Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Jennifer Lynne Hall
Nominee to be United States District Judge for the District of Delaware

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 disagree with that statement. As a sitting federal judge, I faithfully apply binding precedent from the United States Supreme Court and the United States Court of Appeals for the Third Circuit (or the Court of Appeals for the Federal Circuit, for example, in patent cases) to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge.

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

   Response: I disagree with that approach. As a sitting federal judge, I faithfully apply binding precedent from the United States Supreme Court and the United States Court of Appeals for the Third Circuit (or the Court of Appeals for the Federal Circuit, for example, in patent cases) to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge.

3. **Please provide the dates that you worked under the supervision of David Weiss. Please describe the roles you held during those times.**

   Response: In 2011, I was hired as an Assistant United States Attorney in the Civil Division in the United States Attorney's Office for the District of Delaware. At that time, I was supervised by the Civil Chief. The Civil Chief reported to Mr. Weiss, who was then the First Assistant United States Attorney. In approximately 2012, Mr. Weiss began also serving as the Acting Civil Chief and I was supervised by him.

   In 2015, I became the Civil Chief. I was supervised by Mr. Weiss, who remained the First Assistant United States Attorney.

   In March 2017, Mr. Weiss became the Acting United States Attorney, and, in February 2018, he became the United States Attorney. I was still serving as the Civil Chief at that time. I was supervised by the First Assistant United States Attorney, who was supervised by Mr. Weiss.

I resigned from the U.S. Attorney's Office in June 2019 when I was appointed as a United States Magistrate Judge.

4. **At any time while you worked at the United States Attorney's Office, were you aware of an investigation into Hunter Biden or any other member of President Biden's family?**

If yes, please describe what you knew?

Response: It is my current understanding that, prior to my resignation from the United States Attorney's Office in June 2019 (when I became a United States Magistrate Judge), the office had opened an investigation involving Hunter Biden. I do not recall if I knew that at the time I worked there. I did not have any involvement in that investigation. I have no knowledge of that investigation except for what I have learned in the news. I am not aware of any other investigation involving any other member of President Biden's family.

5. **At any time while you worked at the United States Attorney's Office, were you in any way involved (including involved in a discussion) regarding any investigation into Hunter Biden or any other member of President Biden's family?**

If yes, please describe your involvement with specificity.

Response: No.

6. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

Response: A person in custody pursuant to a judgment of a state court can seek a writ of habeas corpus pursuant to 28 U.S.C. § 2254 if their challenge is that their conviction or sentence was in violation of the Constitution or laws or treaties of the United States.

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

Response: Under 28 U.S.C. § 2255, a prisoner in custody under the sentence of a federal court can seek relief from the court that imposed the sentence if they claim "the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." *See, e.g., Jones v. Hendrix*, 143 S. Ct. 1857 (2023). In addition, under limited circumstances, a person serving a federal sentence may seek modification of their term of imprisonment under 18 U.S.C. § 3582(c) or the First Step Act. *See, e.g., Concepcion v. United States*, 142 S. Ct. 2389 (2022)

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

Response: The Supreme Court held that the admissions programs at Harvard College and the University of North Carolina—each of which took race into account at various stages of the admissions process—failed strict scrutiny and thus violated the Equal Protection Clause of the 14th Amendment. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

9. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**
If yes, please list each job or role where you participated in hiring decisions.

Response: Yes. As a United States Magistrate Judge, I participated in the decisions to hire my law clerks and my courtroom deputy. As an Assistant United States Attorney, I sometimes participated in the decisions to hire Assistant United States Attorneys and other staff, but I was not the ultimate decisionmaker.

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

Response: No.

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

Response: No.

12. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**
If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Except for the jobs listed in my response to Question 9, I am not aware of how my prior employers selected candidates for employment. With respect to my current employment as a United States Magistrate Judge, I can only speak to my own hiring practices. I have not given preference to any candidate on account of race, ethnicity,

religion, or sex. With respect to my prior employment as an Assistant United States Attorney, I can only speak to those decisions in which I participated. Although I was not the ultimate decisionmaker in those decisions, I'm not aware of any preference being given on account of race, ethnicity, religion, or sex.

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

Response: Yes. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

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

Response: The Supreme Court held that the Free Speech Clause of the First Amendment prohibits a state from compelling a website designer to create expressive designs containing messages that the designer disagrees with. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023).

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

Response: To the extent Justice Jackson was saying that the state cannot compel individuals to speak messages that they disagree with, the Supreme Court recently reaffirmed that principle in *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2321 (2023).

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

Response: "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). According to the Supreme Court, "the crucial first step in the content-neutrality analysis" is "determining whether the law is content neutral on its face." *Id.* at 165. The Supreme Court has stated that courts should "consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys," including, whether it "defin[es] regulated speech by particular subject matter" or "by its function or purpose." *Id.* at 163–64. In addition, the Supreme Court has instructed that courts should consider laws to be content based if they

cannot be "'justified without reference to the content of the regulated speech,'" or if they were adopted by the government "because of disagreement with the message [the speech] conveys." *Id.* at 164 (citation omitted).

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

Response: The Supreme Court has held that a state may proscribe "true threats," *i.e.*, "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). "[A] mental state of recklessness is sufficient," *i.e.*, a state "must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Counterman v. Colorado*, 143 S. Ct. 2106, 2111–12 (2023).

18. **Under Supreme Court and Third 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: The Supreme Court has acknowledged "the vexing nature of the distinction between questions of fact and questions of law." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). The Supreme Court has explained that "addressing questions of who did what, when or where, how or why" are findings of historical fact. *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018); *see also Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007) ("[W]e have followed the Supreme Court's definition of 'factual issues' as 'basic, primary or historical facts: facts in the sense of a recital of external events and the credibility of their narrators.'" (citing *Berryman v. Morton*, 100 F.3d 1089, 1094 (3d Cir.1996)). The Supreme Court and the Third Circuit have further explained that "in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *United States v. Brown*, 631 F.3d 638, 642–43 (3d Cir. 2011). According to the Third Circuit, "[i]f application of the rule of law to the facts requires an inquiry that is 'essentially factual'—one that is founded 'on the application of the fact-finding tribunal's experience with the mainsprings of human conduct'— . . . the district court's determination should be classified as one of fact . . . . If, on the other hand, the question requires us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then . . . the question should be classified as one of law." *Brown*, 631 F.3d at 643. If confirmed, I would continue to faithfully apply binding precedent from the United States Supreme Court and

the United States Court of Appeals for the Third Circuit regarding whether a particular issue should be treated as a question of fact or a question of law.

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

Response: Section 3553(a)(2) of Title 18 sets forth retribution, deterrence, incapacitation, and rehabilitation as four factors a judge must consider when imposing a sentence, but the statute does not say to give any factor more weight than any other. If confirmed, I will faithfully follow binding precedent regarding the application of § 3553(a)(2) and give each factor appropriate weight under the law and the circumstances of the case.

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

Response: As a sitting federal judge and a judicial nominee, it is not my place to comment on the quality of Supreme Court precedent. I faithfully apply binding precedent from the United States Supreme Court to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge.

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

Response: As a sitting federal judge and a judicial nominee, it is not my place to comment on the quality of Third Circuit precedent. I faithfully apply binding precedent from the United States Court of Appeals for the Third Circuit to the facts of the cases that come before me, and I would continue that practice if confirmed as a district judge.

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

Response: Section 1507 of Title 18 of the United States Code provides as follows: "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." 18 U.S.C. § 1507.

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

Response: I am not aware of any Supreme Court or Third Circuit precedent assessing the facial constitutionality of 18 U.S.C. § 1507. In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court held that a state statute modeled after 18 U.S.C. § 1507 was not unconstitutional on its face.

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

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

Response: Yes. As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). Because the constitutionality of de jure racial segregation in public schools is an issue that is unlikely to come before me, I may state that *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). Because the constitutionality of laws prohibiting interracial marriage is an issue that is unlikely to come before me, I may state that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *Griswold v. Connecticut* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court's decision in *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court's decision in *Planned Parenthood v. Casey* was overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). While the Supreme Court's reasoning in *Gonzales v. Carhart* was rejected in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) (rejecting the undue burden test), the Court's holding is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *District of Columbia v. Heller* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *McDonald v. City of Chicago* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent. If confirmed, I will

continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *New York State Rifle & Pistol Association v. Bruen* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *Dobbs v. Jackson Women's Health* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *303 Creative LLC v. Elenis* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and the government bears the burden to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 2156 (citation omitted).

26. **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.

27. **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.

28. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

29. **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.

30. **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.

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

Response: On January 31, 2023, I submitted an application to Senators Carper and Coons in response to their January 23, 2023, announcement seeking applications for District Judge for the District of Delaware. On March 3, 2023, I was interviewed by a nominating commission appointed by Senators Carper and Coons. On March 17, 2023, I was interviewed by Senators Carper and Coons. On March 24, 2023, I was contacted by

an attorney from the White House Counsel's Office to schedule an interview. I interviewed with that office on March 27, 2023. On April 5, 2023, that office informed me that they would be continuing the process to consider me for a vacancy. Since April 5, 2023, I have been in contact with that office and the Office of Legal Policy at the Department of Justice. On June 28, 2023, the President announced his intent to nominate me.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
    a. **If yes,**

i. **Who?**
ii. **What advice did they give?**
iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: No.

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

Response: On March 24, 2023, I was contacted by an attorney from the White House Counsel's Office to schedule an interview. I interviewed with that office on March 27, 2023. On April 5, 2023, that office informed me that they would be continuing the process to consider me for a vacancy. Since April 5, 2023, I have been in contact with that office and the Office of Legal Policy at the Department of Justice regarding my nomination and the confirmation process.

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

Response: I received these questions on August 2, 2023. I drafted my responses and submitted my draft responses to the Office of Legal Policy at the Department of Justice. I received limited feedback. I then finalized and submitted my responses.

Senate Judiciary Committee
Nominations Hearing
July 26, 2023
Questions for the Record
Senator Amy Klobuchar

Jennifer Hall, nominee to be U.S. District Court Judge for the District of Delaware

Between 2011 and 2019, you served in the U.S. Attorney's Office for the District of Delaware, including serving as Chief of the Civil Division for four years. During your tenure as an Assistant U.S. Attorney you served as either lead counsel or supervisory attorney in the over 200 investigations and litigations.

- **How will these experiences inform your approach if you are confirmed as a federal district court judge?**

  Response: In my experience as an Assistant United States Attorney, as well as in my experiences as a law clerk, private attorney, and federal magistrate judge, I have handled nearly every type of case that comes before the United States District Court for the District of Delaware. Not only do I have extensive substantive knowledge in many areas of the law, but I also have frequently been called upon to get up to speed on new topics. I believe that these experiences will serve me well as a district judge. In addition, I believe that my experience handling and supervising a very heavy caseload will be particularly beneficial in the District of Delaware, which has one of the busiest dockets in the country.

Senator Mike Lee
Questions for the Record
Jennifer L. Hall, Nominee to the United States District Court for the District of Delaware

1. How would you describe your judicial philosophy?

Response: My judicial philosophy is to work hard, approach each case with an open mind, carefully study the applicable precedent, and faithfully apply the law to the particular case before me.

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

Response: In interpreting a statute, I would look to Supreme Court and Third Circuit precedent (or Federal Circuit precedent, for example, in patent cases) to see if the text has been interpreted in binding precedent. If it hasn't, I would look to see if the text of the statute is clear; if it is unambiguous with respect to the issue before the court, then the text is dispositive. If the text is ambiguous, I would look to other sources authorized by the Supreme Court and the Circuit, including precedent interpreting similar laws, persuasive precedent from other courts, and canons of construction.

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

Response: In interpreting a constitutional provision, I would look to the text of the provision and consider Supreme Court and Third Circuit precedent interpreting the provision, including binding precedent on the appropriate method of constitutional interpretation. If necessary, I might also consider persuasive precedent from other courts.

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

Response: If the Supreme Court or Third Circuit has instructed that lower courts look to the original meaning of a constitutional provision, *see, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022), I would follow that approach. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including precedent regarding the role of the text and original meaning of a constitutional provision.

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

Response: Please see my response to Question 2.

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

Response: The Supreme Court has stated 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." *Dist. of Columbia v. Heller*, 554 U.S. 570, 605 (2008). The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent (or Federal Circuit precedent, for example, in patent cases) when interpreting the Constitution or a statute, including precedent regarding the role of plain meaning in constitutional and statutory interpretation.

6. What are the constitutional requirements for standing?

Response: The constitutional requirements for standing are injury in fact, causation, and redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

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

Response: Article I, Section 8 of the Constitution gives Congress the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8; *see also McCulloch v. Maryland*, 17 U.S. 316, 324 (1819) ("Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it.").

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 Supreme Court has explained that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). In evaluating whether the enactment of a law falls within the scope of Congress's powers and is consistent with the Constitution, I would follow binding precedent from the Supreme Court and the Third Circuit.

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

Response: The Supreme Court has explained that the Constitution protects unenumerated rights that are "deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997); *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) ("[The Due Process Clause] has been held to guarantee 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.'" (citing *Glucksberg*, 521 U.S. at 721)). Examples of such rights recognized by the Supreme Court include the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967).

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: In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), the Supreme Court held that substantive due process does not protect the right to an abortion. The Supreme Court explained in *Ferguson v. Skrupa*, 372 U.S. 726 (1963), that "[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." *Id.* at 730. As a sitting federal judge, I faithfully apply binding Supreme Court and Third Circuit precedent regarding substantive due process and will continue to do so if confirmed.

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

Response: The Supreme Court has held that the Commerce Clause grants Congress authority to regulate (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

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

Response: The Supreme Court has identified race, alienage, national origin, and religion as suspect classifications requiring strict scrutiny. *See, e.g., Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Supreme Court has explained that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (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: I would begin with the text of the Constitution and analyze it in conjunction with controlling precedent, including any precedent in which one branch of government assumed an authority not granted to it by the text of the Constitution. Some examples in which the Supreme Court has found that a branch exceeded its constitutional authority are *Marbury v. Madison*, 5 U.S. 137 (1803); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: In my four years as a federal magistrate judge, I have approached each case with an open mind, and I have faithfully applied the law to the particular issue before me without regard to my personal views. I would continue that practice if confirmed as a district judge.

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

Response: Both are undesirable and contrary to law.

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

Response: I have not studied this trend or its upsides and downsides, and so I cannot comment intelligently on it. If confirmed as a district court judge, I would continue my practice of faithfully applying Supreme Court and Third Circuit precedent when assessing the constitutionality of federal statutes.

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

Response: "Judicial review" refers to the doctrine described by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137 (1803), in which the Supreme Court described the judiciary's role as to "say what the law is." *Id.* at 177. Black's Law Dictionary defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Black's Law Dictionary* (11th ed. 2019).

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

Response: Article VI of the Constitution provides, "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." U.S. Const. art. VI. Elected officials are obligated to respect Supreme Court decisions interpreting the constitution, *see, e.g., Cooper v. Aaron*, 358 U.S. 1, 19 (1958); as a sitting federal judge, it is not appropriate for me to comment on how elected officials should exercise their independent obligation to follow the Constitution. Article V of the Constitution sets forth methods for elected officials to amend the Constitution. U.S. Const. art. V.

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: One of the things that Hamilton is saying in Federalist 78 is that a judge's role is not to make or enforce the law. Rather, a judge's role is to handle only those cases or controversies that are before them, in accordance with binding precedent. That has been my practice as a federal magistrate judge, and I will continue that practice if confirmed as a district judge.

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: District court judges must follow binding Supreme Court precedent and Circuit precedent that is on point for an issue, even if the precedent in question does not seem to be rooted in constitutional text, history, or tradition. If no precedent directly addresses the issue before the court, the court must take guidance from other relevant precedent, including binding precedent interpreting similar laws and binding precedent on the appropriate method of constitutional interpretation. Judges should address only those issues that are properly before the court.

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

Response: None.

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

Response: I am not familiar with this statement. I am not aware of any Supreme Court or Third Circuit precedent assessing "equity" according to the definition in this question. If confirmed, I will continue to follow binding Supreme Court and Third Circuit precedent regarding any cases that come before me.

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

Response: Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). It defines "equality" as "[t]he quality, state, or condition of being equal." Black's Law Dictionary (11th ed. 2019).

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

Response: The Fourteenth Amendment provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Third Circuit precedent assessing "equity" as defined in this question.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of this term. Merriam-Webster's Dictionary defines it as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster's Dictionary (2022).

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

Response: I do not have a personal definition of this term. Black's Law Dictionary defines "critical race theory," as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see my responses to Questions 27 and 28. By way of further response, I have not compared or otherwise studied "critical race theory" or "systemic racism."

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

Questions for the Record for Jennifer Lynne Hall, nominee to be a United States District Judge for the District of Delaware

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, racial discrimination is unlawful. *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*

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 federal judge and judicial nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court has held that the test for unenumerated rights is whether they are "deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). I will faithfully apply binding Supreme Court and Third Circuit precedent if confronted with such an issue.

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: My judicial philosophy is to work hard, approach each case with an open mind, carefully study the applicable precedent, and faithfully apply the law to the particular case before me. I am not familiar with the judicial philosophies of all of the justices on the listed courts, so I cannot identify the specific Supreme Court justice that has a judicial philosophy most analogous with mine.

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

Response: Black's Law Dictionary defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary (11th ed. 2019). I do not place any particular label on my interpretive method. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including precedent regarding the role of the original meaning of a constitutional provision. If the Supreme Court or Third Circuit has instructed that lower courts look to the original meaning of a particular constitutional provision, *see, e.g., Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), I would follow that approach.

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

Response: Black's Law Dictionary defines the term "living constitutionalism" as "[t]he

doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I do not place any particular label on my interpretive method. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

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: If the Supreme Court or Third Circuit has instructed that lower courts look to the original meaning of a particular constitutional provision, *see, e.g., Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), I would follow that approach. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including precedent regarding the role of the original meaning of a constitutional provision.

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

Response: If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution and statutes, including binding precedent on the appropriate method of constitutional and statutory interpretation. *See, e.g., N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) ("Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated."); *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President."); *Graham v. Florida*, 560 U.S. 48, 58 (2010) (considering "evolving standards of decency that mark the progress of a maturing society" in determining whether a form of punishment violates the Eighth Amendment); *Ashcroft v. ACLU,* 535 U.S. 564, 574 (2002) (looking to "contemporary community standards" in assessing obscenity under the First Amendment).

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

Response: No. In *New York State Rifle and Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 2132.

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

Response: *Dobbs v. Jackson Women's Health Organization* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *Dobbs v. Jackson Women's Health Organization* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: *New York Rifle & Pistol Ass'n v. Bruen* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). *New York Rifle & Pistol Ass'n v. Bruen* is binding precedent. If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent.

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

Response: *Brown v. Board of Education* is binding precedent.

a. **Was it correctly decided?**

Yes. As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). Because the constitutionality of de jure racial segregation in public schools is an issue that is unlikely to come before me, I may state that *Brown v. Board of Education* was correctly decided.

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

Response: The Bail Reform Act of 1984, 18 U.S.C. § 3142(e)(2), (3), provides that there is a rebuttable presumption of pretrial detention in cases involving certain repeat offenders as well as in cases charging certain enumerated violations involving controlled substances, terrorism, violent crime, firearms, minor victims, slavery and human trafficking, and other specified offenses.

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

Response: The Bail Reform Act requires courts to consider whether there are conditions or combinations of conditions that "will reasonably assure the appearance of the person as required and the safety of any other person and the community," 18 U.S.C. § 3142(e)(1), and Congress has stated that there is a rebuttable presumption that no such conditions exist in cases involving specified offenses, reflecting its determination that defendants accused of those offenses present a greater flight risk or danger to the community. 18 U.S.C. § 3142(2), (3). I am not aware of any Supreme Court or Third Circuit precedent explaining the policy rationales underlying the presumption set forth in 18 U.S.C. § 3142(e)(2), (3).

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. There is binding authority from the Supreme Court regarding the limits on the government's ability to regulate private institutions, including religious organizations and small businesses operated by observant owners. *See, e.g., 303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). If confirmed, I will continue my practice of faithfully applying binding Supreme Court and Third Circuit precedent to any issues involving government regulation of private institutions, including religious organizations and small businesses operated by observant owners.

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

Response: The Supreme Court has held that the First Amendment imposes a duty on government "not to base laws or regulations on hostility to a religion or religious viewpoints." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1721 (2018). Government regulations that "treat *any* comparable secular activity more favorably than religious exercise" trigger strict scrutiny, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), and may only be upheld "to further 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.'" *Id.*, 141 S. Ct. at 1298 (citation omitted). "The Free Exercise Clause . . . protects religious observers against unequal treatment," and "laws that impose special disabilities on the basis of religious status" are likewise subject to strict scrutiny. *Espinosa v. Mont. Dept. of Revenue*, 140 S. Ct. 2246, 2257 (2020) (internal marks and citation omitted).

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: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), two religious entities sued to block enforcement of an executive order issued by the governor of New York that imposed restrictions limiting occupancy at religious services. The Supreme Court held that the applicants were entitled to a preliminary injunction to enjoin enforcement of the order because the applicants made a "strong showing" that the challenged restrictions violated "the minimum requirement of neutrality" to religion and thus would likely prove a violation of the Free Exercise Clause of the First Amendment. *Id.* at 66. The Supreme Court further concluded that the challenged restrictions, if enforced, would cause irreparable harm, and that the state had not shown that granting the applications would harm the public. *Id.* at 67–68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that an injunction pending appeal should have been granted to block enforcement of COVID-19-related restrictions in California. The Supreme Court held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise"; accordingly, "the government has the burden to establish that [such a] challenged law satisfies" strict scrutiny. *Id.* at 1296. The Supreme Court further held that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* The Supreme Court further concluded that the applicants "were likely to succeed on the merits of their free exercise claim," that the challenged restrictions caused irreparable harm, and that the state had not shown that "public health would be imperiled" by employing less restrictive measures. *Id.* at 1297. The Supreme Court also held that "litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants remain under a constant threat that government officials will use their power to reinstate the challenged restrictions." *Id.* (internal marks omitted).

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's enforcement action against a cake shop owner who declined for religious reasons to make a wedding cake for a same-sex couple violated the Free Exercise Clause of the First Amendment. Examining the record, the Supreme Court found that the Commission demonstrated "clear and impermissible hostility toward the sincere religious beliefs that motivated [the cake shop owner's] objection." *Id.* at 1729. The Supreme Court held that "the Commission's treatment of [the cake shop owner's] case violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731. It further explained that "[t]he government, consistent with the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Id.*

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, provided that such beliefs are sincerely held. *See Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829 (1989); *see also Burwell v. Hobby Lobby*, 573 U.S. 682 (2014).

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

Response: The Supreme Court has held that individuals with sincere beliefs are entitled to invoke the Free Exercise Clause; courts do not consider whether an individual's interpretations of religious and/or church doctrine is reasonable. *See Burwell v. Hobby Lobby*, 573 U.S. 682 (2014); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829 (1989).

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

Response: The Supreme Court has held that individuals with sincere beliefs are entitled to invoke the Free Exercise Clause; courts do not consider whether an individual's view or interpretation is reasonable. *See Burwell v. Hobby Lobby*, 573 U.S. 682 (2014); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829 (1989).

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

Response: No, not to my knowledge.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception" barred the school teachers' employment discrimination claims against Catholic elementary schools. The Supreme Court concluded that the "ministerial exception," which is grounded in the Religion Clauses of the First Amendment, was not limited to individuals who have the formal title of "minister" or who satisfy academic requirements. *Id.* at 2063–64. The Court affirmed that the First Amendment "protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 2055 (internal marks omitted).

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services (CSS) for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. *Id.* at 1882. The Supreme Court concluded that the city's non-discrimination requirement was not generally applicable because it permitted certain discretionary exceptions; it was thus subject to strict scrutiny. *See id.* at 1877–80. The city failed to meet its burden to show a compelling interest in denying an exception to CSS. *See 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: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's tuition assistance program, under which parents living in districts without a public high school could direct state-funded subsidies to secular private schools but not to religious private schools, violated the Free Exercise Clause of the First Amendment. *Id.* at 2002. The Court explained that "a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Id.* at 1996. The Court further held that Maine's tuition assistance program could not satisfy strict scrutiny. *Id.* at 1997–98.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), a public high school football coach lost his job "for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment" after football games. *Id.* at 2433. The Supreme Court held that the school's actions violated the coach's rights under the Free Exercise and Free Speech clauses of the First Amendment as the school's actions could not be justified on the ground that the coach's suspension was essential to avoid an Establishment Clause violation. *Id*.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated a state court judgment and remanded the case, which involved a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), for further consideration in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In Justice Gorsuch's concurrence, he wrote "to highlight a few issues the lower courts and administrative authorities may wish to consider on remand." *Mast*, 141 S. Ct. at 2430. Justice Gorsuch wrote that strict scrutiny analysis of governmental interests must be "precise," rather than "broadly formulated." *Id.* at 2432. He also stated that the exemptions given to other groups and given by other jurisdictions should be given due weight. *Id.* at 2432–33. Finally, he wrote that the government must prove that rules are narrowly tailored "with evidence" and are not "based on certain assumptions." *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: I am not aware of any binding Supreme Court or Third Circuit precedent assessing whether 18 U.S.C. § 1507 violates the First Amendment rights of individuals to peaceably assemble in that context. As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). I will faithfully apply binding Supreme Court and Third Circuit precedent if confronted with such an issue.

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: I am not aware of any such trainings in the District of Delaware. I will not support such trainings.

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 Appointments Clause of the Constitution gives the President the authority, with the advice and consent of the Senate, to make appointments to political positions. U.S. Constitution art. II, § 2, cl. 2. As a sitting federal judge and a judicial nominee, it is not my place to comment on what is appropriate for the President and Senate to consider in making their decisions; however, if a case concerning the constitutionality of an appointment came before me, I would faithfully apply binding Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has held that disparate impact claims are cognizable under certain federal anti-discrimination laws, for example, the Fair Housing Act and

Title VII of the Civil Rights Act of 1964. *See, e.g., Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519 (2015). I am not aware of any binding Supreme Court or Third Circuit precedent addressing subconscious racial discrimination. If a case involving a racially disparate outcome came before me, I would faithfully apply binding Supreme Court and Third Circuit precedent.

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

Response: As a sitting federal judge and judicial nominee, I am and will be bound by Supreme Court precedent regardless of the size of that court. Whether the number of justices should be changed is not for me to say; it is a question for policymakers.

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

Response: I'm not sure what is meant by "illegitimate." To my knowledge, all current members of the Supreme Court have been confirmed in accordance with the procedure set forth in the Constitution.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); the Supreme Court recounted in detail the original public meaning of the Second Amendment. In *Heller* and *McDonald*, the Supreme Court held that the Second Amendment protects the right of law-abiding citizens to possess a handgun in the home for self-defense. In *Bruen*, the Supreme Court held that the original public meaning of the Second Amendment also protects the right of law-abiding citizens to public carry for self-defense. I will apply binding Supreme Court and Third Circuit precedent regarding the original public meaning of the Second Amendment if confronted with such an issue.

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

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court set forth the test for assessing whether a restriction is prohibited by the Second Amendment. First, the court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct," and the government bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that the

Second Amendment protects the right of law-abiding citizens to possess a handgun in the home for self-defense. In *Bruen*, the Supreme Court held that the Second Amendment protects the right of law-abiding citizens to public carry for self-defense. I will apply binding Supreme Court and Third Circuit precedent regarding the Second Amendment if confronted with such an issue.

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

Response: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." *Id.* at 595. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court confirmed that the right to keep and bear arms is a fundamental right applicable to the states.

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

Response: No. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Second Amendment "standard accords with how we protect other constitutional rights." *Id.* at 2130. The Court further explained that "[t]he constitutional right to bear arms in public 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*, 561 U.S. 742 (2010)) (internal marks omitted).

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

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

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 Constitution provides that the executive power is vested in the President. U.S. Const. art II. Section 3 of Article II requires that the President "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. The Supreme Court has recognized that in undertaking this duty, the executive branch has broad discretion with respect to enforcement decisions. *See Wayte v. United States*, 470 U.S. 598 (1985). "This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis courts are competent to undertake." *Id.* at 607. As a sitting federal judge and judicial nominee, it would be inappropriate for me

to offer an opinion as to how executive discretion should be exercised. I will apply binding Supreme Court and Third Circuit precedent if confronted with such an issue.

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

Response: I am not aware of any binding Supreme Court or Third Circuit precedent that answers this question, and the issue has not previously come before me as a magistrate judge. Black's Law Dictionary defines "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines "administrative rule" as "[a]n officially promulgated agency regulation that has the force of law." *Id.* I will apply binding Supreme Court and Third Circuit precedent if confronted with the issue of whether an act constitutes prosecutorial discretion or a substantive administrative rule change.

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

Response: The federal death penalty is codified in the United States Criminal Code at 18 U.S.C. § 3591. It would require legislation passed by Congress and signed into law by the President to amend the criminal code. *See Clinton v. City of New York*, 524 U.S. 417, 438 (1998) ("There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.").

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 Ass'n of Realtors v. Dep't of Health and Human Servs.*, 141 S. Ct. 2485 (2021), the district court had concluded that the Centers for Disease Control and Prevention (CDC) lacked statutory authority to impose a nationwide eviction moratorium, but the district court had also stayed the effect of its ruling nullifying the eviction moratorium pending appeal. The Supreme Court vacated the district court's stay pending appeal. The Supreme Court held that "the applicants are virtually certain to succeed on the merits of their argument that the CDC has exceeded its authority." *Id.* at 2486. The Supreme Court explained that it "expect[s] Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489 (internal marks omitted) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). The Supreme Court also held that the moratorium had put the applicants "at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery." *Id.* at 2489.

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 federal judge and a judicial nominee, I do not believe it is appropriate for me to comment on the discretionary activities of the executive branch. Should such an issue come before me, I would faithfully apply binding Supreme Court and Third Circuit precedent.

43. **How much criminal litigation experience do you possess? Please be specific.**

Response: I have extensive criminal litigation experience.

In my four years as a sitting federal magistrate judge, I regularly handle criminal pretrial proceedings in federal felony cases, including initial appearances, arraignments, preliminary hearings, and bail hearings.

Prior to becoming a magistrate judge, I spent eight years as an Assistant United States Attorney, during which time I prosecuted many criminal cases, including, for example, drug cases, gun cases, and white-collar cases. I also handled appeals before the Third Circuit. A representative sample of my criminal litigation experience as an Assistant United States Attorney is set forth below.

In *United States v. Bolles*, No. 13-cr-120 (D. Del. 2013) and *United States v. Gold*, 14-cr-29 (D. Del. 2014), I led the prosecution of two Delaware physicians in connection with their illegal distribution of controlled substances on the Silk Road website. Both defendants pleaded guilty and were sentenced to 60 months and 30 months in prison, respectively.

In *United States v. Lavenant*, No. 12-cr-28 (D. Del. 2012), I was co-counsel in the prosecution of a drug dealer for conspiracy to distribute cocaine. The case went to jury trial and I handled certain witness examinations and presented the opening statement and closing argument. The jury found the defendant guilty. The defendant was ultimately sentenced to 293 months in prison.

In *United States v. Boney*, 769 F.3d 153 (3d Cir. 2014); 634 Fed. App'x 894 (3d Cir. 2015); I represented (with co-counsel) the United States in two appeals from an individual defendant's criminal conviction and sentence for conspiracy to possess with intent to distribute cocaine, attempting to retaliate against an informant, and solicitation of a person to retaliate against an informant. In the first appeal, the defendant appealed his conviction and the government cross-appealed the district court's sentence. I argued for the United States before the Third Circuit. The Third Circuit affirmed the defendant's conviction but agreed with the government that the district court should have applied the attempted murder sentencing guideline. On remand, the district court sentenced the defendant to 272 months in prison. The defendant appealed his sentence and the Third Circuit affirmed without oral argument.

In *United States v. Poore*, No. 14-cr-56 (D. Del. 2014), I led the prosecution of the office manager of a Dover small business for embezzling more than $1 million from the business. The defendant pleaded guilty and was sentenced to 45 months in prison and

ordered to pay restitution.

In *United States v. Plumley*, No. 13-cr-33 (D. Del. 2013), I led (with co-counsel) the prosecution of the former Camden Town Manager and his co-conspirator in connection with a kickback scheme to defraud the state of Delaware of more than $200,000. Both defendants pleaded guilty and were sentenced to 24 months in prison and probation, respectively. The defendants were also ordered to pay restitution.

In *United States v. Aslam*, No. 17-cr-50 (D. Del. 2017) and *United States v. Kim*, No. 17-cr-42 (D. Del. 2017), I led (with co-counsel) the prosecution of a Delaware physician and bank employee for conspiracy to commit bank fraud. Both defendants pleaded guilty. I withdrew from the matters at the time of my appointment as a magistrate judge, and the defendants were subsequently sentenced to 30 months and 18 months in prison, respectively.

Senator John Kennedy
Questions for the Record

Judge Jennifer Hall

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

Response: My judicial philosophy is to work hard, approach each case with an open mind, carefully study the applicable precedent, and faithfully apply the law to the particular case before me.

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

Response: The Supreme Court has explained that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The Constitution may also be amended in accordance with Article V. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

3. Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?

Response: In interpreting a statute, I would look to Supreme Court and Third Circuit precedent (or Federal Circuit precedent, for example, in patent cases) to see if the text has been interpreted in binding precedent. If it hasn't, I would look to see if the text of the statute is clear; if it is unambiguous with respect to the issue before the court, then the text is dispositive. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.").

4. Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?

Response: I am not aware of any binding Supreme Court or Third/Federal Circuit precedent that instructs courts to consider statements made by a president as part of legislative history when construing the meaning of a statute. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Circuit precedent when interpreting federal statutes.

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

Response: In *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551 (1972), the Supreme Court held that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." *Id.* at 570. In that case, the Supreme Court held that a shopping center could prevent individuals from distributing handbills at the shopping center. *Id.* If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the First Amendment.

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

Response: I am not aware of any binding Supreme Court or Third Circuit precedent specifically addressing whether non-citizens unlawfully present in the United States are entitled to a right of privacy; however, the Supreme Court has held that, in certain instances, non-citizens unlawfully present in the United States "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

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: In *United States v. Ramsey*, 431 U.S. 606 (1977), the Supreme Court explained that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *Id.* at 615. The Supreme Court has held that, in certain instances, non-citizens unlawfully present in the United States "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990). Subsequent to *Verdugo-Urquidez,* the Third Circuit has held that the Fourth Amendment places limits on government action within the United States with respect to non-citizens who are unlawfully present. *See, e.g., Oliva-Ramos v. Att'y Gen.*, 694 F.3d 259, 274 (3d Cir. 2012). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

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 Supreme Court declined to express a "view about if and when prenatal life is entitled

to any of the rights enjoyed after birth." *Id.* at 2261. As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). I will faithfully apply binding Supreme Court and Third Circuit precedent if confronted with such an issue.

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 that statement or the context in which it was made. As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). I will faithfully apply binding Supreme Court and Third Circuit precedent, including *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Please see my response to Question 9.a. By way of further response, lower courts have a duty to follow binding precedent.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. Lower courts have a duty to follow binding precedent.

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

Response: In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Supreme Court upheld the constitutionality of an Indiana statute that "requir[ed] citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government." *Id.* at 185. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including *Crawford*.

12. Please describe the analysis you will use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court set forth the test for assessing whether a restriction is prohibited by the Second Amendment. First, the court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct," and the government bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* I will apply binding Supreme Court and Third Circuit if confronted with a Second Amendment issue.

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 of any binding Supreme Court precedent specifying the precise number of factors that are necessary to provide a special justification for overturning precedent. In *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Supreme Court held that five factors were "most important" in deciding to depart from stare decisis in the context of that case: "the quality of [the prior precedent's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Id.* at 2478–79. In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court relied on five factors that it concluded "weighed strongly" in favor of overruling precedents in that case: "the nature of their error, the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance." *Id.* at 2265.

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: "Judicial review" refers to the doctrine described by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 177 (1803), in which the Supreme Court described the judiciary's role as to "say what the law is." Black's Law Dictionary defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: The Supreme Court has explained that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

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." U.S. Const. amend. IX. I am not aware of any Supreme Court precedent specifically holding that the Ninth Amendment protects individual rights. In his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), Justice Thomas wrote, "[C]ertain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the First Amendment's Establishment Clause, which 'does not purport to protect individual rights.'" *Id.* at 851 n.20. A panel of the Third Circuit has remarked that "[t]he Ninth Amendment does not independently provide a source of individual constitutional rights." *Clayworth v. Luzerne Cty.*, 513 F. App'x 134, 137 (3d Cir. 2013). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including the Ninth Amendment.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment expressly references rights enumerated elsewhere in the Constitution. *See* U.S. Const. amend IX ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.").

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

Response: If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including the Ninth Amendment. The Supreme Court has relied on founding-era history, for example, in interpreting the Second Amendment and the Sixth Amendment Confrontation Clause. *See, e.g., Dist. of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 47–50 (2004) (Sixth Amendment Confrontation Clause). The Supreme Court has further stated 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." *Heller*, 554 U.S. at 605.

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court explained that in the Second Amendment, and "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." *Id.* at 580. The Supreme Court in *Heller* went on to quote its previous opinion in *United States v. Verdugo–Urquidez*, 494 U.S. 259 (1990), in which it explained that "'the people' . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* at 265.

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?

Responses: Please see my response to Questions 7 and 19.a. If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution.

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: The Supreme Court has explained that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including binding precedent on the appropriate method of constitutional interpretation. *See, e.g., id.* ("Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated."); *Graham v. Florida*, 560 U.S. 48, 58 (2010) (considering "evolving standards of decency that mark the progress of a maturing society" in determining whether a form of punishment violates the Eighth Amendment); *Ashcroft v. ACLU*, 535 U.S. 564, 574 (2002) (looking to "contemporary community standards" in assessing obscenity under the First Amendment).

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

Response: The Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment "protects only those rights 'which ow[e] their existence to the Federal government, its National character, its Constitution or its laws.'" *McDonald v. Chicago*, 561 U.S. 742, 754 (2010) (quoting *Slaughter-House Cases*, 83 U.S. 36, 79 (1872)). I am aware that some scholars and Supreme Court Justices have maintained that the Privileges or Immunities clause may guarantee certain substantive rights. As a sitting federal judge and as a nominee, I may not comment on matters that are before the courts or that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including the Fourteenth Amendment.

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

Response: Please see my response to Question 22. I am not aware of any Supreme Court or Third Circuit precedent holding that a right to terminate a pregnancy is among the privileges or immunities of citizenship.

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

Response: In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the Supreme Court explained that courts should apply the clear meaning of a statute if it is unambiguous; however, courts should grant deference to an agency's reasonable construction of an ambiguous statute that it administers. In *United States v. Mead Corp.*, 533 U.S. 218 (2001), the Supreme Court explained that *Chevron* deference is limited to instances where the agency has exercised its authority to make binding law. In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Supreme Court explained that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies"; there must be "clear congressional authorization" in "certain extraordinary cases" where agencies make decisions of "economic and political significance." *Id.* at 2608–09, 2614.

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. By way of further response, the Supreme Court has explained that "[a]dministrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022).

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

Response: The Constitution divides the power of the federal government into three branches, which results in the separation of powers. Article I states, "all legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I. Article II vests the executive power in the President, and Article III vests the judicial power of the United States in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. II, III. Article I gives Congress a number of powers; it also contains specific limitations, for example, by forbidding Congress from passing an "ex post facto" law. U.S. Const. art. I, § 9.

The Constitution also sets up a system of federalism. For example, the Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

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

Response: The Supreme Court has identified "three broad categories of activity that Congress may regulate under its commerce power": (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities having a substantial relation to interstate commerce . . . , *i.e.*, those activities that substantially affect interstate commerce. *United States v. Lopez,* 514 U.S. 549, 558–59 (1995). In addition, "[i]t has long been accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce." *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 273 (1988). "In its modern cases, th[e Supreme] Court has said that the Commerce Clause prohibits the enforcement of state laws driven by economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1153 (2023) (internal marks omitted).

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

Response: In *United States v. Lopez,* 514 U.S. 549 (1995), the Supreme Court held that Congress exceeded its Commerce Clause authority when it enacted the Gun-Free School Zones Act, a federal law that criminalized the knowing possession of a firearm in a school zone.

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

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment incorporates certain Bill of Rights provisions as against the states. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The Supreme Court has applied

similar analyses to due process challenges to government action arising under the Fifth and Fourteenth Amendments. *See, e.g., Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (noting that "standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments"). If confirmed, I will continue my practice of faithfully following binding Supreme Court and Third Circuit precedent when interpreting the Constitution, including the Fifth and Fourteenth Amendments.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). I will faithfully apply binding Supreme Court and Third Circuit precedent if confronted with such an issue.

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

Response: In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Supreme Court explained that it presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies"; there must be "clear congressional authorization" in "certain extraordinary cases" where agencies make decisions of "economic and political significance." *Id.* at 2608–09, 2614.

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

Response: "[W]hile Congress has substantial power under the Constitution to encourage the States to [take an action], the Constitution does not confer upon Congress the ability simply to compel the States to do so." *New York v. United States*, 505 U.S. 144, 149 (1992); *see also Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."). "The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018).

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

Response: The Supreme Court has explained that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The Supreme Court has further explained that the standard for "cruel and unusual punishment" under the Eighth Amendment "itself remains the same, but its applicability

must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)) (internal marks omitted), *as modified* (Oct. 1, 2008), *opinion modified on denial of reh'g*, 554 U.S. 945 (2008).

34. Is the death penalty constitutional?

Response: The Supreme Court has held that the death penalty is constitutional under some but not all circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008), *as modified* (Oct. 1, 2008), *opinion modified on denial of reh'g*, 554 U.S. 945 (2008).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). I will faithfully apply binding Supreme Court and Third Circuit precedent if confronted with such an issue. *See, e.g., United States v. Texas*, 143 S. Ct. 1964, 1971 (2023) ("Article II of the Constitution assigns the 'executive Power' to the President and provides that the President 'shall take Care that the Laws be faithfully executed.' U. S. Const., Art. II, § 1, cl. 1; § 3. Under Article II, the Executive Branch possesses authority to decide how to prioritize and 'how aggressively to pursue legal actions against defendants who violate the law.'"); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.").

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

Response: As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

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 federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

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

Response: The Supreme Court has explained that the Supremacy Clause permits Supreme Court disturbance of a state court judgment "to the extent that it fails to honor federal rights and duties." *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981). Under the adequate and independent state grounds doctrine, the Supreme Court "will not review judgments of state courts that rest of on adequate and independent state grounds." *Michigan v. Long*, 463 U.S. 1032, 1042 (1983). The adequate and independent state grounds doctrine compliments the Supremacy Clause by ensuring that state court decisions based on federal law are reviewable by the Supreme Court while also ensuring that federal courts do not issue unconstitutional advisory opinions in cases where the state ground is adequate to resolve the case and independent of the federal ground.

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: I am not aware of any binding precedent from the Supreme Court or Third Circuit addressing this issue. As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: I am not aware of any Supreme Court case that cites to the text of the Constitution as the source of the different standards of review for determining whether state laws or regulations violate constitutional rights. The different standards of review for determining whether state laws or regulations violate constitutional rights are set forth in binding Supreme Court precedent.

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

Response: Federal Rule of Civil Procedure 65 controls the issuance of injunctions. The Supreme Court has held that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The Third Circuit has stated that district courts are authorized to issue a nationwide injunction where "necessary to afford complete relief" to the defendant and is "not 'more burdensome to the defendant than necessary' to provide such relief." *Pennsylvania v. President of the United States*, 930 F.3d 543, 575 (3d Cir. 2019), *as amended* (July 18, 2019) (quoting *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 206 (3d Cir. 2014)), *rev'd and remanded sub nom.*, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

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: I had the incredible good fortune to begin my legal career clerking for Judge Sharon Prost of the United States Court of Appeals for the Federal Circuit and then for Judge Kent Jordan of the United States Court of Appeals for the Third Circuit. There are no better role models for a young lawyer than Judge Jordan and Judge Prost. Their commitment to public service and the rule of law is inspiring.

Questions from Senator Thom Tillis
for Jennifer Lynne Hall Nominee to be United States District Judge for the District of Delaware

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

   Response: Yes.

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

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

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

   Response: I believe that it is an expectation.

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: Sometimes a judge's faithful interpretation of the law leads to an outcome that some may consider undesirable. As a sitting federal judge, I have taken an oath to faithfully interpret the law; I abide by that and will continue to do so if confirmed as a district judge.

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

   Response: No.

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

   Response: If confirmed, I will continue to faithfully apply Supreme Court and Third Circuit precedent, including all binding precedent regarding the Second Amendment, such as *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of*

Chicago, 561 U.S. 742 (2010); and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I faithfully apply Supreme Court and Third Circuit precedent, including all binding precedent regarding the Second Amendment, such as *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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: As a sitting federal judge, I have and will continue to apply binding precedent from the Supreme Court and Third Circuit regarding qualified immunity. The Supreme Court has held that "[q]ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *See, e.g., Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (citation omitted). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Id.* (citation omitted).

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: As a sitting federal judge and judicial nominee, it is not for me to say whether current qualified immunity jurisprudence provides sufficient protection for law enforcement officers; that is a question for policymakers. As a sitting federal judge, I have and will continue to apply binding precedent from the Supreme Court and Third Circuit regarding qualified immunity for law enforcement officers.

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

Response: As a sitting federal judge and judicial nominee, it is not for me to say what the proper scope of qualified immunity protections for law enforcement officers should be; that is a question for policymakers. As a sitting federal judge, I have and will continue to apply binding precedent from the Supreme Court and Third Circuit regarding qualified immunity for law enforcement officers.

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: As a magistrate judge in the District of Delaware, which has a large volume of patent cases, I have resolved many motions challenging that asserted patents are directed to patentable subject matter under 35 U.S.C. § 101. While I am aware that some in the public have criticized the Supreme Court's current patent eligibility jurisprudence, I do not feel that it would be appropriate for me as a sitting judge to express a personal opinion on the current state of the law. If confirmed as a district court judge, I will continue to follow binding precedent from the Supreme Court and the Federal Circuit on § 101, just as I have done as a magistrate judge.

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 answer to Question 12. By way of further response, the Supreme Court has set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. The first step is to determine whether the claims at issue "are directed to" a patent-ineligible concept. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). The second step is to "consider the elements of each claim both individually and 'as an ordered combination; to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 79, 78 (2012)).

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: As a federal magistrate judge, I issued a Report and Recommendation in *Michael Grecco Productions, Inc. v. GlowImages, Inc.*, No. 18-902-MN, 2020 WL 1866172 (D. Del. Apr. 6, 2020), which involved claims of copyright infringement. In addition, I have presided over certain pretrial (non-substantive) proceedings in several copyright cases. I also took classes on copyright law in law school.

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

Response: In *Michael Grecco Productions, Inc. v. GlowImages, Inc.*, No. 18-902-MN, 2020 WL 1866172, at *4 (D. Del. Apr. 6, 2020), I issued a Report and Recommendation recommending that the district judge enter a default judgment for a copyright holder who alleged that the defendant violated the Digital Millennium Copyright Act, 17 U.S.C. § 1202(a), by providing false copyright management information on its website.

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

Response: I do not recall having had the opportunity to handle any matters involving intermediary liability for online service providers that host unlawful content posted by users.

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

Response: As a sitting magistrate judge in the District of Delaware (which has a very high volume of intellectual property cases), and as a former Federal Circuit law clerk and patent litigation attorney, I have extensive experience handling and presiding over all aspects of intellectual property cases, particularly patent cases. For example, a Westlaw search indicates that I have authored over 50 opinions in patent cases. I do not recall having had the opportunity to handle any matters involving the First Amendment or free speech issues.

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: In interpreting any statute, I would look to Supreme Court and Third Circuit precedent (or Federal Circuit precedent, for example, in patent cases) to

see if the text has been interpreted in binding precedent. If it hasn't, I would look to see if the text of the statute is clear; if it is unambiguous with respect to the issue before the court, then the text is dispositive. If the text is ambiguous, I would look to other sources authorized by the Supreme Court and the Circuit, including precedent interpreting similar laws, persuasive precedent from other courts, canons of construction, and, if appropriate, the forms of legislative history that the Supreme Court has endorsed.

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: I am not aware of any binding Supreme Court or Third Circuit precedent that addresses the role of advice and analysis of the U.S. Copyright Office on the proper interpretation of the Digital Millennium Copyright Act with respect to an obligation for online hosting services to address infringement. As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I faithfully apply Supreme Court and Third Circuit precedent.

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 federal judge and judicial nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I faithfully apply Supreme Court and Third Circuit precedent, including precedent concerning the interpretation of the Digital Millennium Copyright Act.

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 federal judge and judicial nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I faithfully apply Supreme Court and Third Circuit precedent, including precedent concerning the

interpretation of the Digital Millennium Copyright Act. It is not for me to say whether existing digital environment laws are appropriate to protect copyright holders; that is a question for policymakers.

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

Response: As a sitting federal judge and judicial nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I faithfully apply Supreme Court and Third Circuit precedent, including precedent concerning the interpretation of the Digital Millennium Copyright Act.

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 am aware of reports that litigants in larger districts with multiple courthouses might be able to, in effect, choose a judge by choosing in which courthouse to file their case. In the District of Delaware, where I serve as a federal magistrate judge, the cases are randomly assigned to one of our four active district judges. As I lack detailed knowledge of districts other than the District of Delaware, and as I regularly handle motions calling for the court to assess the appropriate venue for a particular case, it would not be appropriate for me to state my personal opinion on whether "judge shopping" and "forum shopping" are a problem.

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

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

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

Response: I am not familiar with the term "forum selling." In my four years as a magistrate judge in the District of Delaware, I have never taken any steps to attract a particular type of case or litigant; I have instead worked hard to decide

the cases that are already on my docket in accordance with binding precedent. I will continue that practice if confirmed as a 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 4.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: Please see my responses to Questions 17.a and 17.c.

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 Question 17.a.