Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Georgette Castner
Judicial Nominee to the U.S. District Court for the District of New Jersey

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

   Response: I am not aware of any definition or case law using the term "super precedent." If confirmed, I would fully and faithfully apply United States Supreme Court and Third Circuit precedent without preference to one case or another.

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

   Response: I believe that our Constitution is an enduring document that has withstood the test of time and if confirmed, I would fully and faithfully uphold the Constitution.

3. **If confirmed, do you intend to allow your attendance at the March for Our Lives influence your decisions concerning guns, *Heller*, in particular?**

   Response: No. If I am fortunate enough to be confirmed, I will fully and faithfully apply United States Supreme Court and Third Circuit precedent including the Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

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

   Response: If I am fortunate enough to be confirmed, I will follow the law and apply United States Supreme Court and Third Circuit precedent.

5. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

   Response: Pursuant to the Code of Conduct for United States Judges, a judge should endeavor to be independent and impartial in order to maintain public confidence in our judicial system. Also, a judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. Code of Conduct for United States Judges, Canons 1 and 2(B).

6. **What is the legal standard for "threats" in the Third Circuit?**

   Response: In the context of the First Amendment, the Third Circuit will consider statements "in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners" to determine whether speech constitutes "true threats" or

constitutionally protected political speech. *United States v. Kosma*, 951 F.2d 549 (3d Cir. 1991). The Third Circuit has also adopted the objective, reasonable person test to determine if a "true threat" was made willfully under 18 U.S.C. § 871 (threats against President and successors to the Presidency). With respect to the "knowingly" element under the statute, the Third Circuit has adopted the Ninth Circuit's standard that the threat must be made intentionally and "not be the result of mistake, duress, or coercion."

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

   Response: The United States Supreme Court has previously noted the vexing nature of the distinction between questions of fact and questions of law and that Federal Rule of Civil Procedure 52(a) does not provide particular guidance with respect to distinguishing law from fact. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982). The Court, however, has recognized that the effect of admitted facts is a question of law, *Nelson v. Montgomery Ward & Co.*, 312 U.S. 373 (1947), and has used the term "mixed questions of law and fact" when a court determines whether settled facts satisfy a legal standard. *U.S. Bank Nat'l Assoc. v. Vill. at Lakeridge, LLC,* 138 S. Ct. 960 (2018).

8. **Please discuss your criminal federal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, and how many times you have argued before the court in a criminal matter.**

   Response: My fourteen years of experience in private practice has primarily involved complex civil litigation. I also have experience involving white collar crime and government investigations, including responding to subpoenas from the United States Attorney's Office. From 2009 to 2016, I handled a criminal case in federal court in which our client pleaded guilty to a one-count Information charging him with aiding and abetting the making of a false statement or report on a loan or credit application in violation of 18 U.S.C. §§ 1014 and 2, which required mandatory jail time. I served as associate counsel and appeared at his plea hearing, prepared his sentencing memorandum for the court, represented the defendant in meetings with the United States Probation Office and appeared at his sentencing hearing. Prior to private practice, I served as a law clerk in the Appellate Division in New Jersey where I was responsible for reviewing trial court errors in both civil and criminal matters. I also represented an individual, pro bono, in a parole revocation hearing.

9. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**
   a. **How often have you cited to either of these tomes during the course of your work?**

Response: I have experience preparing a sentencing memorandum in a criminal case in federal court. The sentencing memorandum included an analysis of the factors the court is to consider under 18 U.S.C. § 3553(a) as well as an analysis of the United States Sentencing Commission's Guidelines and Sentencing Table. I have also begun to review the Federal Rules of Criminal Procedure so that I can be in a position to hit the ground running if I am fortunate enough to be confirmed. It is my hope that because of my greater familiarity with civil litigation, I will be able to devote more time getting up to speed on criminal law.

b. How often have you had an opportunity to work within these constructs during the course of your career?

Response: Please see my response to Question 9a, above.

10. Should a defendant's personal characteristics influence the punishment he or she receives?

Response: If confirmed, I would consider the factors set forth in 18 U.S.C. § 3553(a), which includes the "history and characteristics of the defendant," the Sentencing Guidelines, the final presentence report from the Probation Office, the arguments of the parties and any controlling statutes as well as United States Supreme Court and Third Circuit precedent.

11. What is the legal basis for a nationwide injunction? What considerations would you note as a district judge (if confirmed) when deciding whether to grant one?

Response: Federal Rule of Civil Procedure 65 grants federal courts the authority to issue a preliminary injunction. The United States Supreme Court has recognized that a preliminary injunction is an extraordinary remedy never awarded as of right. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

12. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

Response: I am mindful that Congress has instructed that all of these purposes of sentencing are important, and my approach would not include any personal views or opinions. Regarding the relative importance of one factor over another, if confirmed, I would consider the factors set forth in 18 U.S.C. § 3553(a), which includes the "history and characteristics of the defendant," the Sentencing Guidelines, the final presentence

report from the Probation Office, the arguments of the parties and any controlling statutes as well as United States Supreme Court and Third Circuit precedent.

13. What legal standard would you apply in evaluating whether a redistricting map is racially gerrymandered?

Response: The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans. It prevents a State, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race." *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017). When a voter sues state officials for drawing such race-based lines, the court follows a two-step analysis.

First, the plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* That entails demonstrating that the legislature "subordinated other factors—compactness, respect for political subdivisions, partisan advantage . . . —to racial considerations." *Id.* at 1464. The plaintiff may make the required showing through "direct evidence of legislative intent, circumstantial evidence of a district's shape and demographics, or a mix of both." *Id.*

Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny. The burden thus shifts to the State to prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to that end. *Id.* The Supreme Court has recognized that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965. *Id.* The State must establish that it had "good reasons" to think that it would transgress the Act if it did not draw race-based district lines. *Id.*

If I am fortunate enough to be confirmed, I will fully and faithfully apply United States Supreme Court and Third Circuit precedent should a matter involving these issues come before me.

14. What is implicit bias?

Response: Although I have not studied the issue, my general understanding is that implicit bias refers to the biases individuals may have that operate at the subconscious level.

15. Do you have implicit bias? If you believe you do, how does your implicit bias impact your day-to-day decision-making on behalf of your clients?

Response: I understand that I am not immune to implicit bias; however, personal views or opinions play no role in my job as a zealous advocate on behalf of my clients.

16. Is the federal judiciary affected by implicit bias?

Response: This question raises important policy questions for policymakers and those who manage our federal judicial system. If I am fortunate enough to be confirmed, I will

do everything in my power to ensure that every litigant is treated with respect and dignity and that I approach every matter with an open mind and adjudicate cases in a fair and impartial manner.

17. Do parents have a constitutional right to direct the education of their children?

Response: In *Meyer v. Nebraska*, 268 U.S. 390 (1923), the United States Supreme Court held that the liberty guaranteed under the Fourteenth Amendment includes a parent's right to control the education of their children. If confirmed, I would apply United States Supreme Court and Third Circuit precedent relating to this issue.

18. Do you believe that we should reallocate funds from law enforcement in favor of increased money for support services?

Response: This question raises important policy questions for policymakers. As a current judicial nominee, it would be inappropriate for me to comment on this issue that is currently being debated across the country.

19. In what situation(s) does qualified immunity not apply to a law enforcement officer in New Jersey?

Response: In *Thomas v. Tice*, 948 F.3d 133 (3d Cir. 2020), the Third Circuit has held that "[q]ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right. To prevail against a claim of qualified immunity, the plaintiff "need not produce 'a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Thomas*, 948 F.3d 133 (citing *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)). If confirmed, I will fully and faithfully apply United States Supreme Court and Third Circuit precedent.

20. In a False Claims Act case, what is the standard used by the Third Circuit for determining whether a false claim is material?

Response: A False Claims Act violation has four elements: falsity, causation, knowledge, and materiality. The Third Circuit has applied the United States Supreme Court's holding in *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016) for determining the standard for materiality. *United States ex rel. Doe v. Heart Solution, PC*, 923 F.3d 308 (3d Cir. 2019); *United States ex rel. Freedom Unlimited, Inc. v. City of Pittsburgh, Pa.*, 728 Fed.Appx. 101 (3d Cir. 2018). The Third Circuit has determined that a matter is material if: "(1) a reasonable person would attach importance to it in determining a choice of action in the transaction, or (2) the defendant knew or had reason to know that the recipient of the representation attaches importance to the specific matter in determining his choice of action, regardless whether a reasonable person would do so." *United States ex rel. Freedom Unlimited, Inc.*, *supra*, 728 Fed.Appx. at 106.

The Third Circuit in adopting the Supreme Court's decision in *Escobar* provided guidance as to how the materiality requirement should be enforced. It explained that a misrepresentation is not material "merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment ... [or because] the Government would have the option to decline to pay if it knew of the defendant's noncompliance." *United States ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 489 (3d Cir. 2017). Materiality may be found where "the Government consistently refuses to pay claims in the mine run of cases based on noncompliance with the particular statutory, regulatory, or contractual requirement." *Id.* On the other hand, it is "very strong evidence" that a requirement is not material "if the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated." *Id.* Finally, materiality "cannot be found where noncompliance is minor or insubstantial." *Id.*

21. What legal standard and circuit precedents would you apply in evaluating whether a regulation or statute infringes on Second Amendment rights?

Response: If I am fortunate enough to be confirmed, I will apply all United States Supreme Court and Third Circuit precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010) and *Drummond v. Robinson Twp.*, 9 F.4th 217 (3d Cir. 2021).

22. Please describe your understanding of the Supreme Court and Third Circuit precedents concerning the public use requirement of the Fifth Amendment's Takings Clause.

Response: The Fifth Amendment's taking clause provides "nor shall private property be taken for public use, without just compensation." With respect to the term "public use," the United States Supreme Court cases early on embodied a strong theme of federalism, emphasizing the "great respect" for state legislatures and state courts in discerning local public needs. *See Hairston v. Danville & W. R. Co.*, 208 U.S. 598 (1908). The Supreme Court has held that "[w]hen the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over wisdom of takings – no less than debates over wisdom of other kinds of socioeconomic legislation – are not to be carried out in the federal courts." *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005) (holding that economic development could constitute a public use) (citing *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, (1984)); *see also Whittaker v. County of Lawrence*, 437 Fed.Appx. 105, 108 (2011) (adopting the Supreme Court's holding in *Kelo* as "providing a federal constitutional floor for the definition of a public use that allows states to build upon this floor should they choose to do so."). If confirmed, I will apply United States Supreme Court and Third Circuit precedent relating to this issue.

23. Please describe your understanding of the Supreme Court and Third Circuit precedents concerning limitations on "pretextual" takings under the Fifth Amendment's Takings Clause.

Response: In *Kelo v. City of New London, Conn.*, 545 U.S. 469, 478 (2005), the United States Supreme Court stated that the City would not be permitted "to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." The Court determined that economic development could constitute a public use because the taking would be executed pursuant to a "carefully considered" development plan. *Id.* The Court's decision focused on the fact that there was "no evidence of an illegitimate purpose" and the City's development plan was not adopted "to benefit a particular class of identifiable individuals." *Id.* The Court stated that when this Court began applying the Fifth Amendment to the States at the close of the 19th century, it embraced the broader and more natural interpretation of public use as "public purpose." *Id.* The Supreme Court has defined the concept of "public purpose" broadly, reflecting its longstanding policy of deference to legislative judgments in this field. *Id.* The Court has not overruled its decision in *Kelo* and therefore, I would be bound to apply it. The Third Circuit has likewise adopted the Court's holding in *Kelo*. *See Whittaker v. County of Lawrence*, 437 Fed.Appx. 105, 108 (2011) (adopting the Supreme Court's holding in *Kelo* as "providing a federal constitutional floor for the definition of a public use that allows states to build upon this floor should they choose to do so.").

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

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

Response: As a current judicial nominee, it would be inappropriate for me to comment on whether the United States Supreme Court correctly or incorrectly decided a matter as it may indicate that I have prejudged an issue that might come before me if I were fortunate enough to be confirmed. If confirmed, I would apply United States Supreme Court and Third Circuit precedent without regard to any personal views or opinions. However, I believe the Court's holding in *Brown v. Board of Education*, 347 U.S. 483 (1954) is so foundational in our legal jurisprudence that it is not likely to come before me. For that reason, I believe the case was correctly decided by the Court.

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

Response: As a current judicial nominee, it would be inappropriate for me to comment on whether the United States Supreme Court correctly or incorrectly decided a matter as it may indicate that I have prejudged an issue that might come before me if I were fortunate enough to be confirmed. If confirmed, I would apply United States Supreme Court and Third Circuit precedent without regard to any personal views or opinions. However, I believe the Court's holding in *Loving v. Virginia*, 388 U.S. 1 (1967) is so foundational in our legal jurisprudence that it is not likely to come before me. For that reason, I believe the case was correctly decided by the Court.

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

Response: As a current judicial nominee, it would be inappropriate for me to comment on whether the United States Supreme Court correctly or incorrectly decided a matter as it may indicate that I have prejudged an issue that might come before me if I were fortunate enough to be confirmed. If confirmed, I would apply United States Supreme Court and Third Circuit precedent without regard to any personal views or opinions.

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

Response: Please see my response to Question 24c, above.

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

Response: Please see my response to Question 24c, above.

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

Response: Please see my response to Question 24c, above.

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

Response: Please see my response to Question 24c, above.

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

Response: Please see my response to Question 24c, above.

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

Response: Please see my response to Question 24c, above.

25. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

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

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

26. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

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

    Response: No.

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

    Response: No.

27. **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? 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, or any other such Arabella dark-money fund.**

    Response: No.

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

Response: No.

28. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No.

29. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

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

Response: In March 2021, I expressed interest in the position with Senator Robert Menendez's office. I interviewed with Senator Menendez on April 14, 2021. I interviewed with Senator Cory Booker on April 19, 2021. I interviewed with attorneys from the White House Counsel's Office on June 9, 2021. Since June 28, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 3, 2021, my nomination was submitted to the Senate.

31. 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.

32. 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.

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

Response: No.

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

Response: No.

35. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

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

Response: I interviewed with attorneys from the White House Counsel's Office on June 9, 2021. Since June 28, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. I was in contact with both offices during the

vetting process and in preparation for my appearance before the Senate Judiciary Committee.

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

Response: I received the questions on December 22, 2021. I drafted answers to each question based on my own personal knowledge and legal research I conducted over a period of several days. I submitted draft answers to the Office of Legal Policy on December 29, 2021, received feedback, and finalized my answers for submission.

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

Questions for the Record for Georgette Castner, Nominee for the 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 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. 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: If I were fortunate enough to be confirmed, my judicial approach will be to take each case one at a time, review all of the facts in the record, research the applicable law, give the parties an opportunity to be heard and decide only those issues that are before me

with an open mind and in a fair and impartial manner. Beyond this approach, I do not have a judicial philosophy to compare to another United States Supreme Court Justice.

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

Response: To me, "originalism" means interpreting a statute or constitutional provision based on the original and plain meaning of the words as they were understood at the time they were adopted. If confirmed, I would apply the interpretative method that is required by controlling United States Supreme Court and Third Circuit precedent.

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

Response: "Living constitutionalism" is defined as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social views." *Black's Law Dictionary* (11th ed. 2019). If I were fortunate enough to be confirmed, I would apply the interpretative method that is required by controlling United States Supreme Court and Third Circuit precedent.

4. 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: In the rare instance that there is a constitutional issue of first impression, I would look to the original and plain meaning of the text. If the text is clear, my analysis would be complete. If the text is ambiguous, I would then consult United States Supreme Court and Third Circuit precedent to determine the method of analysis and tools that would apply for constitutional interpretation issues.

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

Response: If I were fortunate enough to be confirmed as a district court judge, I would be bound to apply United States Supreme Court and Third Circuit precedent. In the rare instance that there is an issue of first impression, I would consult United States Supreme Court and Third Circuit precedent to determine the method of analysis and tools that would apply for constitutional interpretation issues.

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

Response: If I were fortunate enough to be confirmed, I would be bound to apply United States Supreme Court and Third Circuit precedent without consideration of any personal views, opinions or beliefs.

7. 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: In 1993, Congress enacted the Religious Freedom Restoration Act ("RFRA") in order to provide protection for religious liberty. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). By statute, Congress provided that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). RFRA applies to the federal government. In addition, the Free Exercise Clause of the First Amendment can also establish limits on what state and local governments can impose. *See e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

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

Response: If confirmed, I would apply controlling United States Supreme Court and Third Circuit precedent regarding any case or controversy that may invoke the protections afforded under the First Amendment of the Constitution. Please also see my responses to Questions 7, 9 and 10.

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the plaintiffs sought relief from an Executive Order issued by the Governor of New York that imposed certain restrictions on attendance at religious services claiming that the restrictions violated the Free Exercise Clause of the First Amendment. The United States Supreme Court granted a preliminary injunction on behalf of the plaintiffs holding that the

plaintiffs' "First Amendment claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." Specifically, the Court determined that the regulations could not be "viewed as neutral because they single out houses of worship for especially harsh treatment," that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" and there was no showing that "attendance at the applicants' services has resulted in the spread of disease."

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the plaintiffs brought an action alleging that California's Blueprint System for restrictions on private gatherings during the COVID-19 pandemic violated their First Amendment rights to free exercise, free speech, and freedom of assembly and their Fourteenth Amendment substantive due process and equal protection rights. The United States Supreme Court granted the plaintiffs' application for a preliminary injunction pending appeal on the grounds that the plaintiffs were likely to succeed on the merits as the restrictions treated "some comparable secular activities more favorably than at-home religious exercise," that the plaintiffs were "irreparably harmed by the loss of free exercise rights for even minimal periods of time" and the government did not show that the "public health would be imperiled by employing less restrictive measures." The Court explained that the government regulations were not "neutral and generally applicable," and therefore strict scrutiny under the Free Exercise Clause would apply.

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

Response: Generally speaking, yes. If confirmed, I would apply controlling United States Supreme Court and Third Circuit precedent regarding any case or controversy that may invoke the protections afforded under the First Amendment of the Constitution.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the plaintiffs, owners of a cake shop in Colorado, sought review of the Colorado Civil Rights Commission's decision and issuance of a cease and desist order that the owner's decision not to create a wedding cake for a same-sex couple was in violation of the Colorado Anti-Discrimination Act that prohibits discrimination against customers because of their sexual orientation. The United States Supreme Court held that the Commission's cease and desist order violated the Constitution because the Commission did not consider the issue with religious neutrality. The Court determined that the Commission's treatment of the case had some "elements of a clear and impermissible hostility toward the cake shop owner's religious beliefs," and an inconsistent treatment by

the Commission between the plaintiffs' case and the cases of other bakers who objected to a requested cake on the basis of conscience and prevailed before the Commission.

13. 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: In *Frazee v. Illinois Department of Employment Security, et al.*, 489 U.S. 829 (1989), the United States Supreme Court held that Illinois's denial of unemployment benefits to a worker who refused a position because it would have required him to work on Sunday violated the Free Exercise Clause of the First Amendment. The Court determined that while membership in a sect would simplify the problem of identifying sincerely held beliefs, the notion that one must be responding to the commands of a particular religious organization to claim the protection of the Free Exercise Clause is rejected.

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

Response: In *Frazee v. Illinois Department of Employment Security, et al.*, 489 U.S. 829, 834 (1989), the United States Supreme Court determined that individuals are entitled to invoke First Amendment protections for "sincerely held religious beliefs."

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

Response: Please see my response to Question 13a, above.

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

Response: As a current judicial nominee, it would be inappropriate for me to comment on a pending or impending matter that may come before me if I am fortunate enough to be confirmed. Code of Conduct for United States Judges, Canon 3(A)(4). If I were fortunate enough to be confirmed, I would apply controlling United States Supreme Court and Third Circuit precedent.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055, 2060 (2020), the United States Supreme Court held that the "First Amendment protects the right of religious institutions to decide for themselves, free from state interference,

matters of church government as well as those of faith and doctrine." The Court determined that under the "ministerial exception" a court is barred from considering an employment discrimination claim brought by employees whose responsibilities include carrying out the church's mission.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the United States Supreme Court held that the City's refusal to contract with Catholic Social Services ("CSS"), a foster care agency, unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The Court determined that the City's standard foster care contract was not neutral and generally applicable because the non-discrimination requirement was discretionary and allowed for individualized exemptions and therefore was subject to strict scrutiny. The Court held that the City offered no compelling reason why it had a particular interest in denying an exception to CSS while making them available to others.

16. Explain your understanding of Justice Gorsuch's concurrence in the 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, 2432 (2021), Justice Gorsuch issued a concurring opinion in which he highlighted that Fillmore County's ordinance requiring homes to have a modern septic system for the disposal of gray water was subject to strict scrutiny and a "precise analysis" by the court on remand. Justice Gorsuch explained that "[c]ourts cannot rely on broadly formulated governmental interests, but must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." According to Justice Gorsuch, the question in the case was "not whether the County had a compelling interest in enforcing its septic system requirement *generally*, but whether it has such an interest in denying an exception from that requirement to the Swartzentruber Amish *specifically.*" Justice Gorsuch noted exemptions were permitted for campers, hunters, fisherman, and owners and renters of rustic cabins and that other jurisdictions permitted the disposal of gray water using mulch basins as the Amish offered to employ.

17. If you are to join the district court, and supervise along with your colleagues the court's human resources programs, will 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: As a current judicial nominee, I am not familiar with the District of New Jersey's human resource or employee training programs and the extent, if any, judges play in creating training programs. I would expect that all training programs are fully consistent and in compliance with the law.

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

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

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

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

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

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

18. 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: Please see my response to Question 17a, above.

19. Is the criminal justice system systemically racist?

Response: This is an important policy question for policymakers. If I were fortunate enough to be confirmed, I would do everything in my power to ensure that litigants are treated with respect and dignity and that I approach all matters with an open mind and apply the law to the facts of a case in a fair and impartial manner.

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

Response: As a current judicial nominee, it would be inappropriate for me to comment on a pending or impending matter that may come before me if I am fortunate enough to be confirmed. Code of Conduct for United States Judges, Canon 3(A)(4). If confirmed, I would apply controlling United States Supreme Court and Third Circuit precedent.

21. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: This is an important policy question for policymakers. As a current judicial nominee, it would be inappropriate for me to comment on a pending or impending matter that may come before me if I am fortunate enough to be confirmed. Code of Conduct for United States Judges, Canon 3(A)(4).

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment guarantees an individual the right to keep and bear arms.

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

Response: I am not aware of any United States Supreme Court or Third Circuit precedent that holds that the right to own a firearm receives less protection than other individual rights enumerated in the Constitution.

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

Response: I am not aware of any United States Supreme Court or Third Circuit precedent that holds that the right to own a firearm receives less protection than the right to vote under the Constitution.

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

Response: In general, the Executive Branch has significant discretion in deciding which cases to prosecute; however, whether a categorical decision not to enforce a particular law would be legal is something I would carefully consider when applying United States Supreme Court and Third Circuit precedent.

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

Response: Under the Administrative Procedure Act ("APA"), a substantive administrative rule change requires notice and comment procedures whereas a notice and comment period is not required for "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice[.]" 5 U.S.C. § 553(b). The substantial impact test is the primary means by which a court will look to determine whether a rule is of the type Congress thought appropriate for public participation" including the need for notice and comment under the APA. *Texas v. United States*, 809 F.3d 134, 176 (5th Cir. 2015).

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

Response: The death penalty is codified by statute. 18 U.S.C. § 3591. An act of Congress would be required to repeal the statute.

28. Does a federal judge have authority to not apply the death penalty if it appropriately requested by a prosecutor?

Response: If confirmed as a federal judge, I would take all cases seriously including those where the defendant is charged with a death-eligible crime. In general, the United States Department of Justice makes the initial determination on whether to seek the death penalty and the decision whether to impose the death penalty is made by a jury. If confirmed, I would follow 18 U.S.C. § 3591, *et seq.* and United States Supreme Court and Third Circuit precedent.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the United States Supreme Court granted the plaintiffs' application to vacate a stay of a judgment that declared that a nationwide eviction moratorium that was imposed by the Director of Centers for Disease Control and Prevention in response to the COVID-19 pandemic was unlawful. The Court determined that the plaintiffs had a substantial likelihood of success on the merits as the CDC exceeded its authority and a balancing of equities weighed against a stay of the judgment in favor of the plaintiffs pending appeal.

Senator Josh Hawley
Questions for the Record

Georgette Castner
Nominee, U.S. District Court for the District of New Jersey

1. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

    a. **Do you agree with that philosophy?**

    Response: No. If I were fortunate enough to be confirmed, I would apply the law to the facts of a case in a fair and impartial manner and without regard to any particular outcome.

    b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

    Response: If I were fortunate enough to be confirmed, I would take the oath of office very seriously and would apply the law to the facts of a case in a fair and impartial manner and without regard to any particular outcome.

2. **What is the standard for each kind of abstention in the court to which you have been nominated?**

    Response: Based on my research, the following abstention doctrines have been recognized in the Third Circuit and the District Court of New Jersey:

    Rooker-Feldman doctrine: precludes a United States District Court from exercising subject-matter jurisdiction in an action previously resolved in state court. *Great W. Mining & Mineral Co. v. Fox Rothschild, LLP*, 615 F.3d 159, 166 (3d Cir. 2010); *Tomasi v. Twp. of Long Beach*, 364 F.Supp.3d 376, 387 (D.N.J. 2019). In order to apply *Rooker-Feldman*, four elements must be established: "(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments."

    Younger doctrine: a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances. *Middlesex Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982); *Tomasi*, *supra*, 364 F.Supp.3d at 388. In order for a district court to abstain under *Younger*, three requirements must be met: (1) there must be ongoing state proceedings that are

judicial in nature; (2) the state proceedings must implicate important state interests; and (3) the state proceedings must provide an adequate opportunity to raise federal claims." *Dixon v. Kuhn*, 257 F.App'x 553, 555 (3d Cir. 2007).

Colorado River doctrine: a federal court may abstain "either by staying or dismissing a pending federal action, where there is a parallel ongoing state court proceeding." *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009); *Spellman v. Express Dynamics, LLC*, 150 F.Supp.3d 378 (D.N.J. 2015). The threshold question in determining whether abstention is appropriate is whether there is a parallel state proceeding. Two proceedings are parallel "when they involve the same parties and substantially identical claims, raising nearly identical allegations and issues, and when plaintiffs in each forum seek the same remedies." If two proceedings are parallel, a court then applies a six-part test to determine whether there are "extraordinary circumstances" that justify abstention, analyzing: (1) which court first assumed jurisdiction over property in an *in rem* case, (2) "the inconvenience of the federal forum," (3) "the desirability of avoiding piecemeal litigation," (4) "the order in which jurisdiction was obtained," (5) "whether federal or state law controls," and (6) "whether the state court will adequately protect the interests of the parties." No single factor is determinative, and the "balancing of factors is heavily weighted in favor of the exercise of jurisdiction."

Thibodaux abstention doctrine: a district court may abstain from exercising diversity jurisdiction to avoid deciding an unclear and important issue of state law bearing upon sovereign prerogative. *Tomasi*, *supra*, 364 F.Supp.3d at 389.

Brillhart abstention doctrine: when a federal suit is brought under the Federal Declaratory Judgments Act, 28 U.S.C. § 2201 presenting only questions of local laws, the court is under no compulsion to exercise jurisdiction if a parallel state court proceeding would address the matters in controversy between the parties. *W. Coast Life Ins. Co. v. Harry Esses 2007-1 Ins. Trust, ex rel. its Trustees*, 2010 WL 1644799 at *2 (D.N.J. 2010) (citing *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942)). In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.

3. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

Response: Please see my response to Question 3, above.

4. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

Response: If I were fortunate enough to be confirmed, I would apply the original meaning of the Constitution's text where required by United States Supreme Court and Third Circuit precedent. In the rare instance involving an issue of first impression, I would look to the original and plain meaning of the text. If the text is ambiguous, I would then consult United States Supreme Court or Third Circuit precedent to determine the method of analysis and tools that would apply for constitutional interpretation issues.

5. **Do you consider legislative history when interpreting legal texts?**

Response: I would begin by consulting United States Supreme Court and Third Circuit precedent to determine whether there is controlling case law directly on point. If it is an issue of first impression, I would look to the plain meaning of the text. If the text is clear and unambiguous my analysis would be complete. If the text of the statute is unclear or ambiguous, I would use those interpretation tools recognized by the United States Supreme Court and Third Circuit such as canons of statutory interpretation, dictionaries, persuasive authority from other circuit courts and legislative history to the extent permitted by the Supreme Court and Third Circuit.

a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

Response: If confirmed, I would apply United States Supreme Court and Third Circuit precedent regarding the use of legislative history and the extent, and in the form, permitted by the Court.

b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

Response: If confirmed, I would look to the text, structure, and background of the Constitution itself when interpreting the provisions of the United States Constitution.

6. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: When determining whether a State's chosen method of execution violates the Eighth Amendment, a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019) (citing *Glossip v. Gross* 576 U.S. 863 (2015)). I am not aware of a Third Circuit case applying this standard.

7. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Please see my response to Question 6, above.

8. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: In *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), the United States Supreme Court held that the defendant had no substantive due process right to obtain postconviction access to the State's evidence for DNA testing. The Court noted that the task of establishing rules to harness DNA's power to prove innocence without unnecessarily overthrowing the established criminal justice system belongs primarily to the legislature. This standard has been recognized and applied by the Third Circuit. *Bonner v. Montgomery County*, 458 Fed.Appx. 135 (3d Cir. 2012).

9. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   Response: No. If I were fortunate enough to be confirmed, I have no doubt about my ability to uphold the law.

10. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the plaintiffs brought an action alleging that California's Blueprint System for restrictions on private gatherings during the COVID-19 pandemic violated their First Amendment rights to free exercise, free speech, and freedom of assembly and their Fourteenth Amendment substantive due process and equal protection rights. The United States Supreme Court granted the plaintiffs' application for a preliminary injunction pending appeal on the grounds that the plaintiffs were likely to succeed on the merits as the restrictions treated "some comparable secular activities more favorably than at-home religious exercise," that the plaintiffs were "irreparably harmed by the loss of free exercise rights for even minimal periods of time" and the government did not show that the "public health would be imperiled by employing less restrictive measures." The Court explained that the government regulations were not "neutral and generally applicable," and therefore strict scrutiny under the Free Exercise Clause would apply. The same standard has been applied by the Third Circuit in *Tenafly Eruv Association, Inc. v. The Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002) (recognizing that the Free Exercise Clause's mandate of neutrality toward religion prohibits government from deciding that secular motivations are more important than religious motivations).

11. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question 10, above. In addition, the United States Supreme Court has held that state governmental action that disqualifies otherwise eligible recipients from a public benefit solely because of their religious status must survive strict scrutiny. *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020); *see also Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (holding that the City's actions burdened the plaintiff's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs).

12. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: In *Frazee v. Illinois Department of Employment Security, et al.*, 489 U.S. 829 (1989), the United States Supreme Court held that Illinois's denial of unemployment benefits to a worker who refused a position because it would have required him to work on Sunday violated the Free Exercise Clause of the First Amendment. The Court determined that while membership in a sect would simplify the problem of identifying sincerely held beliefs, the notion that one must be responding to the commands of a particular religious organization to claim the protection of the Free Exercise Clause is rejected. In *DeHart v. Horn*, 227 F.3d 47, 51-52 (3d Cir. 2000) the Third Circuit held that beliefs, alleged to be religious in nature, are accorded First Amendment protection if the beliefs avowed are (1) sincerely held, and (2) religious in nature. In *Sutton v. Rasheed*, 323 F.3d 236 (3d Cir. 2003), the court held that the plaintiffs' sincerely-held views were sufficiently rooted in religion to merit First Amendment protection because they were not "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." The Third Circuit relied on a prior United States Supreme Court case that held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection. *See Thomas v. Review Bd. of Ind. Employment Sec.*, 489 U.S. 829, 834 n.2 (1989).

13. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment guarantees an individual the right to keep and bear arms.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

14. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I am not sure what Justice Holmes meant by that statement nor am I familiar with Mr. Herbert Spencer's Social Statics.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: In *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the United States Supreme Court held that the doctrine that prevailed in *Lochner*, that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely, has long since been discarded. *See also West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Day-Brite Lighting Inc. v. State of Mo.*, 342 U.S. 421 (1952). Accordingly, I would not apply the *Lochner* decision.

15. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: I cannot recall any United States Supreme Court opinions that have not been "formally overruled" but that I believe "are no longer good law."

a. If so, what are they?

Response: Please see my response to Question 15, above.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: If I were fortunate enough to be confirmed, I would fully and faithfully apply all United States Supreme Court and Third Circuit precedent.

16. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: As a current judicial nominee, it would be inappropriate for me to comment on whether the Second Circuit correctly or incorrectly decided the *United States v. Aluminum Co. of America* case. If a case involving allegations of antitrust violations came before me, I would carefully research and apply binding United States Supreme Court and Third Circuit precedent.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 16a, above.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: A violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, consists of two elements: (1) possession of monopoly power and (2) maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. *U.S. v. Dentsply*, *Intern. Inc.*, 399 F.3d 181, 186 (3d Cir. 2005). The existence of monopoly power may be inferred from a predominant share of the market, and the size of that portion is a primary factor in determining whether power exists. *Id.* at 187 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966)). A less than predominant share of the market combined with other relevant factors may suffice to demonstrate monopoly power. *Id.* (citing *Fineman v. Armstrong World Indus.,* 980 F.2d 171, 201 (3d Cir.1992). The Third Circuit has recognized that absent other pertinent factors, a share significantly larger than 55% has been required to established prima facie market power. *Id.*; *see also Grinnell*, *supra*, 384 U.S. at 571 (holding that 87% of the market is a monopoly). If confirmed, I would be bound to apply United States Supreme Court and Third Circuit precedent.

17. Please describe your understanding of the "federal common law."

Response: "Federal common law" is defined as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between states and foreign relations, but excluding all cases governed by state law." *Black's Law Dictionary* (11th ed. 2019).

18. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: In general, states are free to provide greater protections for certain rights than the federal constitution affords, but states cannot provide less protections. The extent of a constitutional right at the state or federal level would require a careful evaluation of state and federal precedent. If confirmed, I would apply controlling United States Supreme Court and Third Circuit precedent.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 18, above.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Please see my response to Question 18, above.

19. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a current judicial nominee, it would be inappropriate for me to comment on whether the United States Supreme Court correctly or incorrectly decided a matter. However, I believe the Court's holding in *Brown v. Board of Education*, 347 U.S. 483 (1954) is so foundational in our legal jurisprudence that it is not likely to come before me if I am fortunate enough to be confirmed. For that reason, I believe the case was correctly decided by the Court.

20. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Federal Rule of Civil Procedure 65 grants federal courts the authority to issue a preliminary injunction. The United States Supreme Court has recognized that a preliminary injunction is an extraordinary remedy never awarded as of right. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

a. If so, what is the source of that authority?

Response: Please see my response to Question 20, above.

b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response: As a current judicial nominee, it would be inappropriate for me to

comment on a pending or impending matter that may come before me if I am fortunate enough to be confirmed. Code of Conduct for United States Judges, Canon 3(A)(4). If confirmed, I would review each case one at a time and apply controlling United States Supreme Court and Third Circuit precedent to determine whether an injunction is appropriate based on the circumstances of the case.

21. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 20b, above.

22. What is your understanding of the role of federalism in our constitutional system?

Response: "Federalism" is defined as the "legal relationship and distribution of power between the national and regional governments within a federal system of government, and in the United States particularly, between the federal government and the state governments." *Black's Law Dictionary* (11th ed. 2019). Our Constitution recognizes this principle under the Tenth Amendment which provides that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." With respect to our judicial system, federal courts have limited jurisdiction and, if confirmed, I would only exercise jurisdiction over those cases and controversies that are properly before me.

23. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 2, above.

24. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: As a current judicial nominee, it would be inappropriate for me to comment on a pending or impending matter that may come before me if I am fortunate enough to be confirmed. Code of Conduct for United States Judges, Canon 3(A)(4). If confirmed, I would review all of the facts in the record, give the parties an opportunity to be heard and apply the applicable law, whether by statute or United States Supreme Court or Third Circuit precedent to determine the appropriate relief in a case.

25. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The United States Supreme Court has held that liberty denotes more than freedom from bodily restraint "but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). More recently, the Supreme Court has adopted a two-step analysis: (1) that substantive due process protects those fundamental rights and liberties which are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed;" and (2) a "careful description of the asserted fundamental liberty interest." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

26. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Free Exercise Clause "protect[s] religious observers against unequal treatment" and subjects to the strictest scrutiny laws that target the religious for "special disabilities" based on their "religious status." *Trinity Lutheran Church of Columbia, Inc., v. Comer*, 137 S. Ct. 2012, 2019 (2017). The United States Supreme Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest "of the highest order." *Id.* I will fully and faithfully apply United States Supreme Court and Third Circuit precedent with respect to the scope of the First Amendment. Please also see my responses to Questions 10 and 11, above.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The United States Supreme Court treats the right to worship and the right to exercise one's religious beliefs as coextensive. *See Tandon v.*

Newsom, 141 S. Ct. 1294 (2021) (holding that state restrictions that treated some comparable secular activities more favorably than at-home religious exercise violated First Amendment right to free exercise); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (applying strict scrutiny to state restrictions that single out houses of worship for especially harsh treatment in violation of Free Exercise Clause).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: In 1993, Congress enacted the Religious Freedom Restoration Act ("RFRA") in order to provide protection for religious liberty. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). By statute, Congress provided that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). RFRA applies to the federal government. In addition, the Free Exercise Clause of the First Amendment can also establish limits on what state and local governments can impose. *See e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 12, above.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: Congress enacted the Religious Freedom Restoration Act ("RFRA") in 1993 in response to the Supreme Court's decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990) where the Court held that under the First Amendment, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." RFRA provides that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a

compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). If confirmed, I would apply binding United States Supreme Court and Third Circuit precedent including *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

27. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: To me, this statement means that judges should not consider any personal views or opinions when deciding the outcome of a case. If I were fortunate enough to be confirmed, I would apply the law to the facts of a case in a fair and impartial manner without consideration of any personal views or opinions.

28. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: Over the last fourteen years in private practice, I have worked on a number of different cases in various capacities; however, I do not recall taking such a position.

a. If yes, please provide appropriate citations.

Response: Please see my response to Question 28, above.

29. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: To the best of my recollection, no.

30. Do you believe America is a systemically racist country?

Response: Racism is a topic that is the subject of significant debate in our country and raises important policy questions that should be left to policymakers. As a current judicial nominee, it would be inappropriate for me to comment. If I were fortunate enough to be confirmed, I would do everything in my power to ensure that my courtroom is free from bias and racism.

31. Have you ever taken a position in litigation that conflicted with your personal views?

Response: As required under the Rules of Professional Conduct, I have always served as a zealous advocate on behalf of my clients without consideration of any personal views or opinions. Likewise, if I were fortunate enough to be confirmed, I would apply the law to the facts of a case in a fair and impartial manner without consideration of any personal views or opinions.

32. How did you handle the situation?

Response: Please see my response to Question 31, above.

33. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes, I commit to applying the law fully and faithfully.

34. Which of the Federalist Papers has most shaped your views of the law?

Response: There is no one Federalist Paper that has particularly shaped my view of the law.

35. Do you believe that an unborn child is a human being?

Response: This is a topic of significant debate and current litigation in our country right now. As a current judicial nominee, it would be inappropriate for me to comment because it may create the impression that I have prejudged a future case that may come before me that raises this issue. If confirmed, I will apply United States Supreme Court and Third Circuit precedent.

36. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Yes. In approximately 2005 or 2006, I was deposed as part of a lawsuit involving a motor vehicle accident. I filed the action in 2005 in the Superior Court of New Jersey, Law Division, Camden County for personal injuries sustained as a result of the accident. The matter was resolved by way of a settlement. I do not have any records from that matter or a copy of the deposition transcript.

37. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

38. Do you currently hold any shares in the following companies:

a. Apple?

Response: I do not own any stocks or individual investments in Apple.

b. Amazon?

Response: I do not own any stocks or individual investments in Amazon.

c. Google?

Response: I do not own any stocks or individual investments in Google.

d. Facebook?

Response: I do not own any stocks or individual investments in Facebook.

e. Twitter?

Response: I do not own any stocks or individual investments in Twitter.

39. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: At this time, I cannot recall any specific case; however, over the last fourteen years in private practice, I have worked on numerous cases in various capacities, including as a junior associate where I would assist in providing legal research or editing citations.

a. If so, please identify those cases with appropriate citation.

Response: Please see my response to Question 39, above.

40. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Please see my response to Question 40, above.

41. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: When appearing before the Senate Judiciary Committee, I took an oath to answer all questions truthfully and honestly and did so to the best of my ability.

Questions for the Record for Georgette Castner
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

   a. **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.

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

      Response: No.

Senator Mike Lee
Questions for the Record
Georgette Castner, Nominee to the District Court for the District of New Jersey

1. How would you describe your judicial philosophy?

Response: If confirmed, my judicial approach will be to take each case one at a time, review all of the facts in the record, research the applicable law, give the parties an opportunity to be heard and decide only those issues that are before me with an open mind and in a fair and impartial manner.

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

Response: I would begin by consulting United States Supreme Court and Third Circuit precedent to determine whether there is controlling case law directly on point. If it is an issue of first impression, I would look to the plain meaning of the text. If the text is clear and unambiguous my analysis would be complete. If the text of the statute is unclear or ambiguous, I would use those interpretation tools recognized by the United States Supreme Court and Third Circuit such as canons of statutory interpretation, dictionaries, persuasive authority from other circuit courts and legislative history to the extent permitted by the Supreme Court and Third Circuit.

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

Response: I would begin by consulting United States Supreme Court and Third Circuit precedent to determine whether there is controlling case law directly on point or a method of analysis that governs the issue before the court. In the rare instance that it is an issue of first impression, I would look to the original and plain meaning of the text. If the text is ambiguous, I would then consult United States Supreme Court and Third Circuit precedent to determine the method of analysis and tools that would apply for constitutional interpretation issues.

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

Response: Please see my response to Question 3, above.

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: The plain meaning of the words of a statute has great and significant weight when deciding statutory interpretation issues as it is the best indication of legislative intent. *Browder v. United States*, 312 U.S. 335 (1941).

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

Response: The "plain meaning" would be the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1738 (2020).

6. What are the constitutional requirements for standing?

Response: In its constitutional dimension, standing imports justiciability. The threshold question in every federal case is whether the plaintiff has a "case or controversy" between himself and the defendant within Article III. Standing contains three elements. First, the plaintiff must have suffered an "injury in fact" that is "actual or imminent." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Second, there must be a causal connection between the injury and the conduct complained of and third, it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.*

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

Response: The United States Supreme Court has recognized that Congress is authorized to pass all laws that are "necessary and proper to carry into execution the powers conferred on it." *M'Culloch v. State of Maryland*, 17 U.S. 316 (1819). Congress has broad power to enact laws that are "convenient or useful" or "conducive" to the authority's "beneficial exercise." *Id.*

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

Response: If confirmed, my analysis would begin with the principal that congressional enactments are invalidated only upon "a plain showing that Congress has exceeded its constitutional bounds" and that there is a presumption of constitutionally in mind. *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Harris*, 106 U.S. 629 (1883). I would then apply United States Supreme Court and Third Circuit precedent that dictates the method of analysis based on the congressional power that has been invoked.

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

Response: Yes. The United States Supreme Court has recognized certain liberty interests not specifically enumerated in the Constitution such as the freedom to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to travel, *Kent v. Dulles*, 357 U.S. 116

(1958), the freedom of association, *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), the right to reproductive and sexual privacy, *Eisenstadt v. Baird*, 405 U.S. 438 (1972) and *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992) and the right of parents to direct the upbringing of their children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

10. What rights are protected under substantive due process?

Response: The United States Supreme Court has held that liberty denotes more than freedom from bodily restraint "but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). More recently, the United States Supreme Court has adopted a two-step analysis: (1) that substantive due process protects those fundamental rights and liberties which are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed;" and (2) a "careful description of the asserted fundamental liberty interest." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

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: The United States Supreme Court has distinguished between these two types of rights. The *Lochner* decision has been abrogated by the Court's decision in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). *See also Ferguson v. Skrupa,* 372 U.S. 726, 730 (1963) (holding that the doctrine that prevailed in *Lochner* has long since been discarded). If I am fortunate enough to be confirmed, I will fully and faithfully apply binding United States Supreme Court and Third Circuit precedent regarding substantive due process protections without consideration of any personal views or opinions.

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

Response: Under the Commerce Clause, Congress has the power to regulate the use of the channels of interstate commerce, to prohibit the interstate transportation of a commodity through the channels of commerce, and to protect an instrumentality of interstate commerce or a thing in interstate commerce. A court must look at whether the regulated activity "substantially affects" interstate commerce. *U.S. v. Lopez*, 514 U.S. 549, 559 (1995).

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

Response: The United States Supreme Court has determined that a "suspect class" is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). The United States Supreme Court has identified race, nationality, religion and alienage as inherently suspect and subject to close judicial scrutiny. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Constitution specifically recognizes the need for checks and balances to reinforce the separation of powers among the executive, legislative and judicial branches of government. This form of government ensures that no one branch becomes too powerful and that individual liberties are protected under the Constitution.

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 I were fortunate enough to be confirmed, I would look to United States Supreme Court and Third Circuit precedent and the analysis that was applied by the Court with respect to the challenged authority.

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

Response: If I were fortunate enough to be confirmed, I would consider only the facts and the law at issue in the case and apply the law to the facts in a neutral manner.

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

Response: If confirmed, I would apply United States Supreme Court and Third Circuit precedent and would be bound to invalidate laws that are unconstitutional and uphold laws that are constitutional without consideration of any personal views or opinions.

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

Response: I have not studied the United States Supreme Court's exercise of judicial review over time to provide an opinion on the topic. If confirmed, I would apply United States Supreme Court and Third Circuit precedent as to when it is appropriate to exercise judicial review. If courts become too aggressive or too passive in exercising judicial review it could threaten the separation of powers and checks and balances that are inherent in our Constitution.

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

Response: Judicial review requires that our courts uphold the Constitution and "say what the law is." *Marbury v. Madison*, 5 U.S. 137 (1803). "Judicial supremacy" is defined in Black's Law Dictionary as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Black's Law Dictionary* (11th ed. 2019).

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

Response: Elected officials are bound by judicial decisions, which ensures confidence in our judicial system. However, elected officials have the authority to enact laws that provide greater protections than those afforded under 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: The will of the people rests with the executive and legislative branches of government and not with the judicial system. The role of a judge is to protect the rights of the people by ensuring that executive and legislative action is consistent with our Constitution.

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: A district court judge is bound to apply controlling precedent. If there is no controlling precedent that "speak[s] directly to the issue at hand," a district court judge would be required to apply the methods of interpretation as set forth in Question 3, above.

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

Response: Sentencing determinations are limited to a consideration of the factors set forth in 18 U.S.C. § 3553(a), after reviewing the advisory Sentencing Guidelines and any pertinent policy statements issued by the Sentencing Commission. The Commission lists certain factors that can never be considered in sentencing such as race, sex, national origin, creed and religion. *Koon v. U.S.*, 518 U.S. 81, 93 (1996) (citing 1995 U.S.S.G. § 5H1.10).

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

Response: I am not familiar with this quote or the context in which it was made by the Biden Administration. If I were fortunate enough to be confirmed and a case or controversy came before me regarding an "equity" issue, I would apply the applicable statute or controlling precedent by the United States Supreme Court and Third Circuit.

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

Response: If I were fortunate enough to be confirmed and a case or controversy came before me regarding an "equity" or "equality" issue, I would apply the applicable statute or controlling precedent by the United States Supreme Court and Third Circuit.

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

Response: The Fourteenth Amendment refers to the "equal protection of the laws." If confirmed, I would apply United States Supreme Court and Third Circuit precedent regarding the Fourteenth Amendment's protections.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of "systemic racism," but I understand it is a topic being discussed in our country. If I am fortunate enough to be confirmed, I will do everything in my power to ensure that every litigant is treated fairly and with dignity and that I approach all matters with an open mind and apply the law to the facts of a case in a fair and impartial manner.

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

Response: I do not have a personal definition of "critical race theory." Black's Law Dictionary defines "critical race theory" as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." *Black's Law Dictionary* (11th ed. 2019). If I am fortunate enough to be confirmed, I will do everything in my power to ensure that every litigant is treated fairly and with dignity and that I approach all matters with an open mind and apply the law to the facts of a case in a fair and impartial manner.

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

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

Questions from Senator Thom Tillis for Georgette Castner
Nominee to be United States District Judge for the District of New Jersey

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: In my opinion, "judicial activism" is when a judge decides an issue or claim that is beyond the issues or claims asserted by the parties or the judge considers his or her own personal views or opinions when ruling on a case. A judge must issue rulings that are solely based on an application of the law to the facts of a case in a fair and impartial manner.

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

   Response: Impartiality is expected and required pursuant to the Code of Conduct for United States Judges.

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: Yes. If I were fortunate enough to be confirmed, I would be bound to apply the law to the facts of a case without consideration of any personal views or opinions related to the outcome.

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

   Response: No.

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

   Response: If confirmed, I will apply United States Supreme Court and Third Circuit precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v.*

City of Chicago, 561 U.S. 742 (2010), holding that individuals have a fundamental right to keep and bear arms under 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: If confirmed, I would apply United States Supreme Court and Third Circuit precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), holding that individuals have a fundamental right to keep and bear arms under the Second Amendment. I would also consider the United States Supreme Court's decisions in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), as both cases involved the exercise of constitutional rights during the COVID-19 pandemic.

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: I would apply United States Supreme Court and Third Circuit precedent. The Supreme Court has held that government officials are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is a "mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

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: If I were fortunate enough to be confirmed, I would apply United States Supreme Court and Third Circuit precedent relating to any claims of qualified immunity as set forth in Question 9, above.

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

Response: The scope of qualified immunity protections is a policy question reserved to our policymakers. If confirmed, I would apply United States Supreme Court and Third Circuit precedent relating to any claims of qualified immunity as set forth in Question 9, above.

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: In my fourteen years of experience in private practice in addition to the time I served as a law clerk, I have not had a case involving patent eligibility. As such, I have no opinion on the United States Supreme Court's patent eligibility jurisprudence, and as a current judicial nominee, it would be inappropriate for me to comment on the Supreme Court's opinions as to patent eligibility.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: As a current judicial nominee, it would be inappropriate for me to comment on a hypothetical or a matter that could potentially come before me as it could suggest that I have prejudged a case or issue. Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed and presented with similar facts, I would apply controlling United States Supreme Court and Third Circuit precedent.

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: Please see my response to Question 13a, above.

c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Please see my response to Question 13a, above.

d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?

Response: Please see my response to Question 13a, above.

e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?

Response: Please see my response to Question 13a, above.

f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: Please see my response to Question 13a, above.

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTechCo* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the

gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my response to Question 13a, above.

h. **Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question 13a, above.

i. ***Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question 13a, above.

j. ***Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13a, above.

14. **Based on the previous hypotheticals, 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: Please see my response to Question 12, above.

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

a. What experience do you have with copyright law?

Response: In my fourteen years of experience in private practice in addition to the time I served as a law clerk, I have not had a case involving copyright law. If I am fortunate enough to be confirmed, I will apply United States Supreme Court and Third Circuit precedent relating to any copyright issues that may come before me.

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

Response: None.

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

Response: None.

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

Response: My fourteen years of experience in private practice have been primarily focused on complex civil litigation relating to products liability, commercial disputes, employment matters and insurance coverage disputes. During my time in private practice and as a law clerk, I did not work on any matters relating to free speech and intellectual property issues. If confirmed, I would be guided by United States Supreme Court and Third Circuit precedent.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If I were fortunate enough to be confirmed, I would be bound to apply controlling United States Supreme Court and Third Circuit precedent. If there is no controlling United States Supreme Court or Third Circuit precedent, I would apply the ordinary and plain meaning of the text. If the text is unclear or ambiguous, I would consider canons of statutory interpretation, analogous precedent and legislative history to the extent permitted by the Supreme Court and Third Circuit.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: Interpretations such as those in opinion letters – like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law – do not warrant *Chevron*-style deference. Instead, interpretations contained in formats such as opinion letters are "entitled to respect," but only to the extent that those interpretations have the "power to persuade." *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: As a current judicial nominee, it would be inappropriate for me to comment on a matter that could potentially come before me. Code of Conduct for United States Judges, Cannon 3(A)(6). If confirmed and presented with similar facts, I would apply controlling United States Supreme Court and Third Circuit precedent.

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

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

Response: If I were fortunate enough to be confirmed, I would be bound to apply the Digital Millennium Copyright Act as written and controlling United States Supreme Court and Third Circuit precedent.

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

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

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: In the District of New Jersey, there are multiple judges in the District and matters are randomly assigned so "judge shopping" would not be applicable. Also, as a current judicial nominee, it would not be appropriate for me to state an opinion as to decisions made by other courts.

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

Response: Please see my response to Question 18a, above.

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

Response: No. If I were fortunate enough to be confirmed, I would apply venue statutes and controlling United States Supreme Court and Third Circuit precedent.

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

Response: Please see my response to Question 18c, above.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: This important question would be resolved by the District's Chief Judge, Circuit Judicial Council or Congress. If confirmed, I would apply the rule of law and fully and faithfully adhere to the Constitution, binding precedent and governing statutes.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

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

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

Response: If confirmed, I would fully and faithfully apply venue statues and controlling precedent by the United States Supreme Court and Third Circuit.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: If confirmed, I would fully and faithfully apply venue statues and controlling precedent by the United States Supreme Court and Third Circuit to ensure the fair administration of justice.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Please see my response to Question 20a, above.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: This important question would be resolved by the District's Chief Judge, Circuit Judicial Council or Congress. If confirmed, I would apply the rule of law and fully and faithfully adhere to the Constitution, binding precedent and governing statutes.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: Please see my response to Question 21a, above.