge sits.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Supreme Court upheld a statute that "require[ed] citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government." 553 U.S. 181, 185 (2008). If confirmed as a district judge, I would faithfully apply *Crawford* and all other Supreme Court and Fourth Circuit precedent.

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court held that the proponent of such a regulation "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." 142 S. Ct. 2111, 2126 (2022). "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.* (citation omitted). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit, including *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), to the specific facts of the case before me.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In *Janus v. American Federation of State, County, and Municipal Employees*, the Supreme Court identified five factors as "most important" to the determination of whether to "overrule a past decision," namely: "[1] the quality of [the prior case's] reasoning, [2] the workability of the rule it established, [3] its consistency with other related decisions, [4] developments since the decision was handed down, and [5] reliance on the decision." 138 S. Ct. 2448, 2478–79 (2018). The Supreme Court has relied on "[a]ll these reasons" to provide the "special justification" required to overturn its precedent. *Id.* at 2486; *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2265 (2022) (overturning precedent after discussing "the nature of [Supreme Court's] error [in the prior cases], the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the

absence of concrete reliance"). To my knowledge, the Supreme Court has not identified a specific number of these factors as necessary to provide the special justification for overturning precedent.

b. Is one factor alone ever sufficient?

Response: Please see my answer to Question 13a.

14. **Please explain the difference between judicial review and judicial supremacy.**

Response: Judicial review refers to the bedrock principal that it is "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *see also* Black's Law Dictionary (11th ed. 2019) (defining "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp[ecially], the courts' power to invalidate legislative and executive actions as being unconstitutional"). Judicial supremacy is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: Consistent with the rest of the Constitution, the Ninth Amendment has a fixed meaning. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (noting that "the Second Amendment's historically fixed meaning applies to new circumstances" (citing *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008))).

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: Justice Thomas noted in a concurrence in *McDonald v. City of Chicago, Ill.*, that the Ninth Amendment was an "obvious example" of a "Bill of Rights provision[designed to] prevent federal interference in state affairs and [was] not readily construed as protecting rights that belong to individuals." 561 U.S. 742, 851 n.20 (2010). Other courts have made similar observations. *See, e.g.*, *Schowengerdt v. United States*, 944 F.2d 483, 490 (9th Cir. 1991) ("Finally, Schowengerdt's ninth amendment argument is meritless, because that amendment has not been interpreted as independently securing any constitutional rights for purposes of making out a constitutional violation.") (citing *Strandberg v. City of Helena*, 791 F.2d 744 (9th Cir.1986)); *Gibson v. Matthews*, 926 F.2d 532, 537 (6th Cir. 1991) ("[T]he ninth amendment does not confer substantive rights in addition to those conferred by other portions of our governing law."). If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret provisions of the Constitution.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment expressly references rights enumerated elsewhere in the Constitution. *See* U.S. Const. amend IX ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.")

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: The Supreme Court has held that original meaning and text play a critical role in interpreting many constitutional provisions, and Founding-era history can be useful in determining what that original meaning is. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 47–50 (2004) (Sixth Amendment Confrontation Clause). If confirmed as a district judge, I will faithfully apply precedent from the Supreme Court and the Court of Appeals for the Fourth Circuit if called upon to interpret provisions of the Constitution.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: In *District of Columbia v. Heller*, the Supreme Court recognized that in the Second Amendment, and "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." 554 U.S. 570, 580 (2008). The Court then reaffirmed what it had said in *United States v. Verdugo-Urquidez*:

> '[T]he people' seems to have been a term of art employed in select parts of the Constitution. . . . [Its uses] sugges[t] that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.

Id. (citing 494 U.S. 259, 265 (1990)). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

b. Is the term's meaning consistent in each amendment?

Response: Please see my answers to Questions 6, 7, and 19a. As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this

issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: "Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." *Plyler v. Doe*, 457 U.S. 202, 210 (1982). Please also see my answers to Questions 6, 7, and 19a. As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

21. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: To the best of my knowledge, *Glucksberg* did not directly address this question. However, it affirmed that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed' . . . ." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). Further, the Supreme Court recently re-affirmed that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me. whether the meaning changes over time.

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: The Supreme Court long ago held that the Privileges or Immunities Clause of the Fourteenth Amendment "protects only those rights 'which ow[e] their existence to the Federal government, its National character, its Constitution or its laws.'" *McDonald v. Chicago*, 561 U.S. 742, 754 (2010) (quoting *Slaughter-House Cases*, 83 U.S. 36, 79

(1872)). As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: I am not aware of any decision of the Supreme Court or the Court of Appeals for the Fourth Circuit that holds that the right to terminate a pregnancy is among the "privileges or immunities" of citizenship. As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, "a court review[ing] an agency's construction of the statute which it administers . . . is confronted with two questions":

> First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

467 U.S. 837, 843 (1984). *Chevron* remains binding precedent. However, in *West Virginia v. EPA*, the Supreme Court identified that there may be "extraordinary cases" that implicate the major questions doctrine and thus require than an agency provide "something more than a merely plausible textual basis for the agency action" and instead "point to 'clear congressional authorization' for the power it claims." 142 S. Ct. 2587, 2609 (2022) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: Please see my answer to Question 24. Also, "[t]he Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, which sets forth the full extent of judicial authority to review executive agency action for procedural correctness, . . . permits . . . the setting aside of agency action that is 'arbitrary' or 'capricious' . . . ." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513–14 (2009) (internal citations omitted).

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: Sections 8 and 9 of Article I specifically delineate the powers of Congress. Section 8 permits Congress "[t]o make all laws which shall be necessary and proper for carrying" these powers "into execution." But Section 9 limits Congress's powers by, for example, forbidding Congress from passing an "ex post facto" law. In *McCulloch v. Maryland*, the Supreme Court held that Section 8 granted limited implied powers to Congress to pass laws that are "necessary and proper to carry into execution the powers of the government." 17 U.S. 316, 422 (1819) (internal quotation marks omitted). The Constitution also limits power by specifically enumerating limits on judicial and executive authority in Articles II and III, and through the Tenth Amendment's recognition that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," U.S. Const. amend. X.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Lopez*, 514 U.S. 549, 558 (1995). These categories are: (1) "the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted).

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: The Supreme Court held that Congress exceeded its Commerce Clause authority when it enacted the Gun-Free School Zones Act, a federal law that criminalized the knowing possession of a firearm in a school zone. *Lopez v. United States*, 514 U.S. 549, 568 (1995).

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: The Supreme Court has explicitly affirmed the long-standing rule that "the equal protection obligations imposed by the Fifth and the Fourteenth Amendments [are] indistinguishable[.]" *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995).

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: Please see my answers to Questions 24 and 25.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The anti-commandeering doctrine has its roots in the Supreme Court's recognition that the Tenth Amendment prohibits Congress from "commandeer[ing] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 288 (1981). The doctrine "is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018). "[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *Id.* at 1477.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: The Supreme Court has held that the Eighth Amendment standard for cruel and unusual punishment "itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C.J., dissenting)).

34. Do you believe the death penalty is constitutional?

Response: The Supreme Court has held that the death penalty is constitutional. *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: The Supreme Court has recognized that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]" *United States v. Nixon*, 418 U.S. 683, 693, 94 S. Ct. 3090, 3100, 41 L. Ed. 2d 1039 (1974); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my answer to Question 5.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: Article VI of the Constitution contains the Supremacy Clause, which provides that the Constitution, federal laws, and certain treaties are the "supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI. Under the "adequate and independent state grounds" doctrine, the Supreme Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (citations omitted).

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the specific facts of the case before me.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: To the best of my knowledge, the Supreme Court has not cited a textual source for the different standards of review for determining whether state laws or regulations violate constitutional rights. Thus, it is decisions of the Supreme Court that provide the sources of the different standards of review. *See, e.g.*, *Munn v. People of State of Illinois*, 94 U.S. 113, 131–32, (1876) (rational basis test); *United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 n.4 (1938) (noting that "[t]here may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution[.]"); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 538–39 (1942) (strict scrutiny); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (intermediate scrutiny for sex-based classifications).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017). The power to issue an injunction is found in Federal Rule of Civil Procedure 65. The Fourth Circuit has held that a federal district court has "wide discretion to fashion appropriate injunctive relief in a particular case," even if that injunction has "nationwide scope." *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992). If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit

to the specific facts of the case before me, always recognizing that injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

Questions from Senator Thom Tillis

for Brendan Abell Hurson
Nominee to be United States District Judge for the District of Maryland

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

   Response: Yes. Judges must decide cases by fairly and impartially applying the law to facts. A judge's personal opinions or values should not guide their decision-making. As a sitting United States Magistrate Judge, I apply the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. If confirmed as a district judge, I would continue to do so.

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

   Response: Judicial activism has been defined as "[a] philosophy of judicial 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, as judges must apply the law impartially and fairly to the facts before them without regard to their personal views on the outcome.

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

   Response: Impartiality is an expectation for a judge.

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

   Response: No.

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

   Response: Faithfully interpreting the law may sometimes result in an undesirable outcome. As a sitting United States Magistrate Judge, whether an outcome may be undesirable has no bearing on my judicial decision-making. I am bound to follow the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit regardless of any opinion I may have of the desirability of a particular outcome. I will continue to do so if confirmed as district judge.

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: "In *Heller* and *McDonald*," the Supreme Court "held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2125 (2022) (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010)). The *Heller* Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as [did] its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." 554 U.S. at 635. If confirmed, I would apply this precedent as well as any other relevant binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: "The doctrine of qualified immunity 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.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "In determining whether defendant government officials [such as law enforcement] are protected by qualified immunity, the court considers both 'whether a constitutional right [was] violated on the facts alleged' and 'whether the right was clearly established' at the time of the conduct in question." *Scinto v. Stansberry*, 841 F.3d 219, 235 (4th Cir. 2016) (quoting *Saucier v. Katz*, 533 U.S. 194, 200 (2001)). As a sitting United States Magistrate Judge, I am bound to follow the binding precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit, and I will continue to do so if confirmed as district judge.

9. 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: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed to serve as a district judge, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit, including *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

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

Response: Please see my answer to Question 9.

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

Response: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed to serve as a district judge, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Federal Circuit (which has exclusive jurisdiction over patent appeals from district courts under 28 U.S.C. § 1295(a)(1)), including *Alice Corporation Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012).

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

Response: Please see my answer to Question 11.

13. 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: As an Assistant Federal Public Defender, I recall being involved in at least one matter involving allegations of criminal copyright infringement. As a United States Magistrate Judge, I have also been involved in matters involving alleged trademark infringement.

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

Response: In nearly eighteen years serving as a federal law clerk, a litigator, and a United States Magistrate Judge, I do not recall involvement in any cases involving the Digital Millennium Copyright Act. If confirmed to serve as a district judge, I would faithfully apply the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

Response: In nearly eighteen years serving as a federal law clerk, a litigator, and a United States Magistrate Judge, I do not recall involvement in any cases involving intermediary liability for online service providers that host unlawful content posted by users. If confirmed to serve as a district judge, I would faithfully apply the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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: As an Assistant Federal Public Defender, I represented clients charged with crimes that raised First Amendment issues including cases alleging the solicitation of crimes, unlawful interstate communication of threats, and threatening a federal official. I have also been involved in these types of cases as a United States Magistrate Judge presiding over preliminary criminal matters.

14. 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 reported that 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: When interpreting legislative text, the first step is to look at the plain meaning of the statute. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."). If the text is unclear or ambiguous and there is no judicial precedent on point, legislative history may be helpful, but only to the extent the Supreme allows it. *Id.* (noting that legislative history may be helpful

"when interpreting *ambiguous* statutory language"). The Supreme Court has explicitly noted that some forms of legislative history are more probative of legislative intent than others. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'") (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969))). If confirmed as a district judge, I would follow the directives of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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: To ascertain the level of deference to afford an expert federal agency, courts generally look to the Supreme Court's precedents of *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *United States v. Mead Corp.*, 533 U.S. 218 (2001), and their progeny. If confirmed as a district judge, I would follow the relevant binding precedents of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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 sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed to serve as a district judge, I would faithfully apply the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

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

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

Response: Please see my answer to 14a. As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed to serve as a district judge, I would faithfully apply the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. I leave to policymakers the decision of whether to amend the DMCA.

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: Please see my answer to Question 15a.

16. 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 this practice.

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

Response: In the District of Maryland, cases are randomly assigned to district judges and magistrate judges (with the consent of the parties under 28 U.S.C. § 636(c)) within the appropriate geographic division. *See* Loc. Rs. 301.4, 501.1 (D. Md. 2021). I am not aware that "judge shopping" or "forum shopping" is an issue in either of the two divisions that comprise the District of Maryland.

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

Response: I am not aware that "judge shopping" or "forum shopping" is an issue in either division of the District of Maryland. In all cases, judges should fairly and impartially apply relevant binding precedents to the facts before them.

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?

Response: No.

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

Response: I do not, and will not, engage in the conduct described in Question 16c.

17. 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: As a sitting United States Magistrate Judge and a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. It would therefore be inappropriate to comment.

18. 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: Please see my answer to Questions 16a and 17.

Senate Judiciary Committee

"Nominations"

Questions for the Record

for Brendan Hurson

to be United States District Judge for the District of Maryland

QUESTIONS FROM SENATOR BLACKBURN

1. **Please describe your understanding of an originalist judicial philosophy.**

   Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect."

2. **When, if ever, is it appropriate for a judge to take into account his or her lived experience when interpreting the law?**

   Response: It is not appropriate for a judge to take into account his or her lived experience when interpreting the law.

3. **What is your understanding of the definition of "original public meaning"?**

   Response: Black's Law Dictionary (11th ed. 2019) notes that "original public meaning" shares a definition with "originalism," which is defined as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Specifically, it is "the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." Black's Law Dictionary (11th ed. 2019). In the context of constitutional interpretation, the Supreme Court has held that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). "Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Id.* at 576–77. The Supreme Court and the Court of Appeals for the Fourth Circuit have held that original public meaning is a primary consideration in the interpretation of texts. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President."); *Williams v. Kincaid*, 45 F.4th 759, 766 (4th Cir. 2022) (affirming that absent an explicit statutory definition, courts must look to meaning of a statute's "terms at the time of its enactment"

(quoting *Bostock*, 140 S. Ct. at 1738)). If confirmed, I would continue to faithfully follow the precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit.

4. **When, if ever, is it appropriate for a judge to consider legislative history when interpreting a statutory provision?**

Response: In interpreting a statutory provision, a judge should first look to the plain language of the statute at issue. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."). If the text is unclear or ambiguous and there is no judicial precedent on point, the judge may then turn to legislative history, but only to the extent the Supreme Court allows it, and always being mindful of the types of legislative history that the Supreme Court has found most relevant. *Id.* (noting that legislative history may be helpful "when interpreting ambiguous statutory language").

5. **At your confirmation hearing, Ranking Member Graham asked you a number of questions regarding the scourge of fentanyl in our society and, specifically, in Baltimore where you currently preside as a federal magistrate judge. Please research each of the following questions and answer according to the data available to you.**

   a. **How many fentanyl related deaths occurred in Baltimore last year?**

   Response: The most recent reliable data I could find on deaths related to fentanyl use in Maryland is a Maryland Department of Health report from March 2022 including data through the third quarter of 2021. *See* Md. Dep't of Health, Unintentional Drug- and Alcohol-Related Intoxication Deaths in Maryland (Mar. 2022), available at https://health.maryland.gov/vsa/Documents/Overdose/Quarterly%20Drug_Alcohol_Intoxication_Report_2021_Q3.pdf. According to the Maryland Department of Health, there were 737 "fentanyl-related intoxication deaths" in Baltimore City from January through September of 2021. *Id.* at 15. There were 253 such deaths in Baltimore County. *Id.*

   b. **Recently, there has been a massive spike in fentanyl related deaths in the United States. What is your understanding of the cause of this spike in deaths?**

   Response: I am deeply troubled by all deaths related to drug overdoses. I am also aware of statistics reflecting an increase in such deaths attributable to fentanyl. *See* Ctrs. for Disease Control & Prevention, Understanding Drug Overdoses and Deaths (Feb. 14, 2022), available at https://www.cdc.gov/drugoverdose/epidemic/index.html. Researchers at the Johns Hopkins University Bloomberg School of Public Health have attributed this

rise in drug overdose deaths to "the potent synthetic opioid fentanyl and other similar substances, which are increasingly laced into heroin and other street drugs, making them even more deadly." Bloomberg Am. Health Initiative, Johns Hopkins Bloomberg Sch. of Pub. Health, Detecting Fentanyl. Saving Lives (2018), available at https://americanhealth.jhu.edu/fentanyl. I am generally aware that an increase in the use of fentanyl and other synthetic opioids, often mixed with other illicit drugs and under circumstances where the user was unaware that they were ingesting fentanyl, is a major source of the increase in fentanyl overdoses and deaths.

c. What is your understanding of the origins of the increase of fentanyl in the United States?

Response: I am generally aware of the debate over the reason for the increase in fentanyl use in the United States. I am also aware that multiple federal agencies including the Drug Enforcement Agency posit that illicit fentanyl used in the United States is mostly manufactured in foreign laborites. Drug Enf't Admin., Facts About Fentanyl, available at https://www.dea.gov/resources/facts-about-fentanyl. If faced with a case involving fentanyl, I would neutrally apply the relevant statutes and precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the facts before me.

d. What is the origin of the chemicals used to make most of the fentanyl consumed in the United States?

Response: I am generally aware of the discussion over the origin of the chemicals used to make most of the fentanyl consumed in the United States, and I am also aware that multiple federal agencies, including the Drug Enforcement Administration, posit that illicit fentanyl used in the United States is largely manufactured in foreign laboratories. Drug Enf't Admin., Facts About Fentanyl, available at https://www.dea.gov/resources/facts-about-fentanyl. If faced with a case involving fentanyl, I would neutrally apply the relevant statutes and precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit to the facts before me.

e. What is the average age of fentanyl overdose victims in the United States?

Response: I have not found a reliable source of information for the average age of fentanyl overdose victims in the United States. However, according to the National Safety Council, "[t]he 35- to 44-year age group is experiencing the most opioid overdose deaths . . . . Currently, 71% of preventable opioid deaths occur among those ages 25 to 54, and the number of deaths among individuals 55 and older is growing rapidly." *See* Nat'l Safety Council, Drug Overdoses, available at https://injuryfacts.nsc.org/home-and-community/safety-topics/drugoverdoses/.

f. What is your understanding of the drug trafficking network in Baltimore?

Response: I am aware that both Baltimore City and Baltimore County have significant issues with drug trafficking. According to the United States Sentencing Commission, 31.6% of federal sentencings in Maryland in 2022 were for offenses involving drug trafficking or drug possession. *See* U.S. Sentencing Comm'n, Statistical Information Packet, Fiscal Year 2022, District of Maryland, at 1, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2022/md22.pdf.

g. What is your understanding of the drug trafficking network in the United States as a whole?

Response: I am aware that the United States has a significant issue with drug trafficking. According to the United States Sentencing Commission, 31.1% of federal sentencings (19,938) in the United States in 2022 were for offenses involving drug trafficking. *See* U.S. Sentencing Comm'n, Statistical Information Packet, Fiscal Year 2022, District of Maryland, at 3, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2022/md22.pdf.

h. How many cases have you seen over the course of your career as a federal magistrate judge involving distribution of drugs?

Response: Including applications for search warrants and initial appearances related to drug distribution, I have personally seen dozens of cases involving drug distribution since becoming a United States Magistrate Judge. According to the United States Sentencing Commission, 31.6% of federal sentencings in Maryland in 2022 were for offenses involving drug trafficking or drug possession. *See* U.S. Sentencing Comm'n, Statistical Information Packet, Fiscal Year 2022, District of Maryland, at 1, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2022/md22.pdf.

i. During your testimony, you referenced cases on your docket involving defendants charged with distribution of drugs and how these defendants are often drug users. In what circumstances do you believe that drug users who are charged with distribution of drugs should be given alternatives to incarceration?

Response: If confirmed as a district judge, I would take my responsibility to sentence individuals convicted of any federal crimes, including defendants convicted of unlawfully distributing drugs, extremely seriously. Congress has delineated the factors federal judges must consider when sentencing a defendant in 18 U.S.C. § 3553. These include "the need for the sentence imposed" "to reflect the seriousness of the offense," "to afford adequate deterrence to criminal conduct," and "to protect the public from further crimes of the defendant," among other considerations. 18 U.S.C. §§ 3553 (a)(2)(A)–(C). As a United States

Magistrate Judge, I have imposed misdemeanor sentences and made determinations related to pretrial detention by strictly adhering to the laws of Congress and by applying the relevant precedent of the Supreme Court and the Court of Appeals for the Fourth Circuit. If confirmed, I would continue to do so.

j. What is the recidivism rate of drug dealers who are given alternatives to incarceration in Maryland?

Response: I not familiar with a reliable source of information compiling the information requested. In 2017, the United States Sentencing Commission published a comprehensive report on recidivism among federal drug trafficking offenders finding that "[o]ver the eight-year follow-up period, one-half (50.0%) of federal drug trafficking offenders released in 2005 recidivated by being rearrested[ ] for a new crime or rearrested for a violation of supervision conditions." U.S Sentencing Comm'n, Recidivism Among Federal Drug Trafficking Offenders, at 3 (Feb. 21, 2017), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170221_Recidivism-Drugs.pdf. This report does not provide information specific to offenders who are "given alternatives to incarceration."

k. What is the recidivism rate of drug dealers who are given alternatives to incarceration across the United States?

Response: Please see my answer to Question 5j.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Lindsey Graham, Ranking Member

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

   Response: While I am not familiar with this statement, or the context in which it arose, I do not believe it is a correct statement of the law. Judges in the United States District Court for the Eastern District of Louisiana should interpret the Constitution by following the binding precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals, and in a manner consistent with the methods of interpretation the United States Supreme Court has used to decide constitutional questions.

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

   Response: While I am not familiar with this judge, the statement, or the context in which it arose, a United States District Judge in the Eastern District of Louisiana is obligated to follow the binding precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals. It is improper for a federal judge to write opinions or to decide cases in a manner inconsistent with Supreme Court or binding federal precedent and guidance. If I were confirmed as a United States District Judge, I would faithfully follow the binding precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

3. **Please define the term "living constitution."**

   Response: Black's Law Dictionary defines "living constitution" as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values," and "living constitutionalism" as the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary, (11th ed. 2019).

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

   Response: The United States Supreme Court has stated that the Founders created a Constitution "intended to endure for ages to come, and consequently, to be adapted to the

various crises of human affairs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). The Court further stated, "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* Beyond that, I am not familiar with then-Judge Ketanji Brown Jackson's 2013 statement or the context in which it arose. If confirmed as a United States District Judge, my duty would be to apply the binding precedents of the United States Supreme Court and United States Fifth Circuit.

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

Response: If a case came before me that required me to address this issue, I would carefully research the law and impartially apply the law to the facts in the record.

6. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

Response: United States District Judges are required to consider the factors set forth in 18 U.S.C. § 3553(a) when making sentencing decisions. If confirmed as a federal judge, I will consider all of the 3553(a) factors when making sentencing decisions, giving each factor appropriate weight depending on the particular facts and circumstances of each case based upon a careful application of the law and evidence in the record to reach a fair and just decision under the circumstances.

7. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: If confirmed as a United States District Judge, my judicial philosophy would be to approach each case with humility and: (1) to always carefully follow the letter of the law and apply the precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals to the facts of each case; (2) to treat all who come before me equally and with dignity and respect; (3) to fairly and impartially discharge and perform my duties as a federal judge under the Constitution and laws of the United States; and (4) to have a deep respect for the rule of law. Stated simply, as a federal trial judge, my role would be to call balls and strikes and not color outside the lines. I am not aware of a particular United States Supreme Court decision that is typical of my judicial philosophy.

8. **Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: If confirmed as a United States District Judge, my judicial philosophy would be to approach each case with humility and restraint and: (1) to always carefully follow the letter of the law and apply the precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals to the facts of each case; (2) to treat all who come before me equally and with dignity and respect; (3) to fairly and impartially discharge and perform my duties as a federal judge under the Constitution and laws of the United States; and (4) to have a deep respect for the rule of law. Stated simply, as a federal trial judge, my role would be to call balls and strikes and not color outside the lines. I am not aware of a particular United States Supreme Court decision that is typical of my judicial philosophy. I am not aware of a particular Fifth Circuit judicial decision that is typical of my judicial philosophy.

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

Response: 18 U.S.C. § 1507 provides that, "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both." If confirmed, I will apply the precedent of the United States Supreme Court and the United States Fifth Circuit Court of Appeals to any such case involving 18 U.S.C. § 1507 that comes before the court.

10. **Under Supreme Court precedent, including *Cox v. Louisiana*, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: In *Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965), the United States Supreme Court held that a Louisiana state statute, which was modeled on 18 U.S.C. § 1507 and punished picketing near a courthouse, was constitutional on its face.

11. **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?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**
    e. **Was *Planned Parenthood v. Casey* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**
    g. **Was *District of Columbia v. Heller* correctly decided?**
    h. **Was *McDonald v. City of Chicago* correctly decided?**
    i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
    j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

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

Combined Response to 11(a) to (j): As a judicial nominee, it is not appropriate for me to comment on the correctness of decisions of the United States Supreme Court because as a United States District Judge, I would be obligated to follow and respect the decisions of the United States Supreme Court. Consistent with the responses of other nominees, I agree there are some constitutional decisions that are settled and unlikely to be relitigated such that I can state that they were correctly decided. These decisions include *Brown v. Board of Education* and *Loving v. Virginia*. Of the cases noted above, in Question 11, the United States Supreme Court recently overruled *Roe v. Wade* and *Planned Parenthood v. Casey*. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022). Apart from *Roe* and *Casey*, both of which have been overruled, the other referenced decisions are binding precedent. If I am confirmed, I will apply all binding precedent of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

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

Response: In *District of Columbia v. Heller*, the United States Supreme Court declined to adopt a single standard of review. 554 U.S. 570, 634-35 (2008). The Court concluded the ban on handguns in the home in *Heller* failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. Further, the United States Supreme Court held that a ban on firearms in the home violates the Second Amendment. *Id.* The Court noted that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The United States Supreme Court noted that these were examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

In *McDonald v. Chicago*, 561 US 742 (2010), the Supreme Court held the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states. The Court concluded rights, like the right to keep and bear arms, that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment.

In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court expounded on *Heller* and held that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."

142 S. Ct. at 2129–30. In that context, the Government bears the burden of "justify[ing] its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. Put another way, "the [G]overnment must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 2127.

If I were confirmed as a United States District Judge, I would carefully apply these precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals to evaluate whether a regulation or statutory provision infringes on Second Amendment rights.

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

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

       Response: No.

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

       Response: No.

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

       Response: No.

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

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

       Response: No.

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

Response: No.

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

Response: No.

15. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

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

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

    Response: No.

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

    Response: No.

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

    Response: No.

18. **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: I was contacted by United States Senator John Kennedy's office on April 7, 2022, inviting me to a meeting with Senator Kennedy. I met with Senator Kennedy on April 12, 2022, and he indicated an interest in recommending me to the White House for an opening on the United States Fifth Circuit Court of Appeals. On April 18, 2022, after learning my name had been submitted to the While House by my home state senators, I sent my CV and biography to the White House Counsel's Office. On May 16, 2022, Senator Kennedy's office inquired about my interest in serving on the United States District Court for the Eastern District of Louisiana. I indicated I would be interested in serving. I met with Senator Bill Cassidy on May 25, 2022, about my potential service as a federal judge. On January 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since January 13, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice, the White House Counsel's Office, and the Offices of United States Senators John Kennedy and Bill Cassidy. On March 20, 2023, the President announced his intent to nominate me, and my nomination was sent to the United States Senate on March 21, 2023. A hearing was held on my nomination by the United States Senate Judiciary Committee on April 18, 2023.

19. **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 am not familiar with who is associated with this organization. To the best of my knowledge, No.

20. **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 am not familiar with who is associated with this organization. To the best of my knowledge, No.

21. **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 am not familiar with who is associated with this organization. To the best of my knowledge, No.

22. **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 am not familiar with who is associated with this organization. To the best of my knowledge, No.

23. **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 am not familiar with who is associated with this organization. To the best of my knowledge, No.

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

Response: Please see my answer to question 18.

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

Response: I received the questions from the United States Department of Justice. I prepared draft answers, and before my answers were finalized, I sent them to attorneys in the United States Department of Justice's Office of Legal Policy who provided limited feedback. All answers herein are my own answers based upon my own careful review and consideration of all questions and the applicable law or facts necessary to answer the questions, before certifying these answers as my own.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Amy Klobuchar

During your nearly three decades as a practitioner, you have tried over 30 cases to verdict, including over a dozen jury trials. You served as chief counsel in nearly two dozen cases and have a broad practice ranging from civil rights cases to commercial litigation.

- **Can you describe your work in private practice and how that has prepared you to serve as a federal district court judge?**

  Response: I went to college and law school at my state's flagship public university with people from all walks of life. After law school, I clerked for a trailblazing Louisiana Supreme Court Associate Justice, who would eventually become Louisiana's first female Chief Justice. Since my clerkship, I have had an extremely busy trial and litigation practice for nearly 30 years.

  From 1995 until 1999, I worked at McGlinchey Stafford, a large regional law firm headquartered in New Orleans, in the firm's Products Liability Section, where my work consisted almost entirely of defense of products liability actions in state and federal court representing Fortune 500 companies. In 1999, I began working at Moore Walters Thompson and its successor firms, before starting my own firm with three of my partners in 2009. Since 1999, I have primarily represented individuals and families in injury and death cases, and I continue to represent businesses and corporations. My main areas of practice have been personal injury and wrongful death litigation. I have also served as a mediator and a Court-Appointed Special Master.

  All these experiences, in my opinion, will help me if I am confirmed as a United States District Judge because I know the value of good, hard-working, and fair trial judges who allow the parties to move their cases expeditiously through the court system. I know how important it is that both ordinary citizens and large corporations are treated fairly by a judge who recognizes that courthouses and courtrooms are not the usual abode of most people, and litigants are often under a great deal of stress and need a prompt resolution of their dispute or other legal matter, so they can move forward with their lives or businesses. Having tried many cases to verdict, I know trials are time-consuming and expensive for all concerned, and I will be mindful of this as I work to conclude the litigants' business in every matter by working hard to rule promptly and fairly to save the litigants' time and money while ensuring the fair and impartial administration of justice.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Hirono

1. **As part of my responsibility as a member of this Committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

   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.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Mike Lee

1. How would you describe your judicial philosophy?

Response: If confirmed, my judicial philosophy would be to approach each case with humility and restraint and: (1) to always carefully follow the letter of the law and apply the precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals to the facts of each case; (2) to treat all who come before me equally and with dignity and respect; (3) to fairly and impartially discharge and perform my duties as a federal judge under the Constitution and laws of the United States; and (4) to have a deep respect for the rule of law. Stated simply, if I were to be confirmed as a federal trial judge, my role would be to call balls and strikes and to not color outside the lines.

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

Response: I would look first at the plain language and text of the federal statute and work to apply the statute in accordance with its plain and ordinary meaning as written. I would then look at the precedents of the United States Supreme Court and the United States Fifth Circuit to ensure that my application of that statute strictly followed those precedents.

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

Response: I would first look at the text of the constitutional provision, and seek to apply the provision using its plain textual meaning. I would then carefully review applicable United States Supreme Court and United States Fifth Circuit precedent interpreting that particular constitutional provision to make sure that I was correctly applying the provision in accord with applicable precedent. In the very unlikely event I would be forced to decide a case that turned on a question of first impression involving a constitutional provision, not yet interpreted by the Supreme Court or United States Fifth Circuit, after reviewing the textual language of the provision, I would interpret the text in a manner consistent with the method of interpretation the Supreme Court used, for example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Supreme Court looked to the original public meaning of the Second Amendment.

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

Response: The United States Supreme Court has held the text and original public meaning of a constitutional provision play an important role in interpreting the Constitution. *See District of Columbia v. Heller*, 554 U.S. 570 (2008). As Justice

Scalia noted in Heller, "[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.") *Id.* at 576 (citations omitted). If confirmed, I would strictly apply all binding Supreme Court and Firth Circuit precedent when interpreting the Constitution.

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: I first look to the plain text of the statute, and if the statute is clear and unambiguous, I would apply the statute as written. I would also look carefully at the precedents of the Supreme Court and the Fifth Circuit to ensure that my reading of the plain textual language of the statute would be consistent with the binding precedents of those courts.

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: Statutes are immutable. In other words, the "plain meaning" of a statute does not change over time. The words mean what they meant when they were written. See, for example, *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: In general, for a party to establish standing, the party must have a genuine stake in the outcome of the case and to personally suffer (or imminently suffer): (1) a concrete and particularized injury; (2) traceable to the allegedly unlawful actions of the opposing party; and (3) the suffering is redressable by a favorable judicial decision. These requirements seek to ensure federal courts do not exceed their Article III power to decide actual cases or controversies.

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the United States Supreme Court held the Necessary and Proper Clause in Article I, Section 8, of the United States Constitution gives Congress certain implied powers that are not explicitly enumerated in the Constitution. The United States Constitution endowed Congress with the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." *Id.*

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

Response: If confirmed as a federal judge, I would evaluate the constitutionality of a law enacted by Congress in which Congress made no reference to a specific enumerated power by carefully following the precedents of the United States Supreme Court and the United States Fifth Circuit. The Supreme Court has held the determination of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise. *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: The United States Supreme Court has held the Constitution protects unenumerated rights only if those rights are "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

10. What rights are protected under substantive due process?

Response: The Supreme Court has recognized that certain rights are fundamental and protected under substantive due process because the rights are deeply rooted in our nation's history and tradition. *Washington v. Glucksberg*, 521 U.S. 702 (1997). These rights include the right: 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)); to marital privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); to use contraception (*Eisenstadt v. Baird*, 405 U.S. 438 (1972)); and bodily integrity (*Rochin v. California*, 342 U.S. 165 (1952)).

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 Woman's Health Organization*, 142 S. Ct. 2228 (2022), the United States Supreme Court held the Constitution does not confer a right to abortion. *Lochner v. New York*, 198 U.S. 45 (1905), was largely abrogated by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), and applicable Supreme Court precedent has returned to the principle that a court should not substitute its own social

and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The United States Supreme Court has recognized Congress' power under the Commerce Clause includes: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and 3) those activities that substantially affect interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558-559 (1995). If confirmed as a United States District Judge, I would be bound to apply this and all other binding precedents of the United States Supreme Court and the U.S. Fifth Circuit Court of Appeals.

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

Response: The United States Supreme Court has held race, national origin, religion, and alienage as suspect classes to which strict scrutiny applies. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: Separation of powers plays a pivotal role in the structure of the Constitution. The framers specifically sought to define and enumerate the power of each branch of government such that they would serve to check and balance the power of the others. Indeed, the separation of powers protects each branch of government from incursion by the others, but also protects the individual. *See Bond v. United States*, 564 U.S. 211, 222 (2011).

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 I were fortunate enough to be confirmed as a United States District Judge and faced this question, I would review the relevant text of the Constitution and consider the text itself, and I would also carefully apply and follow binding United States Supreme Court and United States Fifth Circuit precedent to properly adjudicate the issue before me in a fair and just manner.

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

Response: Judges should decide cases based on the law and the evidence, and not based on their own personal views or feelings. If I were so fortunate as to be confirmed as a United States District Judge, I would work to treat all litigants fairly

and with respect and courtesy, but my decisions and rulings would be based solely on the applicable law and evidence in a particular case.

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

Response: I believe both are wrong, and, if confirmed as a United States District Judge, I would work hard to very carefully apply the precedents of the United States Supreme Court and the United States Fifth Circuit to avoid committing either wrong.

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: The question regarding the change in trends regarding judicial review is a complex one, and I do not have sufficient information to resolve it. The role of a judge is to uphold the rule of law in all cases by carefully applying the law to the facts of each case in a fair and even-handed manner. If confirmed as a judge, I would follow this principle in every case, and I would scrupulously follow my oath of office in the performance of my duties as a federal judge and work to use the authority of that office with humility and when the law and precedents of the Supreme Court and the Fifth Circuit command use of judicial authority in furtherance of the Constitution and laws of the United States.

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

Response: Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government; especially the courts' power to invalidate legislative and executive actions as being unconstitutional." *See* Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" has been defined as follows: "interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id.*

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: Article Six, Section Three of the United States Constitution requires government officials to take an oath to uphold the Constitution. Elected officials are required to follow the decisions of the United States Supreme Court interpreting the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). The question of how elected officials should balance these obligations is the type of question that could come before me in my capacity as a United States District Judge, if I were fortunate enough to be confirmed, such that the Canons of Judicial Conduct preclude me from giving an opinion on the application of this balance at this juncture. If I were faced with such a question, however, I would carefully follow the precedents of the United States Supreme Court and the United States Fifth Circuit to reach a fair and correct answer under the law.

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: Federalist 78 recognizes the role of the federal courts is to interpret and apply the law, and not to make the law or to enforce it because these two are the roles of the legislative and executive branches. The role of the courts is to decide cases and controversies, to faithfully apply the law, and to also uphold the rule of law. Federalist 78 speaks to the separation of powers and to judicial restraint and the need for avoidance of judicial overreach.

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: As a nominee to the United States District Court for the Eastern District of Louisiana, it is not my role to question whether the United States Supreme Court or the United States Fifth Circuit has properly decided the cases that are binding precedents. Rather, the proper role of a district judge in the Eastern District of Louisiana is to apply the binding precedents from the Supreme Court and Fifth Circuit whether or not those precedents have questionable constitutional underpinnings as referenced in the question. My role, if confirmed, would be to apply the law in a fair and neutral manner to the facts of the case at hand and to follow Supreme Court and Fifth Circuit 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.

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: I have no familiarity with the definition referred to in this question or the context in which it may have arisen. Black's Law Dictionary (11th ed. 2019) defines the term "equity" as "[f]airness; impartiality; evenhanded dealing." If I were fortunate enough to be confirmed as a United States District Judge, I would work to treat all persons in a fair, impartial, and evenhanded manner without regard to their race, gender, or status.

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

Response: Equity is defined by Black's Law Dictionary as, "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). Equality is defined by Black's Law Dictionary as, "[t]he quality, state, or condition of being equal." *Id.*

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

Response: The Fourteenth Amendment does not contain the word "equity." It forbids states from denying to any person within its jurisdiction the equal protection of the laws. If confirmed as a United States District Judge, I will faithfully follow United States Supreme Court and Fifth Circuit precedent regarding or interpreting the Fourteenth Amendment.

27. How do you define "systemic racism?"

Response: "Systemic racism" is defined by Merriam Webster as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster's Dictionary (2022).

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

Response: Black's Law Dictionary defines "critical race theory," as "[a] reform movement within the legal profession, particularly within academia, whose adherents

believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: While I have heard the words or terms "critical race theory" and "systemic racism," and while I have included definitions, as cited in my answers to questions 27 and 28, I have not studied these concepts. I have no personal definition of these terms, and I am not an expert in the use of these terms. Therefore, I am not qualified to distinguish one term or definition from another. If I were to be confirmed as a United States District Judge, I would follow the law, as outlined by the United States Supreme Court, United States Fifth Circuit, and applicable statutes when dealing with issues related to allegations of race or racism.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Josh Hawley

1. 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: On April 1, 2020, the East Baton Rouge Parish District Attorney's Office filed bills of information against Pastor Mark Anthony Spell, a Baton Rouge area pastor, for alleged violations of the Louisiana governor's emergency declarations that had been issued in response to the Covid-19 pandemic and restricted the size of indoor gatherings. I was not involved in the decision to commence the prosecution against Pastor Spell, nor was I involved in drafting the governor's emergency declarations. The East Baton Rouge Parish District Attorney asked me to assist in this matter as a Special Prosecutor because the case involved a number of constitutional issues. While the case against Pastor Spell presented important constitutional questions, on April 7, 2020, the United States Fifth Circuit stated that "all constitutional rights may be reasonably restricted to combat a public health emergency." *In re Abbott*, 954 F.3d 772, 786 (5th Cir. 2020), citing *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358 (1905), and in May 2020, the Supreme Court issued a decision in *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020), denying an application by a church – brought under the Free Exercise Clause – to enjoin a proclamation by the Governor of California which limited attendance at places of worship to 25% of building capacity or a maximum of 100 attendees in an effort to limit the spread of Covid-19. Chief Justice Roberts, concurring in the denial of the application for injunctive relief, concluded that these guidelines appeared to be consistent with the Free Exercise Clause of the First Amendment because "similar or more severe restrictions appli[ed] to comparable secular gatherings." *South Bay*, 140 S. Ct. at 1613 (Roberts, C. J., concurring) (quoting *Jacobson*, 197 U.S. at 38). The Chief Justice highlighted the fact that the California order only exempted or treated more leniently "dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods." *Id.* The East Baton Rouge Parish District Attorney's office understood Louisiana's gubernatorial proclamation to be similar to the California gubernatorial order that had been temporarily upheld by the Supreme Court in *South Bay*.

The trial court held a hearing on Pastor Spell's Motion to Quash the bills of information on January 25, 2021, and denied Pastor Spell's motion. Pastor Spell then filed an application for a supervisory review in the Louisiana First Circuit Court of Appeal.

On April 9, 2021, while Pastor Spell's case was pending in the Louisiana First Circuit, the United States Supreme Court decided *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), and stated, in part, "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.* "It 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.*

On May 24, 2021, the Louisiana First Circuit, which was aware of the substantive holding of *Tandon*, denied Pastor Spell's application for supervisory writs. Although *Tandon* had been issued by the time of its ruling, the First Circuit denied Pastor Spell's application for relief primarily on procedural grounds. Pastor Spell thereafter sought review in the Louisiana Supreme Court. On May 13, 2022, with the benefit of *Tandon*, the Louisiana Supreme Court ruled in Pastor Spell's favor and dismissed the charges against him.

With the benefit of *Tandon*, the Louisiana Supreme Court quashed the bills of information against Pastor Spell. Given the Louisiana Supreme Court's decision, which was informed by *Tandon*, I can only assume the Louisiana gubernatorial orders would have been drafted differently had *Tandon* been decided before charges were brought against Pastor Spell. As such, this prosecution would have been unnecessary because there would have been a clearer understanding, as the Court recognized in *Tandon,* 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." 141 S. Ct. 1294, 1296 (2021). Therefore, I believe if the law had been clearer in the early stages of the pandemic, this case would not have been brought against Pastor Spell.

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

Response: The original public meaning of the Constitution plays a critical role in interpretation of its provisions. The United States Supreme Court has held it is appropriate to look at the original understanding of constitutional provisions. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment. As Justice Scalia noted in *Heller*, "[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Id.* at 576 (citations omitted). If confirmed, I would strictly apply all binding Supreme Court and Firth Circuit precedent when interpreting the Constitution.

3. Do you consider legislative history when interpreting legal texts?

Response: When interpreting a legal text, such as a statute, regulation, or the Constitution, I would start first with the plain text. I would next look to the precedents of the United States Supreme Court and the United States Fifth Circuit regarding the text. If faced with no binding precedent, I would return to the text, carefully reviewing it in connection with accepted canons of statutory construction and would try to apply the text as written, with the aid of any available authority from other United States federal courts. Next, I would consult trusted legal treatises and would look to analysis in articles from reputable law reviews or journals. If, after all the foregoing, I were to have trouble making sense of the text, I would examine the legislative history. Referencing extrinsic material, like legislative history, the Supreme Court explained these materials "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). The Court cautioned "legislative history is itself often murky, ambiguous, and contradictory." *Id.*

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: No. Not all legislative history is of equal value. Recordings of floor debates or news reports or accounts of comments by individual members of a legislative body and similar legislative history are of less value than, for example and if available, committee reports. *See, e.g.*, *United States v. Craft*, 535 U.S. 274, 287 (2002) (failed legislative proposals not probative of legislative intent); *National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 832 n.28 (1983) (noting report of entire conference committee would carry greater weight than manager's statement not contained in committee report).

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

Response: The United States Supreme Court has turned to English precedents in interpreting various constitutional provisions. *See, e.g.*, *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2135-42 (2022); *Crawford v. Washington*, 541 U.S. 36, 42-61 (2004). It is, however, difficult to conceive of when a United States District Judge would need to consult the law of a foreign nation to interpret the highest source of American law, the United States Constitution. If I were confirmed as a United States District Judge, and charged with interpreting the United States Constitution, I would look to the plain language of the text itself and then to the binding precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

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

Response: The United States Supreme Court has found an execution protocol can violate the Eighth Amendment's prohibition against cruel and unusual punishment if the method presents "a substantial risk of serious harm" and if there is "an alternative that is feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (citations and quotation marks omitted). Moreover, the United States Fifth Circuit Court of Appeals has used these elements when seeking to determine whether a plaintiff has sufficiently pled a method-of-execution claim. *Whitaker v. Collier*, 862 F.3d 490, 497 (5th Cir. 2017).

5. 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. See my response to Question 4.

6. 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: *In Dist. of Attorney Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 72 (2009), the United States Supreme Court reversed a finding that a defendant possessed a right under the Due Process Clause to obtain postconviction access to the state's evidence for DNA testing. The Court held "there is no such substantive due process right." *Id.* Similarly, the United States Fifth Circuit Court of Appeals has recognized "[t]here is no freestanding, substantive due process right to access DNA evidence at the post-conviction stage." *Moon v. City of El Paso*, 906 F.3d 352, 359 (5th Cir. 2018).

7. 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.

8. 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: In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), the United States Supreme Court held that, as a general proposition, "a law that is neutral and of general applicability need not be justified by a compelling

governmental interest even if the law has the incidental effect of burdening a particular religious practice." *See also Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021); *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990). However, a law or policy or law that allows for individualized exemptions but does not allow for an exemption for a religious entity is likely not neutral or generally applicable. *Fulton v. City of Philadelphia*, 141 S. Ct. at 1877. In addition, "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Likewise, a law or policy adopted or motivated by religious animus on the government's part is subject to strict scrutiny. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018).

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

Response: Please see my response to Question 8. Strict scrutiny requires the government to further "interests of the highest order" by means "narrowly tailored in pursuit of those interests." *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)).

10. 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: According to the Fifth Circuit Court of Appeals, "[i]t does not matter whether a religious belief itself is central to the religion, but only that 'the adherent [ ] have an honest belief that the practice is important to his free exercise of religion.'" *Moussazadeh v. Texas Dep't of Crim. Just.*, 703 F.3d 781, 790–91 (5th Cir. 2012), as corrected (Feb. 20, 2013) (citing *United States v. Seeger*, 380 U.S. 163, 185, 85 S. Ct. 850, 13 L.Ed.2d 733 (1965)).

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008), the United States Supreme Court concluded Washington D.C.'s ban on handguns in the home failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. Further, the United States Supreme Court held a ban on firearms in the home violates the Second Amendment. *Id.* The Court noted that

"[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27.

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.

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

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

Response: I believe Justice Holmes was suggesting the Constitution enacted no particular economic theory. He went on to say in his dissent, "[A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). As a federal judicial nominee, it is not appropriate for me to give an opinion on whether I agree with what Justice Holmes may have meant because any personal opinion or belief of mine would not be relevant to my application of binding precedent if I were to be confirmed as a federal judge. As a federal judge, I would be bound by the decisions of the United States Supreme Court and the Fifth Circuit. *Lochner*, however, was abrogated in *West Coast Hotel Co. v. Parrish*, 300 U.S 379 (1937), and it is my understanding *Lochner* is no longer binding precedent.

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

Response: See my response to 12(a).

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

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018), the Supreme Court held "[t]he forcible relocation of U.S. citizens to concentration camps, solely and explicitly

on the basis of race, is objectively unlawful and outside the scope of Presidential authority." Chief Justice Roberts, writing for the majority, added, "[t]he dissent's reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear— 'has no place in law under the Constitution.'" My understanding of this phrase is that the majority is clearly expressing *Korematsu* was wrongly decided, but I believe this is likely a reference to the fact that years after the original *Korematsu* decision, in 1983, Mr. Korematsu's original conviction was overturned by a federal district judge in San Francisco, on grounds that the government had withheld critical evidence in the case, but this 1983 district court action had no effect on the 1944 United States Supreme Court decision which had continued to stand.

14. 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 aware of no such opinions.

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

Response: If confirmed, I commit to faithfully applying all precedents of the United States Supreme Court.

15. 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: As a federal judicial nominee, it is not appropriate for me to express an opinion as to whether I agree with this contention because, if I am fortunate enough to be confirmed as a federal judge, I may have to make decisions regarding issues of this type, and I do not want to inappropriately pre-judge the issue. While I cannot comment on my agreement or not with Judge Hand's statement, in *Eastman Kodak Co. v. Image Tech Servs., Inc.*, 504 U.S. 451, 481 (1992), the United States Supreme Court concluded Kodak's nearly 100% share of the parts market and 80% to 95% of the service market "with no readily available substitutes" was sufficient to create a triable issue of material fact as to whether Kodak had "monopoly power" under Section 2 of the Sherman Act. As a general matter, a nonconclusory allegation that a defendant holds a predominant share of the relevant market will usually satisfy the monopoly power element of a monopolization claim. *United States v. Grinnell*, 384 U.S. at 563, 571 (1966). The

exact share of the market a defendant controls before it is found to have monopoly power has not been conclusively defined, but, as a general matter, a market share of more than 70 percent is generally sufficient to support an inference of monopoly power. See, e.g., *Eastman Kodak Co.*, 504 U.S. at 481; *Heatransfer Corp. v. Volkswagenwerk, A.G.*, 553 F.2d 964, 981 (5th Cir. 1977) (71–76 percent share sufficient). In contrast, courts almost never find monopoly power when market share is less than about 50 percent. *American Telephone & Telegraph Co. v. Delta Commc'ns Corp.*, 408 F. Supp. 1075, 1107 (S.D. Miss. 1976), aff'd per curiam, 579 F.2d 972 (5th Cir. 1978) (adopting district court opinion), modified on other grounds, 590 F.2d 100 (5th Cir. 1979) (41% share of local prime time television market insufficient to subject television network to Section 2 monopolization scrutiny). The Fifth Circuit adheres to Judge Learned Hand's widely accepted rule of thumb that "while a 90 percent market share definitely is enough to constitute monopolization, 'it is doubtful whether 60 or 64 percent would be enough; and certainly, 33 percent is not.'" *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480, 489 (5th Cir. 1984) (citing *United States v. Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945), approved and adopted, *American Tobacco Co. v. United States*, 328 U.S. 781, 811–14 (1946)).

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

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

Response: Black's Law Dictionary (11th ed. 2019) defines "federal common law" as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." As a general matter, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The Supreme Court has recognized, however, certain "limited areas" in which "federal judges may appropriately craft the rule of decision," such as "admiralty disputes and certain controversies between States." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020).

17. 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: If confirmed, in keeping with the precedents of the United States Supreme Court, I would seek to defer to the interpretation declared by a state's highest court. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-79 (1938); *see also Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts"), and if I were presented with a case or controversy involving this issue, I would carefully review the evidence, research the applicable statutes and precedent and follow the interpretation of the United States Supreme Court and the United States Fifth Circuit.

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

Response: Please see my response to Question 17.

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

Response: The United States Supreme Court stated in *California v. Greenwood*, 486 U.S. 35, 43 (1988), that "[i]ndividual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution."

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

Response: Canons of judicial conduct prohibit judicial nominees and judges from commenting on legal issues that could become the subject of litigation. As a consequence, it would not be appropriate for me to comment or opine on whether particular cases were decided correctly. As prior judicial nominees have stated, however, because the precise legal issues presented in *Brown v. Board of Education* (involving *de jure* segregation of schools) are unlikely to become the subject of serious litigation, I feel comfortable stating that *Brown* was correctly decided.

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

Response: Federal Rule of Procedure 65 gives courts the authority to issue injunctive relief. The United States Supreme Court has held a party seeking injunctive relief must show: (1) it has suffered an irreparable injury; (2) the absence of an adequate remedy at law; (3) that, considering the balance of hardships between the moving and resisting parties, an injunction is warranted; and (4) "the public interest would not be disserved" by issuing injunctive relief. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Id.* at 165. Both the United States Supreme Court and the Fifth Circuit Court of Appeals have concluded that, "[s]uch injunctions at times can constitute 'rushed, high-stake, low-information decisions,' while more limited equitable relief can be beneficial." *Louisiana v. Becerra*, 20 F.4th 260, 264 (5th Cir. 2021), quoting *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch J.,

concurring in the grant of a stay.). The Fifth Circuit has confirmed the right of federal trial judges to issue nationwide injunctions. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015) (issuing preliminary injunction against enforcement of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (per curiam). If confirmed as a federal district judge, I would follow the precedential authority of the Supreme Court and Fifth Circuit.

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

Response: See my response to Question 19.

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

Response: See my response to Question 19.

20. 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 19.

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

Response: Federalism is a bedrock concept of our constitutional democracy. The Supreme Court has said federalism "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). The Court further observed that "[p]erhaps the principal benefit of the federalist system is a check on abuses of government power." *Id.* The Constitution grants limited powers to the federal government and reserves all other powers to the states. In so doing, the Constitution leaves room for states to enact laws and regulations according to the needs of that state.

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

Response: A federal court should or must abstain from resolving a pending legal question in deference to adjudication by a state court in the following circumstances:

1) *Burford* abstention refers to cases where state agency action is involved and federal courts defer to state courts to review those decisions under certain circumstances. The Fifth Circuit Court of Appeals has distilled the Supreme Court's guidance into five factors that steer the analysis of whether *Burford* abstention is warranted: (1)

whether the cause of action arises under federal or state law; (2) whether the case requires inquiry into unsettled issues of state law or into local facts; (3) the importance of the state interest involved; (4) the state's need for a coherent policy in that area; and (5) the presence of a special state forum for judicial review. *Grace Ranch, L.L.C. v. BP Am. Prod. Co.*, 989 F.3d 301, 313 (5th Cir. 2021), *as revised* (Feb. 26, 2021) (internal citations omitted). "Burford abstention is disfavored as an abdication of federal jurisdiction." *Aransas Proj. v. Shaw*, 775 F.3d 641, 653 (5th Cir. 2014).

2) *Colorado River* abstention applies where there is parallel state and federal litigation and requires abstention only in exceptional circumstances. The Fifth Circuit Court of Appeals has set forth six factors that may be considered and weighed in determining whether such exceptional circumstances exist: (1) assumption by either court of jurisdiction over a res; (2) the relative inconvenience of the forums; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forums; (5) whether and to what extent federal law provides the rules of decision on the merits; and (6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction. *Black Sea Inv., Ltd. v. United Heritage Corp.*, 204 F.3d 647, 650 (5th Cir. 2000). In assessing the propriety of abstention according to these factors, a federal court must keep in mind that "the balance [should be] heavily weighted in favor of the exercise of jurisdiction." *Id.* (internal citations omitted).

3) *Pullman* abstention applies when a case presents both state grounds and federal constitutional grounds for relief, the proper resolution of the state ground for the decision is unclear; and the disposition of the state ground could obviate adjudication of the federal constitutional ground. "*Pullman* abstention is limited to *uncertain questions of state law* because '[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.'" *Texas Entm't Ass'n, Inc. v. Hegar*, 10 F.4th 495, 508 (5th Cir. 2021) (quoting *Colo. River Water Conservation Dist.*, 424 U.S. at 813, 96 S. Ct. 1236) (emphasis supplied by the Fifth Circuit).

4) *Younger* abstention doctrine "counsels that federal courts should abstain from interfering with states' enforcement of their laws and judicial functions." *Texas Ent. Ass'n, Inc. v. Hegar*, 10 F.4th at 508 (citing *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). *Younger* abstention applies only in exceptional circumstances and is appropriate only "in three types of proceedings": (1) ongoing state criminal prosecutions, (2) "certain 'civil enforcement proceedings'" that are "in aid of and closely related to [the State's] criminal statutes," and (3) "pending 'civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their judicial functions.'" *Id.* (citing *Sprint*, 571 U.S. at 77-78).

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

Response: As a general matter, damages provide financial compensation to the complaining party, while injunctive relief provides equitable relief in the form of an order commanding either action or inaction by the responding party. In some cases, an award of damages may adequately remedy the complaining party's injury. In other cases, damages may be insufficient, and injunctive relief may be warranted based on the nature of the complaining party's injury and the requirements of the law in demonstrating an entitlement to an injunctive relief. The key point is that the advantages and disadvantages of damages versus injunctive relief are fact specific and hinge on the particular circumstances of a case. If confirmed as a judge, I would faithfully follow binding precedent from the United States Supreme Court and Fifth Circuit in determining the appropriate remedies available to claimants in all cases that come before me.

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

Response: The United States Supreme Court has held the substantive due process clauses of the Fifth and Fourteenth Amendments protect unenumerated rights that are "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). These rights include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

25. 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: Pursuant to the First Amendment, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Whenever a governmental regulation that burdens religion treats any comparable secular activity more favorably than religious exercise, that regulation is not neutral and triggers strict scrutiny under the Free Exercise clause. The government must show that the challenged law satisfies strict scrutiny. See also my response to Question 8.

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

Response: In *Lee v. Weisman*, 505 U.S. 577, 591 (1992), the Supreme Court held

that the "Free Exercise Clause embraces a freedom of conscience and worship that has close parallels in the speech provisions of the First Amendment . . ."

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

Response: Please see my answers to 1(a), 8 and 9. I would apply the tests set out the by the United States Supreme Court and the Fifth Circuit Court of Appeals.

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

Response: Please see my answers to question 10.

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: The Religious Freedom Restoration Act ("RFRA") ". . . applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3(a); *see also Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) ("Placing Congress' intent beyond dispute, RFRA specifies that it 'applies to all Federal law, and the implementation of that law, whether statutory or otherwise'"). "RFRA also permits Congress to exclude statutes from RFRA's protections." *Id.*

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the United States Supreme Court found Title VII and other similar laws indicate that Congress "speaks with specificity when it intends a religious accommodation not to extend to for-profit corporations." In *Hobby Lobby*, the Supreme Court applied the RFRA's free exercise protections to for-profit corporations. Based on this binding precedent, it is clear that RFRA applies to all persons, non-profits, and for-profit corporations subject to federal laws, unless Congress clearly indicates otherwise.

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: I have issued no such opinions.

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

believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: In the Fifth Circuit, "proof beyond a reasonable doubt" has been defined as "proof of such a convincing character that you would be willing to rely and act upon it without hesitation in making the most important decisions of your own affairs." Fifth Circuit District Judges Association Pattern Jury Instructions Committee, *Pattern Jury Instructions, Criminal Cases* (2019). If I were to be confirmed as a United States District Judge, my obligation would be to carefully follow the precedents of the United States Supreme Court and the United States Fifth Circuit Court of Appeals. To the extent I might be called upon to make a legal determination regarding the issue posed by this question, as a federal judicial nominee it would be inappropriate for me to set forth my own personal confidence threshold in numerical form.

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

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

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

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

    Combined Response to 27(a) – (c): If confirmed, and a case or controversy were to be presented involving this question, my duty would be to review the evidence and arguments submitted by the parties with an open mind, research the applicable statutes and precedent, and apply the applicable precedents of the United States Supreme Court and the United States Fifth Circuit to the matter before me. I cannot, under applicable canons, as a federal judicial nominee give statements of opinion regarding these issues.

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

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

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

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

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

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

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

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

Combined Response to 28(a)-(g): If I were so fortunate as to be confirmed as a United States District Judge in the Eastern District of Louisiana, I would very carefully follow the rules established by the two federal courts that supervise that court, namely the United States Supreme Court and the United States Fifth Circuit. I would also follow the rules of court established by the Eastern District of Louisiana, and, to the extent applicable, the Fifth Circuit Rules relative to Federal Rule of Appellate Procedure 32.1. As a federal judicial nominee, it is not appropriate for me to comment on the "appropriateness" of rules made by supervising courts, and, if confirmed, I would follow the rules of the supervising courts.

29. In your legal career:

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

Response: I have tried 33 cases to verdict. In 24 of those cases, I was lead counsel, and in 9 of the cases I was either co-lead or second chair.

b. How many have you tried as second chair?

See Response to 29(a).

c. How many depositions have you taken?

Response: In my 28 years of practice, I have taken hundreds, if not thousands, of depositions.

d. How many depositions have you defended?

Response: In my 28 years of practice, I have defended hundreds of depositions.

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

Response: While I do not have an exact number, I believe I have argued before a federal appeals court, at oral argument, 2 to 5 times.

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

Response: In my 28 years of law practice, I have argued many times in Louisiana's courts of appeal and the Louisiana Supreme Court. I do not have an exact number, but I would estimate at least 20 times. For example, Louisiana has 5 intermediate appellate courts spread across the state, and, to my knowledge, I have argued in at least 4 and possibly all 5 courts of appeal.

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

Response: I do not recall "appearing" before a federal agency. I have interacted with federal agencies in connection with my law practice, but I do not recall ever arguing before an agency or federal agency's administrative tribunal.

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

Response: I do not have an exact number, but I would estimate I have argued hundreds of dispositive motions over my 28-year career, as both a plaintiff and a defense lawyer. For example, I believe each of the 10 cases listed in No. 17 of my Senate Judiciary Committee Questionnaire involved at least one (and sometimes several) dispositive motions, and, as I recall, the *Hackler* case, identified in 17(9) of my SJQ, accounted for roughly a dozen dispositive motions in the Eastern District of Pennsylvania. Based on this, and the hundreds of other cases I have handled, I believe "hundreds" of dispositive motions is a very fair estimate.

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

Response: I do not have an exact number, but I would estimate I have argued in at least 20 motion hearings that involved the "taking of evidence," for example a "prescription" or statute of limitations "trial" (which Louisiana counts as a "trial," but I do not count as a "trial" in my total number of "trials") in clergy abuse cases with allegations of repressed memory or other matters that involved the taking of evidence. In addition, if the question is seeking to understand how many motions I have argued regarding the "admissibility of evidence," prior to trial or some proceeding involving evidence, I have likely argued close to 100 motions of this type over my 28 years of practice.

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

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

Response: When I practiced law at a firm that tracked my billable hours, which was over 20 years ago, I believe I typically billed 2300 to 2800 hours per year.

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

Response: I have not worked at a firm that "tracked" billable hours for over 20 years. I do not recall how much time I spent while working at a billable firm on pro bono matters. While working as an hourly lawyer at a big firm, I handled pro bono cases through a local pro bono organization. Any hours I spent on pro bono work would have been "on my own time" and would not have been counted toward the firm's billing requirements for associates. Over the past 24 years, I have been primarily a contingent fee lawyer, charging no fee unless I recovered for my clients. Over the years, I have represented numerous clients for free and have reduced many thousands of dollars in fees for clients of limited financial means. I have also supported legal aid organizations in my state in many ways, and I have been a board member of the Louisiana Bar Foundation and the Baton Rouge Bar Foundation, both of which help fund the legal needs of the poor. I also served as the Honorary Co-Chair of the Fiftieth Anniversary Advisory Committee of Southeast Louisiana Legal Services in 2017. Moreover, as a State Bar President and Bar leader, I have given seminars and speeches that have addressed the need for lawyers to serve the less fortunate, and I have always tried to advocate for funding for legal services corporations and organizations that serve the legal needs of the poor.

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: Under 28 U.S. Code § 453, each justice or judge of the United States takes an oath, promising to administer justice without respect to persons, and do equal right to the poor and to the rich, and to faithfully and impartially discharge and perform all the duties incumbent upon the justice or judge under the Constitution and laws of the United States. I understand Justice Scalia's quote to mean that judges must follow this oath, regardless of their personal feelings or opinions, and, obviously, sometimes in the performance of their duties, judges or justices will not always like, on a personal level, every decision they have to make to comply with this important oath. If I am fortunate enough to be confirmed as a United States District Judge, I will take my oath very seriously and will work very hard every day to fulfill its obligations.

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

a. What do you understand this statement to mean?

Response: Although I am not familiar with this statement or the context in which the Chief Justice made the statement, I understand it to mean judges should not be "activists" and should not "legislate" from the bench. It is essentially a statement about the separation of powers, and the appropriate role of the federal judiciary in our constitutional democracy. Article 1 gives Congress the legislative power to enact laws. Article 2 gives the President the Executive Branch's power to enforce the laws, and Article 3 defines the judicial power. So, he is saying, in my view, that judges, like umpires (who do not pitch, run, bat, or catch, but rather call the game) interpret and apply the rules.

b. Do you agree or disagree with this statement?

Response: I agree with the statement, but I would note that the Supreme Court has itself recognized certain "limited areas" in which "federal judges may appropriately craft the rule of decision," such as "admiralty disputes and certain controversies between States." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020). Similarly, judges do make certain rules regarding court procedure and the management of dockets, but, generally, I believe the statement of the Chief Justice is correct. If I were confirmed as a federal judge, I would seek to "call balls and strikes," and not legislate from the bench.

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

a. What do you think Justice Holmes meant by this?

Response: Although I am not familiar with this statement or the context in which Justice Holmes made the statement, I believe Justice Holmes was expressing his view that judges are obligated to apply the law by applying binding precedent, regardless of outcome.

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

Response: As stated in my response to Question 33(a), above, I am not familiar with this statement or the context in which Justice Holmes made the statement, and my belief is that Justice Holmes was expressing his view that judges are obligated to apply the law by applying binding precedent, regardless of outcome. If I were confirmed as a federal judge, I would carefully review and consider the evidence and arguments submitted by the parties with an open mind, research the applicable statutes and precedent, and apply the binding precedent to the case before me.

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

a. If yes, please provide appropriate citations.

Response: In my 28 years of practice, I would tend to believe that in some matter or another I have made allegations that a state statute, most likely the Louisiana Medical Malpractice Act, was unconstitutional. But I can recall no specific matter at this time.

35. 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. I have not, to my knowledge or recollection, deleted any specific content from my social media. On or about March 21, 2023, after being notified the President would nominate me to the federal bench, I closed and deleted all of my social media accounts, not for any content they contained, but to protect the privacy and safety of my family, particularly my minor children, and because I do not believe it is appropriate for federal judges or federal judicial nominees to have a presence on social media.

36. What were the last three books you read?

Response:
Woodward, B., & Armstrong, S. (1979). The Brethren, (1st ed.) Simon and Schuster.
Chernow, R. (2004), Titan (2nd ed.) Vintage Books.
Williams, T.H. (2009), Huey Long: a biography, Blackstone Audio, Inc.

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

Response: While I have heard the term "systemic racism," I have not studied this concept and am not an expert in the use of this term. If confirmed as a federal district judge, I will work to ensure all who come before me are treated fairly and in a non-discriminatory manner. If any case were to come before me involving claims of systemic racism, I would follow the precedents of the United States Supreme Court and United States Fifth Circuit, and I would apply that precedent in a fair and neutral manner to the facts and circumstances of the case. Canons of judicial ethics prohibit judicial nominees and judges from commenting on legal issues that could become the subject of litigation. As such, it would be inappropriate for me to comment further on this matter.

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

Response: This is a difficult question to answer. I have handled many rewarding matters, so it is difficult to select a particular case; rather, the cases that have given me the most satisfaction are the many cases I have handled for ordinary American families who

suffered a great loss. I have represented many working men, or their surviving wives and children, in cases in which the worker, most often a man, but sometimes a woman, left home, in a uniform or with a hard hat and work boots, and sometimes in a business suit, to do an honest day's work, and either never came home, or came home in a wheelchair or horribly burned and disfigured or otherwise badly damaged, and I was able to secure a recovery for the worker or the family to ensure the injury was not the end of that family's American dream. Similarly, while emotionally draining, and very sad, I am proud of the cases I handled for victims of abuse at the hands of trusted individuals: teachers, coaches, health care professionals, and members of the clergy who violated their trust and, in many cases, robbed my clients of their innocence.

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

Response: Yes.

a. How did you handle the situation?

Response: In my role as an advocate, it was my duty to present the best case possible for my client consistent with the law and the rules of professional conduct. If confirmed as a federal judge, my role will be to faithfully follow binding precedent from the United States Supreme Court and the Fifth Circuit and to apply the law fairly and neutrally in each case, even if the outcome may conflict with my own personal views.

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

Response: Yes.

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

Response: I read a variety of sources in connection with my work as a lawyer. I cannot point to any three law professors whose works I have read most often.

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

Response: No single Federalist Paper has most shaped my views of the law.

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

Response: While I am sure I have been persuaded or informed over my 30 years as a lawyer and law student by a law review article, opinion, or court decision, I cannot point to a particular decision at this time.

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

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the United States Supreme Court overruled *Roe v. Wade*, 410 U.S. 113 (1978), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and the Supreme Court held there is no Constitutional right to abortion. If confirmed as a federal judge, I will carefully follow the precedents of the Supreme Court and Fifth Circuit, including *Dobbs*. As a federal judicial nominee, it would be inappropriate for me to comment further on this matter.

44. 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 June of 2022, I testified as a witness in the matter of *Boudreaux v. Louisiana State Bar Ass'n*, No. 11962, Eastern District of Louisiana (2022), as a past President of the Louisiana State Bar Association (LSBA) regarding certain programs of the LSBA, in an action brought by a Louisiana lawyer, challenging the mandatory status of the LSBA. The federal district court rendered judgment against the plaintiff, and in favor of the LSBA, and the matter is currently on appeal. The matter is pending in the United States Fifth Circuit Court of Appeals, where oral argument, in *Boudreaux v. LSBA*, No. 22-30564 (5th Cir.), is scheduled for July 2023. My involvement in that matter has concluded. A copy of my testimony is attached.

In August of 2021, I was proffered as an expert witness in matters related to the legal profession and standard of conduct for attorneys in a hearing seeking to disqualify an attorney from serving as counsel in a lawsuit involving allegations of legal malpractice against a Baton Rouge lawyer and law firm. My testimony was proffered as expert testimony on behalf of the defendant lawyer and law firm who sought, and ultimately obtained, the disqualification of the attorney who had filed the action. To my knowledge, that testimony is not available.

It is possible I testified under oath at some other time in my 28 years as an attorney and bar leader, but I do not recall being placed under oath at any time other than these two instances and when I testified at my Senate confirmation hearing on April 18, 2023.

45. 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.

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

a. Apple?
b. Amazon?
c. Google?
d. Facebook?
e. Twitter?

Combined response to 47 (a) to (e): No. I only own mutual funds and exchange traded funds. I do not own any individual stocks.

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

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

Response: To the best of my recollection, I have never authored a brief that was filed in court without my name on the brief. It is possible that when I was a very junior associate at a large law firm, who had recently clerked at the Louisiana Supreme Court, I may have edited or made suggested revisions to a brief filed by other members of the firm, and I was not listed as counsel on the brief. Similarly, later in my career, I may have reviewed or edited a brief at the request of one of my partners or another member of our firm as a courtesy and for the improvement of our firm's work product, when my name was not formally on the brief, but I have never, for example, "ghost-written" or secretly written a brief that did not contain my name.

48. Have you ever confessed error to a court?

Response: I do not recall ever confessing error to a court.

a. If so, please describe the circumstances.

Response: See Response to Question 48.

49. 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: As a judicial nominee, I swore under oath that the testimony I provided to the Senate Judiciary Committee would be, to the best of my knowledge and understanding, true and accurate. I have attempted to answer each of these questions truthfully, to the best of my ability, and in a manner consistent with my ethical obligations under Canon 3 of the Code of Conduct for United States Judges as it applies to judicial nominees.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator John Kennedy

1. **Please describe your understanding of the First Amendment's guarantee of religious liberty.**

   Response: Pursuant to the First Amendment, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Whenever a governmental regulation that burdens religion treats any comparable secular activity more favorably than religious exercise, that regulation is not neutral and triggers strict scrutiny under the Free Exercise clause. The government must show that the challenged law satisfies strict scrutiny.

2. **As a Special Prosecutor, were you in any way involved in the decision to prosecute Pastor Tony Spell in early 2020?**

   Response: I was not involved in the decision to prosecute Pastor Spell. The East Baton Rouge Parish District Attorney asked me to assist in this case after the decision to take legal action was made, and he did so because of the constitutional considerations in the case.

3. **The COVID-19 pandemic revealed that law related to emergency state powers in the United States lacked clarity until the United States Supreme Court provided guidance, especially when emergency state action restricted certain constitutional rights and liberties. One year into the pandemic, for example, the Court in *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) stated that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." The Court released this decision as the Spell case remained unresolved.**

   a. **Please describe how this decision, among others, impacted your approach to the Spell case.**

      Response: On April 1, 2020, the East Baton Rouge Parish District Attorney's Office filed bills of information against Pastor Mark Anthony Spell for alleged violations of the Louisiana governor's emergency declarations that had been issued in response to the Covid-19 pandemic and restricted the size of indoor gatherings. I was not involved in the decision to commence the prosecution against Pastor Spell, nor was I involved in drafting the governor's emergency declarations. The East Baton Rouge Parish District Attorney asked me to assist in this matter because it involved a number of constitutional issues. While the case against Pastor Spell presented important constitutional questions, on April 7, 2020, the United States Fifth Circuit stated that "all constitutional rights may be reasonably restricted to combat a public health emergency." *In re Abbott*, 954

F.3d 772, 786 (5th Cir. 2020), citing *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358 (1905), and in May 2020, the Supreme Court issued a decision in *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020), denying an application by a church – brought under the Free Exercise Clause – to enjoin a proclamation by the Governor of California which limited attendance at places of worship to 25% of building capacity or a maximum of 100 attendees in an effort to limit the spread of Covid-19. Chief Justice Roberts, concurring in the denial of the application for injunctive relief, concluded that these guidelines appeared to be consistent with the Free Exercise Clause of the First Amendment because "similar or more severe restrictions appli[ed] to comparable secular gatherings." *South Bay*, 140 S. Ct. at 1613 (Roberts, C. J., concurring) (quoting *Jacobson*, 197 U.S. at 38). The Chief Justice highlighted the fact that the California order only exempted or treated more leniently "dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods." *Id.* The East Baton Rouge Parish District Attorney's office understood Louisiana's gubernatorial proclamation to be similar to the California gubernatorial order that had been temporarily upheld by the Supreme Court in *South Bay*.

The trial court held a hearing on Pastor Spell's Motion to Quash the bills of information on January 25, 2021 and denied Pastor Spell's motion. Pastor Spell then filed an application for a supervisory review in the Louisiana First Circuit Court of Appeal.

On April 9, 2021, while Pastor Spell's case was pending in the Louisiana First Circuit, the United States Supreme Court decided *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), and stated, in part, "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.* "It 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.*

On May 24, 2021, the Louisiana First Circuit, which was aware of the substantive holding of *Tandon*, denied Pastor Spell's application for supervisory writs. Although *Tandon* had been issued by the time of its ruling, the First Circuit denied Pastor Spell's application for relief primarily on procedural grounds. Pastor Spell thereafter sought review in the Louisiana Supreme Court. On May 13, 2022, with the benefit of *Tandon*, the Louisiana Supreme Court ruled in Pastor Spell's favor and dismissed the charges against him.

b. Had the law been clearer at earlier stages in the pandemic, do you believe the State could have brought a case against Pastor Tony Spell?

Response: With the benefit of *Tandon*, the Louisiana Supreme Court quashed the bills of information against Pastor Spell. Given the Louisiana Supreme Court's

decision, which was informed by *Tandon*, I can only assume the Louisiana gubernatorial orders would have been drafted differently had *Tandon* been decided before charges were brought against Pastor Spell. As such, this prosecution would have been unnecessary because there would have been a clearer understanding, as the Court recognized in *Tandon,* 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." 141 S. Ct. 1294, 1296 (2021). Therefore, I believe if the law had been clearer in the early stages of the pandemic, this case would not have been brought against Pastor Spell.

4. **Pastor Tony Spell's attorney offered statements in support of your nomination to local media following your confirmation hearing. Do you believe, in light of the law at the time, that you handled your involvement with the case neutrally and fairly?**

Response: Yes. I believe I handled my work in that matter neutrally and fairly. It was gratifying to read the comments of my opposing counsel in the *Spell* case, Jeff Wittenbrink, on the day after my Senate confirmation hearing, who was quoted as follows: "In oral argument before the Louisiana Supreme Court, Mr. Papillion was refreshingly honest and candid with the tribunal in that he agreed with our side that 'strict scrutiny' must be applied in cases such as the Spell case." Mark Ballard, *Federal judicial nominee grilled on Spell prosecution*, The Advocate, April 20, 2023, at 3A. Mr. Wittenbrink additionally stated: "Many attorneys in a similar situation would stick with the game plan, but Mr. Papillion's honesty and integrity would not let him make a representation to the court that he did not believe himself." *Id.* It is also gratifying to know that several members of the Louisiana Supreme Court, who participated in the *Spell* case, including members of the majority, wrote letters in support of my nomination to the Senate Judiciary Committee. If I were fortunate enough to be confirmed as a United States District Judge, I would work very hard each day to apply the law, as articulated by the United States Supreme Court and the United States Fifth Circuit, in a fair and neutral manner to the facts of each case.

5. **Please detail any leadership position you hold or have held with a religious organization.**

Response: I have been an active member of Saint George Catholic Church in Baton Rouge, Louisiana for over twenty years. During that time, I have served on several committees, including the Finance Committee and the Committee for the construction of a new church that raised nearly $20 million. I regularly attend mass at Saint George, where I am a lector, eucharistic minister, and often lead prayers before mass.

Additionally, in 2019, I made a major financial contribution to St. George Church to build a prayer garden in memory of my late wife who had died of cancer the preceding year.

I also served on the Board of Trustees for the Academy of the Sacred Heart School, a Catholic school, in Grand Coteau, Louisiana, from 2019 until 2022.

In addition, I attend retreats at Manresa House of Retreats, a Jesuit retreat center in Convent, Louisiana, where I am also a "Co-Captain" in the coordination of retreats.

Finally, I served for several years on the board of Franciscan Diocesan High School, a Catholic High School in Baton Rouge, Louisiana.

Responses of Darrel J. Papillion
Nominee to the U.S. District Court for the Eastern District of Louisiana
to the Written Questions of Senator Thom Tillis

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

   Response: Yes.

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

   Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not believe judicial activism is appropriate. Judges must faithfully and impartially discharge their duties.

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

   Response: Impartiality is an expectation for a judge. The oath of judges requires them to administer justice without respect to persons, and do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all the duties incumbent upon them under the Constitution and laws of the United States. In addition, Canon 2 of the Code of Conduct for United States Judges expressly provides that a judge, "respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. In addition, Canon 3 provides that judges should perform the duties of the office fairly, impartially and diligently."

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

   Response: No.

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

   Response: Judges should decide cases based on the law and the evidence, and not based on their own personal views or feelings. If I were so fortunate as to be confirmed as a United States District Judge, I would work to treat all litigants fairly and with respect and courtesy, but my decisions and rulings would be based solely on the applicable law and evidence in a particular case.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment protects an individual right to keep and bear arms for lawful purposes, including to keep a usable handgun in the home for self-defense. *Id.* at 629. In *McDonald v. Chicago*, 561 US 742 (2010), the Supreme Court held the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states. The Court concluded rights, like the right to keep and bear arms, that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment. *In New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court further concluded that the Second Amendment's individual right to keep and bear arms for lawful purposes includes the right to carry a gun for self-defense outside the home. *See* id. at 2122. If I were so fortunate as to be confirmed as a United States District Judge, I would faithfully apply all Supreme Court and United States Fifth Circuit precedent related to the Second Amendment.

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

Response: The Supreme Court has stated that government officials performing discretionary functions are, as a general matter, granted qualified immunity and thus are "shielded 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." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Supreme Court and the United States Fifth Circuit have held that once a defendant properly pleads qualified immunity, the burden shifts to the plaintiff to establish that: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct. *Craig v. Martin*, 26 F.4th 699, 704 (5th Cir. 2022) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). If confirmed, I will faithfully follow and apply all binding precedent of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

9. 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: As a nominee to the United States District Court for the Eastern District of Louisiana, it is not appropriate for me to comment on a question of policy. My role, if confirmed, would be to faithfully follow and apply all binding precedent of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

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

Response: Please see my responses to questions 9 and 10.

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

Response: As a nominee to the United States District Court for the Eastern District of Louisiana, it is not my role to question whether the United States Supreme Court has properly decided the cases that are binding precedents. Rather, the proper role of a district judge in the Eastern District of Louisiana is to apply the binding precedents from the Supreme Court and Fifth Circuit. My role, if confirmed, would be to apply the law in a fair and neutral manner to the facts of the case at hand. Following this methodology, my obligation would be to follow Supreme Court and Fifth Circuit precedent regarding the proper method of analysis needed under the circumstance and regarding the sources to be consulted in conducting that analysis to achieve an outcome consistent with the rule of law.

12. Do you believe the current patent eligibility 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 to the United States District Court for the Eastern District of Louisiana, it is not appropriate for me to comment on a question of policy. My role, if confirmed, would be to faithfully follow and apply all binding precedent of the United States Supreme Court and the United States Fifth Circuit Court of Appeals.

13. 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: To the best of my recollection, I have not had the opportunity to handle any matters involving copyright law.

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

Response: To the best of my recollection, I have not had the opportunity to

handle any matters involving 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: To the best of my recollection, I have not had the opportunity to handle any matters involving intermediary liability for online service providers that host unlawful content posted by users.

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: To the best of my recollection, I have not had the opportunity to handle any matters involving free speech and intellectual property issues, including copyright.

14. 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 reported that 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: If confirmed, I would begin by looking to United States Supreme Court and Fifth Circuit precedent. If faced with a situation where there is no precedent on point, I would first look at the text of the statute itself, and I would seek to apply the statute based upon its plain and ordinary meaning, including any definitions within the statute. If the statutory text is clear and unambiguous, my analysis would end there. If the text was ambiguous, I would carefully consider canons of construction, persuasive precedent from other courts, and finally legislative history. The United States Fifth Circuit Court of Appeals has instructed that only "if the statute is ambiguous, we may look to the legislative history [] for guidance." *United States v. Orellana*, 405 F.3d 360, 365 (5th Cir. 2005). Regarding legislative history, the Supreme Court has explained that Committee Reports are "more authoritative than comments from the floor." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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 as a judge, I would faithfully follow binding precedent from the Supreme Court and Fifth Circuit when determining the role that advice and analysis of an agency such as the U.S. Copyright Office should have in any case I consider. This includes the analysis set forth in cases such as *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

When reviewing an agency's interpretation of a statute, courts apply a two-step process. The Court first determines "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43. Second, if Congress has not unambiguously expressed its intent regarding the precise question at issue, then the Court will defer to the agency's interpretation unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844. The United States Supreme Court has explained that "the possibility of deference can arise only if a regulation is genuinely ambiguous." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019).

In addition, the Supreme Court held recently there are "extraordinary cases" in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority. *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2595 (2022) quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-160 (2000). Under this body of law, known as the major questions doctrine, given both separation of powers principles and a practical understanding of legislative intent, the agency must point to "clear congressional authorization" for the authority it claims. *Id.*

An administrative rule interpreting the issuing agency's own ambiguous regulation may receive substantial deference. *Auer v. Robbins*, 519 U.S. 452, 461–463 (1997). So may an interpretation of an ambiguous statute, *Chevron*, 467 U.S. at 842–845, but only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States v. Mead Corp.*, 533 U.S. 218, 226–22 (2001). Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

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 to the United States District Court for the Eastern District of Louisiana, it is not appropriate for me to comment on a question of policy. If confirmed, I would apply United States Supreme Court and Fifth Circuit precedent to issues of copyright infringement.

15. 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 Questions 15(a) and 15(b): Judges are required to interpret the DMCA in the same manner as other federal laws. Please see my response to question 14(a) above regarding the general methodology for statutory construction. The United States Supreme Court has held that "[p]olicy considerations cannot override our interpretation of the text and structure of [a statute], except to the extent that they may help to show that adherence to the text and structure would lead to a result so bizarre that Congress could not have intended it." *Central Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164, 188 (1994).

16. 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 this practice.

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

Response: I have not conducted my own research regarding the issue of "judge shopping" or "forum shopping," and as such, I do not have an opinion on this issue. Moreover, as a judicial nominee, it would be inappropriate for me to comment on litigants' use of specific litigation strategies and/or procedural devices or the

practices of current federal district court judges. Cases in the Eastern District of Louisiana are randomly assigned, and there is currently no other active division in the Eastern District of Louisiana. These factors further reduce the risk of judge-shopping in that court. If confirmed, I would follow all binding United States Supreme Court and Fifth Circuit precedent concerning venue issues as well as all applicable procedural rules.

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

Response: Please see my response to question 16(a).

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?

Response: No, I do not believe this is ever appropriate conduct by a judge.

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

Response: Please see my answer to question 16(c). I commit to not engage in any type of behavior intended to attract a particular type of case or litigant.

17. 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: As a nominee to the United States District Court for the Eastern District of Louisiana, it is not appropriate for me to comment on a question of policy. See also my response to Question 16(a).

18. 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: As a nominee to the United States District Court for the Eastern District of Louisiana, it is not appropriate for me to comment on a question of policy. See also my response to Question 16(a).

PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

April 17, 2023

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 150 public interest and civil rights organizations, I write to support the confirmation of Judge Brendan Hurson to the United States District Court for the District of Maryland.

Judge Hurson has deep ties to the state of Maryland. Born in Washington, D.C., in 1977, he earned his J.D. with honors from The University of Maryland Francis King Carey School of Law in 2005. After law school, he clerked for the Honorable Margaret B. Seymour of the United States District Court for the District of South Carolina. At the conclusion of his clerkship, he joined Schulman, Hershfield, and Gilden, PA, in Baltimore, Maryland, as an associate. There, he handled a variety of complex civil and criminal litigation matters.

Judge Hurson has committed his career to public service, having worked in the Office of the Federal Public Defender in Baltimore for more than a decade. There, he defended individuals charged with federal felony and misdemeanor offenses, beginning at their initial appearance and continuing through their sentencing. His experience as a public defender gave him unique insights into the importance of equal justice for all, experience that will be invaluable on the federal bench. Further, the Maryland legal community has long recognized his dedication and expertise as a public defender. He was awarded the Honorable Mention, Public Service Law Network, National Pro Bono Publico Award, and the Fred Warren Bennett Defender Award, Office of the Federal Public Defender, District of Maryland.

Given his exemplary qualifications, Judge Hurson was appointed a magistrate judge for the U.S. District of Maryland in 2022. Additionally, Judge Hurson serves on two committees of the U.S. District Court for the District of Maryland: one that advises the court on issues related to the Criminal Justice Act panel and a second that advises the court on issues related to probation and pretrial services. Judge Hurson actively seeks to foster excellence in the next generation of the legal community, teaching Criminal Procedure and Written and Oral Advocacy at the University of Maryland Carey School of Law.

Judge Hurson has a demonstrated commitment both to the District of Maryland and to justice. His experience as a public defender will help diversify the federal bench, bringing a much-needed perspective to the courtroom. He is well suited to the federal bench and would make an exceptional addition to the District of Maryland. I urge you to support his confirmation.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks
President, Alliance for Justice

ACADEMY OF THE SACRED HEART

BERCHMANS ACADEMY OF THE SACRED HEART

Office of Head of School

April 14, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, S.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Yvonne Sandoz Adler, Head of School, at the Academy of the Sacred Heart and Berchmans Academy of the Sacred Heart in Grand Coteau, Louisiana. Our schools are members of the Network of Sacred Heart Schools under the guidance of the Society of the Sacred Heart.

I am writing this letter on behalf of Mr. Darrel Papillion who served on our Board of Trustees of our independent Catholic school under the auspices of the Religious of the Sacred Heart, a religious order. Mr. Papillion served on the Board of Trustees from 2019-2022. He diligently served our schools and provided needed support in our efforts to prepare students to become men and women of faith, character, and integrity.

Mr. Papillion is himself a gentleman of faith, character, and integrity. He possesses the personal and professional characteristics and credentials to serve as a judge in the Eastern District of Louisiana.

Thank you for considering this recommendation of a truly outstanding gentleman.

Sincerely,

Yvonne Sandoz Adler

Yvonne Sandoz Adler, Ph.D.
Head of Schools

PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

April 17, 2023

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing more than 150 public interest and civil rights organizations, I write to support the confirmation of Darrel James Papillion to the United States District Court for the Eastern District of Louisiana.

A seasoned plaintiff's lawyer, Mr. Papillion has spent his career representing injured workers, advocating for survivors of sex abuse, and fighting voter disenfranchisement in his home state of Louisiana. Growing up in the rural community of St. Landry Parish, Mr. Papillion learned about the justice system while working in the parish courthouse and Opelousas City Hall as a student. He went on to earn degrees from Louisiana State University and A&M College and the Paul M. Herbert Law Center at Louisiana State University in 1994.

After law school, Mr. Papillion launched a career committed to helping plaintiffs access justice. In 1999, Mr. Papillion joined Walter, Thomas, Papillion, Cullens, LLC, where he was named a partner in 2001. Notably, he handled numerous civil cases on behalf of workers injured or killed on the job and served as co-counsel in a recent voting rights case. In 2020, thanks to his reputation as a seasoned attorney and dedicated member of the community, Mr. Papillion was appointed Special Prosecutor for the East Baton Rouge District Attorney's Office to help the state manage emergency laws passed to combat the COVID-19 pandemic.

A lifelong Louisianan, Mr. Papillion is deeply involved in his community. He is active in the Louisiana State Bar Association (LSBA), serving as Co-Chair of the LSBA Continuing Legal Education Committee. Mr. Papillion also served on the board of the Louisiana Bar Foundation, sitting on numerous committees including the Ethics Advisory Committee, the Legislation Committee, and the Rules of Professional Conduct Committee before serving as president from 2016 to 2017. His community involvement beyond the legal profession includes his service on the Board of Directors for the Louisiana Art & Science Museum.

Well-known and respected in Baton Rouge, Mr. Papillion was named one of the Top 40 Under 40 by the Baton Rouge Business Report and has been named a Louisiana Super Lawyer annually since 2006. In 2019, Mr.

Papillion was named the Lawyer of the Year in the Baton Rouge area for his work in personal injury litigation. A seasoned litigator, Mr. Papillion has dedicated his professional life to serving the people of Louisiana as a plaintiff's attorney—an area of the legal profession that is underrepresented in our federal judiciary.

Mr. Papillion's temperament, his commitment to public service, and his legal accomplishments all prove he is well suited to the federal bench and would make an exceptional addition to the Eastern District of Louisiana. I urge you to support his confirmation.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks
President, Alliance for Justice

BARRASSO · USDIN · KUPPERMAN
FREEMAN & SARVER, L.L.C.

JUDY Y. BARRASSO
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Our File No.:
0622-0001

April 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Darrel Papillion /United States District Court
for the Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

I am past President of the New Orleans Bar Association and the International Society of Barristers and a practicing attorney for over 40 years, including actively practicing in the Eastern District of Louisiana from the beginning of my career. I write to urge you to strongly consider Darrel Papillion for nomination to the United States District Court for the Eastern District of Louisiana.

I have known Darrel personally for over ten years primarily through our work in the legal profession and participation in bar and other professional organizations. We have worked together as adversaries and co-counsel on complex litigation matters. And, we both are members of the International Society of Barristers (ISOB) and American College of Trial Lawyers (ACTL). Both are honor societies of select outstanding trial lawyers from across the world who are chosen by their peers after consideration of recommendations from the nominee's colleagues and local judges on the basis of excellence and integrity in advocacy.

From these many experiences, I am personally familiar with Darrel's astute legal abilities and skills, and his reputation inside and outside of Louisiana as an outstanding lawyer. I have

experienced firsthand Darrel's astute legal abilities and skills, which supports his well-deserved reputation as one of Louisiana's finest lawyers. This conclusion is corroborated by Darrel's selection as a member of the ISOB and ACTL. Darrel's elections in both of these select organizations demonstrate that judges and lawyers throughout Louisiana and the United States hold him in the highest regard among trial lawyers and believe him "to have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality". ACTL Mission Statement.

In addition to astute legal skills, Darrel possesses all the attributes of a good judge, including patience and good humor, a sense of fairness and concern about all parties, high intelligence, and an extraordinary work ethic. Darrel's work as an advocate and adjunct law professor at LSU has well prepared him for a judicial role.

For these reasons, I believe Darrel would be an excellent addition to the bench of the United States District Court for the Eastern District of Louisiana.

I am happy to provide any additional information you may need regarding Darrel's experience and qualifications.

I thank you for your consideration.

With kind regards,

Sincerely,

Judy Y. Barrasso

JYB/mao

SIMON, PERAGINE, SMITH & REDFEARN, L.L.P.

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** ALSO ADMITTED IN FLORIDA
‡ ALSO ADMITTED IN GEORGIA
‡‡ ALSO ADMITTED IN MISSISSIPPI
× ALSO ADMITTED IN SOUTH DAKOTA
×× ALSO ADMITTED IN TEXAS

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Darrel J. Papillion to Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham,

My name is David F. Bienvenu, a practicing attorney in New Orleans. I take this opportunity to wholeheartedly urge the appointment of Darrel J. Papillion to serve as a United States District Judge for the Eastern District of Louisiana.

I have known Darrel for many years, in his roles as opposing counsel, as a mediator in litigation in which represented one of the parties, and as a fellow past president of the Louisiana State Bar Association. Darrel is a man of keen intellect, solid work ethic and of the highest integrity to which our Profession aspires. I know he would be an invaluable asset to a fair and impartial Eastern District Bench.

If I can answer any questions you may have, please do not hesitate contact me.

Sincerely,

David F. Bienvenu

DFB/cpa

01224324-1

Kim M. Boyle
6116 Milne Blvd.
New Orleans, Louisiana 70124

April 14, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Darrel J. Papillion's Nomination for Judge of the Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

My name is Kim M. Boyle and I have been a lawyer in New Orleans, Louisiana since 1987. I am submitting this letter on behalf of Darrel J. Papillion, as I believe he will be an excellent judge in the Eastern District Court of Louisiana.

I have known Darrel for many years, primarily through the Louisiana State Bar Association ("LSBA") but also through various cases. I was the second African American to serve as President of the LSBA, and Darrel was the third, and he did a phenomenal job as LSBA President.

Darrel is an excellent lawyer, well respected and universally liked by the bench and bar. No one has or will say anything negative about Darrel because there is nothing negative to say. Not only is he one of the best lawyers in the state, he is also one of the best individuals you will ever meet. Darrel has great personal integrity, professionalism and ethics.

If I can be of assistance with anything, please do not hesitate to contact me.

Very truly yours,

Kim M. Boyle

CTB

cc: Nathan_Williams@Kennedy.senate.gov

PD.41691621.1

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RONALD L. WILSON [1]

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April 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

By way of introduction, I am Lawrence J. Centola, Jr. and have been a practicing attorney in New Orleans for fifty-one years. I am writing in support of Darrel J. Papillion, who has been nominated to become a judge for the Easter District of Louisiana, a court where I practice.

I first met Darrel many years ago when he became a lawyer with a Baton Rouge Law Firm where my high school classmate and good friend was a member. I later had the opportunity to work with him when I chaired and he vice-chaired the Alumni annual fund drive for our alma mater, the LSU Law School.

Unfortunately, we both experienced a personal life tragedy during which we communicated on a personal level.

As he is a past president of the Louisiana Bar Association, I know him to have the highest moral, ethical, and professional standings, and will be an outstanding addition to that bench.

Please feel free to have any of your staff contact me.

Very Truly Yours,

Lawrence J. Centola, Jr.

mb&c
Martzell, Bickford & Centola APC
Attorneys at Law

John R. Martzell (1937-2007)
Scott R. Bickford *
Lawrence J. Centola, III
Neil F. Nazareth
Spencer R. Doody
Jason Z. Landry
Jeremy J. Landry

Byron J. Jeanice
Office Administrator

* also licensed in
Texas and Colorado

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Lawrence J. Centola, III. I have been a lawyer in New Orleans, Louisiana since 2001 and I practice in front of the judges on the Eastern District of Louisiana on a regular basis.

I am currently the Treasurer of the New Orleans Chapter of the Federal Bar Association.

I'm writing this letter on behalf of Mr. Darrel J. Papillion. I was excited when I read that Darrel was nominated to become a judge on the Eastern District of Louisiana bench.

I have known Darrel for many years. He was a guest lecturer when I was in law school at Louisiana State University. I have served with him on various committees and boards in conjunction with the Louisiana State Bar Association.

Darrel is well respected and universally liked by the bench and bar. One would be hard pressed to find a lawyer in this state that had anything negative to say about Darrel. The New Orleans legal community looks forward to and is hopeful for his confirmation as his legal mind will be a great asset to the bench and the Louisiana public.

If I can be of assistance with anything, please do not hesitate to contact me.

Sincerely yours,

MARTZELL, BICKFORD & CENTOLA

Lawrence J. Centola. III

LJC,III/ll

cc: Nathan_Williams@Kennedy.senate.gov

SCOTT J. CRICHTON
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April 12, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Darrel J. Papillion, Candidate for Article III Nomination/
Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

I currently serve as an Associate Justice of the Louisiana Supreme Court and previously served for 24 years as a Louisiana state district court judge in Caddo Parish. For five years, I have served as an adjunct faculty member of Tulane Law School, teaching courses in appellate advocacy and advanced legal ethics, and for the past 30 years I have regularly taught continuing legal education courses for lawyers and judges. Finally, I am a Republican and a conservative jurist. It is through this lens of judge and teacher that I write to recommend Darrel J. Papillion for your consideration as a judge for the Eastern District of Louisiana.

As reflected by his curriculum vitae, Darrel is academically accomplished, having achieved multiple scholarly recognitions during his undergraduate studies at Louisiana State University and his time at Paul M. Hebert Law Center, Louisiana State University. However, the level of passion for the law that Darrel has demonstrated since his formal education is truly remarkable. Not only has Darrel excelled in the practice of law, his two-decade experience as an adjunct

professor of law has made an impression on many a student. In fact, one of my sons, also a graduate of LSU Law Center, enrolled in Darrel's Advanced Appellate Advocacy course. When I inquired with my son about Darrel during the drafting of this recommendation, he remarked that Darrel was one of the best – and most memorable – instructors of his law school experience. Such an accolade from my son is a rarity!

In addition to his dedication to educating law students, Darrel has been a consistent contributor and instructor for many continuing legal education seminars for lawyers each year. The legal community has also benefitted greatly from Darrel's scholarship through his numerous published works and his passionate service as officers in both the State and his local Bar Associations. His tremendous reputation is unmatched in our community; he is a leader and role model for many.

Outside of the law, Darrel's community and civic service, especially with the Rotary Club, is likewise noteworthy. Even with his incredible workload, Darrel prioritizes quality time with family, which I can personally note is paramount in the balance of a judicial candidate.

I can confidently say that Darrel Papillion's impeccable credentials and accomplishments qualify him for service in the federal judiciary. He is an extremely worthy candidate for the federal bench and I recommend him without hesitation. I appreciate your consideration of my thoughts on Darrel, as I hold him in the highest regard. Please contact me at scrichton@lasc.org or scott@justicecrichton.com or my cell phone (318)510-8000 should you have any questions.

Sincerely,

Scott J. Crichton

PERRY ✦ DAMPF
DISPUTE SOLUTIONS

April 10, 2023

Senator Richard J. Durbin
Senator Lindsey Graham

Dear Senators Durbin and Graham:

My name is Robert S. Dampf. It is with great pleasure I write this letter in support of Mr. Darrel J. Papillion, a nominee for a judgeship in the Eastern District of Louisiana. I have been a practicing lawyer in Louisiana since 1979. I have served as a full-time mediator since 1996 and have worked with Mr. Papillion on numerous occasions. He is an outstanding lawyer, respected across the state as evidenced by his many professional accolades. I absolutely vouch for his personal integrity, knowledge of the law and ethics.

Do not hesitate to reach out if I can be of further assistance.

Sincerely,

Robert S. Dampf

RSD/rmh

721 GOVERNMENT STREET, SUITE 102 BATON ROUGE, LA 70802 ✦ PHONE 225.389.9899 ✦ FAX 225.389.9859 ✦ WWW.PERRYDAMPF.COM

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JAMES J. DAVIDSON, JR.
(1904-1990)
RICHARD C. MEAUX,SR.
(1921-2008)
JAMES J. DAVIDSON,III
V. FARLEY SONNIER
(1942-1987)
JOHN E. MCELLIGOTT,JR.†
PHILIP A. FONTENOT †
KYLE L. GIDEON †
THEODORE G. EDWARDS,IV †
CHRISTOPHER J. PIASECKI †
KEVIN M.DILLS †
ROBERT D. FELDER †
JAMI L. ISHEE †*

JAMES H. DOMENGEAUX, JR.

† A PROFESSIONAL LAW CORPORATION
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OF COUNSEL
ROBERT R. MCBRIDE, RET.
ARTHUR D. MOUTON

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April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

I have just learned that Mr. Darrel J. Papillion has been nominated to become a United States District Judge for the Eastern District of Louisiana.

I feel that it is vitally important to move forward with nominations of individuals such as Mr. Papillion and ultimately confirming his nomination for the Eastern District of Louisiana.

As a former President of the Louisiana State Bar Association, I have had the privilege to be involved with Mr. Papillion for many years both professionally and socially, I feel that it is important that I give to you my highest recommendations for his confirmation.

He is, in my opinion, a person of the highest integrity, a man devoted to his family and one who will have the wisdom and enlightenment to garner respect from those appearing before him. He will be a tremendous asset to our esteemed Judiciary.

Thank you for the opportunity to be a part of the confirmation process and if I can be of any assistance, please do not hesitate to advise.

Sincerely,

DAVIDSON, MEAUX, SONNIER, MCELLIGOTT, FONTENOT, GIDEON & EDWARDS, LLP

James J. Davidson, III
JJDIII/cba

S. GUY deLAUP
A PROFESSIONAL LAW CORPORATION
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April 12, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Nathan Williams
(via email: nathan_williams@kennedy.senate.gov)

Dear Chairman Durbin, Ranking Member Graham and Mr. Williams:

I am writing this letter on behalf of Darrel J. Papillion who has been nominated to become a Federal District Judge for the Eastern District of Louisiana.

I have been practicing law in the New Orleans, Louisiana metropolitan area, since 1981. I have known Darrel since approximately 2004. Since he was a young lawyer, Darrel had been involved in many Louisiana State Bar activities, so during my tenure as President of the Louisiana State Bar during 2007-2008, I appointed Darrel to our Board of Governors. Darrel remained active in Louisiana Bar Association activities and as a result of his work and dedication to our Bar, he was elected President of our Bar during 2016-2017. He served admirably in that position during his tenure.

Darrel is a seasoned trial attorney and has become a well respected litigator, not only in southeast Louisiana, but in the entire state. Darrel also has an excellent representation for both ethics and professionalism, among both the Bench and Bar in Louisiana. He has volunteered and given a lot to the law profession in Louisiana.

I am confident that Darrel possesses the scholarship, integrity and professionalism to serve in the Federal Judiciary. I also think that Darrel's personality and demeanor will contribute to the judicial temperament necessary for him to serve as District Judge.

With best regards, I am

Sincerely yours,

S. GUY deLAUP

SGD/ms

LSU Law

Faculty

April 17, 2023

The Honorable Richard Durbin, Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Thomas C. Galligan, Jr. and I am a chaired law professor at LSU's Paul M. Hebert Law Center and LSU President Emeritus. I have also served as the Dean of the LSU Law Center; Dean of the University of Tennessee College of Law; President of Colby-Sawyer College, and President of Louisiana State University. I am also lucky to have been one of Darrel J. Papillon's professors when he was in law school.

Darrel was a wonderful student and a delightful person. He was an exemplary law student and he has been an accomplished, ethical, and successful practitioner. All of us at LSU's Paul M. Hebert are proud to say: Darrel Papillion is an alumni of our law school. Darrel has been an outstanding lawyer and a great public servant. Among his many accomplishments, he has been President of the Louisiana State Bar Association, President of the Baton Rouge Bar Association.

I am very excited about his nomination to become a district judge of the Eastern District of Louisiana. Darrel will be a credit to the judiciary and our Nation. He will be prepared, fair, ethical, and balanced. If I can be of any assistance, please let me know.

Sincerely,

Thomas C. Galligan, Jr.
Dodson & Hooks Endowed Chair in Maritime Law, LSU Law Center
James Huntington and Patricia Kleinpeter Odom Professor of Law, LSU Law Center
LSU President Emeritus

Justice James T. Genovese
386 Roxsan Road
Sunset, Louisiana 70584
jimmy@justicegenovese.com

April 11, 2023

Senator Dick Durbin, Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin:

My name is James "Jimmy" Genovese. I am an associate justice on the Louisiana Supreme Court, having been in the legal profession for over 48 years and having served as a district judge in Louisiana for 10 years, an appellate court judge for 12 years, and as an associate justice in my 7th year on the Louisiana Supreme Court.

I write this letter in support of Mr. Darrel J. Papillion. Mr. Papillion and I grew up in St. Landry Parish. I have known him and his family for decades. I personally witnessed him growing up, getting educated, and becoming an attorney. What a fine young man and attorney he has turned out to be.

"Darrel," as we know him, didn't have the luxury of his peers growing up. He experienced obstacles and overcame them with success, respect, and dignity. He comes from a good, hard-working, moral and ethical family, and he has done quite well for himself. He is highly thought of, experienced, and is well-respected in the legal profession.

I am so proud of Darrel and his nomination for a federal district judgeship in New Orleans, Louisiana. He is bright, conscientious, well-educated, and a top-notch attorney with an exemplary work ethic. I highly recommend him for this appointment. If given the chance, he will serve the people and the federal judiciary admirably.

I will be more than happy to render any additional information you may want or need. My email address is jgenovese@lasc.org and my cell number is (337) 945-8343.

Sincerely,

James T. Genovese

James T. Genovese, Justice
Louisiana Supreme Court

GIBSON
LAW
PARTNERS

ATTORNEYS AT LAW

April 10, 2023

Mr. Nathan Williams VIA EMAIL: Nathan_Williams@Kennedy.senate.gov
Chief Counsel to U.S. Senator John N. Kennedy
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

My name is James H. Gibson. I have been a lawyer in Lafayette, Louisiana since 1984.

I'm writing this letter on behalf of Mr. Darrel J. Papillion. I was delighted to learn that Darrel was nominated to become a judge of the Eastern District of Louisiana.

I have known Darrel for many years. I have litigated cases with him, with each of us representing separate parties. Due to Darrel's expertise in litigation, I have retained him as an expert in cases.

Darrel also gives significantly to the legal community. He is a frequent speaker at seminars on topics ranging from ethics to federal court procedure to litigation strategy.

Darrel is an excellent lawyer, well respected and universally liked by the bench and bar. Darrel's reputation is beyond reproach. He has the highest standards that one could ask for as an attorney or a judge. With Darrel's vast experience in litigation he will immediately be an asset to the Federal Judiciary.

If I can be of assistance with anything, please do not hesitate to contact me.

With kind regards, I remain,

Very truly yours,

James H. Gibson
Direct Dial # 337-761-6025
Direct Fax # 337-761-6061
Email: jimgibson@gibsonlawpartners.com

Thomas M. Hayes, III
2509 Myrtle Street
Monroe, LA 71201

April 14, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Durbin and Senator Graham,

I have been a practicing attorney and member of the Louisiana State Bar Association since 1977. I have served as a council member and officer of the Louisiana State Law Institute for many years.

Over the last twenty years, I have been privileged to know Mr. Darrel J. Papillion, who has been nominated by President Biden to serve as United States District Judge of the Eastern District of Louisiana. My contacts with Darrel began when he and his firm represented parties adverse to parties represented by me and my firm; they continued thereafter on a regular basis as I encountered Darrel through his many volunteer leadership roles in the Louisiana State Bar Association, culminating in his service as its President. My contacts with Darrel continue to this day through his service as a council member of the Louisiana State Law Institute.

Darrel long ago earned and throughout this career has retained the respect of bench and bar for his ethics, professionalism, knowledge of the law and talent as a courtroom lawyer, and for his dedication to the improvement of the legal profession and the law of Louisiana, evidenced in no small part by his long service as teacher at LSU's Paul M. Hebert Law Center, as lecturer at meetings of multiple bar associations, and more recently as a council member of the Law Institute.

I urge the Committee to recommend Darrel's confirmation as United States District Judge. If I can be of assistance regarding Darrel, please contact me.

Sincerely yours,

Thomas M. Hayes, III

cc: Nathan_Williams@Kennedy.senate.gov

TIMOTHY E. PUJOL
ASHLEY D. TADDA

PUJOL | IRWIN
ATTORNEYS AT LAW

BARBARA L. IRWIN*
LANDYN A. GAUTREAU

April 11, 2023

Via Email
Nathan Williams
Chief Counsel
to U.S. Senator John N. Kennedy
Russell Office Building

Dear Mr. Williams:

My name is Barbara L. Irwin, I have been a lawyer in the Baton Rouge, Louisiana area since 2002.

This letter is provided to you on behalf of Mr. Darrel J. Papillion and his nomination to become a district judge at the Eastern District of Louisiana.

Mr. Papillion is well known in our area as an excellent lawyer. He has practiced with great integrity and the highest of ethics. He has been a part of a very well-respected firm, the Walters, Papillion, Thomas, Cullens, LLC firm in Baton Rouge for a number of years. Mr. Papillion possesses the appropriate temperament that will serve him well if confirmed for the District Court seat. The Eastern District would be well served to have Mr. Papillion on its bench.

If there is additional information I could provide, please do not hesitate to contact me.

Sincerely,

PUJOL IRWIN, LLC

Barbara L. Irwin

BLI/jmd

*also licensed in Maryland

12320 LA HIGHWAY 44, SUITE 4C, GONZALES, LA 70737 | P. 225-644-0607 | F. 225-644-1688

KEAN | MILLER LLP

JAY M. JALENAK, JR., PARTNER
PH 225.382.3438 DIRECT FAX 225.215.4038
JAY.JALENAK@KEANMILLER.COM

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Appointment of Darrel J. Papillion as Judge,
Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

I am an attorney, and I have practiced in the State of Louisiana since October 1990. I am writing this letter in support of the nomination of Mr. Darrel J. Papillion as judge in the Eastern District of Louisiana.

I have had the opportunity to represent clients with Darrel as opposing counsel. Additionally, I have had the pleasure to serve with Darrel on the board of the Baton Rouge Bar Association. He is an excellent attorney and an admirable person. His experience and demeanor certainly merit the nomination and his confirmation. Darrel would serve the Court with integrity, professionalism, and superior legal expertise.

I strongly support this nomination and confirmation.

Very truly yours,

Jay M. Jalenak, Jr.

JMJ

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Post Office Box 3513 | Baton Rouge, LA 70821
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WILLIAM C. HELM*
GREGORY KENT MOROUX, JR.
SALLIE C. DUPONT
BRIAN W. HARRELL†
DEVON B. MCKNIGHT
KOLBY P. MARCHAND
MAHALIE LEFRANC KYZAR
BRENT E. KINCHEN - OF COUNSEL
MYRON A. WALKER, JR. - OF COUNSEL

* ALSO ADMITTED IN MISSISSIPPI
† ALSO ADMITTED IN TEXAS

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BATON ROUGE, LA 70809

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April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Brent Kinchen. I have been in practice in Baton Rouge since 1979. I am a Republican and many would consider me to be very conservative.

I'm writing this letter on behalf of Mr. Darrel J. Papillion. I was delighted to learn that Darrel was nominated to become a judge of the Eastern District of Louisiana.

I have known Darrel for many years. We have had 4 to 5 jury trials over the years I have known Darrel. Even though we have been adversaries in all the cases we have had we developed a close friendship. As I recall in our last jury trial, we had only one objection during the entire trial.

Darrel is an excellent lawyer, well respected and universally liked by the bench and bar. Not only is he one of the finest lawyers in the state, he is also one of the finest people you could ever meet. I know him to be a man of great personal integrity, professionalism, and ethics.

I would expect that as a judge he would rule on the facts and the law and not for any political reason. He will be a fine judge that is respected by all.

If I can be of assistance with anything, please do not hesitate to contact me.

Sincerely,

Brent Kinchen

Brent E Kinchen

Manresa House of Retreats
P.O. Box 89
Convent, Louisiana 70723-0089

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Father Leonard Kraus, S.J. I am Associate Director of Manresa House of Retreats in Convent, Louisiana. I am writing to recommend **Mr. Darrel Papillion**, who has been nominated as a Judge for the Eastern District of Louisiana.

Manresa House of Retreats is a place where those who come have the opportunity to spend some days in reflection and prayer as they seek to deepen their commitment to their call to service of God and their calling in life. Darrel has made retreats here for many years, and in that context, I have come to know him as a man of integrity and commitment to the good of all those he serves and works with. I know him to be a loving and dedicated father and friend to many in the community.

It is an honor to recommend **Darrel Papillion** to you and I can assure you that, as a man of such honesty and integrity, he will serve well as Judge of this Court. Thank you for the opportunity to make this recommendation. Please feel free to contact me if you have further questions or if I can be of further help or assistance.

Sincerely,

Leonard E. Kraus, S.J.

Leonard E. Kraus, S.J.
krausle@slu.edu
(314) 750-7948

KUTCHER TYGIER & LUMINAIS, LLP
Attorneys at Law
A Limited Liability Partnership

Robert A. Kutcher
Partner
(504) 830-3820 Direct
(504) 836-9540 Fax
rkutcher@nolacounsel.com

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

My name is Robert A. Kutcher. I have been a lawyer in New Orleans, Louisiana since 1976. Over the years, I have appeared before many judges.

I am writing this letter on behalf of Mr. Darrel J. Papillion. I am pleased that Darrel was nominated to become a judge of the Eastern District of Louisiana. I have known Darrel for many years. We have been adverse to each other in litigation, and we served in multiple capacities together in the Louisiana State Bar Association. Darrel was President from 2015-2016, and I was President from 2019-2020.

Darrel is an excellent lawyer, well respected and universally liked by the Bench and Bar. Not only is he one of the finest lawyers in the state; he is also a fine person. I know him to be a man of great personal integrity, professionalism and ethics. He would be an excellent jurist and a fine addition to the Eastern District of Louisiana Bench.

If I can be of assistance with anything, please do not hesitate to contact me.

Sincerely,

Robert A. Kutcher

cc: Nathan_Williams@Kennedy.senate.gov

C. G. Norwood, Jr.

5421 St. Charles Avenue – 5A
New Orleans, Louisiana 70115

Monday, April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Judicial Nomination
Darrel Papillion

Dear Chairman Durbin and Ranking Member Graham,

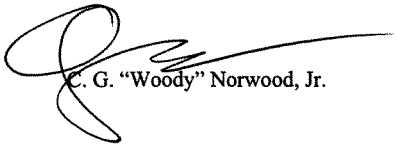
My name is Colvin G. Norwood, Jr, but I'm better known as "Woody." I'm a trial lawyer with over 50 years' experience. I write this letter in support of Darrel Papillion's nomination to the bench of the Eastern District of Louisiana. In my opinion he will be an outstanding judge. Let me explain.

Twenty-eight years ago – after completing a clerkship with Justice Kitty Kimball of the Louisiana Supreme Court – Darrel joined the McGlinchey firm in its New Orleans office. He began his private practice as a litigation associate and was assigned to assist me in an active trial practice, primarily representing defendants in product liability cases in Louisiana and elsewhere in the Southeast. For almost five years I worked alongside him and watched as he developed into an outstanding advocate. In addition to his firm grasp of legal principles he had an uncanny poise and ability to relate to Judges, jurors, adversaries, clients, co-workers – just about everyone. He did not shirk the hard work of case preparation. In fact, he seemed to like it. In every circumstance, both legal and social, he acted with unquestioned honesty, integrity, and good faith. Having enjoyed many conversations with Darrel over the years, I believe his character reflects the best qualities of the people he grew up with in the very small community of Swords, not far from Opelousas, Louisiana.

A sad day it was in February 1999 when Darrel came into my office to say that he felt the need to move to Baton Rouge, and to try his hand on the other side of the "v." He joined a smaller firm, his practice flourished, and he became – literally – a lawyer's lawyer, and even a judge's lawyer.

I' m sure you are acquainted with Darrel's resume. It speaks for itself. And I suspect you will receive many endorsements from every quarter of the bar in the Eastern District and beyond. I offer this personal note to explain my enthusiasm for his nomination and ultimate confirmation.

Respectfully,



C. G. "Woody" Norwood, Jr.

CGN/bm

LONG LAW FIRM

BATON ROUGE • WASHINGTON, DC

April 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Linsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Michael A. Patterson. I practice law in Baton Rouge Louisiana as a member of Long Law Firm, LLP. I have been a lawyer since 1971.

I am pleased to write this letter on behalf of the nomination of Darrel Papillion to become a Judge in the Eastern District of Louisiana. I have known Darrel since the mid-1990s when he was a law clerk for a Justice on the Louisiana Supreme Court. He then worked as a lawyer at McGlinchey Stafford in its New Orleans Office for several years. He then became associated with a firm in Baton Rouge where he has been practicing since 1999.

I have had numerous opportunities to observe Mr. Papillion professionally and can unequivocally state he is an extremely talented lawyer who is well respected for his abilities and professionalism. He has devoted significant time to giving back to the profession including serving as President of the Louisiana State Bar Association.

I can wholeheartedly, without any hesitation, state that, if confirmed, he will be an excellent addition to the Bench.

Very truly yours,

Michael A. Patterson

MAP/ak

Long Law Firm, LLP 1800 City Farm Drive, Building 6 Baton Rouge, LA 70806
Telephone: (225) 922-5110 Telefax: (225) 922-5105
www.LongLaw.com

PERRY DAMPF
DISPUTE SOLUTIONS

April 14, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

My name is John W. Perry, Jr. I have been a lawyer in Baton Rouge, Louisiana since 1978. I am the founding member of both my law firm (Perry, Balhoff, Mengis & Burns, LLC) as well as my mediation/arbitration firm (Perry Dampf Dispute Solutions).

Please accept this letter on behalf of Mr. Darrel J. Papillion. I understand that Darrel has been nominated to become a judge of the Eastern District of Louisiana, and I am happy to offer my unconditional endorsement.

I have had considerable contact with Darrel for over 25 years and have followed his entire career closely. Interestingly, as you know from his resume, he has been affiliated with Perry Dampf Dispute Solutions for a number of years. Accordingly, I have observed his unwavering commitment to his family, his Church, his clients and the profession. He is one of the finest and most respected members of our Bar. He has enjoyed great success while at the same time maintaining the highest standards of professionalism and ethics. I know of no judge or lawyer who does not share the same opinion of him. He is an outstanding selection and truly meets all the standards one would expect for a federal judgeship.

Please reach out to me directly if I can answer any questions or provide any additional information you may deem helpful.

Thanking you for your usual consideration, and with kindest personal regards, I remain,

Sincerely yours,

John W. Perry, Jr.

John W. Perry, Jr.

JWPjr/sbl

cc: Nathan_Williams@Kennedy.senate.gov

721 Government Street, Suite 102, Baton Rouge, LA 70802 • Phone (225) 389-9899 • Fax (225) 389-9859
www.perrydampf.com

PIPES • MILES • BECKMAN LLC

H. MINOR PIPES, III
DIRECT DIAL: (504) 322-7101
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E-MAIL: mpipes@pipesmiles.com

April 10, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is H. Minor Pipes, III. I have been a lawyer in New Orleans, Louisiana since 1996.

I'm writing this letter on behalf of Mr. Darrel J. Papillion. I was delighted to learn that Darrel was nominated to become a judge of the Eastern District of Louisiana.

I have known Darrel for many years. We attended LSU Law School where he graduated in 1994. He worked with my wife as a paralegal to start his career and he and I have had numerous cases together on the same side and opposing each other. I have also worked closely with him during our years of service as both ex-Presidents of the Louisiana State Bar Association.

Darrel is an excellent attorney, well respected and universally liked by the bench and bar. Not only is he one of the finest lawyers I know, but he is also one of the finest persons you could ever meet. I know him to be a man of great personal integrity, professionalism and ethics.

If I can be of assistance with anything, please do not hesitate to contact me.

Sincerely,

H. Minor Pipes, III

cc: Nathan Williams
Nathan_Williams@Kennedy.senate.gov

RICHARD C. STANLEY

STANLEY REUTER
THORNTON ALFORD LLC

909 Poydras Street, Suite 2500
New Orleans, Louisiana 70112
Telephone: 504-523-1580
Facsimile: 504-524-0069

April 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

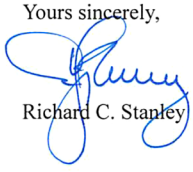
Please let this letter serve as my statement of support for the nomination of Darrel Papillion for a federal district court judgeship in the Eastern District of Louisiana.

I have been a practicing lawyer in Louisiana for 39 years, and have known Darrel for more than 20 years, both in connection with litigation and in connection with volunteer activities for the Louisiana State Bar Association. Not only is Darrel a very talented attorney, he has an excellent reputation for honesty and fairness in his dealings with opposing counsel and the judiciary. Darrel also has taken much time from his successful career to engage in projects dedicated to the improvement of the legal profession and access to justice for Louisiana citizens who are underserved by our profession.

In short, Darrel has the outstanding record and qualifications that all citizens want in a federal judge. I have no doubt that he will act fairly and impartially for all citizens and be a credit to our federal bench.

With kindest regards, I am

Yours sincerely,



Richard C. Stanley

RCS/byk

Edward J. Walters, Jr. *
Darrel J. Papillion
David Abboud Thomas
J. Cullens * †
Andrée Matherne Cullens
Hayden A. Moore
Jennifer Wise Moroux
Reneé C. Crasto
S. Layne Lee

*Board Certified in Civil Trial Advocacy, NBTA
†American Board of Professional Liability Attorneys

WALTERS
PAPILLION
THOMAS
CULLENS
ATTORNEYS AT LAW

Special Counsel
J. Neale deGravelles

Of Counsel
John S. McLindon, LLC
Michelle McCune Sorrells, LLC

Colleen C. Milfelt, Business Manager

P: 225.236.3636
F: 225.236.3650
LAWBR.NET

April 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Edward J. Walters, Jr. I have been a lawyer in Baton Rouge, Louisiana since 1976.

I'm writing this letter on behalf of Mr. Darrel J. Papillion. I was delighted to learn that Darrel was nominated to become a judge of the Eastern District of Louisiana.

I have known Darrel for many years. I taught him at the LSU Law School where he graduated in 1994. In 1999 our firm needed to hire an associate and I contacted Darrel. He and I have been practicing law together since 1999.

Darrel is an excellent lawyer, well respected and universally liked by the bench and bar. Not only is he one of the finest lawyers in the state, he is also one of the finest persons you could ever meet. I know him to be a man of great personal integrity, professionalism and ethics.

If I can be of assistance with anything, please do not hesitate to contact me.

Edward J. Walters, Jr.
Walters, Papillion, Thomas, Cullens LLC
12345 Perkins Road
Baton Rouge, Louisiana 70810

LSU Law

Office of the Dean

April 11, 2023

The Honorable Richard Durbin
Chairman, Senate Committee on the Judiciary
United States Senate
711 Hart Senate Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member, Senate Committee on the Judiciary
United States Senate
711 Hart Senate Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

I write to you today on behalf and in support of Mr. Darrel J. Papillion, recently nominated to serve as a district judge in the Eastern District of Louisiana. His nomination provides your Committee with the opportunity to meet—and then vote to recommend confirmation of—one of the most outstanding lawyer-leaders in Louisiana.

I am a professor at and the interim dean of the Louisiana State University Paul M. Hebert Law Center. I became acquainted with Darrel, not to mention his sterling reputation, not long after I joined the faculty of the Law Center in 2005. In addition to being an alumnus of the LSU Law Center, Darrel has also served as an adjunct professor of litigation practice skills for many years, and he has also volunteered significant amounts of time in other leadership and mentoring roles with us. My esteem of him and his capacities has only grown over time with my increased familiarity with his standards of integrity and professionalism and his overall even-keeled good judgment.

There are few lawyers who can be as widely known among bench and bar as Darrel is, while still eliciting positive reactions among so many. Not once have I heard a negative comment about him—instead, he is known and respected by persons in a variety of roles, whether judge, co-counsel, opposing counsel, or other community member. His work with our students as an adjunct professor and in other volunteer roles at the Law Center has been second to none in quality, integrity, and in appreciation by the students, faculty, and staff with whom he engages.

Darrel listens, he thinks, he cares, and he demonstrates his integrity and good judgment at every turn. I hope you will support his nomination as strongly as I do.

Sincerely,

Lee Ann Wheelis Lockridge

Lee Ann Wheelis Lockridge
Interim Dean
David Weston Robinson Professor of Law
McGlinchey Stafford Professor of Law
Pan American Life Insurance Co. Professor of Law

LAWL:ch

cc: Hon. John Neely Kennedy
c/o Nathan Williams, Chief Counsel
via email (Nathan_Williams@Kennedy.senate.gov)

Hon. Bill Cassidy, M.D.

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April 8, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

My name is Father Paul Yi, pastor of St. George Catholic Church in Baton Rouge, Louisiana which is a congregation of 3,500 families. I'm writing this letter on behalf of **Mr. Darrel Papillion** who is an outstanding, active, and long-time parishioner of St. George Catholic Church. Mr. Papillion has demonstrated great leadership and generosity by serving as board member of several organizations in our Catholic Diocese of Baton Rouge.

Over the years as pastor, I have grown to appreciate Mr. Papillion's dedication to his Catholic faith and his desire to foster faith in our community. He regularly leads early morning prayers and attends daily Mass at our church. His generosity toward our church parish has helped us create a prayerful space where school children and family can gather to pray. This prayer space was a dream of his to honor his deceased wife who passed in 2018. She herself was a woman of deep faith, and I became aware of how faith was so important to this couple.

I was delighted to learn that Mr. Papillon was nominated as a judge to the Eastern District of Louisiana. I know him to be a man of great integrity and faith. If I can be of assistance with anything, please do not hesitate to contact me.

Fr. Paul Yi

Fr. Paul Yi
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COMMENTARY · DIVERSITY AND INCLUSION

To understand why America's lead in tech and innovation is eroding, look at China's investment in women inventors

BY **HOLLY FECHNER**

April 18, 2023 at 3:35 AM EDT

A minority of patents list at least one woman among their inventors globally–but China is bridging that gap almost twice as fast as the U.S.

CFOTO/FUTURE PUBLISHING/GETTY IMAGES

In the race for global technology leadership, China understands that it needs more inventors to compete with the United States and has worked systematically to expand its capacity to innovate. That's why China is eating America's lunch on a critical measure of technological capacity: women inventors.

A new World Intellectual Property Organization (WIPO) study of international patent applications found that from 2001 to 2005 and 2016 to 2020, China grew its capacity of women inventors at almost *double* the rate of the U.S.–42% in China compared to 22% in the U.S. To continue outpacing China in cutting-edge technologies so, as President Biden vowed in his State of the Union, "they're not used against us," the United States must access all available talent by changing the culture around invention and expanding its pipeline of inventors.

Our elected officials already know the risks of letting other countries out-innovate us. In a rare and powerful show of bipartisanship, Congress passed the CHIPS and Science Act last summer to bolster U.S. innovation in next-generation technologies such as artificial intelligence, clean energy, 5G, and other advanced technologies to make sure American innovators can keep up with China by not only maintaining American leadership in these areas but also by inventing the next breakthrough technologies.

The WIPO study shows that the U.S. lags behind China and much of the world in our efforts to fully mobilize our inventive talent. From 2016 through 2020, the U.S. ranked just 13th–well below the global average–based on the share of patents that includes women. China ranked fourth, behind Colombia, Spain, and Egypt.

Globally, the WIPO report found that only one in eight inventors listed on a patent was a woman, and only 4% of international patents covered inventions by women-only inventors or teams. These figures portray not only a massive global underutilization of talent but also sustained gender bias in innovative fields worldwide.

According to the WIPO study, global patent filings could potentially reach gender parity in about four decades. That already disappointing pace could be slowed even more by crises like the COVID-19 pandemic, which forced more women scientists than men out of the lab to care for their families.

Inventing plays a central role in economic growth and job creation. The strength of a country's patent protections is a strong predictor of its commitment to the rule of law and its ability to provide incentives to innovate. In the U.S., where patent rights are enshrined in the Constitution, the U.S. Patent and Trademark Office (USPTO) has estimated that intellectual property-intensive industries account for more than 40% of U.S. economic activity and support 63 million jobs–44% of the U.S. workforce.

A dearth of U.S. women among named patent inventors can be remedied. In his first two years in office, President Biden drove a resurgence of "Made in America." Now we must ensure that everyone has the opportunity to "Invent in America." New laws, policies, and private sector practices can expand access to education, mentorship, and careers in science and technology: for example, by increasing access and funding for research and legal assistance for patenting inventions, improving the availability of child care and family and medical leave, and making sure that university and private sector workplaces are welcoming for all.

The need for change is as much about economic and technological competitiveness as it is about equality and righting historical wrongs. A series of studies has shown the more diverse a team of inventors, the more creative and innovative their output.

The USPTO Office of the Chief Economist issued a report last October, calling the persistent underrepresentation of women in patenting a "drag on American innovation and prosperity," and citing projections for significantly increased economic output if women were to patent at the same rate as men. "Gender diversity boosts the inventive process in essential ways: women's experiences and viewpoints help inform, and thus improve, the quantity and quality of innovation," the report noted.

Government, educational institutions, and the private sector must promote broad participation in invention and patenting to make sure that women, people of color, and other historically underrepresented groups have the opportunity to contribute fully to the innovation economy.

The global innovation race is on—and the stakes are higher than ever. America can continue to lead—but only if we harness the power of all of our talent to maximize our inventive potential.

Holly Fechner is the executive director of Invent Together, an alliance of universities, nonprofits, companies, and other stakeholders committed to ensuring that everyone has the opportunity to invent

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Standing Committee on the Federal Judiciary

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April 17, 2023

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
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United States Senate
Washington, DC 20510

Re: Nomination of Jeremy C. Daniel to the United States District Court for the Northern District of Illinois

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jeremy C. Daniel, who has been nominated by the President to the United States District Court for the Northern District of Illinois. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Mr. Daniel is **"Well Qualified"** to serve on the United States District Court for the Northern District of Illinois.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Jeremy C. Daniel (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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April 17, 2023

Via Email
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Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
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United States Senate
Washington, DC 20510

Re: Nomination of Magistrate Judge Brendan Abell Hurson to the United States District Court for the District of Maryland

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Brendan Abell Hurson, who has been nominated by the President to the United States District Court for the District of Maryland. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Magistrate Judge Hurson is **"Well Qualified"** to serve on the United States District Court for the District of Maryland.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Magistrate Judge Brendan Abell Hurson (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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April 17, 2023

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Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Darrel James Papillion to the United States District Court for the Eastern District of Louisiana

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Darrel James Papillion, who has been nominated by the President to the United States District Court for the Eastern District of Louisiana. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Mr. Papillion is **"Well Qualified"** to serve on the United States District Court for the Eastern District of Louisiana. One member of the Standing Committee recused from voting.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee
on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Darrel James Papillion (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

Introductory Remarks for the Record: Jeremy Christen Daniel, Nominee for the U.S. District Court for the Northern District of Illinois

Senator Tammy Duckworth

Thank you, Chairman Durbin and Ranking Member Graham for the opportunity to submit this statement of support into the record. It's my honor to strongly support Mr. Jeremy Christen Daniel, President Biden's nominee to serve as District Judge on the U.S. District Court for the Northern District of Illinois. Mr. Daniel exemplifies President Biden's fulfillment of his promise to nominate individuals to the Federal Bench who are highly qualified, demonstrate a commitment to the rule of law and reflect the incredible diversity of our country.

A native of the State of Illinois and Veteran of the United States Marine Corps., Mr. Daniel has a proven track record that demonstrates his commitment to justice and service to the community. Prior to joining the legal community, Mr. Daniel served our Nation in uniform as a Marine. He is a graduate of Illinois Wesleyan University and Loyola University Chicago School of Law. Mr. Daniel began his legal career at Katten Muchin Rosenman in Chicago as an Intellectual Property Associate. He then served as a law clerk for Judge Virginia Mary Kendall of the United States District Court for the Northern District. Following these roles, Mr. Daniel has been serving as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Northern District of Illinois as the Deputy Chief of Narcotics and Money Laundering since 2014.

As Assistant U.S. Attorney, Mr. Daniel investigated and prosecuted violations of Federal criminal law including cases related to mail and wire fraud, healthcare fraud, controlled substances, immigration offenses, firearms offenses, violent crimes and public benefit fraud. He has participated in eleven Federal criminal trials and three appeals. Additionally, Mr. Daniel has

experience representing clients in various stages of civil litigation concerning patent, trademark and contract matters.

Mr. Daniel's leadership, professionalism and dedication to service, coupled with his litigation skills and familiarity with the Northern District of Illinois, prepares him well for the rigors and responsibilities of this role, a position in which I am certain he will serve with integrity and merit. The nominees that win my support must have a proven track record of integrity and character, with a wealth of relevant experience and an unfaltering, resolute dedication to the Constitution and the rule of law. Mr. Jeremy Daniel strongly exhibits all these qualifications and qualities, and his past experience both in the public and private sectors solidify them.

I am proud to have joined Senator Durbin in submitting a positive blue slip for Jeremy Daniel's nomination to the Senate Judiciary Committee. His commitment to the rule of law and the community has been deep and constant. Mr. Daniel is well prepared to serve on the U.S. District Court for the Northern District of Illinois. I urge the Senate Judiciary Committee to support this important nomination. Thank you.