**Senator Lindsey Graham, Ranking Member**
**Questions for the Record**
**Judge Adam Abelson**
**Nominee to be United States District Judge for the District of Maryland**

1. **You were a member of the team representing Greg Craig, who was acquitted in 2019 of a felony charge under the Foreign Agents Registration Act. The defense called the prosecution a "disgrace" and alleged that the prosecution was political. You stated that the acquittal "renewed my faith in our jury system."**
    a. **Please explain your involvement in this case.**

    Response: I was a member of the Zuckerman Spaeder team that represented Mr. Craig in the prosecution, which resulted in his acquittal, and the preceding investigations.

2. **You are a member and former chair of the ABA Working Group on Building Public Trust in the American Justice System. In 2022 the Working Group released a report on "Ten Principles on Reducing Mass Incarceration."**
    a. **The report states that "mass incarceration neither makes us safer nor lowers crime rates," but instead "creat[es] a cycle of crime." Do you agree that incarceration makes communities less safe?**

    Response: No. As federal law reflects, criminal sentences are designed not only to "protect[] the public from further crimes of the defendant," but also to "promote respect for the law," to "provide just punishment," and to "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a). If confirmed as a district judge, I would faithfully discharge my obligation to order incarceration when justified by the § 3553(a) factors.

    Similarly, as a magistrate judge, when I adjudicate motions to detain criminal defendants pretrial where the government contends that a defendant poses a risk of danger to the community, my obligation under the Bail Reform Act of 1984 is to determine whether the government has shown that pretrial detention is necessary to "reasonably assure . . . the safety of any other person and the community." 18 U.S.C. § 3142(e). In every case where the government makes that showing, I order detention pursuant to my obligation to protect the safety of the community.

    In short, Congress has made clear that incarceration in both the pretrial and post-conviction contexts is an important tool for promoting public safety. As for the referenced statement, the American Bar Association Working Group on Building Public Trust in the American Justice System is 10-member group that has been charged with helping to determine the role that bar associations might play in restoring public trust in our criminal justice system. The positions that the Working Group has taken do not necessarily reflect my personal views. I also am not familiar with the research or basis underlying every section of the ABA

Principles. In any event, I take seriously my obligation as a judicial officer to apply the law fairly and impartially, without reference to any view espoused by any group with which I have been affiliated and any personal views I might hold, and I would continue to do so if confirmed as a district judge.

b. **Principle three of the report calls for repealing mandatory minimum sentence provisions, labeling them "inequitable and counterproductive" due to racial disparities.**

   i. **Do you believe that mandatory minimum sentencing provisions should be repealed?**

   Response: As a U.S. magistrate judge, my responsibility is to faithfully apply the law to the facts of any case before me. If confirmed as a district judge, that would remain my obligation, and that would include following and applying any relevant mandatory minimum sentencing provision, and I would do so without reservation.

   ii. **Do you believe that mandatory minimum sentencing is racist? Why or why not?**

   Response: No. The Fourth Circuit and many other courts have repeatedly rejected claims that mandatory minimum sentencing provisions violate the constitution's Equal Protection Clause. *United States v. Perkins*, 108 F.3d 512, 518 (4th Cir. 1997). My obligation presently as a U.S. magistrate judge is to faithfully apply the law to the facts of any case before me. That includes any statute enacted by Congress, and any precedents interpreting that statute by the U.S. Supreme Court and the Fourth Circuit. If confirmed as a district judge, that would remain my obligation, including application of any applicable mandatory minimum, and I would do so without reservation.

   iii. **What is the purpose of mandatory minimum sentencing?**

   Response: I understand that policymakers may have any of a number of goals when enacting mandatory minimum statutes. *See, e.g.*, Dale Parent, *et al.*, *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, U.S. Dept. of Justice, Office of Justice Programs (Jan. 1997) ("Mandatory sentencing enhancements . . . are aimed at deterring known and potentially violent offenders and incapacitating convicted criminals through long-term incarceration.").

   iv. **Principle three also states that these provisions "afford prosecutors disproportionate power to coerce a plea bargain." Do you agree? Why or why not?**

Response: A guilty plea may be entered in federal court only after a determination from the court that "the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement)." Fed. R. Crim. P. 11(b)(2). Additionally, Federal Rule of Criminal Procedure 11 requires courts to determine that the defendant comprehends the nature of the charges to which he or she is pleading guilty, the minimum and maximum penalties at issue, and the rights he or she is relinquishing by pleading guilty. Fed. R. Crim. P. 11(b)(1). A court must also find that "there is a factual basis for the plea." Fed. R. Crim. P. 11(b)(3).

3. **In a 2023 introduction for ABA's Section on Civil Rights and Social Justice *Human Rights Magazine*, you explain that "[c]riminal justice system involvement can be catastrophic," including to "individuals who never spend a day in jail."**
   a. **Is the criminal justice system itself to blame for its "catastrophic" impact?**

      Response: No. In that introduction I was tasked with summarizing the views expressed by the authors of the articles in that issue of the magazine, and those views, including those reflected in the referenced statement, do not necessarily reflect my own views. Some of those articles discussed ways in which non-incarceration sentences, such as fines, as well as court fees, can create collateral consequences, including for family members of criminal defendants.

   b. **You describe the "racist origins" of fees and money bail. Are court fines and fees still racist? If so, in what way?**

      Response: In that introduction I was tasked with summarizing the views expressed by the authors of the articles in that issue of the magazine, and those views, including those reflected in the referenced statement, do not necessarily reflect my own views. The statement referenced in this question was part of my summary of one of those articles, which discussed the history of "convict leasing" after the Civil War. As for court fines and fees today, I am not aware of any court fines or fees that have been adopted or imposed for race-based reasons.

   c. **Quoting the executive director of the Center on Race, inequality, and the Law at New York University School of Law, you say that, "'[c]hanging our default question from "why release" to "why continue confinement" is critical to ensuring the release of people who pose no risk to public safety.'" When considering pretrial release, should the default be release?**

      Response: Under the Bail Reform Act, 18 U.S.C. § 3142, for a court to consider imposing pretrial detention, the government must prove, and the court must find, that "no condition or combination of conditions 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), (f). Where the government seeks to make such a showing based on a claim of danger to the community, it must prove any

facts in support of such a requested finding "by clear and convincing evidence." *Id*. § 3142(f)(2). And the Act instructs that pretrial conditions shall be limited to the "least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." *Id*. § 3142(c)(1)(B).

4. **In the same introduction while discussing pregnancy and abortion laws, you refer to "pregnant individuals."**
    a. **Can anyone other than a woman become pregnant?**

        Response: The language referenced in this question was a direct quote from one of the articles that I was tasked with summarizing. Only someone with female reproductive organs can become pregnant.

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

    Response: No. I ensure that every person who appears before me is treated fairly and with respect, regardless of their race. If fortunate enough to be confirmed as a district judge, I would continue to do the same. Consideration of this question is for policymakers with the benefit of the appropriate data and research. As a magistrate judge, I have not had a case come before me in which that policy question has been at issue.

6. **In *Reyes v. Waples Mobile Home Park Limited Partnership*, you served as lead counsel pro bono for residents of a mobile home park who challenged the park's policy requiring all adult tenants to provide proof of their legal status to renew leases. The lawsuit alleged that the policy violated the Fair Housing Act.**
    a. **Why is proof of legal status in the U.S. a violation of the Fair Housing Act?**

        Response: I served as an attorney for the plaintiffs in that case, with an obligation to zealously advocate on behalf of their interests in that case. As the Fourth Circuit summarized the plaintiffs' claim, "[r]esidents of Waples Mobile Home Park challenged the Park's policy that required all adult tenants to provide proof of their legal status in the United States in order to renew their leases. The residents argued that the policy violated the Fair Housing Act because it disproportionately ousted Latinos from the Park." *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270, 273 (4th Cir. 2024). That case remained ongoing when I left private practice and joined the bench as a magistrate judge.

    b. **Should a landlord have the right to confirm whether potential tenants are legal U.S. residents before leasing the property?**

        Response: I served as an attorney for the plaintiffs in that case, with an obligation to zealously advocate on behalf of their interests in that case. The recent appeal, which the Fourth Circuit decided after I joined the bench as a magistrate judge, presented a narrow legal question: whether the existence of a

statute making it unlawful to "conceal[], harbor[], or shield[] from detection" an "alien," 8 U.S.C. § 1324(a)(1)(A)(iii), provided a complete defense as a matter of law to the plaintiffs' disparate impact claim under the Fair Housing Act. The Fourth Circuit held that "the anti-harboring statute simply does not apply to landlords merely leasing to undocumented immigrants, and Waples's risk of prosecution is too attenuated to cross the threshold of a plausible concern." *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270, 277 (4th Cir. 2024).

7. **Are you a citizen of the United States?**

   Response: Yes.

8. **Are you currently, or have you ever been, a citizen of another country?**

   Response: No.

   a. **If yes, list all countries of citizenship and dates of citizenship.**
   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
      i. **If not, please explain why.**

9. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No.

10. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney (such as race or sex) when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

    Response: No.

11. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

    Response: As a general matter, foreign law should not be considered when interpreting a provision of the U.S. Constitution. In *Atkins v. Virginia*, 536 U.S. 304, 316 n.21, 321 (2002), the Supreme Court considered, in part, foreign laws, when "[c]onstruing and applying the Eighth Amendment in light of our 'evolving standards of decency.'"

12. **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. A judge is obligated to reach a decision by applying the law to the facts. As a United States magistrate judge, I apply Fourth Circuit and Supreme Court precedent and, if confirmed as a district judge, would continue to do so. A judge's "independent value judgments" must never affect the outcome of a case.

13. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

    Response: Yes. The Constitution and the laws enacted by the United States Congress are domestic laws.

14. **Please define the term "prosecutorial discretion."**

    Response. Prosecutorial discretion refers to a "public official's power or right to act in certain circumstances according to personal judgment and conscience, often in an official or representative capacity." *Discretion*, Black's Law Dictionary (11th ed. 2019). Under Supreme Court precedent, when deciding whether to charge an individual, a prosecutor may exercise discretion by considering "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." *Wayne v. United States*, 470 U.S. 598, 607 (1985).

15. **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: No. I am unfamiliar with this statement, but the implication is contrary to my judicial oath to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453.

16. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

17. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

    Response: Yes.

18. **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: Except to the extent appellate rights were knowingly and voluntarily waived, a prisoner in federal custody may file an appeal from any sentence and judgment pursuant to 28 U.S.C. § 1291. A prisoner in federal custody may also file a motion under 28 U.S.C. § 2255 to "vacate, set aside or correct the sentence" on the grounds that it was imposed "in violation of the Constitution or laws of the United States." 28 U.S.C. § 2241 also provides limited grounds on which a prisoner in federal custody may seek relief from a sentence, such as challenging the manner in which the Bureau of Prisons calculated the sentence or awarded good credit time. Finally, a prisoner in custody under sentence of a federal court may seek relief under the First Step Act for compassionate release on the grounds that "extraordinary and compelling reasons warrant" a modification of the "imposed term of imprisonment." 18 U.S.C. § 3582(c).

19. **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: Plaintiffs in these cases filed constitutional and statutory challenges to the admissions policies at the University of North Carolina and Harvard College. Both educational institutions considered race as one factor in the final admissions decisions. The Supreme Court held that these policies violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied strict scrutiny analysis and concluded that the admissions policies "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023).

20. **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 magistrate judge, I hire new law clerks approximately every year, and when I was a partner at Zuckerman Spaeder I was involved in hiring associates.

21. **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, sex, sexuality, or gender identity?**

    Response: No.

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

    Response: No.

23. **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, sex, sexuality, or gender identity?**

    **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: Not that I am aware of.

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

    Response: Yes.

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

    Response: In *303 Creative v. Elenis*, the Supreme Court held that the Government could not compel a web designer to create websites expressing a message that she "does not wish to provide." 600 U.S. 570, 588 (2023).

26. **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: Yes. This quote expresses the principle that "[b]y allowing all views to flourish, the framers understood, we may test and improve our own thinking both as individuals and as a Nation." *303 Creative v. Elenis*, 600 U.S. 570, 584 (2023).

27. **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: A law is content-based "if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed.'" *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). A law is "content neutral so long as it is 'justified without reference to the content of the regulated speech,'" *Bartnicki v. Vopper*, 532 U.S. 514, 526 (2001) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)), and if it "impose[s] reasonable restrictions on the time, place, or manner of protected speech," *McCullen v. Coakley*, 573 U.S. 464, 477 (2014) (quoting *Ward*, 491 U.S. at 791).

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

    Response: True threats "encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence." *Virginia v. Black*, 538 U.S. 343, 359 (2003). To establish that speech constitutes a true threat unprotected by the First Amendment, the government must show that the defendant "had some understanding of his statements' threatening character." *Counterman v. Colorado*, 600 U.S. 66, 73 (2023). The government, however, does need not "prove the defendant had any more specific intent to threaten the victim." *Id.*

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

Response: The Supreme Court has recognized that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive." *Miller v. Fenton*, 474 U.S. 104, 113 (1985). Generally, a fact is "[s]omething that actually exists" and "include[s] not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions." *Fact*, Black's Law Dictionary (11th ed. 2019). The Supreme Court has referred to "basic" or "historical" facts as "addressing questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). Significantly, "an issue does not lose its factual character merely because its resolution is dispositive of the ultimate constitutional question." *Miller*, 474 U.S. at 113 (citing *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 534 (1979)). Questions of law require a court to elaborate on legal standards. *U.S. Bank Nat'l*, 583 U.S. at 396. In making the distinction, courts consider, among other things, whether the question involves "what happened," or the trial court's "appraisal of witness credibility and demeanor," in contrast to a "uniquely legal" issue. *Thompson v. Keohane*, 516 U.S. 99, 111-12 (1995).

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

Response: 18 U.S.C. § 3553 requires the court to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, as articulated by these four principles. The statute does not prioritize these factors. In sentencing a defendant, I would consider each of these primary purposes, as well as the other sentencing factors enumerated in the statue and the U.S. Sentencing Guidelines.

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

Response: As a United States magistrate judge I faithfully apply all Supreme Court precedent, and if confirmed as a district judge I would continue to do so. Otherwise, the Code of Conduct for United States Judges precludes me from answering this question. Canon 2A provides that a "judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3A(6) provides that a "judge should not make public comment on the merits of a matter pending or impending in any court." Answering a question about the correctness of a particular decision may tend to suggest that I would not fairly or impartially apply all Supreme Court precedent.

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

Response: As a United States magistrate judge I faithfully apply all Fourth Circuit precedent, and if confirmed as a district judge I would continue to do so. Otherwise, the

Code of Conduct for United States Judges precludes me from answering this question. Canon 2A provides that a "judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3A(6) provides that a "judge should not make public comment on the merits of a matter pending or impending in any court." Answering a question about the correctness of a particular decision may tend to suggest that I would not fairly or impartially apply all Fourth Circuit precedent.

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

Response: Generally, 18 U.S.C. § 1507 makes it a federal crime to picket or parade near a United States courthouse or the residence of a judge, juror, witness, or court officer, if committed "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."

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

Response: I am not aware of any Fourth Circuit or Supreme Court decisions interpreting the constitutionality of this statute. The Supreme Court, however, found a similar state law constitutional in *Cox v. Louisiana*, 379 U.S. 559 (1965).

35. **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 United States magistrate judge, and as a nominee for a district judge position, the Code of Conduct for United States Judges would generally preclude me from answering this question. Canon 2A provides that a "judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3A(6) provides that a "judge should not make public comment on the merits of a matter pending or impending in any court." Answering a question about the correctness of a particular decision may tend to suggest that I would not fairly or impartially apply all Supreme Court precedent. Notwithstanding this obligation, there are certain foundational decisions that are so unlikely to be relitigated or are so firmly a part of our constitutional framework that their validity cannot be reasonably challenged. Because I believe that *Brown v. Board of Education* falls within this limited exception to the general principles set forth in the Canons, I can state that it was correctly decided.

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

    Response: Yes. As a United States magistrate judge, and as a nominee for a district judge position, the Code of Conduct for United States Judges would

generally preclude me from answering this question. Canon 2A provides that a "judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3A(6) provides that a "judge should not make public comment on the merits of a matter pending or impending in any court." Answering a question about the correctness of a particular decision may tend to suggest that I would not fairly or impartially apply all Supreme Court precedent. Notwithstanding this obligation, there are certain foundational decisions that are so unlikely to be relitigated or are so firmly a part of our constitutional framework that their validity cannot be reasonably challenged. Because I believe that *Loving v. Virginia* falls within this limited exception to the general principles set forth in the Canons, I can state that it was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**
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?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response as to cases (c) through (m): As a United States magistrate judge, and as a nominee for a district judge position, the Code of Conduct for United States Judges precludes me from answering this question. Canon 2A provides that a "judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3A(6) provides that a "judge should not make public comment on the merits of a matter pending or impending in any court." Answering a question about the correctness of a particular decision may tend to suggest that I would not fairly or impartially apply all Supreme Court precedent. Because *Roe v. Wade* and *Planned Parenthood v. Casey* were overruled by *Dobbs v. Jackson Women's Health*, I would not follow those cases, and I would instead faithfully apply the *Dobbs* decision in cases before me. Otherwise, I would faithfully apply the other listed cases, just as I would apply all binding Supreme Court precedent.

36. **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 v. Bruen*, the Supreme Court set forth the test to apply when considering the constitutionality of a gun regulation. The test requires courts to determine whether a challenged firearms regulation is "consistent with this Nation's historical tradition of firearm regulation." 597 U.S. 1, 17 (2022). In conducting this analysis, courts should consider two "central considerations": first, "whether modern and historical regulations impose a comparable burden on the right of armed self-defense," and second, "whether that burden is comparably justified." *Id*. at 29.

37. **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, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, 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, Jen Dansereau, and/or Becky Bond,? If so, who?**

       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, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

38. **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, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, 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, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

   Response: No.

c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

   Response: No.

39. **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?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.**

           Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

           Response: No.

    c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

40. **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, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

    Response: No.

    d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

    Response: No.

41. **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, and/or Josh Cohen? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response: No.

42. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**

a. **Has anyone associated with The Raben Group 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 Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

Response: I was recently introduced by email to Jeremy Paris of the Raben Group, but I have not spoken or corresponded with Mr. Paris.

c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

Response: Please see my response to the preceding question.

d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response: No.

43. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**

a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide 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 Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response: I was recently introduced by email to Jeremy Paris, but I have not spoken or corresponded with Mr. Paris.

c. **Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response: Please see my response to the preceding question.

44. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**

a. **Has anyone associated with the American Constitution Society, 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 American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: At a few points up until a few months ago, I was in contact with Zachary Gima of the American Constitution Society. I am also personal friends

with Stephen Ruckman, who I understand is involved in the Maryland chapter of the American Constitution Society. In addition, I know and have been in periodic contact with Jill Dash.

45. **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 November 13, 2023, I submitted an application to the judicial selection committee established by Senators Cardin and Van Hollen for an anticipated vacancy on the U.S. District Court for the District of Maryland. I interviewed with that committee on December 11, 2023. On February 13, 2024, I was interviewed by Senators Cardin and Van Hollen. On April 1, 2024, Senator Cardin informed me that my name would be submitted to the White House for further consideration. On April 2, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On May 8, 2024, the President announced his intent to nominate me. On June 5, 2024, I appeared before the Senate Judiciary Committee.

46. **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.

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

Response: No.

48. **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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

49. **During or leading up to 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.

50. **During or leading up to 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.

51. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No.

52. **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: Please see my response to question 44 above.

53. **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: While preparing the Senate Judiciary Questionnaire, I was provided limited feedback from officials from the Office of Legal Policy. Some of the feedback suggested I select cases to emphasize the breadth of my practice as an attorney. I chose all the cases listed on my Senate Judiciary Committee questionnaire.

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

    Response: On April 2, 2024, I was interviewed by attorneys with the White House Counsel's office. Since that date, I have been in contact with officials from the Office of Legal Policy and the White House Counsel's office. On May 8, 2024, the President announced his intent to nominate me.

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

Response: I received these questions on June 12, 2024. I consulted prior responses by judicial nominees to similar questions, and with assistance from my law clerks I prepared drafts to the questions. I provided a completed draft to an attorney with the Office of Legal Policy. I had one conversation providing limited feedback about my responses. I submitted my final answers to the Office of Legal Policy for transmission to the Senate Judiciary Committee.

**Senate Judiciary Committee**
**Nominations Hearing**
**June 5, 2024**
**Questions for the Record**
**Senator Amy Klobuchar**

**For Adam Ben Abelson, nominee to be U.S. District Judge for the District of Maryland**

**Prior to your appointment as a federal magistrate judge last year, you had 11 years of litigation experience as a private practitioner where you represented a range of clients in criminal cases and complex civil litigation. You have litigated on behalf of both plaintiffs and defendants, and also represented people and corporate entities in connection with government investigations.**

- **Can you describe your work in private practice and how that has prepared you to serve as a federal district court judge?**

Response: At Zuckerman Spaeder I represented clients in a range of civil and criminal matters, in state and federal courts. I represented clients in a range of white-collar criminal cases and government investigations, including prosecutions or investigations involving alleged insider trading; complex financial, securities, and health care fraud; false statements; and violations of the False Claims Act and the Foreign Agents Registration Act. I also represented plaintiffs and defendants in a wide range of civil cases. On the plaintiff side, my cases arose under, among other laws, the Sherman Act, the Employee Retirement Income Security Act, the Administrative Procedures Act, the Real Estate Settlement Procedures Act, and the District of Columbia Consumer Protection Procedures Act. On the civil defense side, my cases arose under a range of federal and state laws, including employment laws; the False Claims Act; securities laws, including class action and shareholder derivative actions; tort law, including defamation, trade secrets, nuisance, real estate, and trust disputes; and state and federal contract law, including non-competition issues. I frequently represented lawyers and law firms in legal malpractice and related actions. I was a member of trial teams for trials in the U.S. District Courts for the Districts of Maryland, the Southern District of New York, the District of Columbia, and the Northern District of California, as well as the D.C. Superior Court and the Supreme Court of the State of New York. I also briefed appeals in the Second, Fourth, and Ninth Circuits, and the appellate courts of Maryland and the District of Columbia, and argued an appeal in the Fourth Circuit.

I am fortunate to have practiced at a firm where I was able to have a varied practice, from representing plaintiffs in nationwide class actions to defending clients in complex investigations. Judges are generalists, and the variety of my work in private practice helped prepare me to serve as magistrate judge, and would also serve me well if I were confirmed as a district judge.

**Senator Mazie K. Hirono**
**Senate Judiciary Committee**

**Nominations Hearing | June 5, 2024**
**Questions for the Record for Adam Abelson**

***Sexual Harassment***
**As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:**

**QUESTIONS:**

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

   Response: No.

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

   Response: No.

**Senator Mike Lee**
**Adam B. Abelson, nominee to the United States District Court for the District of Maryland**

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

Response: My role as a sitting magistrate judge is, and if confirmed as a district judge would continue to be, to rigorously review the factual record, study the law with adherence to binding Supreme Court and Fourth Circuit authority, and apply the law to the facts. I approach every case with an open mind, to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453.

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

Response: I would first apply any Supreme Court or Fourth Circuit precedent interpreting the statute at issue. In the event there were none, I would interpret the statutory provision at issue consistent with the plain meaning of the statute's text. *Williams v. Carvajal*, 63 F.4th 279, 286 (4th Cir. 2023). I would also look to persuasive authority, such as decisions of other courts interpreting the statutory provision. "Only when statutory text is ambiguous do [courts] consider other indicia of congressional intent such as the legislative history," within the bounds authorized by the Supreme Court and the Fourth Circuit. *Snyder's-Lance, Inc. v. Frito-Lay N. Am., Inc*., 991 F.3d 512, 516 (4th Cir. 2021).

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

Response: I would first apply any Supreme Court or Fourth Circuit precedent interpreting the provision at issue. If there were none, I would interpret the provision by examining its plain text, its location in the structure of the document, cases addressing analogous provisions, and historical sources bearing on its original meaning. I would also consider persuasive authority from other courts.

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

Response: The Supreme Court has held that constitutional provisions are to be interpreted consistent with their text and original meaning. *E.g.*, *Crawford v. Washington*, 541 U.S. 36, 42–43 (2004) ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning."); *D.C. v. Heller*, 554 U.S. 570, 592 (2008).

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.

**6. 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 it "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. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives." *Bostock v. Clayton County*, 590 U.S. 644, 654-55 (2020).

**7. What are the constitutional requirements for standing?**

Response: The requirement for a plaintiff to have standing comes from art. III, § 2, cl. 1, which limits a federal court's jurisdiction to "cases and controversies." "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The three requirements for standing are: (1) that the plaintiff has suffered, or will imminently suffer, a concrete and particularized injury-in-fact; (2) the plaintiff's injury is traceable to the defendant's conduct; and (3) a decision favorable to the plaintiff would be likely to redress the injury. *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Los Angeles v. Lyons*, 461 U.S. 95, 102–03 (1983).

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

Response: In *McCulloch v. Maryland*, the Supreme Court defined the scope of Congress's power. 17 U.S. 316, 411-412 (1819). The Court held that the Necessary and Proper Clause in art. I, § 8 authorizes Congress to make all laws that are necessary to exercise its enumerated powers. In that case, the Court held that the enumerated power to tax and spend included the power to establish a national bank.

**9. 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 stated that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2018) (citing *Woods v. Cloyd W. Miller Co*., 333 U.S. 138, 144 (1948)). If a case were to present a challenge to the constitutionality of an act of Congress, I would apply relevant Supreme Court and Fourth Circuit authority on the extent and limits of congressional power.

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

Response: Yes, although the Supreme Court explained that rights not mentioned in the Constitution are limited to those "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). The Supreme Court has also held that the Due Process Clauses of the Fifth and Fourteenth Amendments provide "heightened protection against government interference with certain fundamental rights and liberty interests." *Id*. at 720. Examples of unenumerated rights that are fundamental include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

**11. What rights are protected under substantive due process?**

Response: Please see my answer to Question 10.

**12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: *Lochner v. New York* was overturned by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). If presented with a case that raised substantive due process arguments, I would apply Supreme Court and Fourth Circuit precedent interpreting the Due Process Clauses of the Fifth and Fourteenth Amendments.

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

Response: "[T]here are three 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.'" *Taylor v. United States*, 579 U.S. 301, 306 (2016) (quoting *United States v. Lopez*, 514 U.S. 549, 558-559 (1995)).

**14. 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, national origin, religion, and alienage as suspect classes. The Court has concluded that these "factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the

burdened class are not as worthy or deserving as others." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985).

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

Response: The Constitution divides government responsibility into three branches of government: the executive, legislative, and judicial branches. Each branch exercises certain authority to limit the other branches to their constitutional authority. In *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court established the principle of judicial review, holding that the court has the power to strike down unconstitutional statutes, underscoring the separate powers between the branches of government.

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

Response: If a case were presented to me that challenged the constitutional authority of an act by a branch of government, I would follow Supreme Court and Fourth Circuit precedent to determine whether the branch of government acted outside the constitutional authority granted to that branch. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: A judge should approach every case with humility, patience, and an open mind, and ensure that each party has an opportunity to express the party's position and perspective.

**18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: They are equally improper and inconsistent with my oath to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453.

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

Response: I have not studied the trends this question refers to, and therefore cannot answer what might account for them. If confirmed, I would continue to uphold my

oath to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States." 28 U.S.C. § 453.

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

Response: Judicial review refers to "a court's power to review the actions of other branches or levels of government, especially the courts' power to invalidate legislative and executive actions as being unconstitutional." *Judicial Review*, Black's Law Dictionary (11th ed. 2019) (cleaned up). Judicial supremacy is "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id*.

**21. 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: Under Article VI, all elected officials must take an oath or affirmation to support the Constitution. U.S. Const. art. VI. cl. 3. No elected official is above the law. As a magistrate judge presently, and if confirmed as a district judge, if I were faced with litigation in which a party asserted that an elected official failed to follow the Constitution or duly rendered judicial decisions, I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent in resolving the case.

**22. 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: I understand this statement to reflect the limited role of a judge to apply the law to the facts of the case faithfully and impartially, and without consideration of personal opinion or result.

**23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: A federal district judge is required to follow precedent of the Supreme Court and the Court of Appeals, regardless of whether that judge agrees with the decision or reasoning.

**24. 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 judge's sentencing analysis?**

Response: When sentencing a defendant, a judge is obligated to consider the sentencing factors set forth in 18 U.S.C. § 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed; (3) the kinds of sentences available by statute; (4) the kinds of sentences and the sentencing range established by the Sentencing Guidelines; (5) any pertinent policy statement issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records; and (7) the need to provide restitution to any victims. The defendant's group identity is not a factor that should be considered.

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

Response: I am unfamiliar with this quote. I would define equity to encompass what is fair and just.

**26. Without citing a dictionary definition, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: I would define equity to encompass what is fair and just. I would define equality to encompass equal treatment regardless of other factors.

**27. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: The Fourteenth Amendment provides, in part, that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., am. XIV. As a magistrate judge presently, and if confirmed as a district judge, if I were

presented with a case that raised whether there is a guarantee of "equity" under the Equal Protection Clause, I would apply Supreme Court and Fourth Circuit precedent.

**28. According to your current understanding, and without citing a dictionary definition, how do you define "systemic racism?"**

Response: No case that I have handled as a magistrate judge, or previously handled as a practicing attorney, as far as I can recall, involved any argument by a party based on "systemic racism," and I do not otherwise recall having had occasion to define the term. I understand the term to refer to patterns or practices that disproportionately affect people based on race, as opposed to individual instances of discrimination.

**29. According to your current understanding, and without citing a dictionary definition, how do you define "Critical Race Theory?"**

Response: In no case that I have participated in as a magistrate judge, or as a lawyer, has any party advanced any argument on the basis of "critical race theory" as far as I can recall, and I do not otherwise recall having had occasion to define the term. I understand the term to refer to academic writings and scholarship about the intersection between race and law.

**30. Do you distinguish "Critical Race Theory" from "systemic racism," and if so, how?**

Response: Please see my responses to Questions 28 and 29.

**31. What are the competing standards of review? When are they applied?**

Response: In my experience, the principal standards of review applied by district courts on dispositive motions are those set forth in Rule 12(b)(6) and Rule 56 of the Federal Rules of Civil Procedure. At the pleadings stage, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In deciding a motion to dismiss for failure to state a claim, a court "must accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff." *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016). Determining plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. In reviewing a complaint for its sufficiency, a court is not required to accept "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc*., 591 F.3d 250, 255 (4th Cir. 2009). A claim is plausible if the facts allow the Court to reasonably infer liability for the alleged misconduct. *Iqbal*, 556 U.S. at 678. Proving the "mere possibility of misconduct" is not enough to plead a plausible claim. *Id*.

As for motions for summary judgment, a party seeking entry of summary judgment must show "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is genuine if 'a reasonable jury could return a verdict for the nonmoving party.'" *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Dulaney v. Packaging Corp. of Am.*, 673 F.3d 323, 330 (4th Cir. 2012)). "A fact is material if it 'might affect the outcome of the suit under the governing law.'" *Id*. (quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986)). A court must consider the facts and all reasonable inferences in the light most favorable to the party opposing the summary judgment motion, *Tolan v. Cotton*, 572 U.S. 650, 656-67 (2014), and must draw all reasonable inferences in that party's favor. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

**32. At the drafting of the Constitution, our Founders could not have foreseen the invention of radios, TV, airplanes, and the internet, yet all of these things are, for the most part, governed by federal law. Is that constitutional? Why or why not?**

Response: The Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316 (1819). Thus, "although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022).

**33. What are the limiting principles of the commerce clause?**

Response: "[T]here are three 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.'" *Taylor v. United States*, 579 U.S. 301, 306 (2016) (quoting *United States v. Lopez*, 514 U.S. 549, 558-559 (1995)).

**34. What are the limiting principles of the dormant commerce clause?**

Response: Article 1, Section 8, Clause 3 of the Constitution explicitly grants Congress the power to regulate interstate commerce. The Supreme Court has inferred that Clause 3 "'contain[s] a further, negative command,' one effectively forbidding the enforcement of 'certain state [economic regulations] even when Congress has failed to legislate on the subject,'" which is often referred to as the dormant commerce clause. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 368-70 (2023) (quoting *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995)). The doctrine "rests upon two primary principles" that limit "a State's authority to regulate interstate commerce." *S. Dakota v. Wayfair, Inc.*, 585 U.S. 162, 173 (2018). "First, state regulations may not discriminate against interstate

commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face 'a virtually *per se* rule of invalidity.'" *Id.* (quoting *Granholm v. Heald*, 544 U.S. 460, 476 (2005)). "State laws that 'regulat[e] even-handedly to effectuate a legitimate local public interest . . . will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

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

**Questions for the Record for Adam Abelson, nominated to be United States District Judge for the District of Maryland**

## I. Directions

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

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

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

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

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

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

## II. Questions

**1. Is racial discrimination wrong?**

Response: Yes. Racial discrimination is prohibited by federal law. *See, e.g.*, U.S. Const. amend. XIV; U.S. Const. amend. XV; 42 U.S.C. § 1981; 1964 Civil Rights Act, Title VI; 1964 Civil Rights Act, Title VII; 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: The Due Process Clause of the Fifth and Fourteenth Amendments protects unenumerated rights that are "deeply rooted in this Nation's history and tradition" and that are "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion as to whether there are any unenumerated rights in the Constitution as yet unarticulated by the Supreme Court. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, if confirmed, I would faithfully apply the *Glucksberg* test and all applicable Fourth Circuit and Supreme Court precedent.

**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: As a sitting U.S. magistrate judge, my judicial philosophy is to administer justice fairly and impartially and to faithfully uphold the Constitution and the laws of the United States, and to diligently ensure equal and timely access to justice under law. I have not studied the judicial philosophies of the Warren, Burger, Rehnquist, or Roberts Courts and have not determined which philosophy is most like mine. If confirmed, I will continue to adhere to my oath as a judicial officer to uphold the Constitution and the laws of the United States without bias or prejudice. I will ensure that all cases are handled in a fair and impartial manner and that all who come before me are treated with dignity and respect.

**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 the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I do not personally subscribe to a particular interpretative theory. The Supreme Court has held that constitutional provisions are generally to be interpreted consistent with their text and original meaning. *See, e.g.*, *Crawford v. Washington*, 541 U.S. 36, 42-32 (2004) ("The Constitution's text does not alone resolve this issue. . . We must therefore turn to the historical background of the clause to understand its meaning."); *District of Columbia v. Heller*, 544 U.S. 570, 592 (2008). If confirmed, I will faithfully apply

Supreme Court and Fourth Circuit precedent to all issues of constitutional and statutory interpretation, including any interpretative theory applied by the Supreme Court or Fourth Circuit in any relevant precedent.

**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 living constitutionalism as the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not personally subscribe to a particular interpretative theory, though the Supreme Court has held that constitutional provisions are generally to be interpreted consistent with their text and original meaning. *E.g., Crawford v. Washington*, 541 U.S. 36, 42–43 (2004) ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning."); *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). If confirmed, I will faithfully apply Supreme Court and Fourth Circuit precedent to all issues of constitutional and statutory interpretation, including any interpretative theory applied by the Supreme Court or Fourth Circuit in any relevant precedent.

**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: Yes. In a rare issue of first impression, my analysis would begin with the text of the Constitution, which I would faithfully apply as written to include any Supreme Court and Fourth Circuit precedent as to how to interpret the meaning of that text. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully apply the analytical framework set forth by the Supreme Court and Fourth Circuit pertaining to the constitutional question presented.

**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: The Supreme Court has instructed that when interpreting the Constitution, the courts are to use the "normal meaning" of the text known and understood by the public at the time of ratification and to apply the ordinary usage of those words. *See, e.g*., *District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008). The Supreme Court has said that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment." *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). *See also New Prime, Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) ("[W]ords generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.") (cleaned up).

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

Response: No. The Constitution does not change except through the amendment process set forth in Article V of the Constitution. Nevertheless, the Supreme Court has explained that "[a]lthough [the Constitution's] 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." *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (citing *United States v. Jones*, 565 U.S. 400, 404–5 (2012)).

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Fourth Circuit precedent, including *Dobbs v. Jackson Women's Health*.

**a. Was it correctly decided?**

Response: As a sitting U.S. magistrate judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Fourth Circuit precedent, including *New York State Rifle & Pistol Association v. Bruen*.

**a. Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Supreme Court's decision in *Brown v. Board of Education* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Fourth Circuit precedent, including *Brown v. Board of Education*.

**a. Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the constitutionality of *de jure* racial segregation is unlikely to come before me as a magistrate judge, or if confirmed as a district judge, and consistent with the responses of other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

**12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: The Supreme Court's decision in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Fourth Circuit precedent, including *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

**a. Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

**13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: The Supreme Court's decision in *Gibbons v. Ogden* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Fourth Circuit precedent, including *Gibbons v. Ogden*.

**a. Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Bail Reform Act of 1984 provides that a rebuttable presumption in favor of pretrial detention arises when there is probable cause to believe that a defendant has committed: (a) certain drug offenses for which the maximum term of imprisonment is

ten years or more; (b) certain offenses involving firearms, conspiracy, or international terrorism; (c) certain other terrorism offenses for which the maximum term of imprisonment is ten years or more; (d) certain human trafficking offenses; and (e) certain offenses involving minors. *See* 18 U.S.C. § 3142(e)(3). Under § 3142(e)(2), a rebuttable presumption in favor of pretrial detention also arises when a defendant committed certain offenses while on pretrial release.

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

Response: Generally, pretrial detention is appropriate when "no condition or combination of conditions 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)(2). The presumption of pretrial detention in certain cases ensures the safety of the community and the appearance of the defendant at court proceedings. *See, e.g.*, *United States v. Salerno*, 481 U.S. 739, 747–51 (1987) (discussing the policy interests at issue in pretrial detention matters).

**15. 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. The Religious Freedom Restoration Act (RFRA) prohibits the government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that application of the burden to the person: (1) is in furtherance of a compelling government interest and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. §§ 2000bb–1(a), (b). RFRA applies to religious organizations, *see Little Sisters of the Poor Sants Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 680 (2020) as well as to businesses operated by observant owners, *see Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 719 (2014).

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

Response: Government regulations that discriminate on the basis of religion must satisfy strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). A law that restricts religious practice must "advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Id*. (citation omitted).

**17. 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*, the Supreme Court granted the religious entity-applicants injunctive relief against the executive order, finding that the executive order likely violated their First Amendment right to free exercise. The executive order's regulations were subject to strict scrutiny because they "single[d] out houses of worship for especially harsh treatment." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020). The Court found that the applicants established a likelihood of success on the merits of their claim, irreparable harm from the violation of their First Amendment right to free exercise, and that injunctive relief was in the public interest. *Id*. at 19–20.

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

Response: In *Tandon v. Newsom*, the Supreme Court granted plaintiffs injunctive relief on their claim that a California regulation restricting private religious gatherings during the COVID-19 pandemic but not restricting similar business-related gatherings violated their First and Fourteenth Amendment rights. The Court held that government regulations "trigger strict scrutiny under the Free Exercise Clause whenever they treat any comparable secular activity more favorably than religious exercise" and found that the California regulation "treats some comparable secular activities more favorably than at-home religious exercise[.]" *Tandon v. Newsom*, 593 U.S. 61, 63 (2021). Therefore, the Court held that the plaintiffs were likely to succeed on the merits and had met the other requirements for injunctive relief.

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

Response: Yes. In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Supreme Court held that the Free Exercise Clause of the Constitution protects religious exercise activities outside the walls of houses of worship.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that the Colorado Civil Rights Commission did not comply with the free exercise clause of the First Amendment in its handling of a proceeding involving a baker's refusal to sell a wedding cake to a same-sex couple, because the Commission demonstrated hostility to a religion or religious viewpoint.

**21. 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. "[I]t is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of his faith. Courts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div*., 450 U.S. 707, 716 (1981); *see also Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 725 (2014) ("[I]t is not for [the Court] to say that their religious beliefs are mistaken or insubstantial.").

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

Response: As articulated by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc*., the federal courts' "narrow function" is to "determine whether [a plaintiff's asserted religious belief] reflects an honest conviction." 573 U.S. 682, 725 (2014) (citation omitted).

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

Response: As articulated by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc*., the federal courts' "narrow function" is to "determine whether [a plaintiff's asserted religious belief] reflects an honest conviction." 573 U.S. 682, 725 (2014) (citation omitted).

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

Response. I am not familiar with the official position of the Catholic Church on abortion.

**22. 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*, the Supreme Court held that the ministerial exception, which is grounded in the First Amendment's free exercise cause, barred the employment discrimination claims of two teachers at Catholic schools. The Court reasoned that the ministerial exception applied to the teachers' claims because they were responsible for "educating and forming students in the Catholic faith[.]" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020).

**23. 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*, the Supreme Court held that Philadelphia's policy of refusing to contract with Catholic Social Services to provide foster care unless it agreed to allow same-sex couples to serve as foster parents failed strict scrutiny and violated the First Amendment free exercise clause. 593 U.S. 522, 542 (2021). The Court reasoned that because the City's policy denied Catholic Social Services' request for an exception that would allow it to provide foster parent services without certifying same-sex couples, while allowing other entities to obtain exceptions, the policy violated the First Amendment free exercise clause because it unduly burdened the organization's religious beliefs and was not generally applicable. *Id*.

**24. 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*, the Supreme Court held that the "nonsectarian" requirement of Maine's tuition assistance program for private secondary schools violated the First Amendment's free exercise and establishment clauses. The Court applied strict scrutiny to the program and held that Maine's "antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." 596 U.S. 767, 781 (2022).

**25. 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*, the Supreme Court held that the school district burdened its football coach's rights under the First Amendment free exercise clause by terminating him for his decision to pray at midfield after games. The Court held that the coach had engaged in private speech, not government speech that was attributable to the school district, and that he had not impermissibly coerced his players to pray. The school district's treatment of the coach's religious exercise and speech failed under strict scrutiny because "the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." 597 U.S. 507, 543 (2022).

**26. 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, Minnesota*, Justice Gorsuch concurred in the decision to vacate the decision of the lower court and applied *Fulton v. City of*

*Philadelphia*, 593 U.S. 522 (2021), to find that the lower court and the County "misapprehended" the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). 141 S. Ct. 2430, 2432 (2021) (Gorsuch, J., concurring). RLUIPA requires that the government's imposition of a land use regulation that places a "substantial burden on the religious exercise of a person" must further a compelling government interest and be the least restrictive means of furthering that interest. *See* 42 U.S.C. § 2000cc(a)(1). Justice Gorsuch found that the County had failed to "offer a compelling explanation why the same flexibility extended to [other groups was not] extended to the Amish." *Mast*, 141 S. Ct. at 2432.

**27. 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 a decision by the Supreme Court or Fourth Circuit applying 18 U.S.C. § 1507 to the circumstances described above. I am aware the Supreme Court upheld the constitutionality of a state statute modeled after 18 U.S.C. 1507, in *Cox v. Louisiana*, 379 U.S. 559 (1965). If I am confirmed and presented with a case involving 18 U.S.C. § 1507, I will faithfully apply the statute, and any Supreme Court and Fourth Circuit precedent on the issue.

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

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

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

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

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

Response. No to all.

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

Response. Yes.

**30. 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.

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

Response: Under the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. U.S. Const. art. II, § 2. As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion on what the President and Senate should consider in exercising their constitutional duties. If a question regarding the lawfulness of a political appointment were to come before me, I would faithfully apply Supreme Court and Fourth Circuit precedent.

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

Response: A racially disparate impact of an employment policy or practice can be evidence of racial discrimination. "[S]ome facially neutral employment practices may violate Title VII even in the absence of a demonstrated discriminatory intent." *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 988 (1988). Under a disparate impact theory of discrimination, proof of intent to discriminate is not required. *Id*. at 988. The Supreme Court has held that where an employer uses "standardized employment tests or criteria" that are "not demonstrably related to the jobs for which they were used" but that have a "markedly disproportionate adverse effect" on a racial minority, racial discrimination has occurred. *Id*. at 987–88; *see also Griggs v. Duke Power Co*., 401 U.S. 424, 429 (1971). If confronted with a legal claim under Title VII or the Equal Protection Clause involving allegations of racial disparity, I would faithfully examine the factual record and apply binding precedent from the Supreme Court and Fourth Circuit.

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

Response: Congress alone has the power to change the size of the Supreme Court. U.S. Const. art. III, § 1. I will faithfully follow the decisions of the Supreme Court regardless of the number of justices on the Court.

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

Response: No.

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

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, the Supreme Court reaffirmed that the Second Amendment "protect[s] an individual right to armed self-defense" subject to "the historical understanding of the Amendment." 597 U.S. 1, 21 (2022).

**36. 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*, 597 U.S. 1, 17 (2022), the Supreme Court held that, for a restriction on the right to keep and bear arms to be constitutional, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." If confirmed, I will faithfully apply all Supreme Court and Fourth Circuit precedent relating to the Second Amendment.

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

Response: Yes. *See McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

**38. 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 Rifle & Pistol Ass'n v. Bruen*, the Supreme Court held that the right to own firearms is protected under "a test rooted in the Second Amendment's text, as informed by history." 597 U.S. 1, 19 (2022). The Supreme Court explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *Id*. at 70 (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)). If confirmed, I will faithfully apply Supreme Court and Fourth Circuit precedent relating to the Second Amendment.

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

Response: No. In *New York Rifle & Pistol Ass'n v. Bruen*, the Supreme Court held that the right to own firearms is protected under "a test rooted in the Second Amendment's text, as informed by history." 597 U.S. 1, 19 (2022). The Court did not suggest that the right to own firearms is less protected than the right to vote. If confirmed, I will faithfully apply Supreme Court and Fourth Circuit precedent relating to the Second Amendment.

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

Response: Article II, Section 3 of the Constitution states that the President "shall take

Care that the Laws be faithfully executed." As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion regarding the appropriate exercise of this power.

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

Response: Prosecutorial discretion involves an executive official's decision whether to initiate a criminal prosecution. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). A substantive administrative rule change occurs via a rulemaking process undertaken by an administrative agency pursuant to the Administrative Procedure Act or other applicable law. *See* 5 U.S.C. § 553.

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

Response: No. Congress enacted 18 U.S.C. § 3591, which states that a defendant who has been found guilty of certain federal offenses "shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years at the time of the offense." The death penalty for state offenses is enacted by the states. *See* U.S. Const. amend. X.

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

Response: In *Alabama Association of Realtors v. HHS*, the Supreme Court vacated the stay of the judgment of the U.S. District Court for the District of Columbia that the nationwide moratorium on evictions of tenants living in counties with substantial or high levels of COVID-19 transmission, imposed by the Centers for Disease Control and Prevention (CDC), was unlawful. 594 U.S. 758, 759 (2021). The Supreme Court found that the applicants were "virtually certain to succeed on the merits of their argument that the CDC exceeded its authority" under the Public Health Services Act, on which it relied to enact the moratorium. *Id*. at 759-60.

**44. 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: No.

**45. You served on ABA Working Group on Building Public Trust in the American Justice System that produced "The ABA Ten Principles on Reducing Mass Incarceration" in 2022.**

**a. How do you define mass incarceration?**

Response: The ABA Ten Principles on Reducing Mass Incarceration (the "ABA Principles") referred to in this question were the product of a review by the Working Group of existing recommendations on criminal justice policies that had previously been adopted by the ABA House of Delegates and that had some bearing on incarceration rates. I understand the term "mass incarceration" in the context of those Principles to refer to the question addressed by those ABA policies, namely whether developments in recent decades had resulted, in the aggregate, in more individuals being incarcerated, or incarcerated for longer, than productively advanced public safety.

**b. How do you differentiate that definition from regular incarceration?**

Response: Please see my response to Question 45(a).

**46. The report explained that "Incarceration does not simply hurt the individual jailed. It devastates families and destabilizes communities."**

**a. Why does incarceration destabilize communities?**

Response: That statement appears in the introduction to the Principles; I do not believe I wrote it, and I was not the chair of the Working Group at that time. The American Bar Association Working Group on Building Public Trust is 10-member group that has been charged with helping to determine the role that bar associations might play in restoring public trust in our criminal justice system. The positions that the Working Group has taken do not necessarily reflect my personal views. I also am not familiar with the research or basis underlying every section of the ABA Principles. In any event, my understanding is that statement likely refers to the impact that incarceration of an individual can have on that individual's family members or community.

**b. Does failing to incarcerate people that have committed crimes also destabilize communities?**

Response: Under 18 U.S.C. § 3553(a), federal courts imposing sentences must consider various factors, including "the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." Thus, the sentencing statute reflects the view, which I share, that criminal sentences serve, in part, to protect communities, not only by "protect[ing] the public from further crimes of the defendant," but also to "promote respect for the law," to "provide just punishment," and to "afford adequate deterrence to criminal conduct." If confirmed as a district judge, I would faithfully discharge my obligation to order incarceration when

justified by the § 3553(a) factors.

Similarly, as a magistrate judge, when I adjudicate motions to detain criminal defendants pretrial where the government contends that a defendant poses a risk of danger to the community, my obligation under the Bail Reform Act of 1984 is to determine whether the government has shown that pretrial detention is necessary to "reasonably assure . . . the safety of any other person and the community." 18 U.S.C. § 3142(e). In every case where the government makes that showing, I order detention pursuant to my obligation to protect the safety of the community.

**c. Do you agree or disagree with the statement that most violent crime is perpetrated by recidivist criminals?**

Response: I am not familiar with the specific statistic referenced. I am aware that the United States Sentencing Commission has reported that "Over 60 percent (63.8%) of violent offenders" in a 2019 study "recidivated by being rearrested for a new crime or for a violation of supervision conditions."

**d. Is incarcerating criminals bad or good for society?**

Response: Under a host of circumstances, federal law requires judges to incarcerate people who have committed crimes. As a sitting magistrate judge, I am not a policymaker; my obligation is to faithfully apply the law, including any precedents of the U.S. Supreme Court and the Fourth Circuit, to the facts of every case. If confirmed as a district judge, in any sentencing my obligation will be to faithfully apply any statute (including mandatory minimums), to faithfully calculate the applicable sentencing range recommended under the U.S. Sentencing Guidelines, and to faithfully apply the factors set forth in 18 U.S.C. § 3553(a) in rendering a sentence. As far as I am aware, none of those sources require, or permit, a sentencing judge to consider whether incarceration in a given case would be perceived as "good" or "bad."

**47. The report advocated for repealing mandatory minimum sentencing provisions because they are "inequitable and counterproductive."**

**a. What makes mandatory minimum sentencing "inequitable"?**

Response: The ABA Principles reflect then-existing ABA policies; they do not necessarily reflect my views or those of any given member of the Working Group or any member of the ABA. The ABA had previously taken positions, on multiple occasions, recommending repeal, or opposing adoption, of mandatory minimum sentences. *See* ABA Principles at 31. And Congress recently repealed some mandatory minimums pursuant to the First Step Act of 2018. Regardless, if confirmed as a district judge, my obligation will be to apply the laws of the United States, including any statutes containing mandatory minimums to which a defendant has pled guilty.

**b. What makes mandatory minimum sentencing "counterproductive"?**

Response: The ABA Principles reflect then-existing ABA policies; they do not necessarily reflect my views or those of any given member of the Working Group or any member of the ABA. As quoted in the ABA Principles (at page 31), for example, in 2010 the ABA testified before the U.S. Sentencing Commission in opposition to mandatory minimums, expressing reasons that were later reflected in Congress's decision to repeal some mandatory minimum sentences pursuant to the First Step Act of 2018. Regardless, if confirmed as a district judge, my obligation will be to apply the laws of the United States, including any statutes of conviction containing mandatory minimums.

**c. Do mandatory minimum sentencing promote equal sentencing across different federal judicial districts?**

Response: I am not familiar with studies addressing this question.

**48. What United States Senator sponsored the S.1607 - Violent Crime Control and Law Enforcement Act of 1993?**

Response: I understand that then-Senator Biden was the sponsor of the Violent Crime Control and Law Enforcement Act of 1993.

**a. Did this senator warn of "predators on our streets," who were "beyond the pale"?**

Response: I am not familiar with the referenced statements.

**b. Who was this senator referring to with those remarks?**

Response: I am not familiar with the referenced statements.

**c. What did this bill do regarding mandatory minimum sentencing?**

Response: I have not studied the referenced bill. I understand some provisions of that bill provided for mandatory minimum sentences.

**d. Do you blame this senator for contributing to your definition of "mass incarceration"?**

Response: I have not studied the referenced bill, and thus do not have a basis for evaluating whether or to what extent the ABA Principles bear on that bill. As a sitting magistrate judge, I am not a policymaker; my obligation is to faithfully apply the law to the facts of any case before me. If confirmed, in any sentencing my obligation will be to faithfully apply any statute, including mandatory

minimums, to faithfully calculate the applicable sentencing range recommended under the U.S. Sentencing Guidelines, and to faithfully apply the factors set forth in 18 U.S.C. § 3553(a) in rendering a sentence.

**49. Your report's recommendations advocated for less incarceration. Are communities safer when violent criminals do not face incarceration?**

Response: Under 18 U.S.C. § 3553(a), federal courts imposing sentences must consider various factors, including "the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." Thus, the sentencing statute reflects the view, which I share, that criminal sentences serve, in part, to protect communities, not only by "protect[ing] the public from further crimes of the defendant," but also to "promote respect for the law," to "provide just punishment," and to "afford adequate deterrence to criminal conduct." If confirmed as a district judge, I would faithfully discharge my obligation to order incarceration when justified by the § 3553(a) factors.

Similarly, as a magistrate judge, when I adjudicate motions to detain criminal defendants pretrial where the government contends that a defendant poses a risk of danger to the community, my obligation under the Bail Reform Act of 1984 is to determine whether the government has shown that pretrial detention is necessary to "reasonably assure . . . the safety of any other person and the community." 18 U.S.C. § 3142(e). In every case where the government makes that showing, I order detention pursuant to my obligation to protect the safety of the community.

**50. Do you believe in deterrence as an element of our criminal law? If yes, please explain why. If no, please explain why.**

Response: Yes. Under 18 U.S.C. § 3553(a), the purposes of criminal sentencing include to "promote respect for the law," to "afford adequate deterrence to criminal conduct," and to "protect the public from further crimes of the defendant."

**Questions from Senator Thom Tillis**
**For Adam B. Abelson, nominated to serve as U.S. District Judge for the District of Maryland**

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

Response: A judge's personal views are irrelevant to interpreting and applying the law. A judge's obligation is to faithfully and impartially apply the law, irrespective of any personal beliefs.

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

Response: Impartiality is an expectation for a judge and central component of the oath that I took upon being appointed as a magistrate judge, and the oath that I would take if confirmed as a district judge.

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

Response: Black's Law Dictionary defines the term as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, . . . with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents" (11th ed. 2019). As stated above, I believe a judge's personal views, whether about "public policy" or otherwise, are irrelevant to interpreting and applying the law, and thus judicial activism is not appropriate. My obligation as a magistrate judge is to faithfully apply the Constitution, and laws enacted by Congress (and, in diversity cases, by state legislatures), as interpreted by the Supreme Court and the Fourth Circuit (and, in diversity cases, by state courts), and I would continue to do the same if confirmed as a district judge.

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

Response: No.

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

Response: A district judge's obligation is to faithfully and impartially apply all laws and precedent, irrespective of outcome. Doing so promotes confidence in the rule of law, and demonstrates that decisions will be based on clear legal principles, rather than outcome-driven.

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

Response: As a U.S. magistrate judge, I faithfully and impartially apply all laws and precedent, and I would continue doing so if I were confirmed as a district judge. In the Second Amendment context, that includes faithfully applying all Supreme Court precedent, including the three recent, seminal cases on the Second Amendment: *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *New York State Rifle Association v. Bruen*, 597 U.S. 1 (2022).

**7. 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: "Qualified 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." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). "The immunity balances two important interests: 'the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.'" *Atkinson v. Godfrey*, 100 F.4th 498, 504 (4th Cir. 2024) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). As directed by the Supreme Court and the Fourth Circuit, assessing a defense of qualified immunity requires applying "a two-step analysis." *Id.* "Under the first prong of the analysis, [courts] ask 'whether a constitutional violation occurred.'" *Id.* (quoting *Melgar ex rel. Melgar v. Greene*, 593 F.3d 348, 353 (4th Cir. 2010)). "Under the second prong, [courts] ask whether the right at issue was 'clearly established' at the time of the events in question." *Id.* And courts "may address these questions in the order that would best facilitate the fair and efficient disposition of the case," *id.* (citing *Pearson*, 555 U.S. at 236), including "without resolving the 'often more difficult question whether the purported right exists at all." *Id.* (quoting *Reichle*, 566 U.S. at 664). I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent to the issue of qualified immunity in any case where this protection is relevant.

**8. 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: The scope of qualified immunity protection is a matter to be determined by legislatures and courts. My obligation is to enforce those protections and immunize officers within the limits set by policymakers and as determined by the Supreme Court and the Fourth Circuit.

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

Response: Please see my response to Question 8.

**10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?**

Response: Intellectual property is enshrined in the Constitution. *See* Art. I, § 8, cl. 8. And the Patent Clause and the federal statutes protecting intellectual property rights reflect the importance of encouraging innovation, among other purposes. *See Bonito Boats, Inc. v. Thunder Craft Boats, Inc*., 489 U.S. 141, 146 (1989). A judge's obligation to impartially and faithfully apply the law extends to all federal law, including those laws intended to encourage innovation, foster competition, and protect inventors.

**11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"**

Response: My obligation as a magistrate judge is to impartially decide the cases that are assigned to me, and that obligation will remain if I am confirmed as a district judge. I understand that in recent years the concern reflected in this question has been the subject of study, including by the Judicial Conference of the United States, and was referenced by Chief Justice John G. Roberts, Jr., in his 2021 Year-End Report on the Federal Judiciary. I also understand that 28 U.S.C. § 137(a) provides that "The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court. The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe. If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders."

**12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?**

Response: As a sitting federal magistrate judge and a nominee to be a district judge, the Code of Conduct prohibits me from opining on the validity or coherence of the Supreme Court's jurisprudence in any area, including patent eligibility. I am obligated to faithfully apply all Supreme Court precedent and would continue to do in all patent matters should I be fortunate enough to be confirmed.