Senator Chuck Grassley, Ranking Member
Questions for the Record
Christine O'Hearn
Judicial Nominee to the U.S. District Court for the District of New Jersey

1. **Have you ever defended a client in a criminal matter?**

   Response: No.

   a. **Approximately how many clients have you represented in criminal matters?**

      Response: None.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: The Supreme Court has not used or defined the term "super precedent." If confirmed, my role as a district court judge would be to faithfully apply all binding precedents decided by the Supreme Court and the Third Circuit.

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

   Response: In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Id*. "[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry*, 392 U.S. at 27. The totality of the circumstances must be considered in evaluating reasonable suspicion. *U.S. v. Sokolow*, 490 U.S. 1, 8 (1989).

4. **You have represented a number of counties and municipalities in cases alleging sexual harassment and in many of those cases, you prevailed over the accuser.**

   a. **Should courts fully embrace the "believe all women" mindset? Please explain why or why not.**

      Response: Courts should be open and accessible for all persons, including women who allege they are victims of sexual harassment. Fact finders must weight disputed issues of fact and questions as to the credibility of such claims and

defenses. I would also like to note that as a litigator for twenty-eight (28) years, I have represented both plaintiffs and defendants in civil litigation and I discharged my ethical obligations to zealously represent my clients in all circumstances. However, I understand the role of a judge is fundamentally different. If confirmed as a district court judge, I will decide all legal issues in such cases fairly and impartially.

b. **By successfully defending municipalities and local governments against claims of sexual harassment, do you believe that you impeded the mission of the "me too" movement?**

Response: Plaintiffs in sexual harassment cases are required to prove their case under the law just like plaintiffs in all other cases. In every case where I was successful as an attorney in defending municipalities and local governments against claims of sexual harassment, it was because (1) a court determined the plaintiff failed to establish a claim as a matter of law upon a motion to dismiss and/or a motion for summary judgment; or (2) after a full trial, a jury decided that the plaintiff had not proven her claims under the law. I would also like to note that in my role as an advocate, I also facilitated the settlement of many cases when appropriate. In general, I believe that I discharged my ethical obligations as a lawyer to zealously represent my clients in all circumstances whether I represented the plaintiff or defendant in civil litigation.

5. **Should every individual accused of a crime receive due process? Why or why not?**

Response: The Fifth and Fourteenth Amendments provide that no person shall be deprived of life, liberty, or property, without due process of law. The Supreme Court has recognized that "[t]he Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." *Faretta v. California*, 422 U.S. 806, 807 (1975). The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him . . . and to have Assistance of Counsel for his defence." The Supreme Court has held that "these rights are basic to our adversary system of criminal justice [and] they are a part of the 'due process of law' that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States." *Faretta*, 422 U.S. at 818. If confirmed, I would follow Supreme Court and Third Circuit precedent interpreting these due process rights.

6. **Should law firms undertake the pro bono prosecution of crimes?**

Response: The question of whether law firms should undertake the pro bono prosecution of crimes is a question for individual law firms guided by what is permissible under relevant state or federal law. I do not have an opinion on this question.

7. **Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a "living constitution"?**

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent about the meaning of the Constitution.

8. **Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

Response: I have not practiced criminal law. I am not aware of any authority that would allow private parties to prosecute federal criminals in the absence of charges being actively pursued by federal authorities. The "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *U.S. v. Nixon*, 418 U.S. 683, 693 (1974).

9. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

Response: I would hire law clerks based upon ability and without regard to any other matter.

10. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

Response: Decisions about what clients a private law firm should accept and under what terms or conditions are decisions left to the private law firm to make.

11. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

Response: I do not agree with the proposition that some civil clients don't deserve representation on account of their identity.

12. **Do you agree with the proposition that some clients do not deserve representation on account of their:**

    a. **Heinous Crime?**

    Response: No.

    b. **Political beliefs?**

    Response: No.

c. **Religious beliefs?**

Response: No.

13. **Should judicial decisions take into consideration principles of social "equity"?**

Response: Judicial decisions should only take into consideration those factors as set forth in the applicable statute or case law governing the issues in the case.

14. **Is climate change real?**

Response: Questions as to the existence and extent of climate change are the subject of extensive and ongoing debate and litigation. As a nominee, it would be inappropriate for me to comment on such matters.

15. **You can answer the following questions yes or no:**

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

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

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

Response: See Response to 15(a).

h. **Was *Sturgeon v. Frost* correctly decided?**

Response: See Response to 15(a).

i. **Was *Rust v. Sullivan* correctly decided?**

Response: See Response to 15(a).

16. **Is threatening Supreme Court Justices right or wrong?**

Response: Threatening Supreme Court Justices is wrong.

17. **Do you think the Supreme Court should be expanded?**

Response: As a nominee, it would be inappropriate for me to comment on the current structure of the Supreme Court or ongoing public discussion about expansion of the Supreme Court. This is a matter reserved for the legislative and executive branches.

18. **If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: The Constitution places the power to prosecute in the Executive Branch. Under Federal Rule of Criminal Procedure 48(a), the government may dismiss an indictment, information or complaint "with leave of the court." In *Rinaldi v. United States*, 434 U.S. 22 (1977), the Supreme Court applied an abuse of discretion standard in reviewing the district court's denial of a Rule 48(a) motion to dismiss. *In Re Richards*, 213 F.3d 773 (2000) sets forth the Third Circuit's standard for when a court may refuse to dismiss an indictment under Rule 48(a). A court should grant a government Rule 48(a) motion to dismiss unless such dismissal is "clearly contrary to manifest public interest." *Id*. at 787. Courts have acknowledged "that refusal to dismiss is appropriate only in the rarest of cases." *Id*. at 786. This standard is to prevent a court from routinely substituting its judgment for that of the prosecutor. *Id*. at 788. As a nominee, it would be inappropriate for me to comment on the specific question posed.

19. **Do Blaine Amendments violate the Constitution?**

Response: My understanding is that the term "Blaine Amendments" refers to laws enacted by states that preclude government entities from appropriating funds to religious institutions in order to avoid violations of the Establishment Clause. The Supreme Court has considered such state laws in several cases including *Espinoza v. Montana Dept. of Revenue*, 140 S.Ct. 2246 (2020) and *Trinity Lutheran Church of Columbia, Inc. v.*

Comer, 137 S.Ct. 2012 (2017) and in both cases found the state laws to violate the First Amendment. I would apply all Supreme Court and Third Circuit precedent in this regard.

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

Response: I interviewed with Senator Menendez on February 17, 2021, regarding my interest in the position. I interviewed with Senator Booker on February 25, 2021, regarding my interest in the position. I interviewed with attorneys from the White House Counsel's Office on March 1, 2021. Since March 4, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 29, 2021, my nomination was submitted to the Senate.

21. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?**

Response: No.

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

Response: No.

23. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

24. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation? If so, what was the nature of those discussions?**

Response: No.

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

Response: See Response to Question No. 20.

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

Response: On June 30, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and prepared answers to each of the questions. I researched any relevant case law as needed to prepare my answers. I provided by answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

Nomination of Christine P. O'Hearn
to be United States District Judge for the District of New Jersey
Questions for the Record
Submitted June 30, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's rights to keep and bear arms and that such right is not limited to groups such as a militia. The Supreme Court thereafter held that the Second Amendment right to keep and bear arms is applicable to the states. *See McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S.__(2021).**

   Response: *Greer* held that in felon-in-possession cases, a *Rehaif* error, *Rehaif v. U.S.*, 139 S. Ct. 2191(2019), is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon. Under Rule 51(b) of the Federal Rules of Criminal Procedure, a defendant can preserve a claim of error "by informing the court" of the claimed error when the relevant "court ruling or order is made or sought." If a

defendant has "an opportunity to object" and fails to do so, he forfeits the claim of error. If a defendant later raises the forfeited claim on appeal, the Rule 52(b) plain-error standard applies. Unpreserved *Rehaif* claims are subject to plain-error review under Rule 52(b).

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. UnitedStates*, 593 U.S.__(2021).**

Response: n offender is eligible for a sentence reduction under the First Step Act only if he previously received "a sentence for a covered offense," which is defined by the Act as "a violation of a Federal criminal statute, the statutory penalties for which were modified by" certain provisions of the Fair Sentencing Act. Section 2(a) of the Fair Sentencing Act modified the statutory penalties for subparagraph (A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties. Therefore, *Terry* held that a crack offender is eligible for a sentence reduction under the First Step Act only if the offender's conviction triggered a mandatory minimum sentence.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S.__(2021).**

Response: *Jones* held that in cases involving a defendant who committed a homicide when he or she was under the age of 18, the Supreme Court's prior precedent, *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), do not require that the sentencing judge make a separate factual finding of permanent incorrigibility before imposing a life-without-parole sentence on a murderer under age 18.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S.__(2021).**

Response: *Tandon* held that government regulations are not neutral and generally applicable, and they therefore trigger strict scrutiny under the Free Exercise Clause, whenever the regulations treat any comparable secular activity more favorably than religious exercise. Comparability is concerned with the risks various activities pose, not the reasons why people gather. The government has the burden of establishing that the challenged law satisfies strict scrutiny, which requires more than asserting that certain risk factors are always present in worship, or always absent from the other secular activities the government may allow. Rather, narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S.___(2021).**

Response: Section 1255 allows a "nonimmigrant"—a foreign national lawfully present in the United States on a designated, temporary basis—to obtain an "adjustment of status"

making him a Lawful Permanent Resident (LPR). A nonimmigrant's eligibility for such an adjustment to permanent status depends on an "admission" into the United States, which is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." The conferral of Temporary Protected Status (TPS) does not make an unlawful entrant into the United States eligible under Section 1255 for adjustment to LPR status. The statute does not constructively admit a TPS recipient—that is, consider him as having entered the country after inspection and authorization." The TPS does not eliminate the disqualifying effect of an unlawful entry.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: When chosen by the parties, arbitration of disputes can be a helpful tool to assist parties in resolving disputes in a timely and cost-effective manner and avoiding protracted and expensive litigation.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: On June 30, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and prepared answers to each of the questions. I researched any relevant case law as needed to prepare my answers. I provided by answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

12. **Did any individual outside of the United States federal government write or draft youranswers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. Ifgovernment officials assisted with writing or drafting your answers, please also identifythe department or agency with which those officials are employed.**

Response: No.

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

Questions for the Record for Christine P. O'Hearn, Nominee for the United States District Court for the District of New Jersey

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 previousnominee 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 previouslyprovided.

If a question asks for a yes or no answer, please provide a yes or no answer first andthen 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-writtenand then articulate both the premise about which you disagree and the basis for thatdisagreement.

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 tentativeanswer 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, pleasestate the ambiguity you perceive in the question, and provide multiple answers whicharticulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

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

   Response: Article II, Section 3 of the Constitution requires that the President "take Care that the laws be faithfully executed."

2. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   Response: As an attorney practicing primarily in state and federal trial courts, I have not ascribed to or developed a particular judicial philosophy. I have not studied the various philosophies of the Justices referenced. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

3. **Does the Constitution's meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

   Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent as to the meaning of the Constitution.

4. **Please briefly describe the interpretative method known as originalism.**

   Response: Originalism is the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specifically, the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. *Black's Law Dictionary* 1275 (10th ed. 2014).

5. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

   Response: Living Constitutionalism is the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. *Black's Law Dictionary* 1076 (10th ed. 2014).

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

Response: If confirmed as a District Court Judge, I would be bound by Supreme Court and Third Circuit precedent both as to the substance of the particular cases and the interpretative method the courts used. The Supreme Court has looked to original public meaning in interpreting certain constitutional provisions such as the Second Amendment. I would be bound by Supreme Court precedent as to the specific constitutional provisions whether or not based on the original public meaning.

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

Response: The Supreme Court has stated that "the *public understanding* of a legal text in the period after its enactment or ratification….is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 670, 605 (2008) (emphasis in original). *See also Binderup v. United States of America*, 836 F.3d 336, 362 (3d Cir. 2016).

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

Response: In *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's rights to keep and bear arms and that such right is not limited to groups such as a militia. The Supreme Court thereafter held that the Second Amendment right to keep and bear arms is applicable to the states. *See McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010).

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

Response: To the best of my knowledge, the Supreme Court has not ranked or compared the right to own a firearm under the Second Amendment to other individual rights specifically enumerated in the Constitution.

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

Response: See Response to No. 12.

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

Response: The Supreme Court has held there are limits under the First Amendment to what the government may impose or require of private institutions such as religious organizations or small businesses operated by observant owners. Recent cases in that

regard include *Tandon v. Newsom*, 141 S.Ct. 1294 (2021); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020); and *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014).

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

Response: Yes.

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

Response: My practice has focused on civil litigation. I have not practiced criminal law. If confirmed, I would faithfully apply all laws, including criminal laws, to the specific parties and facts of the case before the Court to ensure all persons who may appear before me are treated equally.

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

Response: Political appointments are within the discretion of the Executive Branch. As a nominee, it would be inappropriate for me to comment on the constitutionality of any particular set of facts or to indicate how I might rule in a case including one involving the constitutionality of factors considered in making political appointments.

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

Response: Congress determines the applicable penalties for conduct it has declared unlawful. The President's duty under the "take Care that the Laws be faithfully executed" clause in Article II, Section 3 of the Constitution requires the President execute all laws Congress enacts including penalties for violations of federal criminal laws. The President does not have the power to unilaterally change the laws that Congress has enacted.

Questions for the Record for Christine O'Hearn
From Senator Mazie K. Hirono

1. **In 2008, you wrote an article headlined, Assumption Refuted: No Duty to Provide Pregnant Employees with Light Duty.**

   a. What led you to write this article?

   Response: I wrote the referenced article approximately thirteen (13) years ago to bring attention to a then-recently decided New Jersey Appellate Division decision, *Larsen v. Township of Branchburg*, 2007 WL 135706 (N.J. App.Div., Jan. 22, 2007). In that case, the New Jersey court held that the employer police department was not required to provide a pregnant police officer with a light duty assignment under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12-1 et seq. because the employer did not provide any employees with light duty and because a pregnancy was not a "disability" under the statute. At the time the article was written, several state and federal courts had held that an employer must provide accommodations to pregnant employees the same as provided to non-pregnant employees. However, this case presented a narrow and different issue - whether an employer who does not provide light duty for *any* employees must accommodate a pregnant woman by providing light duty. The New Jersey court answered that question "no." The decision highlighted a gap in New Jersey law in not requiring accommodations for a pregnant woman if the employer did not provide other employees with accommodations. I wrote the article because I thought it was important to discuss this gap in protections for pregnant women and the article was not intended to be a statement of my personal opinion regarding this case but to accurately report on this decision. It should be noted that I did not write the title for the article.

   b. Does this article still reflect your understanding of current law?

   Response: No. The *Larsen* case is no longer the law in New Jersey because on January 20, 2014, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12-1 et seq. was amended to include pregnancy as a protected class and to require employers to provide reasonable accommodations for all pregnant women. Additionally, the Supreme Court's decision in *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015) sets forth the current federal law on the issues of an employer's duty to accommodate a pregnant woman.

2. **In your Senate Judiciary Committee Questionnaire, you noted that in the early 2000s your legal practice "centered on representing employees as plaintiffs in employment discrimination matters," but in the last 15 years your practice "has concentrated on defense of private and public employers."**

a. Since your practice in recent years has concentrated on the defense of employers, what assurances would you give to plaintiffs in employment matters that you can be impartial and give them a fair hearing?

Response: For the first 10-15 years of my practice, I represented plaintiffs in employment discrimination and other matters. My practice thereafter transitioned to representing defendants, primarily in employment discrimination matters. I have tried nearly as many cases representing employees as I have representing employers. Thus, my representation of employees and employers has been balanced over the course of my career. My record shows that I have been an equally zealous advocate for employees and employers. I believe my experience representing both employees and employers has made me a better lawyer and, if confirmed, will make me a better district court judge. My experiences in representing both employees and employers has given me the ability to appreciate and understand the interests, equities and concerns of both sides in these disputes. If confirmed, I will be fair and impartial to all parties with respect to all matters, including employment discrimination cases.

Written Questions for Christine P. O'Hearn
Submitted by Senator Patrick Leahy
June 30, 2021

1. **Medical and societal understanding of HIV and the risk of infection has greatly advanced in recent years. This has coincided with a growing appreciation for the societal contributions of Americans with disabilities and chronic medical conditions. In 2006, you wrote that healthcare employees with conditions such as depression, attention deficit disorder, and hearing impairments may not qualify for accommodations under the Americans with Disabilities Act (ADA) if said conditions presented a "reasonable risk to patient safety" and noted that the Third Circuit construed this exemption to the ADA "rather liberally." In particular, you noted that HIV-positive healthcare workers pose an "obvious patient risk" and for that reason were typically not deemed qualified employees under the ADA.**

   (a) Given the advances in societal understanding since then, do these statements reflect your position today with respect to healthcare workers with HIV and other chronic medical conditions?

   Response: The statements in the referenced article, which is now fifteen (15) years old, were not intended to be statements of my personal opinions but rather to summarize decisions made by various courts analyzing the duty of an employer to accommodate a healthcare employee with a serious health condition when the employer reasonably believed the employee posed a direct threat to patient safety. *See, e.g. Waddell v. Valley Forge Dental Assoc*., 276 F.3d 1275 (11th Cir. 2001) (granting summary judgment to employer and holding HIV-positive dental associate posed direct threat to patient safety); Mauro v. Borgess Medical Center, 137 F.3d 398 (6th Cir. 1998) (affirming summary judgment and holding an HIV-positive surgical technician posed direct threat to patient safety). The analysis in cases presenting these questions has been and continues to be very fact-specific to the employee, the underlying medical condition, and the job at issue. Key to those decisions was the Court's finding that at the time HIV was almost always a fatal disease. However, changes in societal understanding of different medical conditions, as well as advances in medical science and treatment, cases involving the question of whether an employee poses a direct threat to patient safety, may result in different outcomes if decided today. As discussed below, the relevant federal regulations on this topic contemplate that this determination will be based on the "most current medical knowledge and/or on the best available objective evidence." Today, being HIV-positive is not a fatal disease. The fact that my research revealed no federal case addressing the direct threat defense in the context of an HIV-positive employee since the publication of the article, suggests employer have in fact recognized this fact and have changed the way they treat HIV-positive employees.

(b) Do you believe that this evaluation of ADA precedent reflects current law in the Third Circuit?

Response: The standards regarding the "direct threat" defense remain current law. Specifically, 29 C.F.R. 1630.2(r) provides:

> (r) Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that *relies on the most current medical knowledge and/or on the best available objective evidence*. In determining whether an individual would pose a direct threat, the factors to be considered include:
>
> (1) The duration of the risk;
>
> (2) The nature and severity of the potential harm;
>
> (3) The likelihood that the potential harm will occur; and
>
> (4) The imminence of the potential harm.
>
> (emphasis added). *See also* 42 USCA § 12113(b).

The Third Circuit's most recent interpretation of the direct threat defense is *Coleman v. Pennsylvania State Police*, 561 Fed.Appx. 138 (3d Cir. 2014) (holding that an employer established the direct threat defense with respect to its termination of a law enforcement officer with post-traumatic epilepsy as he posed a direct threat to others).

In summary, the federal regulations to be applied to these cases remains the same, however, the outcome of any case is very fact-specific and dependent upon the employee's specific medical condition and the particular job at issue. Thus, there are no broad or sweeping rules in this area of the law. Advances in medical science and treatment will continue to affect the outcomes of such cases in the future. If confirmed as a district court judge, I would faithfully apply relevant Third Circuit precedent and federal law if a case presently these issues came before me.

Senator Mike Lee Questions for the Record Christine O'Hearn, D.N.J.

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

Response: As a practicing attorney, I have not ascribed to or developed a particular judicial philosophy. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

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

Response: I would first consider any Supreme Court or Third Circuit cases that addressed the statute at issue. If so, I would be bound by such precedent. If there was no controlling precedent, I would follow Third Circuit precedent on statutory interpretation. *See Ki Se Lee v. Ashcroft*, 368 F.3d 218, 222 (3d Cir. 2004). I would look to the text of the statute and plain meaning at the time it was enacted. If the plain meaning is clear and unambiguous, I would then apply the plain language of the statute. If there is no precedent and the statute was ambiguous, I would look to the canons of statutory construction, any persuasive authority analyzing the meaning of the statute, or the same or similar language in analogous statutes, as well as available legislative history.

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

Response: I think it would be unusual for a district court judge to be faced with a question of first impression under the Constitution. I would thus first look to Supreme Court and Third Circuit precedent. If there was no controlling precedent, I would look to Supreme Court and Third Circuit precedent for the interpretative method to be applied to the particular constitutional provision at issue and apply that methodology to the case. I would also review and consider persuasive authority from other Circuits if available.

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

Response: The Supreme Court has said that text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: See Response to No. 2.

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

Response: I believe that the plain meaning of a statute or constitutional provision refers to the meaning of the language used at the time it was enacted.

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

Response: Article III limits federal court jurisdiction to cases or controversies. The Supreme Court recently affirmed in *California, et al. v. Texas, et al.,* 593 U.S. ___ (2021) that a plaintiff has standing only if they can "allege a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Id*. at 4. Stated differently, a plaintiff must demonstrate (1) that they have suffered an injury in fact; (2) that the injury is fairly traceable to the defendant's conduct; and (3) that a favorable decision will redress the injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

7. **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 held that Congress has powers beyond those enumerated in the Constitution by virtue of the Necessary and Proper Clause. *See McCulloch v. Maryland*, 17 U.S. 316, 411-12 (1819). The Supreme Court has stated that the scope of the Necessary and Proper Clause is "broad" and "allows Congress to adopt any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished and consistent with the letter and spirit of the Constitution." *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013) (citations and quotations omitted).

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

Response: I would follow Third Circuit and Supreme Court precedent in evaluating the constitutionality of a law enacted without specific reference to a specific constitutional enumerated power. For example, I would look to *United States v. Lopez,* 514 U.S. 549 (1995) and *United States v. Morrison,* 529 U.S. 598 (2000*)* to evaluate whether Congress had the authority to enact the specific law at issue under the Commerce Clause.

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

Response: The Supreme Court has held that the Constitution protects rights that are not expressly enumerated in the Constitution such as the right to privacy. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court set forth the analysis to determine whether a right is fundamental within the meaning of substantive due process. First, the Court has observed that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id*. at 720-21. Second, the Court stated that it has "required in substantive-due-process cases a careful description of the asserted fundamental liberty interest." *Id*. at 721. The Court, as noted in *Glucksberg*, has held that "liberty" as protected by the Due Process Clause includes, among others, the rights to marry and have children. *Id*. at 720. Thus, fundamental rights and liberties "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" are protected under substantive due process. *Id*. at 720-21.

11. **If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: If confirmed, any personal beliefs regarding substantive due process rights or economic rights would be of no relevance. I would apply binding Supreme Court and Third Circuit precedent on substantive due process (for example, *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)).

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

Response: The Supreme Court has broadly construed Congress's power under the Commerce Clause but has noted that it is not unlimited. The Supreme Court has held that Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: The Supreme Court has held that when government makes distinctions between groups of people based upon "traditional indicia of suspectness" including those that pertain to "an immutable characteristic determined solely by accident of birth," and those that pertain to those who are "saddled with such disabilities or subjected to a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). The Supreme Court has determined that race, religion, national origin and alienage are suspect classes that warrant strict scrutiny.

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

Response: The Constitution provides for three branches of government - Legislative, Executive and Judicial. The duties of each branch are articulated in the Constitution and are designed to prevent the concentration of power in any one branch and to provide that each branch can check and limit the powers of the others.

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

Response: If presented with a case in which one branch of government assumed an authority not granted to it by the text of the Constitution, I would review Supreme Court and Third Circuit precedent on the issue and apply the law to the facts of the case to determine whether the exercise of the authority was constitutional.

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

Response: Empathy should not play any role in a judge's consideration of a case. The role of a judge is to faithfully apply the law to the facts of the case without injecting his or her personal views.

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

Response: Both invalidating a law that is constitutional and upholding a law that is unconstitutional are undesirable outcomes.

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

Response: I have not reviewed or analyzed the trend or change described and have not formed any opinions as to what if any reasons there may be for the trend or change.

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

Response: Judicial supremacy refers to the principle that the Supreme Court is the final interpreter of the meaning of the constitution and the law. Judicial review refers to the power of the judiciary to review the actions of the legislative and executive branches and to determine whether such actions are consistent with the Constitution.

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

Response: All elected officials take an oath to uphold the Constitution.

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: It is important for a judge to be cognizant at all times when deciding cases that judges do not have the will of the legislators to enact laws or the force of the executive branch to execute laws. The role of the Judiciary is to determine "what the law is" as set forth in the seminal case of *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The judiciary does not have the power to make policy decisions as to what the law should be or to enforce the laws that are enacted.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As a district court judge, I would be bound to apply all applicable binding Supreme Court and Third Circuit precedent regardless of any views I may have as to its constitutional underpinnings.

23. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No. Courts must have jurisdiction to take any action.

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 judges' sentencing analysis?**

Response: 18 U.S.C. §1335(a) identifies the factors that a judge shall consider and does not include race, gender, nationality, sexual orientation or gender identity as a factor to be considered.

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

Response: I am not aware of the above stated definition or quotation. Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing" and "the body of principles constituting what is fair and right."

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

Response: With respect to "equity," see Response to No. 25. Black's Law Dictionary (11th ed. 2019) defines "Equality" as "the quality, state, or condition of being equal; esp., likeness in power or political status."

27. **Does the 14th Amendment's equal protection clause refer to "equity" or "equality?"**

Response: The 14th Amendment's equal protection clause does not use the words "equity" or "equality."

28. **How do you define "systemic racism?"**

Response: I have not studied systemic racism. However, I understand systemic racism to be synonymous with the terms institutional or structural racism and to refer to theories that institutions have practices and/or policies that cause disproportionate effects on certain groups of individuals. *See, e.g., Challenging Systemic Racism with Human Connection*, The American Bar Association (Feb. 26, 2021). If confirmed as a

district court judge, I would decide all cases as described in my Response to Questions No. 1 and 16.

29. **How do you define "critical race theory?"**

Response: I have not studied critical race theory. I understand there are different tenets of critical race theory. The basic tenets of critical race theory include that racism and disparate racial outcomes are the result of social and institutional dynamics rather than explicit and intentional prejudices on the part of individuals. *See, e.g., Lessons in Critical Race Theory, The American Bar Association (Jan. 12, 2021)*. If confirmed as a district court judge, I would decide all cases as described in my Response to Questions No. 1 and 16.

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

Response: I have not studied the differences, if any, between the terms or theories systemic racism and critical race theory.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 23, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

For all judicial nominees:

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

   Response: As a practicing attorney, I have not ascribed to or developed a particular judicial philosophy. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

2. **Would you describe yourself as an originalist?**

   Response: I have never used the term "originalist" to describe myself. I believe that the text of any statute must be construed by its plain meaning at the time it was enacted. I will follow Supreme Court and Third Circuit precedent in interpreting the text of the Constitution or any statutes.

3. **Would you describe yourself as a textualist?**

   Response: I have never used the term "textualist" to describe myself. I believe that the text of any statute must be construed by its plain meaning at the time it was enacted. I will follow Supreme Court and Third Circuit precedent in interpreting the text of the Constitution or any statutes.

4. Do you believe the Constitution is a "living" document? Why or why not?

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent about the meaning of the Constitution.

5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I have not studied the jurisprudence of any particular justices appointed since January 20, 1953. As a young girl, I greatly admired Justice Sandra Day O'Connor when she was the first woman appointed to the Supreme Court. Years later as a young lawyer, I admired Justice Ruth Bader Ginsburg as the second woman appointed to the Supreme Court.

6. Was Marbury v. Madison correctly decided?

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Marbury v. Madison* is one of those exceptions. I agree this case was correctly decided.

7. Was Lochner v. New York correctly decided?

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

8. Was Brown v. Board of Education correctly decided?

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Brown v. Board of Education* is one of those exceptions. I agree that this case was correctly decided.

9. Was Bolling v. Sharpe correctly decided?

Response: See Response to No. 7.

10. Was Cooper v. Aaron correctly decided?

Response: See Response to No. 7.

11. Was Mapp v. Ohio correctly decided?

Response: See Response to No. 7.

12. Was Gideon v. Wainwright correctly decided?

Response: See Response to No. 7.

13. Was Griswold v. Connecticut correctly decided?

Response: See Response to No. 7.

14. Was South Carolina v. Katzenbach correctly decided?

Response: See Response to No. 7.

15. Was Miranda v. Arizona correctly decided?

Response: See Response to No. 7.

16. Was Katzenbach v. Morgan correctly decided?

Response: See Response to No. 7.

17. Was Loving v. Virginia correctly decided?

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Loving v. Virginia* is one of those exceptions. I agree that this case was correctly decided.

18. Was Katz v. United States correctly decided?

Response: See Response to No. 7.

19. Was Roe v. Wade correctly decided?

Response: See Response to No. 7.

20. Was Romer v. Evans correctly decided?

Response: See Response to No. 7.

21. Was United States v. Virginia correctly decided?

Response: See Response to No. 7.

22. Was Bush v. Gore correctly decided?

Response: See Response to No. 7.

23. Was District of Columbia v. Heller correctly decided?

Response: See Response to No. 7.

24. Was Crawford v. Marion County Election Bord correctly decided?

Response: See Response to No. 7.

25. Was Boumediene v. Bush correctly decided?

Response: See Response to No. 7.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: See Response to No. 7.

27. Was Shelby County v. Holder correctly decided?

Response: See Response to No. 7.

28. Was United States v. Windsor correctly decided?

Response: See Response to No. 7.

29. Was Obergefell v. Hodges correctly decided?

Response: See Response to No. 7.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Section 9.1 of the Third Circuit's Internal Operating Procedures provides: "It is the tradition of this court that the holding of a panel in a reported opinion is binding on subsequent panels. Thus, no subsequent panel overrules the holding in a precedential opinion of a previous panel. Court in banc consideration is required to do so." The Third Circuit has stated that "Although a panel of this court is bound by, and lacks authority to overrule, a published decision of a prior panel… a panel may reevaluate a precedent in light of intervening authority and amendments to statutes or regulations." *See United States v. Joshua*, 976 F.2d 844, 853 (3d Cir.1992). If confirmed as a district court judge, I will be bound to apply all precedents of the Supreme Court and Third Circuit and will not

be in a position to make determinations as to whether an appellate court should reaffirm its own precedent under the stated circumstances.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: See Response to No. 30.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No.

Nomination of Christine P. O'Hearn
to be United States District Judge for the District of New Jersey

QUESTIONS FROM SENATOR TILLIS

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

   Response: Yes.

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

   Response: Judicial activism is defined in *Black's Law Dictionary* as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." A judge must consider only the facts in the record and faithfully apply the law to those facts to derive the outcome compelled by the rule of law. Judicial activism may also be used to describe instances where a court decides or discusses issues that are not necessary to decide the case before the court. In either scenario, judicial activism is inappropriate. If confirmed, I will follow precedent of the Supreme Court and Third Circuit and decide the necessary issues before the court without consideration of my personal views.

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

   Response: Impartiality is an expectation and necessary requirement of a judge. Judicial Canon 3 is titled "A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently."

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

   Response: No.

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

   Response: Faithfully interpreting the law may sometimes result in an undesirable outcome. However, consistent with my response to Question No. 2, a judge must apply the law to the facts of the case without regard to any personal belief or preference as to a desired outcome.

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

   Response: Consistent with my response to Question No. 2, a judge must apply the law to the facts of the case without regard to any personal policy or political preferences.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." *Id*. at 595. In *McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010), the Supreme Court held the right guaranteed by the Second Amendment applies to the states. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent when deciding any cases involving the Second Amendment.

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: I would begin by researching Supreme Court and Third Circuit precedent, including the Supreme Court's recent decisions related to constitutional rights and the Covid-19 crisis, *Tandon v. Newsom,* 141 S. Ct. 1294 (2021) and *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020). I would then apply the law to the specific facts of the case before me.

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

Response: If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent when considering qualified immunity cases. Specifically, I would follow *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) which holds that law enforcement officers are entitled to qualified immunity unless (1) they violated a federal constitutional right and (2) the unlawfulness of their conduct was clearly established at the time. *See also Sauers v. Borough of Nesquehoning,* 905 F.3d 711, 717 (3d Cir. 2014) ("Qualified immunity protects government officials from civil damages for conduct that does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Thus, courts assessing a claim of qualified immunity must answer two questions. One is whether the defendant's conduct violated a statutory or constitutional right. The other is whether the right at issue was clearly established when the conduct took place.") *(citations and quotations omitted).*

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

Response: Whether current qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy question for legislature and not the judiciary. As a

nominee, it would be inappropriate for me to comment as to this issue. If confirmed, I will follow all Supreme Court and Third Circuit precedent regarding qualified immunity.

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

Response: The proper scope of qualified immunity protections for law enforcement is a policy question for the legislature and not the judiciary. As a nominee, it would be inappropriate for me to comment as to this issue. If confirmed, I will follow all Supreme Court and Third Circuit precedent regarding qualified immunity.

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

Response: I have not practiced in the area of patent law. If presented with a case involving these issues, I would thoroughly research patent eligibility jurisprudence particularly, Supreme Court and Third Circuit precedent, including *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc*., 566 U.S. 66 (2012) and apply the law to the facts of any case.

13. Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: See Response to No. 12. While I have not practiced in the area of patent law, I am well aware of how important these cases are to the litigants who bring or defend them and I would endeavor to carefully and thoughtfully apply federal law and binding precedent in any case that came before me.