Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Matthew James Maddox
Nominee to be a 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 this statement or its context, but I disagree with the statement. As a United States Magistrate Judge, I carefully and faithfully apply controlling law to the facts of each case before me and render decisions based solely on that analysis, without regard to any personal opinions or partiality to any particular outcome. I would continue to take this approach if confirmed to serve as a United States District Judge.

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. It does not describe the approach that I take in my service as a United States Magistrate Judge and would take if confirmed to serve as a United States District Judge. As a judge, I faithfully apply controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

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 its context. The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines a "fact" as "[s]omething that actually exists; an aspect of reality" or "[a]n actual or alleged event or circumstance, as

distinguished from its legal effect, consequence, or interpretation." The United States Supreme Court has "noted the vexing nature of the distinction between questions of fact and questions of law[]" and has found no "rule or principle that will unerringly distinguish a factual finding from a legal conclusion." Pullman-Standard v. Swint, 456 U.S. 273, 288 (1982). "[T]he fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." Miller v. Fenton, 474 U.S. 104, 114 (1985).

6. **Please describe your views regarding mandatory minimum sentences.**

Response: Certain federal statutes mandate minimum terms of imprisonment for certain offenses. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. Any prison sentence that falls below or exceeds that mandated by statute would be beyond the authority of a sentencing judge.

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

Response: I understand "attacks" on a sitting judge to be conduct intended to threaten or harm the judge physically or otherwise, which may rise to the level of criminality or risk to judicial security. See, e.g., 18 U.S.C. § 1503 (criminal penalties for use of threats or force to influence, intimidate, or impede judicial officers). I understand criticism of a judicial opinion to be the expression of views contrary to the substance or methodology of the opinion, which is constitutionally protected. See, e.g., Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Harney, 331 U.S. 367 (1947); Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976).

8. **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 above listed purposes of sentencing to be more important than the others. The factors to be considered in federal sentencing are outlined in 18 U.S.C. § 3553 without any distinctions based on level of importance. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. I would also consider applicable provisions of the United States Sentencing Guidelines, including the advisory sentencing guidelines range.

9. **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 am not aware of any one particular Supreme Court decision that provides an example of my judicial philosophy. I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions I might have affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the Supreme Court and Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

10. 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: I am not aware of any one particular Fourth Circuit decision that provides an example of my judicial philosophy. Please see my response to Question 9.

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

Response: Title 18, United States Code, Section 1507 provides:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.
>
> 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.

If an issue involving this statute is presented to me for decision in any case, I would fairly and impartially apply the law to the facts and render a decision based solely on that analysis.

12. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

Response: In Cox v. State of Louisiana, 379 U.S. 559, 563 (1965), the United States Supreme Court upheld a state statute modeled upon § 1507, holding that it did not "infringe upon the constitutionally protected rights of free speech and free assembly."

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

Response: The United States Supreme Court has explained that "fighting words" are among "certain well-defined and narrowly limited classes of speech" that may be prevented or punished by the government without burdening First Amendment rights. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571–72 (1942). Fighting words are described as those "that are 'likely to provoke the average person to retaliation, and thereby cause a breach of the peace[,]'" Texas v. Johnson, 491 U.S. 397, 409 (1989) (quoting Chaplinsky, 315 U.S. at 574), and as "personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction[,]" Cohen v. California, 403 U.S. 15, 20 (1971). "[S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." Chaplinsky, 315 U.S. at 572. "[T]he exclusion of 'fighting words' from the scope of the First Amendment simply means that, for purposes of that Amendment, the unprotected features of the words are, despite their verbal character, essentially a 'nonspeech' element of communication. R.A.V. v. City of St. Paul, 505 U.S. 377, 386 (1992).

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

Response: The United States Supreme Court has identified "true threats" as among the types of utterances that are not protected by the First Amendment. Virginia v. Black, 538 U.S. 343, 359 (2003). True threats include "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Id. "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protect[s] individuals from the fear of violence' and 'from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'" Id. at 359–60 (citations omitted).

15. 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: Yes. As a sitting judge and judicial nominee, it would be generally inappropriate for me to comment on the merits of a decision of the Supreme Court. Brown v. Board of Education of Topeka has been regarded by other nominees as an exception to this general practice because its merits are unlikely to be challenged or reassessed by the United States Supreme Court. I will join other nominees in commenting that this case was correctly decided.

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

Response: Yes. As a sitting judge and judicial nominee, it would be generally inappropriate for me to comment on the merits of a decision of the Supreme Court. Loving v. Virginia has been regarded by other nominees as an exception to this general practice because its merits are unlikely to be challenged or reassessed by the United States Supreme Court. I will join other nominees in commenting that this case was correctly decided.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Griswold v. Connecticut is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. That said, the Court has overturned Roe v. Wade and held that there is no fundamental right to abortion. See Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). I would apply Dobbs if confirmed to service as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States

Supreme Court. That said, the Court has overturned Planned Parenthood v. Casey and held that there is no fundamental right to abortion. See Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). I would apply Dobbs if confirmed to service as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Gonzales v. Carhart is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in District of Columbia v. Heller is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in McDonald v. City of Chicago is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in New York State Rifle & Pistol Association v. Bruen is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. Therefore, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. The Court's decision in Dobbs v. Jackson Women's Health Organization is binding precedent, and I would apply it if confirmed to serve as a United States District Judge.

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

Response: The United States Supreme Court has held that the Second Amendment guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm regulation." Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations "will often involve reasoning by analogy[.]" Id. at 2132. Central to this analogical inquiry are considerations of "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . ." Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

17. 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.

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

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

Response: No.

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

Response: No.

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

Response: No.

19. 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.

20. 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.

21. 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.

22. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In November 2020, a notice was posted on Senator Cardin's website announcing upcoming vacancies on the United States District Court for the District of Maryland. In December 2020, I submitted an application to a judicial selection committee in response to the notice. I interviewed with members of the committee on December 18, 2020. In 2022, while serving as a U.S. Magistrate Judge in the District of Maryland, I became aware of upcoming vacancies among the district judges. During a meeting with a member of Senator Cardin's judicial selection committee in December 2022, I expressed my interest in nomination for the position of U.S. District Judge and supplemented my previous application materials. On December 20, 2022, I interviewed with Senators Cardin and Van Hollen for one of the vacancies. I received an email from an official from the Office of the White House Counsel on December 22, 2022, advising me that I had been recommended as a potential candidate and requesting an interview. 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.

23. **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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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 response to Question 22.

29. 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 July 19, 2023. I reviewed and researched the questions and drafted responses. The OLP provided limited feedback on my draft responses. I then finalized and submitted my responses.

Senate Judiciary Committee
Nominations Hearing
July 12, 2023
Questions for the Record
Senator Amy Klobuchar

For Matthew James Maddox, nominee to be United States District Court Judge for the District Court of Maryland

Last year, you were appointed by judges on the United States District Court for the District of Maryland to serve as a magistrate judge. In that role you authored 22 decisions, none of which have been reversed by a reviewing court.

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

  Response: My experience as a federal magistrate judge in the District of Maryland has given me a clear, constant, and unobstructed view of the role of federal district judges. A magistrate judge's responsibilities closely complement, and often overlap with, those of district judges. My duties as a magistrate judge include adjudicating motions and issuing written opinions and orders in all stages of civil cases, presiding over civil trials with the consent of the parties, and conducting settlement conferences in civil cases assigned to other judges. In criminal matters, I preside over preliminary proceedings in felony cases, all proceedings in misdemeanor cases, and review and authorize search and seizure warrants, criminal complaints, and arrest warrants.

  Since my service as a magistrate judge began in February 2022, I have served as presiding judge in dozens of civil cases by consent of the parties pursuant to 28 U.S.C. § 636(c). In these cases, my role is the same as that of a district judge. In several of these cases, I have resolved motions to dismiss and motions for summary judgment, and I have presided over two trials, including one jury trial and one bench trial. Additionally, I decide non-dispositive pretrial matters and provide recommendations on dispositive matters in civil cases referred to me by district judges pursuant to 28 U.S.C. § 636(b), which have required me to resolve discovery disputes and author reports and recommendations on motions for default judgment.

  In felony criminal matters, my responsibilities include conducting detention hearings where, upon consideration of a broad range of statutory factors, I decide whether the accused is to be detained or released under supervision pending trial. I have also accepted guilty pleas and entered sentences in misdemeanor criminal cases—a role that district judges fulfill in felony cases. Alongside the district judges of my court, I have participated in court administration as a member of three court committees and through attendance of regular bench meetings.

In sum, as a magistrate judge, I have enjoyed the honor and privilege of regularly participating and sharing in the critical work of district judges. My experience on the bench has given me great insight into a wide range of issues that arise in the diverse landscape of federal civil litigation and have prepared me to make the weighty decisions committed to district judges in felony criminal cases. I have developed effective and cooperative working relationships with other judges in the District of Maryland, my chambers staff and those of other judges, and the Office of the Clerk, which have assisted me in managing a significant volume of case assignments. I have become familiar with and accustomed to the fast pace a federal judge's work commonly requires without sacrificing the quality of the important decisions I make or rigor of my preparation to make those decisions. Since my appointment to the bench, I have remained mindful of both the importance of the decisions I make and the constitutional limits on my authority, and I have remained committed to fairness, impartiality, and the rule of law. I would continue in these practices and commitments if I have the honor of being confirmed to serve as a district judge.

- **What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?**

  Response: It is of critical importance that, in the discharge of our duties, judges proactively inspire confidence in the fairness of the courts. I have sought to achieve this goal in all aspects of my work as a magistrate judge. This effort begins with thorough preparation for every hearing and treating every litigant and attorney with dignity and respect at every encounter in court. During hearings and conferences, I give attorneys and pro se litigants all the time they need to explain their positions on disputed matters. In these settings, I listen actively and attend to each point that is made in support of each party's position. In response, I craft questions designed to cast the party's argument in the best light while also challenging the substantive merits of their position with citation to controlling law. In rendering a decision, whether orally or in writing, I am careful to address each point that has been made, provide a clear rationale and full explanation for rejecting those arguments I have resolved to set aside, and support my reasoning with citation to controlling provisions of law and judicial precedents. Being clear and thorough in setting out my reasoning carries the dual benefits of demonstrating the merit of my decision and conveying to the non-prevailing party that I have given their position serious and careful consideration. My goal in every case is that the non-prevailing party will be left with no doubt that they have received a fair hearing despite the unfavorable outcome.

Senator Mike Lee
Questions for the Record
Matthew Maddox, Nominee to the United States District Court for the District of Maryland

1. How would you describe your judicial philosophy?

Response: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

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

Response: As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would follow guidance from the United States Supreme Court in interpretating any federal statute. I would begin with the text and structure of the statute in question. I would also consult any binding precedents of the Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.") (citations omitted).

If the law is susceptible to multiple reasonable interpretations and there is no binding precedent on the meaning of the statute, then I would consult persuasive authorities on the issue, including the decisions of other judges in the district and circuit and courts outside the circuit. I would also apply canons of interpretation endorsed by the Supreme Court and the Fourth Circuit for use in interpreting similar or analogous provisions of law. If this process does not yield a clear answer, I would consult legislative history to aid discernment of the legislative intent and purpose of the

statute to the extent doing so is consistent with Supreme Court guidance. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) ("Extrinsic 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.").

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

Response: As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would follow guidance from the United States Supreme Court in interpretating any constitutional provision. I would begin with the text of the constitutional provision in question and any binding precedents of the Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. I expect that binding precedent would control the interpretation of most constitutional provisions likely to be at issue in litigation. In the unlikely instance that binding precedent does not resolve the issue, I would consult any interpretations of the provision made by other judges of the district and circuit as well as courts outside the circuit. I would also seek guidance from any Supreme Court or Fourth Circuit decisions interpreting related or analogous provisions of the Constitution, which would guide my interpretive methodology. Examination of historical legal texts would be warranted to conduct the textual and historical analysis necessary to discern the original public meaning of the provision. See District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (stating that "the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation[]").

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

Response: Please see my response to Question 3. The United States Supreme Court has stated that inquiry into "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (emphasis omitted).

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 response to Question 2. The plain meaning of the text is dispositive. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.") (citations omitted).

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: Black's Law Dictionary (11th ed. 2019) defines "plain meaning" as "[t]he meaning attributed to a document (usu. by a court) by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent." The United States Supreme Court has stated that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." Bostock v. Clayton County, Georgia, 140 S. Ct. 1731, 1738 (2020). It has also stated that inquiry into "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." District of Columbia v. Heller, 554 U.S. 570, 605 (2008) (emphasis omitted).

6. What are the constitutional requirements for standing?

Response: Article III standing requires the plaintiff to show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992)).

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

Response: The powers of Congress are limited to those enumerated in the Constitution. National Federation of Independent Business v. Sebelius, 567 U.S. 519, 534–35 (2012) (citing Gibbons v. Ogden, 9 Wheat. 1, 195 (1824), and McCulloch v. Maryland, 4 Wheat. 316, 405 (1819)); see also Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018) ("The Constitution confers on Congress not plenary legislative power but only certain enumerated powers."). Specific legislative powers of Congress are outlined in Section 8 of Article I and in other articles and amendments to the Constitution. Importantly, Congress's enumerated powers include the power to make laws that are "necessary and proper for carrying into [e]xecution" other powers enumerated in Article I. Art. I, § 8, cl. 18. The U.S. Supreme Court has interpreted the Necessary and Proper Clause "to give Congress great latitude in exercising its powers[.]" National Federation of Independent Business, 567 U.S. at 537.

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 United States Supreme Court has recognized that "[t]he 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" National Federation of Independent Business v. Sebelius, 567 U.S. 519, 570 (2012) (quoting Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144 (1948)). If presented with a challenge to the constitutionality of an act

of Congress that lacks reference to any specific legislative power enumerated in the Constitution, I would determine the meaning of the statute as directed by binding precedent, carefully consider the parties' arguments, review the constitutional provisions relied upon by the parties and any precedents interpreting those provisions, and impartially render a decision based on that analysis.

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

Response: The United States Supreme Court has recognized constitutionally protected rights that are not expressly enumerated in the Constitution, including certain fundamental rights and liberties protected by the Due Process Clause. These fundamental rights and liberties have included the rights to marry, to have children, to direct the education and upbringing of one's children, and to marital privacy. Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (citing cases). In Glucksberg, however, the Court cautioned that "the utmost care" must be exercised when it is asked to recognize fundamental liberty interests not enumerated in the Bill of Rights, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court[.]" Id. The Court held that the nation's history, legal traditions, and practices provide "crucial 'guideposts for responsible decisionmaking[]'" in this area, which "direct and restrain [the Court's] exposition of the Due Process Clause." Id. at 721. The Court specifically identified "two primary features" of its substantive due process analysis: (1) 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[;]" and (2) that the asserted fundamental liberty interest must be carefully described. Id. at 720–21 (internal quotation marks and citations omitted).

10. What rights are protected under substantive due process?

Response: Please see my response 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 United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would apply the controlling precedents of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit to decide cases involving personal and economic rights asserted under the Due Process Clause.

The Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 U.S. 702, 720 (1997). The Supreme Court has recently held "that the Fourteenth Amendment does not protect the right to an abortion." Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2248 (2022). Notwithstanding, the Court's precedents recognizing various other personal rights as fundamental and protected by the Due Process Clause (including those discussed in my response to Question 9) remain good law.

In contrast, an economic regulation will generally survive a due process challenge if it is "rationally related" to legitimate governmental interests. Brown v. Hovatter, 561 F.3d 357, 368 (4th Cir. 2009). "Rational basis scrutiny in the due process context—as in the equal protection context—is quite deferential." Colon Health Centers of Am., LLC v. Hazel, 733 F.3d 535, 548 (4th Cir. 2013); see also Holland v. Keenan Trucking Co., 102 F.3d 736, 740 (4th Cir. 1996) (federal legislation within Congress's "commerce power to regulate economic matters . . . carries a heavy presumption of validity").

Notably, "[t]he doctrine that prevailed in Lochner . . . 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." Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). In Ferguson, the Supreme Court continued, "Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.'[]" Id. at 730–31 (citation omitted).

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

Response: "[M]odern Commerce Clause jurisprudence has 'identified three broad categories of activity that Congress may regulate under its commerce power.'" United States v. Morrison, 529 U.S. 598, 608 (2000) (quoting United States v. Lopez, 514 U.S. 549, 558 (1995)). Congress may regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. Id. at 609. "[T]he scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." Id. at 608 (quoting Lopez, 514 U.S. at 557) (internal quotation marks omitted). For example, the Commerce Clause does not give Congress the power to regulate intrastate, "noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." Id. at 617.

Furthermore, "[t]he power to *regulate* commerce presupposes the existence of commercial activity to be regulated." National Federation of Independent Business v. Sebelius, 567 U.S. 519, 550 (2012). The commerce power does not permit Congress to compel individuals who are not active in commerce "to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." Id. at 552.

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 that governmental classifications based on race, nationality, and alienage "are inherently suspect and subject to close judicial scrutiny." Graham v. Richardson, 403 U.S. 365, 371–72 (1971). The Court has described suspect classes as "discrete and insular" minority groups, id. at 372, "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[,]" San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).

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

Response: The United States Constitution divides the power of the federal government among legislative, executive, and judicial branches. "[T]he 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) (quoting Buckley v. Valeo, 424 U.S. 1 (1976)). "Yet the dynamic between and among the branches is not the only object of the Constitution's concern." Bond v. United States, 564 U.S. 211, 222 (2011). The structural principles secured by the separation of powers and checks and balances also protect individual liberty. Id.; see also Bowsher v. Synar, 478 U.S. 714, 721 (1986) ("The declared purpose of separating and dividing the powers of government, of course, was to 'diffus[e] power the better to secure liberty.'") (citation 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: If presented with the question of whether a branch of government has exceeded its constitutional authority, I would review and apply relevant provisions of the Constitution and any binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit interpreting these provisions.

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

Response: A judge can and should treat all litigants with respect and dignity but should decide cases fairly and impartially without regard to personal feelings. As a United States Magistrate Judge, I carefully consider the litigants' arguments, make fair assessments of the evidence they present, and faithfully apply the law to the facts of the case without partiality to any private interest. I would continue in this practice and commitment if confirmed to serve as a United States District Judge.

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

Response: For a court to invalidate a law that is constitutional amounts to judicial interference with the duties and powers committed to the legislature. For a court to uphold a law that is unconstitutional is to leave unredressed injuries that result from legislative overreach. Both options upset and undermine the constitutional order and therefore must 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 the historical developments described in this question. As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would be bound to apply the precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit when called upon to review the constitutionality of a federal statute. It would not be appropriate for me to express a personal opinion on the Supreme Court's exercise of judicial review.

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 "[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." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "[t]he 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: Elected officials are required to take an oath or affirmation to support the United States Constitution in the performance of their duties. This obligation includes following the decisions of the United States Supreme Court interpreting the Constitution. As a sitting judge and judicial nominee, it would not be appropriate for me to offer further comment on the obligations of elected officials.

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: As a sitting judge and judicial nominee, I remain mindful that the role of the court is limited to interpreting the law and applying it to the resolution of disputed matters presented in litigation. In fulfilling this role, I exercise fair and impartial judgment—not my own political will, nor any assessment of the political will of the people.

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 United States Magistrate Judge, I am bound to apply controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, and to do so fairly and impartially, regardless of my views on the merits of those precedents. If confirmed to serve as a United States District Judge, I would continue honoring this obligation.

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. "When rendering a sentence, the district court 'must make an *individualized* assessment based on the facts presented.'" United States v. Carter, 564 F.3d 325, 328 (4th Cir. 2009) (quoting Gall v. United States, 552 U.S. 38, 50 (2007)). The factors the court must consider are outlined in 18 U.S.C. § 3553. Gall, 552 U.S. at 49–50. None of the factors concern the defendant's group identity(ies). Moreover,

Section 5H1.10 of the United States Sentencing Guidelines contains a policy statement that "race, sex, national origin, creed, religion, and socioeconomic status are not relevant in the determination of a sentence."

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 the statement referenced in this question and its context. Black's Law Dictionary (11th ed.) defines "equity" as "[f]airness; impartiality; evenhanded dealing[;]" and "[t]he body of principles constituting what is fair and right[.]"

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

Response: Black's Law Dictionary (11th ed.) defines "equity" as "[f]airness; impartiality; evenhanded dealing[;]" and "[t]he body of principles constituting what is fair and right[.]" Black's Law Dictionary (11th ed.) defines "equality" is as "[t]he quality, state, or condition of being equal;" especially "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 guarantees "equal protection of the laws." The term "equity" does not appear in the Fourteenth Amendment, and I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit that has adopted the statement listed above in Question 24 in its interpretation of the Equal Protection Clause. As a United States Magistrate Judge, I am committed to applying binding precedent to any case involving equal protection claims, and I would continue in that commitment if confirmed to serve as a United States District Judge.

27. How do you define "systemic racism?"

Response: "Systemic racism" has been defined 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)." Systemic racism, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/systemic%20racism (last visited Aug. 2, 2023).

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

Response: 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: Please see my responses to Questions 27 and 28.

30. You worked as an "organizer" for the Service Employees International Union. What were your responsibilities in that role?

Response: More than 20 years ago, I worked briefly for the Service Employees International Union, where I conducted outreach and meetings with union and non-union workers to discuss the benefits of union membership and engaged workers regarding union contract negotiations.

31. The main goal of the SEIU is to increase minimum wages to $15, do you agree that minimum wages should be increased to $15 across the country?

Response: More than 20 years ago, I worked for the Service Employees International Union (SEIU). At the time of my brief employment with SEIU, I did not participate in any campaign to increase the minimum wage. Since the time my brief employment with SEIU ended, I have not had any personal knowledge of SEIU's main goals. I am generally aware of efforts to increase the federal minimum wage to $15.00 per hour, but I have not participated in any such efforts. As a sitting judge and judicial nominee, it would not be appropriate for me to express personal opinions on matters of public policy. My role is limited to interpreting the law and applying it fairly and impartially to the resolution of disputed matters presented in cases assigned to me. My views on matters of public policy play no role in my work as a judge.

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

Questions for the Record for Matthew James Maddox, nominated to be United States District Judge for the District of Maryland

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. The United States Supreme Court has recognized that the Equal Protection Clause of the Fourteenth Amendment "requires equality of treatment before the law for all persons without regard to race or color" and "proscribes all invidious racial discriminations." Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2160–61 (2023) (cleaned up, citations omitted). Any exception to this requirement of equal protection must survive "strict scrutiny." Id. at 2162 (citation omitted). Additionally, numerous federal statutes and provisions of state law prohibit racial discrimination in employment, education, public accommodations, and other contexts.

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

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to express an opinion on matters that may be the subject of litigation before me, including whether there are any unenumerated rights in the Constitution that have not yet been identified by the United States Supreme Court. The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment "guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

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

Response: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation

of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

Although I have examined very many decisions of the Supreme Court as a student and practitioner of the law, and now as a judge, I have not researched the judicial philosophy of any individual Supreme Court Justice. It is important to note that my work in a trial-level court as a United States Magistrate Judge—and, if confirmed, as a United States District Judge—is significantly different from the work of the Supreme Court. I have not identified any Supreme Court Justice as having a judicial philosophy that is analogous to my own.

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

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." The United States Supreme Court has applied this interpretative canon to certain provisions of the United States Constitution, such as the Second Amendment. District of Columbia v. Heller, 554 U.S. 570, 576–77 (2008). As a United States Magistrate Judge, I have not subscribed to any particular label. I have followed the precedents of the Supreme Court and the judicial philosophy described in my response to Question 3. If confirmed to serve as a United States District Judge, I would continue to be guided by the Supreme Court when interpreting constitutional and statutory provisions.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "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." As a United States Magistrate Judge, I have not subscribed to any particular label. I have followed the precedents of the United States Supreme Court and the judicial philosophy described in my response to Question 3. If confirmed to serve as a United States District Judge, I would continue to be guided by the Supreme Court when interpreting constitutional provisions.

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

Response: My analysis of a constitutional issue of first impression would begin with the text of the constitutional provision at issue and any United States Supreme Court and United States Court of Appeals for the Fourth Circuit precedents interpreting related, similar, or analogous constitutional provisions. If these Courts have interpreted related, similar, or analogous constitutional provisions with reference to their original public meaning, I would be guided by those precedents and adopt this approach to the provision at issue in the case before me.

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

Response: Generally, no. However, the United States Supreme Court has decided certain constitutional issues with reference to standards observed in contemporary society. See, e.g., Atkins v. Virginia, 536 U.S. 304, 311–12 (2002) ("A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.") (citation omitted); Miller v. California, 413 U.S. 15, 24–25 (1973) (applying "contemporary community standards" in deciding whether material "appeals to the prurient interest[]" and is unprotected by the First Amendment on the basis of obscenity).

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

Response: No. The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification. The United States Supreme Court has held that some provisions of the Constitution are understood and applied in light of contemporary standards. See, e.g., Atkins v. Virginia, 536 U.S. 304, 311–12 (2002) ("A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.") (citation omitted); Miller v. California, 413 U.S. 15, 24–25 (1973) (applying "contemporary community standards" in deciding whether material "appeals to the prurient interest[]" and is unprotected by the First Amendment on the basis of obscenity). However, the Constitution may only be amended through the process described in Article V.

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

Response: Yes. Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022), is a binding precedent of the United States Supreme Court.

a. Was it correctly decided?

Response: As a United States Magistrate Judge, I faithfully apply binding and controlling precedents of the Supreme Court and would continue to do so if confirmed as a United States District Judge. The Court's decision in Dobbs is binding precedent, and I would apply it if confirmed as a United States District Judge. It would not be appropriate for me to comment on the merits of a decision of the Supreme Court.

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

Response: Yes. New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022), is a binding precedent of the United States Supreme Court.

a. Was it correctly decided?

Response: As a United States Magistrate Judge, I faithfully apply binding and controlling precedents of the Supreme Court and would continue to do so if confirmed as a United States District Judge. The Court's decision in Dobbs is binding precedent, and I would apply it if confirmed as a United States District Judge. It would not be appropriate for me to comment on the merits of a decision of the Supreme Court.

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

Response: Yes. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), is a binding precedent of the United States Supreme Court.

a. Was it correctly decided?

Response: Yes. As a sitting judge and judicial nominee, it would be generally inappropriate for me to comment on the merits of a decision of the United States Supreme Court. Brown v. Board of Education of Topeka has been regarded by other nominees as an exception to this general practice because its merits are unlikely challenged or reassessed by the Court. I will join other nominees in commenting that this case was correctly decided.

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

Response: Title 18, United States Code, Section 3142(e) establishes a rebuttable presumption in favor of pretrial detention in certain cases. First, § 3142(e)(2) provides a rebuttable presumption that conditions of pretrial release will not reasonably assure community safety in cases that involve an offense listed in § 3142(f)(1) where the defendant has been convicted such an offense within the previous five years or has been released from imprisonment for such an offense within the previous five years, and the defendant committed that prior offense while on pretrial release. Offenses listed in § 3142(f)(1) include offenses eligible for the death penalty or for which the maximum term of imprisonment is life; crimes of violence, sex trafficking offenses, or controlled substance offenses for which the maximum term of imprisonment is ten years or more; offenses involving minor victims or possession, failure to register as a sex offender, or use of firearms, destructive devices, or other dangerous weapons.

Second, § 3142(e)(3) provides a rebuttable presumption that conditions of pretrial release will not reasonably assure community safety or the defendant's appearance for future court proceedings in cases where there is probable cause to believe that the defendant committed any among certain federal felonies. These felonies include controlled substances offenses for which the maximum term of imprisonment is ten years or more; use or carrying of a

firearm during and in relation to a federal crime of violence or drug trafficking crime; conspiracy to murder, kidnap, or injure a person outside the United States; acts of terrorism; human trafficking, slavery, or peonage offenses for which the maximum term of imprisonment is 20 years or more; or certain offenses involving minor victims, such as kidnapping, sex trafficking, sexual abuse, or distribution, receipt, transportation, or production of child pornography.

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

Response: The policy rationale for such a presumption is that conduct constituting certain offenses is so serious, dangerous, or harmful that a person who has engaged in such conduct likely poses a high risk of flight or community violence or is unlikely to comply with court-imposed release conditions designed to ensure community safety and the person's appearance for trial. See, e.g., United States v. Jessup, 757 F.2d 378, 383–84 (1st Cir. 1985), abrogated on other grounds by United States v. O'Brien, 895 F.2d 810 (1st Cir. 1990) (describing legislative history of the Bail Reform Act, including findings by Congress that "persons charged with major drug offenses[]" generally "pose *special* risks of flight[]"); United States v. Famiglietti, 548 F. Supp. 2d 398, 416 (S.D. Tex. 2008) ("The conduct of which the defendant is accused is deeply threatening to extremely important societal values, a determination that is clearly reflected in Congress' decision to create a presumption (rebuttable) of risk of flight and of danger to the community for persons charged with possessing or trafficking in child pornography.").

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

Response: Yes, certain provisions of the United States Constitution and federal statutes set various identifiable limits on what government may impose, or may require, of private institutions. For example, the Establishment and Free Exercise Clauses of the First Amendment limit government interference with the right of religious institutions to decide matters of faith, doctrine, and internal governance and employment that are essential to the institution's central mission. Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060–61 (2020). The Free Exercise Clause forbids the government from restricting the practices of a religious organization because of their religious motivation unless the government action is justified by a compelling interest and is narrowly tailored to advance that interest. Church of Lukumi Babalu Aye, Inc. v. City of Hialeah., 508 U.S. 520, 533 (1993). Strict scrutiny would also apply to government regulations that treat comparable secular activities more favorably than religious practices. Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021). Under the Religious Freedom Restoration Act, government-imposed requirements on a private, closely held corporation that substantially burden the free exercise of religion by the corporation's owners must advance a compelling governmental interest and be the least restrictive means of doing so. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 705–19 (2014).

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

Response: Government action that discriminates against religious organizations or religious people is subject to strict scrutiny and permissible only if it is narrowly tailored to advance a compelling governmental interest. See Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021); Church of Lukumi Babalu Aye, Inc. v. City of Hialeah., 508 U.S. 520, 533 (1993). "A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases." Id. at 546.

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

Response: The United States Supreme Court held that the applicants were likely to prevail on their First Amendment claims, that denying injunctive relief would lead to irreparable injury, and that granting relief would not harm the public interest. Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 66 (2020). The challenged regulations "single[d] out houses of worship for especially harsh treatment[]" and were not neutral and generally applicable. Id. Therefore, the regulations were subject to strict scrutiny and permissible only if they were narrowly tailored to serve a compelling governmental interest. Id. The Court pointed out the lack of evidence that the applicants contributed to the spread of COVID-19 and the availability of "less restrictive rules" that could "minimize the risk to those attending religious services." Id. at 67. The Court also recognized that the impairment of applicants' free exercise of religion would constitute an irreparable injury. Id. For these reasons, the Court held that enforcement of the challenged restrictions against religious services were to be enjoined. Id. at 69.

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

Response: In Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021), applicants for injunctive relief challenged COVID-19 restrictions imposed by the State of California against at-home religious gatherings. The United States Supreme Court held that the applicants were likely to succeed on the merits of their claims under the Free Exercise Clause, that they were irreparably harmed by the infringement of their free exercise rights, and that the State failed to show that public health would be harmed by using less restrictive measures. Id. at 1297. The challenged regulations treated comparable secular activities more favorably than at-home religious exercise and therefore triggered strict scrutiny. Id. at 1296–97. The Court pointed out the lack of any finding that at-home religious exercise posed a greater risk of transmission of COVID-19 than the comparable secular activities. Id. at 1297.

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

Response: Yes. See, e.g., Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014) (federal regulation substantially burdened the constitutionally protected religious exercise of the owners of a closely held corporation by requiring the corporation to provide insurance coverage for contraceptive methods that violated the owners' sincerely held religious beliefs); Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022) (school district burdened football coach's free exercise rights by suspending his employment for engaging in private prayers on the field after football games); 303 Creative LLC v. Elenis, 143 S. Ct. 2298 (2023) (First Amendment prohibits state from forcing a website designer to create expressive designs speaking messages that are inconsistent with her religious beliefs).

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

Response: In Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018), a Colorado-based bakery challenged the decision of the Colorado Civil Rights Commission that the bakery violated a Colorado antidiscrimination statute by refusing for religious reasons to create a cake for the wedding of a same-sex couple. The United States Supreme Court held that the Commission violated the Free Exercise Clause's requirement of religious neutrality by demonstrating hostility toward the bakery owner's sincere religious beliefs and treating him differently than other bakers who had objected to creating certain cakes on secular grounds.

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

Response: Yes. "Only beliefs rooted in religion are protected by the Free Exercise Clause." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 713 (1981). But the religious belief need only be a sincere and honest conviction. Id. at 716; Frazee v. Illinois Dep't of Emp. Sec., 489 U.S. 829, 834 (1989). A person is not required to comply with "the commands of a particular religious organization[]" "to claim the protection of the Free Exercise Clause[.]" Id.

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

Response: "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Fulton v. City of Philadelphia, Pennsylvania, 141 S. Ct. 1868, 1876 (2021) (quoting Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981)). It is not for the courts to decide whether certain religious beliefs are "mistaken or insubstantial." Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 725 (2014). The "narrow function" of the court is to determine whether the asserted beliefs are honest and sincere. Id.

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

Response: "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Fulton v. City of Philadelphia, Pennsylvania, 141 S. Ct. 1868, 1876 (2021) (quoting Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981)). It is not for the courts to decide whether certain religious beliefs are "mistaken or insubstantial." Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 725 (2014). The "narrow function" of the court is to determine whether the asserted beliefs are honest and sincere. Id.

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

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to state the official position of the Catholic Church with respect to abortion.

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

Response: The United States Supreme Court held that the ministerial exception to judicial enforcement of employment laws barred adjudication of the Catholic school teachers' employment discrimination claims. The ministerial exception is grounded in the Religion Clauses of the First Amendment. Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049, 2060–61 (2020). These provisions limit government interference with the right of religious institutions to decide matters of faith, doctrine, and internal governance that are essential to the institution's central mission. Id. This rule requires courts "to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." Id. at 2060. The Court reasoned that if religious institutions were deprived of "the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities[,] . . . a wayward minister's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith." Id. at 2060–61. The Court recognized that "a variety of factors may be important[]" in determining whether a particular position falls within the ministerial exception, but the focus of this inquiry is on "what the employee does." Id. at 2063–64. It is not necessary for a position to carry the title "minister" or any similar title to fall within the ministerial exception, given that different religious institutions do not use such titles in the same ways. Id.

The Court concluded that the teaching positions at issue in this case fell within the ministerial exception because they involved performance of "vital religious duties[,]" such as providing instruction in religion, guiding students "toward the goal of living their lives in accordance with the faith[,]" praying and attending religious services with students, and preparing students for participation in religious activities. Id. at 2066. "When a school

with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." Id. at 2069. Therefore, the courts were forbidden from adjudicating the employment discrimination claims brought by the teachers in this case. Id.

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

Response: The United States Supreme Court held that the City's refusal to contract with Catholic Social Services ("CSS") to provide foster care services, unless it agreed to certify same-sex couples as foster parents, violated the First Amendment. Fulton v. City of Philadelphia, 141 S. Ct. 1868, 1882 (2021). The Court held that the City's actions "burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." Id. at 1876. The City's refusal to contract with CSS was initially based on a provision in the City's standard foster care contract requiring the foster care agency to provide services to prospective foster parents regardless of their sexual orientation. Id. at 1878. This provision incorporated a system of individual exemptions available at the Commissioner's sole discretion, which rendered the policy not generally applicable and therefore subject to strict scrutiny. Id. at 1878–79. The Court determined that the City's asserted interests were insufficiently precise to identify specific harms of granting an exemption for religious claimants and, once properly narrowed, inadequate to satisfy strict scrutiny. Id. at 1881–82.

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

Response: The United States Supreme Court determined that the requirement in the State's tuition assistance program that eligible private schools be "nonsectarian" violated the Free Exercise Clause of the First Amendment because this requirement disqualified religious schools from a generally available benefit based solely upon the schools' religious character. Carson v. Makin, 142 S. Ct. 1987, 1997 (2022). The Court reasoned that the Free Exercise Clause "protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" Id. at 1996 (quoting Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439, 450 (1988)). Government action that operates to penalize religious exercise in the manner of the challenged tuition assistance program is subject to "the strictest scrutiny[,]" and the State's program could not survive strict scrutiny. Id. (quoting Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246, 2257 (2020)). The State's interest against violating the Establishment Clause did not justify the exclusion of religious schools from the "otherwise generally available public benefit" due to their religious exercise. Id. at 1998. The Court held that for the program to operate in a way to permit religious schools

to benefit would not violate the Establishment Clause. Id.

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

Response: The United States Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protected a public school football coach from reprisal for engaging in brief personal religious observances after football games. Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022). The school's policy forbidding the coach's brief prayer was not neutral toward religion; nor was the policy generally applicable, considering that other members of the coaching staff were permitted to engage in personal activities after football games. Id. at 2422–23. Additionally, the Court determined that the coach's prayers were not ordinarily within the scope of his duties as a coach and therefore were private speech and not government speech. Id. at 2424. Therefore, the coach established that the school district infringed upon his free speech and free exercise rights, which shifted the burden to the school district to show its restrictions on the coach's rights "serve[d] a compelling interest and [were] narrowly tailored to that end." Id. at 2426. The Court rejected the school district's argument that its suspension of the coach was necessary to avoid a violation of the Establishment Clause. Id. at 2426–28. The coach's private expression did not amount to the school district coercing its students to participate in the religious observance. Id. at 2429–32.

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

Response: In his concurring opinion, Justice Gorsuch opined that the County bore the burden under the Religious Land Use and Institutionalized Persons Act to demonstrate a compelling interest in applying its modern septic system requirement to the Swartzentruber Amish community who objected to the ordinance on sincere religious grounds. Mast v. Fillmore Cnty., Minnesota, 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J., concurring). Citing Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021), Justice Gorsuch opined that a general interest in sanitation would not suffice and that the County would need to establish a compelling interest in denying the Swartzentruber Amish households an exception to the septic system requirement. Id. Justice Gorsuch opined that the County and the lower courts needed to give due weight to exemptions enjoyed by other groups, such as campers, and offer a compelling reason for denying the same flexibility to the Swartzentruber Amish households. Id. In Justice Gorsuch's view, the County and the lower courts also gave insufficient weight to rules in other jurisdictions that permitted use of gray water disposal systems to which the Swartzentruber Amish did not have a religious objection. Id. at 2433.

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

Response: Title 18, United States Code, Section 1507 provides criminal penalties for picketing, parading, using a sound-truck or similar device, or "resort[ing] to any other demonstration" in or near a building or residence occupied or used by a judge "with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing" the judge. In Cox v. State of Louisiana, 379 U.S. 559, 563 (1965), the United States Supreme Court upheld a state statute modeled upon § 1507, holding that it did not "infringe upon the constitutionally protected rights of free speech and free assembly." As a sitting judge and judicial nominee, it would not be appropriate for me to offer an advisory opinion on whether or how § 1507 or any other federal criminal law would apply to specific events.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: The United States Constitution commits the authority to make political appointments to the President with the advice and consent of the Senate. As a sitting judge and judicial nominee, it would not be appropriate for me to comment on the propriety of considering skin color or sex in making political appointments. I am not aware of any case addressing the constitutionality of considering skin color or sex in making political appointments. If this issue were presented in a case assigned to me, I would handle the matter as I handle every other case that comes before me as a judge. I would approach the issue with an open mind, carefully consider the arguments presented by the parties, rigorously research and review any binding and persuasive authorities on the topic, and apply the relevant law to the facts of the case.

30. Is the criminal justice system systemically racist?

Response: I understand the question of whether the criminal justice system is systemically racist to be a question of public policy and a topic of academic study and popular discourse. As a United States Magistrate Judge and in my prior work as a federal prosecutor, I have sought to treat each criminal defendant and investigative subject impartially and without any bias in every criminal case I have handled, and I would continue to so if confirmed to serve as a United States District Judge.

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

Response: I understand the question of whether Congress should act to change the number of justices on the Supreme Court to be a question of public policy and a topic of popular discourse. As a sitting judge and judicial nominee, it would not be appropriate for me to express any personal opinion I have on the matter.

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

Response: No.

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

Response: The United States Supreme Court has engaged in textual and historical analyses of the Second Amendment to determine its public understanding in the period of its ratification and held that the provision guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

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

Response: The United States Supreme Court has invalidated laws banning handgun possession in the home, prohibitions against rendering lawful firearms in the home operable for the purpose of immediate self-defense, and requirements that an applicant for an unrestricted license to carry a firearm in public demonstrate a special need for self-protection distinguishable from that of the general community. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). The Court has held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm regulation." Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations "will often involve reasoning by analogy[.]" Id. at 2132. Central to this analogical inquiry are considerations of "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . ." Id. at 2133.

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

Response: Yes. The United States Supreme Court has held that the right to possess a firearm for self-defense is an individual right that is fundamental to the Nation's scheme of ordered liberty and secured by the Second Amendment and the Fourteenth Amendment. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010).

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

Response: The United States Supreme Court has described the Second Amendment's guarantee as an "unqualified command[]" and stated that the standard for assessing the constitutionality of firearm regulations "accords with how [the Court] protect[s] other constitutional rights." New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111, 2130 (2022). The individual right to possess and carry firearms for self-defense "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" Id. at 2156 (quoting McDonald v. City of Chicago, Illinois, 561 U.S. 742, 780 (2010)).

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

Response: To my knowledge, the United States Supreme Court has not issued an opinion specifically comparing the level of protection afforded to the right to own a firearm to the level of protection afforded to the right to vote. The Court has stated that the standard for assessing the constitutionality of firearm regulations "accords with how [the Court] protect[s] other constitutional rights." New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111, 2130 (2022).

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

Response: Article II of the United States Constitution commits responsibility for law enforcement to the executive branch of government. See, e.g., United States v. Nixon, 418 U.S. 683, 693 (1974) ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]") (citations omitted); Wayte v. United States, 470 U.S. 598, 607 (1985) ("[The] broad discretion [retained by a prosecutor] rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review."). As a member of the judicial branch and judicial nominee, it would not be appropriate for me to comment on the law enforcement policies or priorities set by any executive department or agency.

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

Response: Prosecutorial discretion generally refers to authority and discretion committed to a prosecutor's office in deciding whether and how to prosecute a crime. The United States Supreme Court has recognized that, "[i]n our system, . . . the decision whether or not to prosecute [an offense], and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion[,]" provided "the prosecutor has probable cause to believe that the accused committed [the] offense. . . ." Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). See also United States v. Nixon, 418 U.S. 683, 693 (1974) ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]") (citations omitted); Wayte v. United States, 470 U.S. 598, 607 (1985) ("In our criminal justice system, the Government retains 'broad discretion' as to whom to prosecute."). I understand a substantive administrative rule change to be a change in regulations promulgated by an administrative agency.

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

Response: The death penalty is available for certain offenses under 18 U.S.C. § 3591. Repeal of federal statutes is a prerogative of Congress, not of the President.

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

Response: In Alabama Association of Realtors v. Department of Health & Human Services, 141 S. Ct. 2485 (2021), associations of real estate agents and rental property managers challenged the authority of the Centers for Disease Control and Prevention ("CDC") to impose a nationwide moratorium on evictions of any tenants who lived in a county experiencing high levels of COVID–19 transmission and who made certain declarations of financial need. The district court entered judgment in favor of the plaintiffs but initially stayed its judgment pending appeal. The United States Supreme Court ultimately vacated the stay of judgment because the plaintiffs demonstrated a virtual certainty of success on the merits of their argument that CDC exceeded its statutory authority under § 361 of the Public Health Service Act and the balance of equities weighed against depriving them of the judgment in their favor.

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

Response: As a sitting judge and judicial nominee, it would not be appropriate for me to comment on matters committed to the policies and discretion of a prosecutor's office or that may be the subject of pending or future litigation. As a former federal prosecutor, I am aware that, in § 1-7.400 of Justice Manual, Department of Justice personnel are generally directed not to comment on the nature and progress of a criminal investigation before charges are publicly filed. The same policy permits confirmation of an investigation if necessary to reassure the community that the matter is being investigated.

43. You previously worked for the Association of Community Organizations for Reform Now (ACORN). What was your position?

Response: My best recollection is that, nearly 23 years ago, I worked for ACORN for approximately two months speaking with community residents about joining the association. My employment with the association ended almost 23 years ago.

44. To your knowledge ACORN ever submit hundreds of thousands of fraudulent voter registration forms?

Response: I do not have any personal knowledge of ACORN submitting any number of fraudulent voter registration forms. My only knowledge of any fraudulent conduct by employees of the association is from news reports made several years after my brief employment with the association ended in 2000.

45. In your time as an organizer, did you ever personally witness, observe, or partake in any attempts to break local, state, or federal law?

Response: No.

46. Were you aware that ACORN's founder, Dale Rathke, was alleged to have embezzled over $1 million dollars during your time you worked for the organization?

Response: No. I was not aware at the time of my brief employment with ACORN in 2000, nor am I presently aware, of any allegations of embezzlement or any other criminal conduct by ACORN's founder.

47. Please explain your understanding of the incident regarding Project Veritas' 2009 undercover expose of ACORN. Please be specific.

Response: Through news reports published several years after my brief employment with ACORN in 2000 ended, I became aware of an undercover expose alleging then-recent

misconduct or unlawful activity by employees of the association. That is the extent of my understanding of the matter.

48. Why did ACORN ultimately disband?

Response: I have no personal knowledge of whether or why ACORN disbanded. While researching my employment history earlier this year to complete my Senate questionnaire for judicial nominees, I discovered information indicating that the association is now defunct in the United States.

49. You clerked for Judge Gerald Bruce Lee of the United States District Court for the Eastern District of Virginia in 2011-2012 and Judge Andre Davis of the United States Court of Appeals for the Fourth Circuit in 2014-2015. Both Judges for whom you clerked have publicly advocated against mandatory minimum sentences. Specifically, Judge Davis once stated, "[t]he wholesale use of mandatory minimum sentences has been the source of immeasurable injustice in this country."

a. Do you agree with Judge Davis?

Response: I am not familiar with the above statement attributed to Judge Davis or its context. Therefore, I cannot be certain that I have a full understanding of the statement. As a former federal prosecutor, I am aware that certain federal statutes mandate minimum terms of imprisonment for certain offenses, and I prosecuted a number of cases involving such offenses. In cases where an individual was convicted of such an offense, I sought prison sentences of at least the minimum mandated by statute. If confirmed to serve as a United States District Judge, I would enter sentences in accordance with 18 U.S.C. § 3553 and the statutes prescribing minimum and maximum penalties for the offenses of conviction in every criminal case assigned to me. I would also consider applicable provisions of the United States Sentencing Guidelines, including the advisory sentencing guidelines range. Any prison sentence that falls below the minimum sentence or exceeds the maximum sentence mandated by statute would be beyond the authority of a sentencing judge.

b. If Judge Davis is incorrect, please explain why.

Response: Please see my response to Question 49.a.

50. Do you agree there should be uniformity in sentencing?

Response: In general, uniformity is an appropriate goal and factor in sentencing. Title 18, United States Code, Section 3553(a) requires the sentencing court to consider, among other factors, "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]"

a. Is it unjust for two hypothetical defendants to receive different sentences for the same crime?

Response: Not necessarily. Title 18, United States Code, Section 3553(a) requires the court to consider both "the nature and circumstances of the offense" and "the history and characteristics of the defendant" when imposing a sentence. Significant differences between the criminal histories of two defendants, for example, may call for different sentences—even if the crimes for which they are being sentenced were substantially the same. The sentencing court is required to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2).]" 18 U.S.C. § 3553(a). The purposes of sentencing outlined in § 3553(a)(2) include the need "to protect the public from further crimes of the defendant" and "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]" 18 U.S.C. § 3553(a)(2). Two different defendants may, in the judgment of the sentencing court, require different penalties to deter them from further crimes or to provide needed correctional treatment in an effective manner, even if they have committed the same offense.

Senator John Kennedy
Questions for the Record

Judge Matthew Maddox

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: I am guided by several principles in my work as a United States Magistrate Judge that would continue to guide me if I am confirmed to serve as a United States District Judge. In every case, I approach each issue presented to me with an open mind and avoid prejudgment or letting any personal opinions affect my assessment of any issue. I carefully review and meaningfully consider the arguments made by each party and consult the legal authorities cited by the parties to determine independently the extent to which they support the arguments made. I engage in rigorous and independent study of the law that applies to the issues presented to me for decision, which includes finding and reviewing relevant constitutional and statutory provisions, binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit, applicable decisions of other courts, and relevant sections of commonly cited treatises. I make an impartial and honest assessment of the facts and evidence presented by the parties, fairly and faithfully apply the law to the facts in the record, and render a decision based solely on that analysis. In rendering a decision in any case, I focus exclusively on resolving the controversy presented to me and support the decision with clear explanation of my reasoning and with reference to the legal rules and authorities upon which the decision relies.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The United States Constitution is a fixed and enduring document that may be applied to circumstances that did not exist at the time of ratification. The United States Supreme Court has held that some provisions of the Constitution are understood and applied in light of contemporary standards. See, e.g., Atkins v. Virginia, 536 U.S. 304, 311–12 (2002) ("A claim that punishment is excessive is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. . . . The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.") (citation omitted); Miller v. California, 413 U.S. 15, 24–25 (1973) (applying "contemporary community standards" in deciding whether material "appeals to the prurient interest[]" and is unprotected by the First Amendment on the basis of obscenity). However, the Constitution may only be amended through the process described in Article V.

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: As a United States Magistrate Judge and if confirmed to serve as a United States District Judge, my interpretation of any provision of law would begin with its text and structure. I would also consult any binding precedents of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.") (citations omitted).

If the law is susceptible to multiple reasonable interpretations and there is no binding precedent on the meaning of the law, then I would consult persuasive authorities on the issue, including the decisions of other judges in the district and circuit as well as courts outside the circuit. I would also apply canons of interpretation endorsed by the Supreme Court and the Fourth Circuit for use in interpreting similar or analogous provisions of law. If this process does not yield a clear answer, I would consult legislative history to aid discernment of the legislative intent and purpose to the extent doing so is consistent with Supreme Court guidance. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) ("Extrinsic 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.").

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 precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the question of whether a president's statements are part of legislative history. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply any binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

Response: The United States Supreme Court has held 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 non-discriminatorily for private purposes only." Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551, 567 (1972). In Lloyd, the Court determined that a private shopping center did not assume or exercise "municipal functions or power" such that it was open for public use and that it did not lose its private character merely by inviting the general public "to use it for designated

purposes." Id. at 569. "The essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center." Id.; see also PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 81 (1980) (examining Lloyd). Therefore, the general public was not entitled to exercise First Amendment rights within the privately owned and operated shopping center. Lloyd, 407 U.S. at 570.

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

Response: I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing whether or the extent to which non-citizens unlawfully present in the United States are entitled to a right of privacy. The U.S. Supreme Court has stated that "the people" protected by several constitutional guarantees include non-citizens "who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). These guarantees include due process of law and equal protection of the law, as well as certain other rights under the First, Fourth, Fifth, and Ninth Amendments. See, e.g., id.; Plyler v. Doe, 457 U.S. 202, 210–12 (1982); Bridges v. Wixon, 326 U.S. 135, 148 (1945). The Court has also held that several of the foregoing constitutional provisions "have penumbras, formed by emanations from those guarantees that help give them life and substance[,]" and create constitutionally protected "zones of privacy." Griswold v. Connecticut, 381 U.S. 479, 484 (1965).

As a sitting judge and judicial nominee, it would be improper for me to comment further on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

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: The United States Supreme Court has stated that "the people" protected by the Fourth Amendment include non-citizens "who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). The Supreme Court and United States Court of Appeals for the Fourth Circuit have recognized an exception to the warrant requirement in the Fourth Amendment for searches and seizures at the nation's borders to protect sovereign interests in territorial integrity, national security, preventing the entry of "unwanted persons and effects," regulating the collection of duties, and preventing the entry of contraband. United States v. Aigbekaen, 943 F.3d 713, 720 (4th Cir. 2019) (citing United States v. Flores-Montano,

541 U.S. 149, 153 (2004), and United States v. Montoya de Hernandez, 473 U.S. 531, 537 (1985)). "[T]his 'border search' exception to the warrant requirement is broad, [but] it is not boundless." Id. Although government agents may conduct "routine" searches and seizures at the border "without a warrant or any individualized suspicion[,]" conducting an intrusive and nonroutine search at the border without a warrant requires "individualized suspicion of an offense that bears some nexus to the border search exception's purposes. . . ." Id. at 720–21 (citing United States v. Kolsuz, 890 F.3d 133, 137, 143 (4th Cir. 2018)).

As a sitting judge and judicial nominee, it would be improper for me to comment further on this issue because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

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, 142 S. Ct. 2228 (2022), the United States Supreme Court returned the authority to regulate abortion to the people and their elected representatives. I am not aware of any precedent of the Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the point at which a human life is entitled to equal protection of the law. I understand this question to be a subject of debate and discourse within our society. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on the question because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

9. A federal district court judge in Washington, DC 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 the statement referenced in this question, and I am not aware of any precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit addressing the issue. In Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022), the U.S. Supreme Court held that there is no fundamental right to abortion without addressing whether the Thirteenth Amendment may provide a basis for such a right. As a sitting judge and judicial nominee, it would be improper for me to express an opinion on the question because it may be the subject of litigation before me. If

confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

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: Lower courts are required to follow controlling precedent of the United States Supreme Court.

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: A federal district court is required to follow precedent set by the court of appeals of the circuit within which it sits and the United States Supreme Court.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: The United States Supreme Court has rejected a facial constitutional challenge to a state statute requiring government issued photo identification to vote and held that the state's interests in detecting and deterring voter fraud, improving and modernizing election procedures, and promoting public confidence were substantial enough to justify the limitation imposed on voters. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008). As a sitting judge and judicial nominee, it would be improper for me to comment further on this question because it may be the subject of litigation before me. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, engage in rigorous research to identify any binding or persuasive judicial precedents on the matter, faithfully apply binding precedent, and render a decision based solely upon an application of the law to the facts of the case.

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: The United States Supreme Court has held that the Second Amendment guarantees the individual right to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm

regulation." Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations "will often involve reasoning by analogy[.]" Id. at 2132. Central to this analogical inquiry are considerations of "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . ." Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

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: I am not aware that the United States Supreme Court has ever required that any particular number of factors be satisfied to justify overturning a past decision. The Court "will not overturn a past decision unless there are strong grounds for doing so." Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2478 (2018). The Court has stated that overturning a precedent "is a serious matter[]" and "is not a step that should be taken lightly." Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2264 (2022). Several factors have been considered by the Court in deciding whether to overturn a past decision, including: the quality of the reasoning in the past decision; the workability of the rule established in the past decision; its consistency with other related decisions; any disruptive effect the past decision has had on other areas of the law; the nature of the error made in the past decision; and the extent to which there has been reliance on the past decision. See Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2265 (2022); Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2478–79 (2018).

b. Is one factor alone ever sufficient?

Response: Please see my response 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 "[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." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "[t]he 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: The meaning of the Ninth Amendment is fixed and enduring. Please see my response to Question 2.

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 concurring opinion in McDonald v. City of Chicago, Justice Thomas identified the Ninth Amendment as an "obvious example[]" of a provision in the Bill of Rights that "prevent[s] federal interference in state affairs and [is] not readily construed as protecting rights that belong to individuals." 561 U.S. 742, 851 n.20 (2010) (Thomas, J., concurring in part and concurring in judgment). If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties' arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent.

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: If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties' arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent. I expect that the Bill of Rights would be informative because the Ninth Amendment expressly references rights enumerated in other provisions of the United States Constitution, including the Bill of Rights.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: If confronted with an issue in litigation requiring an interpretation of the Ninth Amendment, I would carefully and impartially consider the parties' arguments, engage in rigorous research to identify any judicial precedents on the matter, and faithfully apply precedent. I expect that Founding-era history would be useful because the United States Supreme Court has engaged in historical analyses in its interpretation of various other provisions in the Bill of Rights to determine how these provisions were understood by the public during the period of ratification. See, e.g., Crawford v. Washington, 541 U.S. 36 (2004) (Confrontation Clause); District of Columbia v. Heller, 554 U.S. 570 (2008) (Second Amendment); Town of Greece, N.Y. v. Galloway, 572 U.S. 565 (2014) (Establishment Clause).

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: The United States Supreme Court's textual analysis of the term in United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990), "suggests that [it] 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." The Court cited this analysis in District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008), where it stated that the term "unambiguously refers to all members of the political community[.]"

b. Is the term's meaning consistent in each amendment?

Response: Please see my response to Question 19.a.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Please see my responses to Questions 6, 7, and 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: In Washington v. Glucksberg, 521 U.S. 702, 720 (1997), the United States Supreme Court cautioned that "the utmost care" must be exercised when the Court is asked to recognize fundamental liberty interests not enumerated in the Bill of Rights, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court[.]" The Court held that the nation's history, legal traditions, and practices provide "crucial 'guideposts for responsible decisionmaking[]'" in this area, which "direct and restrain [the Court's] exposition of the Due Process Clause." Id. at 721. The Court specifically identified "two primary features" of its substantive due process analysis: (1) 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[;]" and (2) that the asserted fundamental liberty interest must be carefully described. Id. at 720–21 (internal quotation marks and citations omitted).

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: The United States Supreme Court held four years after the Fourteenth Amendment's adoption "that the Privileges or Immunities Clause protects only those rights 'which owe their existence to the Federal government, its National character, its

Constitution, or its laws,' . . . and that the fundamental rights predating the creation of the Federal Government were not protected by the Clause[.]" McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010) (citing Slaughter-House Cases, 83 U.S. 36, 76, 79 (1872)). In McDonald, the Court declined to reconsider that interpretation of the Privileges or Immunities Clause. Id. at 758. If confronted with this issue in litigation, I would carefully and impartially consider the parties' arguments and evidence, review and apply binding precedents on the issue, and render a decision based solely upon that analysis.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my response to Question 22. In Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2248 (2022), the United States Supreme Court held "that the Fourteenth Amendment does not protect the right to an abortion." The Court continued in a footnote, "That is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause." Id. at 2248 n.22.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: The United States Supreme Court held that "[w]hen a court reviews an agency's construction of the statute which it administers," it is confronted, first, with "the question whether Congress has directly spoken to the precise question at issue." Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). "If the intent of Congress is clear," the court and the agency "must give effect the unambiguously expressed intent of Congress." Id. at 842–43. "[I]f 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." Id. at 843. "[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." Id. at 844.

More recently, the Court has expressly recognized and applied the major questions doctrine. In certain "extraordinary cases[,]" the "history and the breadth" of the authority asserted by the agency, "and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." West Virginia v. Environmental Protection Agency, 142 S. Ct. 2587, 2608 (2022). In such cases, the agency must provide "more than a merely plausible textual basis for the agency action" and identify "'clear congressional authorization' for the power it claims." Id. at 2609 (internal quotation marks and citations omitted); see also Biden v. Nebraska, 143 S. Ct. 2355, 2375 (2023). Congress is expected "to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." National Federation of Independent Business v. Department of Labor, Occupational Safety & Health Administration, 142 S. Ct. 661, 665 (2022) (quoting Alabama Association of Realtors v. Department of Health & Human Services, 141 S. Ct. 2485, 2489 (2021)). The Court has required "exceedingly clear" statutory language if Congress intends "to significantly alter the balance between federal and state power and

the power of the Government over private property." Sackett v. Environmental Protection Agency, 143 S. Ct. 1322, 1341 (2023) (quoting United States Forest Service v. Cowpasture River Preservation Association, 140 S. Ct. 1837, 1849–50 (2020)).

I understand that the Supreme Court has granted certiorari in Loper Bright Enterprises v. Raimondo (No. 22-451) and may, in that case, consider overturning or limiting its decision in Chevron. As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would continue to apply faithfully the controlling precedents of the Supreme Court, including any forthcoming decisions.

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 response to Question 24. The Administrative Procedure Act ("APA") "establishes the procedures federal administrative agencies use for 'rule making,'" Perez v. Mortgage Bankers Association, 575 U.S. 92, 95 (2015), as well as "the full extent of judicial authority to review executive agency action for procedural correctness," F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 513 (2009). "The APA contains a variety of constraints on agency decisionmaking—the arbitrary and capricious standard being among the most notable." Perez, 575 U.S. at 106. The APA permits a court to set aside "agency action that is arbitrary or capricious[]" when an agency fails to "examine the relevant data and articulate a satisfactory explanation for its action." Fox Television Stations, 556 U.S. at 513. In making this assessment, "a court is not to substitute its judgment for that of the agency, . . . and should uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned[.]" Id. at 513–14 (internal quotation marks and citations omitted).

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The United States Constitution divides the power of the federal government among legislative, executive, and judicial branches. Article I of the Constitution vests legislative power in Congress. Specific legislative powers of Congress are outlined in Section 8 of Article I and in other articles and amendments to the Constitution. The powers of Congress are limited to those enumerated in the Constitution. National Federation of Independent Business v. Sebelius, 567 U.S. 519, 534–35 (2012) (citing Gibbons v. Ogden, 9 Wheat. 1, 195 (1824), and McCulloch v. Maryland, 4 Wheat. 316, 405 (1819)); see also Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018) ("The Constitution confers on Congress not plenary legislative power but only certain enumerated powers."). Importantly, Congress's enumerated powers include the power to make laws that are "necessary and proper for carrying into [e]xecution" other powers enumerated in Article I. Art. I, § 8, cl. 18. The United States Supreme Court has interpreted the Necessary and Proper Clause "to give Congress great latitude in exercising its powers[.]" National Federation of Independent Business, 567 U.S. at 537.

The Tenth Amendment to the Constitution provides that "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." Specific limits on the power of Congress are provided in Section 9 of Article I, including prohibitions against suspending the writ of habeas corpus and granting titles of nobility. Further limits on the power of Congress are provided in the Bill of Rights and other constitutional amendments. The First Amendment, for example, forbids Congress from making any law "respecting an establishment of religion[,] . . . 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."

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: "[M]odern Commerce Clause jurisprudence has 'identified three broad categories of activity that Congress may regulate under its commerce power.'" United States v. Morrison, 529 U.S. 598, 608 (2000) (quoting United States v. Lopez, 514 U.S. 549, 558 (1995)). Congress may regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. Id. at 609. "[T]he scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." Id. at 608 (quoting Lopez, 514 U.S. at 557) (internal quotation marks omitted). Furthermore, "[t]he power to *regulate* commerce presupposes the existence of commercial activity to be regulated." National Federation of Independent Business v. Sebelius, 567 U.S. 519, 550 (2012). The commerce power does not permit Congress compel individuals who are not active in commerce "to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." Id. at 552.

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: The Commerce Clause does not give Congress the power to regulate intrastate, "noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." United States v. Morrison, 529 U.S. 598, 617 (2000).

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: The United States Supreme Court has applied similar analyses to due process claims against the federal government under the Fifth Amendment and due process claims against state actors under the Fourteenth Amendment. See Rosales-Mireles v. United States, 138 S. Ct. 1897, 1906 (2018) ("The 'shock the conscience' standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments."). In his concurring opinion

in Malinski v. New York, Justice Frankfurter stated that the Due Process Clauses of the Fifth and Fourteenth Amendments have "the same meaning." 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring).

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 judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: Please see my response to Question 24.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The anticommandeering doctrine recognizes that Congress lacks "the power to issue direct orders to the governments of the States." Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461, 1476 (2018). "While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." New York v. United States, 505 U.S. 144, 162 (1992). "[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 166.

33. Does the meaning of the Eighth Amendment change over time? Why or why not?

Response: The United States Supreme Court has stated that the Eighth Amendment "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." Kennedy v. Louisiana, 554 U.S. 407, 419, modified, 554 U.S. 945 (2008) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion)). The Court has explained that the standard of extreme cruelty under the Eighth Amendment "is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." Id. (quoting Furman v. Georgia, 408 U.S. 238, 382 (1972) (Burger, C.J., dissenting)).

34. Is the death penalty constitutional?

Response: The United States Supreme Court has held that "the death penalty is not invariably unconstitutional," but it "must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution." Kennedy v. Louisiana, 554 U.S. 407, 420, modified, 554 U.S. 945 (2008) (internal quotation marks and citations omitted).

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 United States Supreme Court has recognized that, "[i]n our system, . . . the decision whether or not to prosecute [an offense], and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion[,]" provided "the prosecutor has probable cause to believe that the accused committed [the] offense. . . ." Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If the issue of how prosecutorial discretion applies to criminal contempt of Congress is presented in a case assigned to me, I would faithfully apply the precedent of the Supreme Court and the United States Court of Appeals for the Fourth Circuit.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my response 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 judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: The Supremacy Clause in Article VI of the United States Constitution provides that state courts are bound by the U.S. Constitution and federal laws notwithstanding any contrary provision in the constitution or laws of the state. The U.S. Supreme Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." Ridgway v. Ridgway, 454 U.S. 46, 54 (1981) (quoting Herb v. Pitcairn, 324 U.S. 117, 125–26 (1945)). In this regard, the Supreme Court's power "is to correct wrong judgments, not to revise opinions." Herb, 324 U.S. at 126. "[I]f the same judgment would be rendered by the state court after [the Supreme Court] corrected its views of federal laws, [the Supreme Court's] review could amount to nothing more than an advisory opinion." Id. Thus, the adequate and independent state grounds doctrine provides that 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).

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 judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If this issue is presented for decision in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit.

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 United States Supreme Court has not cited a textual source for the different standards of review for determining whether state laws or regulations violate constitutional rights. The standards of review developed from the Court's decisions. See, e.g., Nebbia v. People of New York, 291 U.S. 502, 537 (1934) ("So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose."); Skinner v. State of Okl. ex rel. Williamson, 316 U.S. 535, 541 (1942) ("[S]trict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws."); Craig v. Boren, 429 U.S. 190, 197 (1976) ("[S]tatutory classifications that distinguish between males and females are subject to scrutiny under the Equal Protection Clause. . . . To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.") (internal quotation marks and citation omitted).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: An injunction is an equitable form of relief available under Rule 65 of the Federal Rules of Civil Procedure. "[A] federal district court has wide discretion to fashion appropriate injunctive relief in a particular case." Richmond Tenants Org., Inc. v. Kemp, 956 F.2d 1300, 1308 (4th Cir. 1992) (citing Lemon v. Kurtzman, 411 U.S. 192, 200 (1973)). However, "[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). "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). As a sitting judge and judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge. If a universal injunction is sought in a case assigned to me, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, carefully consider the parties' arguments, and render a decision based solely on the application of the law to the facts of the case.

43. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

Response: Early in my career in the law, I had the great fortune and honor of serving as law clerk to two exceptional federal judges: the Honorable Gerald Bruce Lee, United States District Judge (Ret.); and the Honorable Andre M. Davis, United States Circuit Judge (Ret.). These judges have been my greatest professional inspiration. In my service as a United States Magistrate Judge, I seek to emulate the thoroughness, clarity, and warmth Judge Davis consistently exhibited in his opinions. I learned the critical importance of preparation for hearings from both judges. From my careful study of Judge Lee's work, I came to view hearings as opportunities for a judge to convey how carefully and seriously he has considered each party's position and to give both parties confidence in the fairness of the process. If confirmed to serve as a United States District Judge, I would continue seeking to emulate the judicial excellence demonstrated in the work of Judge Lee and Judge Davis.

Questions from Senator Thom Tillis
for Matthew James Maddox 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. As a sitting United States Magistrate Judge, I approach each issue with an open mind, seriously and carefully consider the parties' arguments, research and impartially interpret the applicable law, and render a decision applying the law to resolve the issue. If confirmed to serve as a United States District Judge, I would continue in this practice and commitment. My personal views play no role in this process.

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." Judicial activism is not appropriate. Please see my response to Question 1.

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

   Response: Impartiality is an expectation for a judge. As a United States Magistrate Judge, I carefully consider the litigants' arguments, make fair assessments of the evidence they present, and faithfully apply the law to the facts of the case without partiality to any private interest. I would continue in this practice and commitment if confirmed to serve as a United States District 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. Whether an outcome may be undesirable, and what, if any, outcome I may personally prefer, is not a consideration in my decision-making as a judge. As a United States Magistrate Judge, I am bound to interpret and apply the law in accordance with binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit irrespective of my personal views or preferences. I will continue in this commitment if confirmed to serve as a United States District Judge.

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

Response: No. My role as a United States Magistrate Judge is limited to interpreting the law and applying it fairly and impartially to the resolution of disputed matters presented in cases assigned to me. Any views I may hold regarding matters of public policy play no role in my work as a judge. I would continue in this practice and commitment if confirmed to serve as a United States District Judge.

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

Response: As a sitting United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I would faithfully apply the binding precedents of the United States Supreme Court recognizing Second Amendment rights to possess and carry firearms for self-defense. See District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Illinois, 561 U.S. 742 (2010); New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). In Bruen, the Court held that firearm regulations are permissible if they are "consistent with this Nation's historical tradition of firearm regulation." Id. at 2126. The historical inquiry necessary to assess the constitutionality of contemporary firearm regulations "will often involve reasoning by analogy[.]" Id. at 2132. Central to this analogical inquiry are considerations of "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified. . . ." Id. at 2133. If confronted with a constitutional challenge to a firearm regulation, I would carefully and impartially consider the parties' arguments, fairly assess any evidence presented, review and faithfully apply Bruen and any other binding precedents on the matter, and render a decision based solely upon an application of the law to the facts of the case.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: Please see my response to Question 7. As a United States Magistrate Judge, I am required to follow binding precedent of United States Supreme Court and United States Court of Appeals for the Fourth Circuit, and I would continue to do so if confirmed to serve as United States District Judge. I am bound by Canon 3 of the Code of Conduct for United States Judges not to make public comment regarding a matter that may come before me as a judge or is the subject of pending litigation.

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

Response: Law enforcement officers are entitled to qualified immunity from suit for discretionary functions "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018) (internal quotation marks and citation omitted). "'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." Id. (internal quotation marks and citation omitted). As a United States Magistrate Judge, I am required to follow binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit in the application of the qualified immunity doctrine, and I would continue to do so if confirmed to serve as a United States District Judge.

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

Response: Any personal beliefs I have on matters of public policy have no relevance to my decision-making as a judge. As a United States Magistrate Judge, I am required to follow binding precedent of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit in the application of the qualified immunity doctrine, and I would continue to do so if confirmed to serve as a United States District Judge. It would not be appropriate for me to express any personal opinion regarding matters of public policy or matters that may come before me as a judge or may be the subject of pending litigation.

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

Response: Please see my response to Question 10.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: Any personal beliefs I have regarding any area of the United States Supreme Court's jurisprudence have no relevance to my decision-making as a judge. As a United States Magistrate Judge, I am required to follow binding precedent of the Supreme Court and United States Court of Appeals for the Federal Circuit on matters of patent eligibility, and I would continue to do so if confirmed to serve as a United States District Judge. Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion regarding matters of public policy or matters that may come before me as a judge or may be the subject of pending litigation.

13. 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 response to Question 12. Title 35, United States Code, Section 101 defines the subject matter eligible for patent protection: "Whoever invents or discovers any

new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent…." The United States Supreme Court has held that "this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 573 U.S. 208, 216 (2014) (quoting Ass'n for Molecular Pathology v. Myriad Genetics, Inc., 569 U.S. 576, 589 (2013)). "Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work." Mayo Collaborative Services v. Prometheus Laboratories, Inc., 566 U.S. 66, 71 (2012) (citation omitted). "The Court has recognized, however, that too broad an interpretation of this exclusionary principle could eviscerate patent law[]" because "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." Id.

The Court thus set forth a two-step framework for "distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." Alice, 573 U.S. at 217 (citing Mayo, 566 U.S. at 77). First, the court is required to "determine whether the claims at issue are directed to one of those patent-ineligible concepts[.]" Sanderling Mgmt. Ltd. v. Snap Inc., 65 F.4th 698, 702 (Fed. Cir. 2023) (quoting Alice, 573 U.S. at 217). Second, if the claims are directed to patent-ineligible concepts, the court "search[es] for an 'inventive concept' by 'consider[ing] 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[.]'" Id. (Alice, 573 U.S. at 217).

As a United States Magistrate Judge, I am required to follow binding precedent of the Supreme Court and United States Court of Appeals for the Federal Circuit on matters of patent eligibility, and I would continue to do so if confirmed to serve as a United States District Judge.

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

a. What experience do you have with copyright law?

Response: During law school, I completed courses in intellectual property and media law, each of which involved study of copyright law. I participated in a research project on the educational fair use doctrine as a student fellow of the Yale Law School Information Society Project. If any issue relating to copyright law is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States Court of Appeals for the Fourth Circuit.

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

Response: During law school, I completed a course in intellectual property, which involved study of the Digital Millennium Copyright Act (DMCA). If any issue relating to the DMCA is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States 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: During law school, I completed courses in intellectual property, First Amendment law, and media law, which involved study of 47 U.S.C. § 230 and issues relating to intermediary liability for online service providers. As a student fellow of the Yale Law School Information Society Project, I conducted research and contributed to comments on proposed rulemaking by the Federal Communications Commission that involved issues of intermediary liability. If any issue relating to intermediary liability is presented for decision in a case assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case, including any controlling precedent of the United States Supreme Court or United States 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: During law school, I completed courses in intellectual property and trademark law, First Amendment law, and media law. As a student fellow of the Yale Law School Information Society Project, I participated in a research project on the educational fair use doctrine and contributed to comments on proposed rulemaking by the Federal Communications Commission, which involved First Amendment issues. If any free speech or intellectual property issues are presented for decision in cases assigned to me as a United States Magistrate Judge or if I am confirmed to serve as a United States District Judge, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law to the facts of the case.

15. 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 a sitting United States Magistrate Judge and judicial nominee, Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion I have regarding what role Congressional intent "should" have when deciding how to apply a law to the facts of a case. Any personal opinion I have on the matter would play no role in my decision-making as a judge. On matters of statutory interpretation, I am required to follow binding precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

The Supreme Court has made clear that "legislative history is not the law." Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1631 (2018). As a United States Magistrate Judge, and if confirmed to serve as a United States District Judge, my interpretation of any federal statute would begin with its text and structure. I would also consult any binding precedents of the Supreme Court or the Fourth Circuit interpreting the same provision. If the meaning of a provision is clear from its text (including any relevant statutory definitions) and any binding precedent, then I would apply that meaning. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where . . . that examination yields a clear answer, judges must stop.") (citations omitted). There would only be need to consult legislative history to discern Congressional intent if the meaning of the statute's text were unclear or ambiguous and there was no binding precedent on the statute's meaning. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) ("Extrinsic 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.").

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 I am presented with an issue relating to the Digital Millennium Copyright Act on which the United States Copyright Office has provided advice and analysis, I would engage in rigorous research of the matter and fairly and impartially apply the law in deciding the issue, including any controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth

Circuit. In Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842–44 (1984), the Supreme Court held that, where a statute is ambiguous or unclear as to a particular issue, a court must defer to the "reasonable interpretation" of the statute made by an agency to which responsibility for administering the statute has been delegated. Notably, however, the Court has also "held that Chevron deference applies only when a court interprets a rule issued pursuant to an agency's authority to 'make rules carrying the force of law.' . . . When the agency's interpretation doesn't create law, courts must decide whether to afford that interpretation Skidmore deference." Carlton & Harris Chiropractic, Inc. v. PDR Network, LLC, 982 F.3d 258, 264 (4th Cir. 2020) (quoting Gonzales v. Oregon, 546 U.S. 243, 255 (2006)). Under Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944), what weight to give an agency's judgment "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

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 judicial nominee, I am bound by Canon 3 of the Code of Conduct for United States Judges not to express any personal opinion on this issue or any other matter that may be presented to me for decision or is the subject of pending litigation. Any personal opinion I have on the matter would play no role in my decision-making as a judge. If this issue is presented in any case assigned to me, I would engage in rigorous research of the matter and fairly and impartially apply the relevant law in deciding the issue, including any controlling precedents of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit.

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

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

Response: As a sitting United States Magistrate Judge, and if confirmed to serve as a United States District Judge, I am required to interpret and apply federal statutes as they are written and have been interpreted in controlling decisions of the United States Supreme Court and United States Court of Appeals for the Fourth Circuit. Any opinion I have on how well suited the Digital Millennium Copyright Act is to today's digital environment is not relevant and would play no role in my decision-

making. That question is a matter of public policy to be addressed by the political branches of government.

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 response to Question 16.a.

17. 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 studied the incidence or prevalence of "judge shopping" and "forum shopping." These practices are commonly viewed as improper. As a general matter, in the District of Maryland, cases are randomly assigned to judges sitting in the respective Northern and Southern Divisions in which cases are filed. See L.R. 301.4 & 501.1 (D. Md. 2023). Multiple judges sit in each of these divisions.

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

Response: Judges have the responsibility to abide by the canons of judicial conduct and all administrative and court rules that govern the courts in which they preside.

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: I am not familiar with the term "forum selling." I have not studied any practices by courts to attract a particular type of case or litigant through proactive steps or the ethical or legal implications of any such practices. As a United States Magistrate Judge, I have not engaged in any such practices, nor would I engage in such practices if confirmed to serve as a United States District Judge.

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

Response: Please see my response to Question 17.c.

18. 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 judicial nominee, Canon 3 of Code of Conduct for United States Judges precludes me from expressing any personal opinion on the practices and procedures of another court.

19. 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 responses to Questions 17.a and 18.