Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Joseph Francis Saporito, Jr.
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **How many federal criminal trials have you presided over?**

   Response: Magistrate judges are statutorily prohibited from presiding over trials involving felonies. See 18 U.S.C. § 3401; 28 U.S.C. § 636. Thus, I have not presided over a criminal trial. However, in other criminal matters, I have presided over misdemeanors and petty offenses including guilty pleas and sentencings. In felony criminal matters, I have presided over initial appearances, arraignments, bail determinations, pleas, preliminary hearings, and I regularly issue arrest and search warrants. In addition, I have presided over 14 jury trials in my time on the bench and in my nearly three decades as a practitioner, I have tried to verdict over 60 jury and bench trials, many of them criminal.

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

   Response: Yes.

3. **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**.

4. **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.

5. **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.

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

   Response: Generally, No. The Constitution is a domestic and enduring document. However, the Supreme Court has occasionally looked to English common law to interpret certain provisions of the Constitution. *See, e.g., Dimick v. Schiedt*, 293 U.S. 474 (1935) (holding that "common law" in the Seventh Amendment context means the common law of England).

7. **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. Judges are required to follow the rule of law as set down by precedent. Judges are required to apply the law fairly, equally, and impartially, and without consideration of the judge's independent value judgments.

8. **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. In *Medellin v. Texas*, 552 U.S. 491, 504 (2008), the Supreme Court observed that "not all international law obligations automatically constitute binding federal law enforceable in United States courts." Later in the opinion, the Supreme Court held that "[t]he responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress." *Id.* at 525-26.

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

   Response: *Black's Law Dictionary* (11th ed. 2019) defines "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court."

10. **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. Lower courts must follow and apply binding precedent. As a sitting United States magistrate judge, I have faithfully followed and applied Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will continue to do so.

11. **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.

12. **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.

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

    Response: Under 18 U.S.C. § 2255, "a prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

14. **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: Students for Fair Admissions filed separate lawsuits against Harvard and UNC, arguing that their race-based admissions programs violate, respectively, Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. Both Harvard and UNC admitted that they did consider race a factor in admitting students. The Supreme Court observed that these cases "involve whether a university may make admissions decisions that turn on an applicant's race." *Students for Fair Admissions, Inc. v. President of Harvard Coll.*, 600 U.S. 181, 208 (2023). The

Supreme Court held that while universities may consider an applicant's discussion of how race affected his or her life, Harvard's and UNC's admissions "programs 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," those admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause. *Id.* at 230.

15. **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?**

    Response: Yes.

    If yes, please list each job or role where you participated in hiring decisions.

    Response: I have participated in hiring decisions while a partner in my former firm: Saporito & Saporito and by name change, Saporito, Saporito & Falcone located in Pittston, Pennsylvania, and as a United States magistrate judge in the United States District Court for the Middle District of Pennsylvania.

16. **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.

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

    Response: No.

18. **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?**

    Response: No.

    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 applicable.

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

    Response: Yes. Strict scrutiny is applied to actions by government classifications based on race. "[W]hen the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 545 (3d Cir. 2011).

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

    Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that where the State of Colorado compelled an individual who does not believe in same sex marriage to create speech she does not believe, the Free Speech Clause of the First Amendment was violated.

21. **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. *Barnette* was cited with approval in *303 Creative LLC v. Elenis*, 600 U.S. 570, 601-02 (2023).

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

    Response: Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015). "As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based. . . . By contrast, laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral." *Turner Broad. Sys., Inc. v. Fed. Commc'n C*omm'n, 512 U.S. 622, 643 (1994). Whether government regulation of speech is content based, a court should consider whether a regulation on its face draws distinctions based on the message a speaker conveys. *Reed*, 576 U.S. at 163. "Some facial distinctions based on a message are

obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." *Id.* at 165. The first step in the determination of whether a law is content neutral, is "determining whether the law is content neutral on its face." *Id.* Once that determination is made, a court can consider the law's justification or purpose. *Id.* at 166.

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

Response: True threats of violence are not protected by the First Amendment. *Counterman v. Colorado*, 600 U.S. 66, 72 (2023). "[T]he State must prove in true-threats cases that the defendant had some understanding of his statements' threatening character." *Id.* at 73. To avoid infringing on the First Amendment in true threats cases, the prosecution must prove that the defendant acted "recklessly" by "consciously disregard[ing] a substantial and unjustifiable risk that the conduct will cause harm to another." *Id.* at 79 (brackets omitted).

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines a "fact" as [s]omething that actually exists; an aspect of reality" or "[an] actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." The Supreme Court defined "factual issues" as "basic, primary or historical facts: facts in the sense of a recital of external events and the credibility of their narrators." *Townsend v. Sain,* 372 U.S. 293, 309 (1963) (quoting *Brown v. Allen,* 344 U.S. 443, 506 (1953)). The Third Circuit follows the Supreme Court's definition. *See Berryman v. Morton*, 100 F.3d 1089, 1094 (3d Cir. 1996). *See generally Williams v. Taylor*, 529 U.S. 362, 385 (2000) (acknowledging "that the Court has not charted an entirely clear course in this area" and that "the proper characterization of a question as one of fact or law is sometimes slippery") (quoting *Thompson v. Keohane,* 516 U.S. 99, 110–11 (1995)).

25. **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(a) does not identify any one of the four purposes of sentencing as greater or most important than the others. In sentencing a defendant, a judge shall impose a sentence consistent with the factors set forth in 18 U.S.C. § 3553(a). As a United States magistrate judge since 2015, I have imposed sentences consistent with 18 U.S.C. § 3553(a), the applicable sentencing guidelines, and applicable Supreme Court and Third Circuit precedent. I have also considered the presentence reports and

recommendations from the United States Probation Office. If I am confirmed as a district judge, I will continue to be guided by this approach.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether a Supreme Court decision was correct or well-reasoned. As a sitting United States magistrate judge, I am required to follow Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether a Third Circuit decision was correct or well-reasoned. As a sitting United States magistrate judge, I am required to follow Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent.

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

Response: 18 U.S.C. § 1507 is set out as follows: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

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

Response: I am not aware of any case from the Supreme Court or the Third Circuit that addresses whether 18 U.S.C. § 1507 is constitutional. However, the Supreme Court declared a similar Louisiana law valid and in doing so it "[held] that this statute on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." *Cox v. Louisiana*, 379 U.S. 559, 564 (1965).

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

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

Response: Yes. As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. However, because the constitutionality of de jure segregation in public schools is unlikely to be relitigated, I can say that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided.

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

Response: Yes. As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. However, because the constitutionality of laws prohibiting interracial marriage is unlikely to be relitigated, I can say that *Loving v. Virginia*, 388 U.S. 1 (1967) was correctly decided.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Griswold v. Connecticut* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Roe v. Wade*, 410 U.S. 113 (1973) was overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) was overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Dobbs is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Gonzales v. Carhart* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *District of Columbia v. Heller* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *McDonald v. City of Chicago* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *New York State*

Rifle & Pistol Association v. Bruen is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Dobbs v. Jackson Women's Health* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent, and if confirmed as a district judge, I will faithfully follow and apply them.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. *303 Creative LLC v. Elenis* is binding precedent, and if confirmed as a district judge, I will faithfully follow and apply it.

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

Response: In *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 17 (2022), the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" If confirmed as a district judge, I will faithfully follow and apply this binding precedent.

32. **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.

33. **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.

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

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

Response: No.

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?**

Response: No.

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?**

Response: No.

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.

35. **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.

36. **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.

37. **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: No.

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: No.

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.

38. **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: No.

    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: No.

39. **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: No.

40. **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 20, 2023, I submitted an application for the judicial vacancy in the United States District Court for the Middle District of Pennsylvania to the 2024 Judiciary Advisory Commission. On January 4, 2024, I interviewed with the Judicial Advisory Commission. On February 12, 2024, I interviewed with members of Senator Casey's staff. On February 27, 2024, I interviewed with Senator Casey and his staff. On March 28, 2024, I interviewed with attorneys from the White House Counsel's Office. Since March 28, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 8, 2024, the President announced his intent to nominate me.

41. **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.

42. **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.

43. **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.

44. **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.

45. **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.

46. **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.

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

Response: No.

48. **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?**

Response: The attorneys of the Office of Legal Policy gave me general guidance regarding my committee questionnaire. Those discussions included the necessity of including cases that highlighted the breadth of my trial experience as a practitioner, including the extent of cases tried to verdict, as well as cases I presided over as a sitting United States magistrate judge.

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?

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

Response: On March 28, 2024, I interviewed with attorneys from the White House Counsel's Office. Since March 28, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 8, 2024, the President announced his intent to nominate me.

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

Response: On June 12, 2024, I received the Questions for the Record from the Office of Legal policy. I reviewed the questions, conducted legal research as necessary, and I prepared draft responses. I received limited feedback from the Office of Legal Policy. Thereafter, I finalized my answers, and I submitted them 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 Joseph Saporito, nominee to be U.S. District Judge for the Middle District of Pennsylvania

Since 2015, you have served as a U.S. Magistrate Judge in the Middle District of Pennsylvania, and you have served as the Chief Magistrate Judge since February. As a magistrate judge, you have issued more than 950 memorandum opinions and reports and presided over 14 civil jury trials.

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

  Response: In civil matters, which constitute approximately 80% of my docket, where the parties consent to magistrate judge jurisdiction, I exercise essentially the same jurisdiction as an Article III district judge. In consent cases, I preside over all proceedings in a civil action, including case management, discovery disputes, dispositive pretrial motions, jury or bench trials, entry of final judgment, and post-trial proceedings. In those matters where the parties do not consent, I handle pretrial case management, I prepare a report and recommendation on dispositive motions, I make direct rulings on certain discovery motions, and I preside over settlement conferences involving a variety of issues concerning federal law. I have regularly presided over jury and bench trials and evidentiary hearings. In criminal matters, I preside over misdemeanors and petty offenses, including trial, guilty pleas, and sentencings. In felony criminal matters, I preside over initial appearances, arraignments, bail determinations, pleas, preliminary hearings, and I issue arrest and search warrants. I have been performing these duties for over nine years. As a practitioner for over twenty-nine years before coming to the bench, I tried over 60 cases to verdict before juries and judges. I feel these experiences have prepared me to take on the role of a district judge.

- **What are some of the most valuable lessons that you have learned while serving as a magistrate judge?**

  Response: Perhaps the most significant lesson that I have learned over my more than nine years as a magistrate judge is the importance of listening to the parties, witnesses, and lawyers. Equally important is the ability to be patient, tolerant, understanding, and prepared. Every litigant, whether they prevail or not, should leave the courtroom knowing that their case was heard and a decision was reached by an impartial application of the law to the facts. I make it my goal in every case to convey to the parties the feeling that their case was the most important case ever tried. As a believer in the American system of justice, I regularly invite questions from jurors after the trial of cases, I offer them a tour of our courthouse, and I send each of them an individual letter thanking them for their service as a juror and their participation in our democracy. Finally, I treat

everyone who comes into our courthouse (litigants, lawyers, witnesses, jurors, court staff, court security staff, cleaning staff, and visitors) with courtesy, dignity, and respect.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | June 5, 2024
Questions for the Record for Joseph Saporito

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
Joseph Francis Saporito, nominee to the United States District for the Middle District of Pennsylvania

1. How would you describe your judicial philosophy?

Response: Throughout my over nine years as a United States magistrate judge, my judicial philosophy can best be described as follows: I treat every litigant fairly and equally. I treat everyone I encounter with courtesy, dignity, and respect. I listen carefully to the witnesses and lawyers. I keep an open mind until the matter is ready for a decision. All decisions are made promptly after a full discernment of the issues, a thorough review of the record, and the application of the facts to the law. Finally, I faithfully follow binding precedent of the Supreme Court and the Third Circuit in a written decision that is easily understood by the lawyers and litigants.

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

Response: In deciding a case that turned on the interpretation of a federal statute, I would first apply binding Supreme Court and Third Circuit precedent interpreting the statute. If there is no precedent, I would follow the methods of statutory interpretation established by the Supreme Court and the Third Circuit. I would first analyze the text of the statute, if the statute is clear and unambiguous, the analysis ends there. Also, in appropriate instances, I would look for persuasive authority from other circuit and district courts. Only as permitted by Supreme Court and Third Circuit precedents, and as a last resort, if a statute remains ambiguous after application of other tools of interpretation, I would look to committee reports and legislative history.

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

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would first look to any Supreme Court and Third Circuit precedent interpreting the provision. If no such precedent existed, I would analyze the text of the provision utilizing the methods of interpretation as established by the Supreme Court. *See District of Columbia v. Heller*, 554 U.S. 570 (2008), focusing on the ordinary public meaning of the provision. I would also look to see how the Supreme Court and the Third Circuit analyzed and interpreted similar constitutional provisions. In appropriate instances, I would look to persuasive authority from other circuit and district courts.

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

Response: The text and the original meaning of a constitutional provision are the first line of inquiry and analysis involving any issue of constitutional dimension. The

plain meaning of a constitutional provision is determined at the time of the ratification of the constitutional provision in issue.

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 held in *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020) that it "[i]nterprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."

7. What are the constitutional requirements for standing?

Response: There are three constitutional requirements for standing: (1) "the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical," (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court[,]" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: The Supreme Court has long recognized that Congress has implied powers beyond those enumerated in the Constitution and, in particular, the Necessary and Proper Clause authorizes Congress to make all laws that are necessary to exercise its enumerated powers. For example, in *M'Culloch v. Maryland*, 17 U.S. (4 Wheat) 316 (1819), the Supreme Court held that Congress had the power to form a national bank through the Necessary and Proper Clause of the Constitution.

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

Response: I would utilize the same analysis when interpreting the text of the Constitution. I would also be guided by precedent set down by the Supreme Court and the Third Circuit. The Supreme Court has held that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: The Supreme Court has held that the determination of whether an unenumerated right is entitled to constitutional protection, that right must be "deeply rooted in in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed…" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Supreme Court recently recounted certain rights that the Constitution protects that are not enumerated. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (collecting cases on the right to marry a person of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to marry while in prison, *Turner v. Safley*, 482 U.S. 78 (1987); the right to reside with relatives, *Moore v. East Cleveland*, 431 U.S. 494 (1997); the right to make decisions about the education of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); the right to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942)).

11. What rights are protected under substantive due process?

Response: Fundamental rights are protected under substantive due process. 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: In *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court held that the right to buy or sell labor was a constitutionally protected liberty interest. Since *Lochner*, the Supreme Court has shifted away from that holding. For example, in *West Coast Hotel v. Parrish*, 300 U.S. 79 (1937), the Supreme Court stated that the "essential limitation of liberty in general governs freedom of contract in particular." *Id*. at 392. But the Supreme Court explained that "There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *Id.*

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power. Those categories are: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or

persons and things in interstate commerce, even if the threat comes from intrastate activity; and (3) those activities having a substantial relation to interstate commerce—i.e., activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: In determining whether a class is a "suspect class," the Supreme Court generally considers a variety of factors including "whether the ... class is defined by a[n] [immutable] trait that 'frequently bears no relation to ability to perform or contribute to society'" and "whether the class has been saddled with unique disabilities because of prejudice or inaccurate stereotypes." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion). But while these factors are those most often considered, "[n]o single talisman can define those groups likely to be the target of classifications offensive to the Fourteenth Amendment ...; experience, not abstract logic, must be the primary guide." *City of Cleburne v. Cleburne Living Ctr., Inc.,* 473 U.S. 432, 472 (1985).

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

Response: "Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others." *Bond v. U.S.*, 564 U.S. 211, 222 (2011). [T]he separation of powers can serve to safeguard individual liberty, … and that it is the 'duty of the judicial department'—in a separation-of-powers case as in any other— 'to say what the law is,' *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803).

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: As a sitting United States magistrate judge, I faithfully follow and apply Supreme Court and Third Circuit precedent, and I would continue to do so if I am confirmed as a district judge. If an issue involving whether one branch of government assumed authority not granted to it by the text of the Constitution, I would be guided by Supreme Court and Third Circuit precedent in the evaluation and resolution of that issue.

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

Response: Empathy should play no role in a judge's consideration of a case. A judge must keep an open mind and be fair and impartial to the parties. Also, a judge must apply binding precedent in the consideration of a case.

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

Response: Both of these hypotheticals are inconsistent with the rule of law and are equally improper.

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 reviewed the statistical details and data of judicial review referenced in this question nor do I maintain these statistics. Therefore, I am unable to provide comment on this question. As a sitting United States magistrate judge, I faithfully follow and apply Supreme Court and Third Circuit precedent, and I would continue to do so if I am confirmed as a district judge.

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

Response: The explanation of the difference between judicial review and judicial supremacy can be described in the definitions of them set forth in *Black's Law Dictionary* (11th ed. 2019). "Judicial review" is defined therein "as court's power to review the actions of other branches or levels of government, esp[ecially] the courts' power to invalidate legislative and executive actions as being unconstitutional [;] the constitutional doctrine providing for this power[; and] a court's review of a lower court's or an administrative body's factual or legal findings." "Judicial supremacy" is defined therein as [t]he doctrine that the interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: In referencing Chief Justice John Marshall's famous opinion in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), wherein the Supreme Court held that 'It is emphatically the province and duty of the judicial department to say what the law is,'

the Supreme Court observed that "[t]his decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'" *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). All government officials are bound by oath or affirmation to support the Constitution. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Id.*

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: The courts are required to interpret and uphold the law, not to make it or enforce it. Federalist 78 is a reminder that the judicial branch, like the executive and the legislative branches, has its limitations and courts should not overstep.

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: The Supreme Court has explained "If a precedent of this Court has direct application in a case," a lower court "should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). "This is true even if the lower court thinks the precedent is in tension with "some other line of decisions." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023). In the unlikely event where there is no binding Supreme Court or Third Circuit precedent, I would look to decisions of other circuit and district courts as persuasive authority to assist me in rendering a fair and impartial decision.

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 an individual defendant in a criminal case, the defendant's group identities play no role in the judge's sentencing analysis. Rather,

in sentencing a defendant, a judge shall impose a sentence consistent with the factors set forth in 18 U.S.C. § 3553(a). As a United States magistrate judge since 2015, I have imposed sentences consistent with 18 U.S.C. § 3553(a), the applicable sentencing guidelines, and applicable Supreme Court and Third Circuit precedent. I have also considered the presentence reports and recommendations from the United States Probation Office. If I am confirmed as a district judge, I will continue to be guided by this approach.

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 not aware of the Biden Administration's definition of "equity" as set forth above. *Black's Law Dictionary* (11 th ed.) defines "equity" as "[f]airness; impartiality; evenhanded dealing."

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

Response: "Equity" can be a form of a remedy when a court is tasked with the responsibility to render a decision that is fair, right, just, and consistent with binding precedent. "Equality" involves the way parties are treated. All parties should be treated equally. If these terms are presented to me in any matter that may come before me, I will faithfully follow and apply Supreme Court and Third Circuit precedent as I have as a United States magistrate judge.

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

Response: I am not aware of any Supreme Court or Third Circuit case that interprets the Fourteenth Amendment's Equal Protection Clause to guarantee equity as defined in Question 25.

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

Response: I am not aware of a uniform opinion regarding the definition of "systemic racism," nor have I encountered a case where that term was an issue. If this term is presented to me in any matter that may come before me, I will faithfully follow and

apply Supreme Court and Third Circuit precedent as I have as a United States magistrate judge.

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

Response: I am not aware of a uniform opinion regarding the definition of "critical race theory," nor have I encountered a case where that term was an issue. If this term is presented to me in any matter that may come before me, I will faithfully follow and apply Supreme Court and Third Circuit precedent as I have as a United States magistrate judge.

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

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

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

Response: There are six basic standards of review: (1) plenary or de novo review, which affords no deference to the lower court or decision maker, is applied by an appellate or district court in reviewing questions of law, by a district court in deciding factual matters in the first instance, or by a district court in reviewing objections to factual determinations in a magistrate judge's report and recommendation, a bankruptcy judge's proposed findings and conclusions in an adversary matter, or a special master's findings and conclusions; (2) clearly erroneous review, which affords substantial—but not total—deference to factual findings by a lower court or decision maker, is applied by an appellate court to factual determinations by a district court, by a district court considering appeals from bankruptcy court or non-dispositive magistrate judge orders, or by a district court reviewing factual determinations to which there is no objection in a magistrate judge's report and recommendation or a bankruptcy judge's proposed findings and conclusions in an adversary matter; (3) reasonableness or substantial evidence review, which affords great deference to factual determinations by a jury or to agency administrative decisions; (4) arbitrary and capricious review, which affords great deference to an agency's explanation or justification of an informal agency action; (5) abuse of discretion review, which affords great deference to the decisions of a lower court or an agency, is applied by an appellate court in reviewing discretionary decisions by a district court, or by a district court in reviewing discretionary procedural rulings, including discovery rulings, by a magistrate judge, bankruptcy judge, or special master; and (6) no review, which affords complete deference to a decision maker in rare cases, such as a prosecutor's decision not to prosecute, a jury's verdict of acquittal, or certain agency actions committed to agency discretion by law.

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: Yes. The objective meaning of a constitutional term can embrace new circumstances or technologies that fit within existing categories. *See, e.g.*, *United States v. Jones*, 565 U.S. 400, 404-05 (2012) (GPS tracking technology and the Fourth Amendment); *Kyllo v. United States*, 533 U.S. 27, 36 (2001) (thermal imaging technology and the Fourth Amendment); *Fed. Commc'ns Comm'n v. League of Women Voters*, 468 U.S. 364, 376 (1984) (broadcast communications technology and the Commerce Clause); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824) (steamboat technology and the Commerce Clause).

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power. Those categories are: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or persons and things in interstate commerce, even if the threat comes from intrastate activity; and (3) those activities having a substantial relation to interstate commerce—i.e., activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: A court's dormant commerce clause analysis is primarily concerned with economic protectionism—that is, state laws that benefit in-state economic interests by burdening out-of-state competitors. The court first asks whether the state law discriminates on its face against interstate commerce, in which case the law is invalid unless the state can show that it has no other reasonable means to advance a legitimate local purpose. A facially nondiscriminatory state law that only incidentally affects interstate commerce will be upheld unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local purpose. *See Dep't of Rev. of Ky. v. Davis*, 553 U.S. 328, 338–39 (2008).

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

Questions for the Record for Joseph Saporito, nominated to be United States District Judge for the Middle District of Pennsylvania

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.

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

Response: The Supreme Court has held that the determination of whether an unenumerated right is entitled to constitutional protection, that right must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed…" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting further on any right that could be identified by the Supreme Court in the future. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit 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: Throughout my over nine years as a United States magistrate judge, my judicial philosophy can best be described as follows: I treat every litigant fairly and equally. I treat everyone I encounter with courtesy, dignity, and respect. I listen carefully to the witnesses and lawyers. I keep an open mind until the matter is ready for a decision. All decisions are made promptly after a full discernment of the issues, a thorough review of the record, and the application of the facts to the law. Finally, I faithfully follow binding precedent of the Supreme Court and the Third Circuit in a written decision that is easily understood by the lawyers and litigants. I have not studied the judicial philosophies of all the justices and therefore I could not identify whose judicial philosophies are most analogous to mine.

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "originalism" as [t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." The text and the original meaning of a constitutional provision are the first line of inquiry and analysis involving any issue of constitutional dimension. The plain meaning of a constitutional provision is determined at the time of the ratification of the constitutional provision in issue. I do not subscribe to a particular label. I am aware that the Supreme Court has utilized originalism in interpreting the Constitution. As a

sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit 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* (11th ed. 2019) defines "living constitutionalism" as [t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not subscribe to a particular label. I am not aware of any Supreme Court decisions using "living constitutionalism" in interpreting the Constitution. As a sitting United States magistrate judge, I follow and apply Supreme Court and Third Circuit precedent. If I am confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit 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.

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 held in *Bostock v. Clayton County,* 590 U.S. 644, 654 (2020) that it "[i]nterprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (looking to original public meaning of the Second Amendment).

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

Response: The meaning of the Constitution does not change unless amended under Article V. The Founders created a "Constitution . . . intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (citing *M'Culloch v. Maryland*, 4 Wheat. 316, 415 (1819)). "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." *Id.*

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

Response: Yes. It is settled law and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow and apply *Dobbs*.

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

Response: Yes. It is settled law and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow and apply *Bruen.*

Response: Yes. It is settled law and binding precedent.

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

Response: Yes. It is settled law and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. However, because the constitutionality of de jure segregation in public schools is unlikely to be relitigated, I can say that *Brown v. Board of Education* was correctly decided. If confirmed as a district judge, I will faithfully follow and apply it.

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

Response: Yes. It is settled law and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully

follow and apply it.

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

Response: Yes. It is settled law and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether Supreme Court decisions were correctly decided. If confirmed as a district judge, I will faithfully follow and apply it.

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

Response: Under the Bail Reform Act of 1984, 18 U.S.C. § 3142(e)(2)(3), there are certain offenses which trigger the presumption of pretrial detention for defendants who have previously been convicted of certain offenses which include certain crimes of violence, crimes for which the maximum term of imprisonment is 10 years or more as prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, the Maritime Drug Law Enforcement Act, crimes for which the maximum sentence is life imprisonment or death, drug offenses for which the maximum sentence is 10 years or more, certain offenses involving minor victims, certain offenses involving human trafficking, certain criminal conspiracies to harm people or property abroad, certain acts of terrorism, and certain criminal offenses involving minor victims. A presumption in favor of pretrial detention may also be triggered upon a judicial finding that the defendant was previously convicted of a detainable offense committed while on pretrial release, provided that prior conviction occurred, or the resultant sentence expired, within the past five years.

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

Response: Congress made certain finding before enacting the Bail Reform Act. The members of Congress, as policymakers, considered testimony and evidence from various sources. As a judicial officer, I do not question the policy supporting the passage of a law. From 2015 to the present, as a United States magistrate judge, I have faithfully followed and applied the law set forth in the Bail Reform Act as stated therein and interpreted by the Supreme Court and the Third Circuit. I will continue to do so if I am confirmed as a district judge.

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. *See Burwell v. Hobby Lobby,* 573 U.S. 682 (2014) (the Religious

Freedom Restoration Act allows a for-profit corporation to deny its employees health care coverage for contraception based on the religious objections of the company's owners); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617 (2018) (a public accommodations law compelling a cakemaker to design and make a cake for a same sex wedding celebration violated the Free Exercise Clause of the First Amendment where the cakemaker had sincerely held religious beliefs against same sex marriage); and *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (where a state compels an individual who does not believe in same sex marriage to create speech which she does not believe, such actions violate the Free Speech Clause of the First Amendment).

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

Response: Under the First Amendment and the Religious Freedom Restoration Act, the government is prohibited from discriminating against religious organizations or religious people and therefore, strict scrutiny applies to any law or regulation that discriminates based on religious status. *Espinoza v. Montana Dep't of Rev.*, 591 U.S. 464, 477 (2020) (state law allowing for funding for education generally while prohibiting funding for religious schools violated the Free Exercise Clause).

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 v. Cuomo*, 592 U.S. 14 (2020) (per curiam), the Supreme Court applied the well-established standard for considering preliminary injunctions pendente lite, finding that the petitioners were entitled to temporary injunctive relief with respect to COVID-related regulations limiting attendance at religious services at houses of worship while imposing less restrictive limitations on secular businesses and schools. The Court found that the petitioners demonstrated a likelihood of success on the merits by making a strong showing that the challenged restrictions were neither neutral nor of general applicability, triggering strict scrutiny analysis, and that the state had failed to demonstrate that the regulations were narrowly tailored to serve the compelling interest of stemming the spread of COVID. The Court found that the challenged restrictions, if enforced, would unquestionably cause irreparable harm by depriving worshipers of their First Amendment religious exercise rights. The Court found that the state had failed to show that granting the requested preliminary injunction would harm the public. Based on the foregoing, the Court held that enforcement of the challenged regulations must be enjoined while the litigation remained pending.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam), the Supreme Court applied the well-established standard for considering preliminary injunctions pendente lite, finding that the petitioners were entitled to temporary injunctive relief with respect to COVID-related regulations limiting the gathering of people for at-home religious worship while imposing less restrictive limitations on gatherings for secular purposes. The Court found that the petitioners demonstrated a likelihood of success on the merits because California state law contained myriad exceptions and accommodations for secular activities comparable to the at-home religious worship at issue, triggering strict scrutiny analysis, and the state had failed to demonstrate that the challenged regulations were narrowly tailored to serve the compelling interest of stemming the spread of COVID. The Court found that the challenged restrictions, if enforced, would unquestionably cause irreparable harm by depriving at-home worshipers of their First Amendment free exercise rights. The Court found that the state had failed to show that public health would be imperiled by employing less restrictive measures. Based on the foregoing, the Court held that enforcement of the challenged regulations must be enjoined while the litigation remained pending.

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

Response: Yes. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (the Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance, such as praying by himself at midfield of football field, from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression).

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), a public accommodations law compelling a cakemaker to design and make a cake for a same sex wedding celebration violated the Free Exercise Clause of the First Amendment where the cakemaker had sincerely held religious beliefs against same sex marriage.

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. The Supreme Court acknowledged its prior holding that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Phila.*, 593 U.S. 522, 532 (2021), quoting *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

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

Response: In *Burwell v. Hobby Lobby,* 573 U.S. 682 (2014), the Supreme Court explained that "[i]t is not for the Court to say that the religious beliefs of the plaintiffs are mistaken or unreasonable." *Id.* at 686. The Supreme Court described its function as a "narrow function ... to determine" whether the plaintiffs' asserted religious belief reflects "an honest conviction." *Id.* (citations omitted).

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

Response: In *Burwell v. Hobby Lobby,* 573 U.S. 682 (2014), the Supreme Court explained that "[i]t is not for the Court to say that the religious beliefs of the plaintiffs are mistaken or unreasonable." *Id.* at 686. The Supreme Court described its function as a "narrow function ... to determine" whether the plaintiffs' asserted religious belief reflects "an honest conviction." *Id.* (citations omitted).

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

Response: I do not speak for the Catholic Church; however, it is my understanding that the Catholic Church does not consider abortion acceptable. As a sitting United States magistrate judge, I follow the Supreme Court and Third Circuit precedent, and if confirmed as a district judge, I will continue to do so.

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*, 591 U.S. 732 (2020), the Supreme Court held that the ministerial exception to laws governing the employment relationship between religious institutions and certain key employees, first addressed in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), applied to preclude employment discrimination lawsuits brought by two elementary school teachers against the private Catholic schools for which they had formerly worked, even though neither teacher was formally labeled or designated as a "minister." A unanimous *Hosanna-Tabor* Court had recognized that an employment discrimination lawsuit against a religious organization can involve government interference with an internal church decision that affects the faith and mission of the church, and thus may be foreclosed by the First Amendment's religious clauses. Although the teachers in *Our Lady of Guadalupe* were not formally designated as "ministers" and did not have as much religious training as the teacher in *Hosanna-*

Tabor, the Court held that the ministerial exception applied to their claims because the teachers were nevertheless charged with educating young students in the church's faith and religious teachings. At bottom, the Court held that the ministerial exception applies to "any employee who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith." *Our Lady of Guadalupe*, 591 U.S. at 753–54.

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 Phila.*, 593 U.S. 522 (2021), the City of Philadelphia would no longer contract with Catholic Social Services ("CSS") to provide foster care services for children unless CSS would certify same-sex couples as a prospective foster family because the City claimed that practice violated the non-discrimination provision in the agency's contract with the City as well as a citywide ordinance. CSS holds the religious belief that marriage is a sacred bond between a man and a woman. Because CSS believes that certification of prospective foster families is an endorsement of their relationships, it would not certify unmarried couples—regardless of their sexual orientation—or same-sex married couples. The Supreme Court held that the refusal of Philadelphia to contract with CSS for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents could not survive strict scrutiny and violated the Free Exercise Clause of the First Amendment. The Court explained that the question was not whether the City had a compelling interest in enforcing its non-discrimination policies generally, but whether it had such an interest in denying an exception to CSS. Under the circumstances here, the Court held that the City did not have a compelling interest in refusing to contract with CSS.

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*, 596 U.S. 767 (2022), the State of Maine required that any private secondary school receiving state funds from its otherwise generally available tuition assistance program be "nonsectarian." Because the program's "nonsectarian" requirement conditioned benefits solely due to a school's religious character, the Supreme Court held that the "nonsectarian" requirement violated the Free Exercise Clause of the First Amendment, and thus did not survive strict scrutiny.

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 Sch. Dist.*, 597 U.S. 507 (2022), the Supreme

Court held that a school district which terminated a football coach after he knelt at midfield after games to offer a quiet personal prayer violated the Free Exercise and Free Speech Clauses of the First Amendment which protects an individual engaging in a personal religious observance from government reprisal. The Constitution neither mandates nor permits the government to suppress such religious expression.

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,* 141 S. Ct. 2430 (2021), the County adopted an ordinance requiring most homes to have a modern septic system for the disposal of gray water—water used in dishwashing, laundry, and the like. An Amish community sought an exception and offered an alternative for cleaning gray water. The County filed an enforcement action prompting the Amish to file a declaratory judgment action alleging that the County's septic-system mandate violated the federal Religious Land Use and Institutionalized Persons Act. The Supreme Court vacated the lower court's judgment and remanded the case for further proceedings in light of *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). In Justice Gorsuch's concurrence, he observed that *Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands. That statute requires the application of "strict scrutiny." Under that form of review, the government bears the burden of proving both that its regulations serve a "compelling" governmental interest—and that its regulations are "narrowly tailored." *Fulton*, 593 U.S., at 541. He explained that strict scrutiny demands a more precise analysis which scrutinizes the harm of granting specific exemptions to particular religious claimants.

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: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on how I would interpret a statute. If confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent. However, I would interpret a statute by the plain meaning of its text. If the statute is unambiguous, my analysis would end there. I would also follow any binding Supreme Court or Third Circuit precedent.

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;**

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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: The power to make political appointments is vested in the President under the Appointments Clause in the Constitution. U.S. Const., Art. II, § 2, cl.2. As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on issues that could come before the courts. I have followed Supreme Court and Third Circuit precedent in deciding any matter before me. If confirmed as a district judge, I will continue to faithfully follow and apply Supreme Court and Third Circuit precedent.

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

Response: Under controlling Supreme Court and Third Circuit precedent, in a variety of contexts, the racially disparate outcome of a program or policy is insufficient, standing alone, to prove purposeful racial discrimination. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-65 (1977); *Washington v. Davis*, 426 U.S. 229, 242 (1976); *see also Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464-65 (1979). It may, however, constitute circumstantial evidence of such intent, which may be considered together with other evidence of racial animus. *See Penick*, 443 U.S. at

464-65; *Arlington Heights*, 429 U.S. at 265; *Washington*, 426 U.S. at 242; *Pryor v. Nat'l Collegiate Athletic Ass'n*, 288 F.3d 548, 563 (3d Cir. 2002).

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

Response: To increase or decrease the number of justices appointed to serve on the Supreme Court is a policy-making decision for the legislative branch of government. As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether the number of justices appointed to serve on the Supreme Court should be increased or decreased. I have followed Supreme Court and Third Circuit precedent in deciding any matter before me. If confirmed as a district judge, I will continue to faithfully follow and apply Supreme Court and Third Circuit precedent.

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: The original public meaning of the Second Amendment guarantees the right of an individual to keep and bear arms in the home and outside of the home for self-defense purposes. *New York Rifle & Pistol Ass'n, Inc.*, *v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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, Inc. v. Bruen*, 597 U.S. 1, 17 (2022), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home. Further, it held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held the Second and Fourteenth Amendments protect an ordinary, law-abiding citizen's right to carry a handgun for self-defense inside the home and bans on the possession of handguns in the home were

unconstitutional. If confirmed as a district judge, I will faithfully follow and apply this binding precedent.

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

Response: Yes. *See 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, Inc.*, *v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that "The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees. We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." *Id.* at 70 (internal citation omitted).

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, Inc.*, *v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that "The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees. We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." *Id.* at 70 (internal citation omitted).

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether it is appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns. If confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent. However, Article II § 3 of the Constitution requires that the President "shall take Care that the Laws be faithfully executed. . .." U.S. Const., Art. II, § 3. In addition, the Supreme Court has stated that "[u]nder Article II, the Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" *United States v. Texas*, 599 U.S. 670, 678 (2023) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413 429 (2021).

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "prosecutorial discretion" as

"[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." It defines "administrative rule" as "[a]n officially promulgated agency regulation that has the force of law." The link to a substantive administrative rule change calls for speculation. I presume that a substantive change in the rule having the force of law would be subject to the Administrative Procedure Act

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

Response: No.

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. Dept. of Health and Human Services*, 594 U.S. 758 (2021), the Supreme Court vacated a nationwide eviction moratorium of imposed by the U.S. Centers for Disease Control and Prevention during the COVID-19 pandemic. The CDC relied on the decades-old Public Health Service Act for authority to promulgate and extend the eviction moratorium. The Supreme Court held that the applicants had a substantial likelihood of success on the merits and explained that the Act did not provide the CDC with clear Congressional authority necessary for its action stating that "[w]e expect Congress to speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.'" *Id.* at 764.

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: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether it is 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 as that is an issue that may come before the court. I have followed Supreme Court and Third Circuit precedent in deciding any matter before me. If confirmed as a district judge, I will continue to faithfully follow and apply Supreme Court and Third Circuit precedent**.**

45. **Did you represent Nicholas Policare, Christine Carver-Schlesser, and Thomas Leyshon?**

Response: Each of these individuals was assigned to me for representation in my former capacity as a part-time assistant public defender of Luzerne County, Pennsylvania. It is my best recollection that my representation of these individuals occurred sometime between 2007-2010.

a. **What was Mr. Policare found guilty and sentenced for?**

Response: Mr. Policare pled guilty to one count of third-degree murder and was sentenced to a term 15 to 30 years of incarceration.

b. **What was Ms. Carver-Schlesser found guilty of and sentenced for?**

Response: Ms. Carver-Schlesser was found guilty by a jury of rape of a child, involuntary deviate sexual intercourse, indecent assault on a person less than 13 years age, endangering the welfare of children, and two counts of corruption of minors. She was sentenced to serve a term of 20 to 40 years of incarceration.

c. **What was Mr. Leyshon found guilty and sentenced for?**

Response: Mr. Leyshon pled guilty to four counts of aggravated assault and four counts of robbery and was sentenced to serve a term of 8 to 16 years of incarceration.

d. **Did you advocate for reduced sentences in these cases?**

Response: As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so irrespective of any personal views I may hold. As is customary in the representation of a criminal defendant at sentencing, and affording each defendant his or her Sixth Amendment right to the effective assistance of counsel, I raised certain mitigating factors for the court's consideration in the imposition of its sentence.

46. **Did you advocate for reduced sentences for these individuals?**

Response: Please see my answer to question 45(d).

a. **Why did Mr. Policare deserve leniency?**

Response: As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so irrespective of any personal views I might have held regarding the offense conduct or the range of sentences available under law. As Mr. Policare's court appointed assistant public defender, I raised the following mitigating factors for the court's consideration: his acceptance of responsibility in light of his guilty plea, his youthful age, his lack of a criminal record, and that his role in the incident was less than his co-defendant's role. The sentencing court determined how to weigh those factors, along with the circumstances of Mr. Policare's offense and other factors relevant to sentencing and imposed a prison term of 15 to 30 years of incarceration.

b. **Why did Ms. Carver-Schlesser deserve leniency?**

Response: As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so

irrespective of any personal views I may have held. As Ms. Carver-Schlesser's court appointed assistant public defender, and at her request, I raised for the court's consideration at sentencing that the prosecution had proposed a guilty plea offer which included a plea to one count for one of the victims and a mandatory minimum sentence of five years. The sentencing court determined how to weigh those factors, along with the circumstances of Ms. Carver-Schlesser's offenses and other factors relevant to sentencing and imposed a prison term of 20 to 40 years of incarceration.

c. **Why did Mr. Leyshon deserve leniency?**

Response: As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so irrespective of any personal views I may have held. As Mr. Leyshon's court appointed assistant public defender, I raised the following mitigating factors for the court's consideration: his acceptance of responsibility in light of his guilty plea, and the fact that he suffered from a poor mental health condition. The sentencing court determined how to weigh those factors, along with the circumstances of Mr. Leyshon's offenses and other factors relevant to sentencing and imposed a prison term of 8 to 16 years of incarceration.

47. **During your representation of Ms. Carver-Schlesser, you said, "[t]he concern that I have is that the testimony that was elicited at trial was nothing more than these two boys claiming that they had sexual relations with this woman and nothing else. There was no physical evidence."**

Response: I also stated, "We respect the jury's verdict." As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so irrespective of any personal views I may have held.

a. **Was your theory in Ms. Carver-Schlesser's case that the two boys, ages 11 and 12, lied about being raped?**

Response: As an attorney, my obligation was to zealously advocate for my clients within the bounds of ethics and with steadfast candor to the courts. I did so irrespective of any personal views I may have held. It was Ms. Carver-Schlesser's contention through trial that she did not commit the charged offenses. Consistent with my obligations under the Sixth Amendment, I pursued that defense at trial.

48. **What governing philosophy will you apply when sentencing individuals found guilty of crimes?**

Response: I will follow the process set forth in *Gall v. United States*, 552 U.S. 38 (2007). First, the court must properly determine the guideline range. Second, the court must determine whether to apply any of the guidelines' departure policy statements to adjust the guideline range. Third, the court must consider all factors set forth in 18 U.S.C. § 3553(a), including whether a variance is warranted. Finally, the court must

adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. *See Gall*, 552 U.S. at 49-50.

Questions from Senator Thom Tillis
For Joseph Francis Saporito Jr , nominated to serve as U.S. District Judge for the Middle District of Pennsylvania

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. A judge's background and experience, for example familiarity with Supreme Court or circuit precedent, may aid him or her in the interpretation and application of the law.

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

   Response: Impartiality is always an expectation for a judge.

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

   Response: *Black's Law Dictionary* (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, [usually] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not subscribe to this method of judicial decision-making, and I can unequivocally state that judicial activism is never appropriate.

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

   Response: No.

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

   Response: Judges should faithfully and impartially apply the rule of law to each case regardless of the outcome. It would be improper for a judge to allow his or her personal feelings or beliefs to play a role in judicial decision-making.

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

   Response: If confirmed, I will faithfully follow and apply binding precedent regarding the Second Amendment, including *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: A qualified immunity determination involves a two-pronged inquiry: (1) whether a constitutional or federal right has been violated; and (2) whether that right was "clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The *Saucier* test is conjunctive—if a defendant can show that either prong does not apply, qualified immunity attaches. A federal court may exercise its discretion in deciding which of the two *Saucier* prongs should be addressed first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202.

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: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers. If confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent.

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

Response: As a sitting United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on my beliefs regarding the proper scope of qualified immunity protections for law enforcement. If confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent.

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

Response: Under Article I, §8 of the Constitution, Congress is empowered to "promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This provision of the Constitution empowers Congress to grant copyrights and patents. *Allen v. Cooper*, 589 U.S. 248, 256 (2020); *Kimball v. Marvel Entm't*, LLC, 576 U.S. 446, 451 (2015) ("patents endow their holders with certain superpowers, but only for a limited time." If confirmed as a District Judge, I would apply applicable statutory law and binding Supreme Court and third Circuit precedent regarding intellectual property rights.

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: I am a sitting United States magistrate judge in the United States District Court for the Middle District of Pennsylvania. Our district court operates under a Case Assignment Policy, the goal of which is to ensure that the assignment of cases to judicial officers is conducted in an equitable and random method. The practice of forum shopping or judge shopping would not occur under this policy. If confirmed, I will continue to adhere to our court's Case Assignment Policy.

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 United States magistrate judge, the Code of Conduct for United States Judges precludes me from commenting on the current state of jurisprudence regarding patent eligibility. If confirmed as a district judge, I will faithfully follow and apply Supreme Court and Third Circuit precedent.