Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Mia Roberts Perez
Nominee to be United States District Judge for the Eastern District of Pennsylvania

1. **On a podcast, you stated "There is nothing Republican in my DNA. It would be disingenuous." In your opinion, what qualities, characteristics and values are "Republican"?**

   Response: The above statement was made in response to a question regarding why I did not run as both a democrat and republican during my 2015 primary election for a seat on the Court of Common Pleas. In that same statement, I indicated that it would have been disingenuous to do so. This was largely based on my political registration as a Democrat. My consistent record as a fair and impartial jurist in the nearly three thousand cases I have presided over indicates that I would treat all litigants who appear before me fairly and impartially. As a sitting judge and judicial nominee, it would be inappropriate for me to opine on the qualities, characteristics and values of a political party.

2. **In a podcast, you stated that you rely on "[your] experiences in [your] life as a mother, and [your] experience as an attorney to make the right decision."**
   a. **Please define the term "judicial activism."**

      Response: Judicial activism is defined by Merriam-Webster as "the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent."

   b. **In your opinion, what types or kinds of actions constitute "judicial activism"?**

      Please see my answer to Question 2a.

   c. **Should judges be neutral arbiters of justice?**

      Response: Judges should always be neutral arbiters of justice.

3. **In 2021, you received a $500,000 referral fee from the Law Offices of Royce Smith, Esquire.**
   a. **Please list the case or cases this referral fee was for.**

      Response: *Rodriguez et al. v. City of Philadelphia et al.*, No. 2:14-cv-04435-JHS, 2020 WL 7873161 (E.D. Pa. June 26, 2020).

b. Please explain why you believe the referral fee is consistent with the Code of Judicial Conduct.

Response: There is no provision within the Pennsylvania Code of Judicial Conduct that prohibits the acceptance of a referral fee earned prior to being elected to the bench.

4. In August 2022, the Supreme Court of Pennsylvania entered an order disbarring a Royce W. Smith. Numerous disciplinary complaints had been filed against him.

a. Does this order concern the same person that paid you the $500,000 referral fee?

Response: I was not aware of any disciplinary proceedings pending against Mr. Smith until I received a public notice of his disbarment. I was not involved in the disciplinary proceedings in any capacity and so do not know the full scope of the claims against him.

b. If so, does the referral fee or the cases for which you were paid the referral fee relate to any of the disciplinary complaints filed against him?

Response: Please see my response Question 4a. Based on the public record, it is my understanding that the case for which I was paid the referral fee is related to a complaint filed against Mr. Smith, however, the referral fee is not related to any complaint.

5. When Judge Seamus McCaffery's role in referrals for which his wife received referral fees came to light, some commented that when he became involved in the referrals he was practicing law. Do you agree that referring a client and taking a referral fee for referring that client qualifies as practicing law?

Response: I am not familiar with the details of the allegations made against Justice McCaffery, however, it is my understanding that the referrals at issue in those proceedings were made while Justice McCaffery was a sitting judge. This differs from the fee paid to me, as I made that referral and set the terms of the fee agreement more than three years before I took the bench.

6. What is implicit bias?

Response: Implicit bias is defined by Merriam-Webster as "a bias or prejudice that is present but not consciously held or recognized."

7. **Is the federal judiciary affected by implicit bias?**

Response: Whether policies or practices within the judiciary are affected by implicit bias is a question for policy makers. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit and work to ensure my decisions are free from any bias.

8. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker?**

Response: Decisions regarding the funding and administration of police and social service initiatives are complex issues questions faced by policymakers. In all cases, I would listen to the facts and apply all relevant statutory law and binding precedent from the Supreme Court and Third Circuit.

9. **Why do you believe that the war on drugs is a "joke"?**

Response: I made that statement as an advocate and candidate for office. As a judge, I have faithfully applied the law to the facts in any case involving controlled substances. I would continue to do so if I were fortunate enough to be confirmed as a federal district court judge.

10. **In what situation does qualified immunity not apply to a law enforcement officer in Pennsylvania?**

Response: The federal doctrine of qualified immunity protects government officials from liability for civil damages, as long as their conduct does not violate a federal statutory or constitutional right which was clearly established as the time of its violation. *See Saucier v. Katz*, 533 U.S. 194 (2001); *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Under Pennsylvania law, state officials and employees enjoy sovereign and official immunity and are shielded from liability when they are acting within the scope of their duties. 1 Pa.C.S.A. § 2310. Whether an employee's actions are within the scope of their duties requires a fact-specific analysis in each case. Pennsylvania courts have generally found the fact that an act is done in an "outrageous or abnormal manner" to be highly probative when conducting such analysis. *See Justice v. Lombardo*, 652 Pa. 588 (2019).

11. Please define the term "justice."

Response: "Justice" is defined by Black's Law Dictionary as "the fair treatment of people and the fair and proper administration of laws."

12. Does your definition of "justice" take into consideration principles of social "equity"?

Response: Black's Law Dictionary defines "equity" as "denot[ing] the spirit and the habit of fairness, justness, and right dealing." I do not have my own personal definition of "justice" and cannot say whether the Black's Law Dictionary definition "justice" included in response to Question 11 takes principles of "equity" into consideration, however both definitions deal with the general idea of fairness.

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

Response: Judicial decisions should be based upon the facts contained in the record and the applicable precedent provided by the Third Circuit and the Supreme Court.

14. Do you think the Supreme Court should be expanded?

Response: The decision to expand the size of the Supreme Court is a matter for Congress to determine under their authority as prescribed by the Constitution.

15. Do you believe that we should defund police departments? Please explain.

Response: Decisions regarding increasing or decreasing the funding provided to law enforcement agencies is a question for policymakers. As a federal judicial nominee, it would not be appropriate for me to comment on hypotheticals or issues which may come before me in the future. In all cases, I would listen to the facts and apply all relevant statutory law and binding precedent.

16. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Please see my response to Question 15.

17. Please identify a Supreme Court decision from the last 50 years that exemplifies your judicial philosophy and explain why.

Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, it has been guided by several principles. I treat all parties and counsel equally and with respect, and I

work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions which apply the law in a manner which is fair and impartial. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

18. Please identify a Third Circuit decision from the last 50 years that exemplifies your judicial philosophy and explain why.

Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, it has been guided by several principles. I treat all parties and counsel equally and with respect, and I work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions which apply the law in a manner which is fair and impartial. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

19. Is threatening Supreme Court Justices right or wrong? Please explain your answer.

Response: Threats of violence against Supreme Court Justices are wrong. Specifically, 18 U.S.C. § 115 makes it a crime to threaten, assault, kidnap or murder a United States official, United States judge or Federal law enforcement officer, with the intent to impede, intimidate or interfere with their official duties.

20. Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court explained that the court may find that a fundamental right exists within the Due Process Clause of the Fourteenth Amendment where such carefully defined liberty interest is objectively deeply rooted in the nation's history and tradition. If confirmed, I would follow all Supreme Court and Third Circuit precedent relating to the existence of unenumerated rights.

21. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: Pursuant to the Supreme Court's ruling in *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022), a firearm regulation must be consistent with the text

and historical understanding of the Second Amendment. For a court to find that a regulation is consistent with the Second Amendment, the party seeking to promulgate the regulation must demonstrate that the "modern and historical regulations impose a comparable burden on the right of armed self-defense," and the "regulatory burden is comparably justified." *Id*. at 2118.

22. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?

Response: This is a question for policymakers and the Sentencing Commission to consider. If confirmed, I will make all decisions relating to the incarceration of violent, gun re-offenders in a manner which reflects the facts of the individual case before me and complies with all statutes and all precedent established by the Supreme Court and Third Circuit.

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

Response: 18 U.S.C § 1507 prohibits "picket[ing] or parad[ing] in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer," or "us[ing] any sound-truck or similar device" or otherwise demonstrating "in or near any such building or residence" with the intent of "interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty."

24. Under Supreme Court precedent, is 18 USC § 1507 constitutional on its face?

Response: To my knowledge, neither the Supreme Court nor the Third Circuit have ruled on the constitutionality of 18 U.S.C § 1507. As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on current or future jurisprudence. In all cases, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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

Response: Statements are not protected free speech under the true threats doctrine where the speaker's purpose is to "communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343 (2003) (*citing Watts v. United States*, 394 U.S. 705, 708 (1969)).

While the precise mental state requirement for statutes criminalizing true threats remains unsettled federally, the Supreme Court of Pennsylvania held in *Interest of: J.J.M,* 265

A.2d 246 (Pa. 2021), that it is sufficient that the speaker act recklessly, that is with a "conscious disregard … of a substantial and unjustifiable risk that his speech will have a threatening or terrorizing effect." If confirmed, I would apply all binding Supreme Court and Third Circuit precedent when faced with an issue relating to the true threats doctrine.

26. 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?
b. Was *Loving v. Virginia* correctly decided?
c. Was *Griswold v. Connecticut* correctly decided?
d. Was *Roe v. Wade* correctly decided?
e. Was *Planned Parenthood v. Casey* correctly decided?
f. Was *Gonzales v. Carhart* correctly decided?
g. Was *District of Columbia v. Heller* correctly decided?
h. Was *McDonald v. City of Chicago* correctly decided?
i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: As a sitting state judge and federal judicial nominee, it would generally not be appropriate for me to comment on whether the Supreme Court has correctly decided a case. However, given that *Brown v. Board of Education* is so fundamental to American jurisprudence and unlikely to ever be relitigated, I can offer the opinion that it was correctly decided.

If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit in all cases.

27. 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: The morning of my first interview, a meeting with Senators Toomey and Casey's bipartisan selection committee, I received an email from Chris Kang. I spoke with him briefly before meeting with the committee, and again on one other occasion in the summer of 2021. During these conversations he provided practical and procedural information about the nomination process given his prior experience as an advisor to President Obama. I did not discuss any substantive legal or policy-related topics with him at any time.

28. During your selection process, did you talk with anyone from or anyone directly associated with the Raben Group or the Committee for a Fair Judiciary? If so, what was the nature of those discussions?

Response: No.

29. 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.

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

Response: No.

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

Response: No.

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

a. Has anyone associated with Demand Justice 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: Yes, I have spoken to Mr. Kang on two occasions, as explained in response to Question 27. I have not had contact with anyone else associated with Demand Justice.

33. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. Has anyone associated with Alliance for Justice 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.

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

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

Response: No.

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

Response: I have never been in contact with anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund in any capacity.

c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known

subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

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

    Response: No.

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

    Response: No.

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

    Response: No.

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

    Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, 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.

37. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**

a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

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

Response: I submitted my application to Senators Bob Casey and Pat Toomey's Eastern District of Pennsylvania Judicial Advisory Panel on February 8, 2021. I had an initial interview with a panel comprised of members of the Senators' bipartisan nominating committee on May 18, 2021. I interviewed with members of Senator Casey's staff on June 23, 2021, and interviewed with Senator Casey on July 22, 2021. On August 3, 2021, I received a phone call from Senator Casey in which he informed me that I had been

selected as a recommended nominee. I met with members of Senator Pat Toomey's staff on August 17, 2021, and with Senator Toomey on August 31, 2021. I was informed by Senator Casey's staff on February 11, 2022, that he and Senator Toomey had submitted my name to the White House for further consideration. I interviewed with attorneys from the White House Counsel's Office on February 14, 2022. Since February 15, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 12, 2022, the President announced his intent to nominate me.

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

Response: On the evening of September 14, 2022, the Office of Legal Policy sent me your questions. I reviewed the questions, reviewed my Senate Judiciary Questionnaire, reviewed public filings conducted the necessary legal research of the applicable statutes and constitutional provisions as well as any precedent provided by the Supreme Court and the Third Circuit. I provided my responses to the Office of Legal Policy who provided feedback on some of my responses.

Questions for the Record for Mia Roberts Perez
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
Mia Perez, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania

1. How would you describe your judicial philosophy?

Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, I have been guided by several principles. I treat all parties and counsel equally and with respect, and I work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions which apply the law in a manner which is fair and impartial. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has repeatedly discussed the proper steps to be taken when a court is attempting to interpret the meaning of a legislative text. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005), the Supreme Court explained that a court should always look to the plain meaning of the statutory text before considering any other extrinsic material. If the meaning of the text is ambiguous and there is no precedential case law resolving the ambiguity, the court may then look to extrinsic materials which may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id.* That court explained that legislative history is a particularly unreliable tool for statutory interpretation and should be used only as a last resort. *Id.*

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

Response: My analysis would start with the text of the constitutional provision at issue. I would apply the plain language of the constitutional provision in conjunction with binding Supreme Court and Third Circuit precedent. If the plain meaning of the text was ambiguous and there was no binding precedent clarifying the issue, I would look to persuasive authority from other circuits.

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

Response: The Supreme Court has held that the meaning of the Constitution is fixed, absent changes made through the Article V amendment process. *See, e.g., New York State Rifle and Pistol Assoc. v. Bruen,* 142 S. Ct. 2111, 2132 (2022). When interpreting the Constitution, the Supreme Court is "guided by the principle that the

Constitution is written to be understood by the voters, its words and phrases were used in their normal and ordinary meaning as distinguished from their technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

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

Response: Please see my response to Question 2.

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: A court should generally interpret a statute "in accordance with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1738 (2020). When interpreting a constitutional provision, judges should look to plain meaning of the terms contained in the provision within the historical context of their meaning at the time the provision was written. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. What are the constitutional requirements for standing?

Response: Pursuant to *Spokeo, Inc v. Robins*, 578 U.S. 330, 338 (2016), the requirements for Article II standing are: 1) the plaintiff must have suffered an injury in fact, 2) the injury is fairly traceable to the challenged conduct of the defendant, and 3) the injury will be redressed by a favorable judicial decision.

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

Response: The Supreme Court has previously held that Congress has implied powers beyond those enumerated in the Constitution through the Necessary and Proper clause, which provides Congress with the authority to enact legislation that allows it to carry out its enumerated powers. *See McCullough v. Madison*, 17 U.S. 316 (1819).

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, I would adhere to the plain meaning of any relevant constitutional provisions and follow the precedent established by the Supreme Court and the Third Circuit to evaluate the constitutionality of the law.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that unenumerated rights are recognized under the Due Process Clause of the Fourteenth amendment where such carefully defined liberty interest is objectively deeply rooted in the nation's history and tradition. Using this standard, the Supreme Court has identified certain protected rights which are not expressly enumerated in the constitution, including the right to marry (*See Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Zablocki v. Redhail,* 434 U.S. 374, 384 (1978); *Turner v. Safley*, 482 U.S. 78, 95 (1987); *Obergefell v. Hodges*, 576 U.S. 644 (2015)), and the right to interstate travel (*See Shapiro v. Thompson*, 394 U.S. 618 (1969); *Dunn v. Blumstein*, 405 U.S. 330, 342 n. 13 (1972); *Memorial Hospital v. Maricopa Cnty.*, 415 U.S. 250, 254 (1974)).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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

Response: The Supreme Court held in *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022), that the right to abortion is not protected by the Constitution. Additionally, the Court has abrogated *Lochner v. New York*, 198 U.S. 45 (1905) and has since held that "[t]he doctrine that prevailed in *Lochner*... has long been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1937). If confirmed, I would follow all binding Supreme Court and Third Circuit precedent regarding substantive due process.

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

Response: The Supreme Court has held that the Commerce Clause empowers Congress to regulate 1) the channels of interstate commerce 2) the instrumentalities of interstate commerce, and 3) those activities having a substantial relation to interstate commerce. *Gonzales v. Raich*, 545 U.S. 1 (2005).

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

Response: The Supreme Court has held that race, religion, national origin, and alienage are suspect classes that must survive strict scrutiny. The Court considers whether the members of the class constitute a "discreet and insular minority." *See Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: Check and balances and the separation of powers are safeguards to ensure that power is not concentrated in any one branch of government. These principles are reflected in Articles I, II and III of the Constitution. "Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. ...The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

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 confirmed, I would review the text of the Constitution to determine the scope of authority granted to that particular branch of government. I would then apply any precedent provided by the Supreme Court and Third Circuit to determine if the branch of government at issue has exceeded the scope of its constitutional power.

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

Response: Empathy should not play any role in a judge's consideration of the case. If confirmed, I will continue to treat all parties with fairness and respect and apply the applicable law to the facts of the case.

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

Response: Both circumstances are equally concerning and should be avoided.

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 conducted any review or analysis of the number of times the U.S. Supreme Court has exercised judicial review to invalidate statues over time. I am not in a position to hypothesize what could account for any changes over time.

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

Response: Judicial review, as outlined in *Marbury v. Madison*, 5 U.S. 137 (1803), is the power of the judicial branch to review the actions of the legislative and executive branches to determine whether those actions conflict with the Constitution. Black's Law Dictionary defines judicial supremacy as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S.

Supreme Court interpretations, are binding in the coordinate branches of the federal government and the states".

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: Executive officers, legislators and judicial officers are bound by oath to uphold the Constitution. How elected officials should balance their obligations to follow the Constitution and respect judicial decisions is a question best left to policymakers and those officials. As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on the weight elected officials ought to give judicial rulings compared to the weight given to other sources of law.

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: My understanding of the passage is that judges should not consider their own personal views and beliefs when rendering legal decisions. The role of the judiciary is limited to deciding cases by applying the facts of each case to the applicable law.

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: If I am confirmed as a District Court Judge, I would apply all Supreme Court and Third Circuit precedent fairly and faithfully to the facts of each case. If no precedent addresses the issue, only then may the court look for guidance from other circuits and conduct its own analysis of the novel facts at issue to render a decision grounded in the law and fact.

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: Section 5H1.10 of the United States Sentencing Guidelines states a defendant's race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." District court judges are required to consider the "nature and circumstances of the offense and the history and characteristics of the defendant" when sentencing criminal defendants. 18 U.S.C. § 3553(a)(1).

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 do not have a personal definition of "equity," however Black's Law Dictionary defines "equity" as "denot[ing] the spirit and the habit of fairness, justness, and right dealing."

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

Response: Please see the definition of "equity" in my response to Question 24. Black's Law Dictionary defines "equality" as "the condition of possessing the same rights, privileges, and immunities, and being liable to the same duties."

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

Response: The word "equity" does not appear within the text of the Fourteenth Amendment. The Equal Protection Clause states "[n]o State shall … deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

27. How do you define "systemic racism?"

Response: Systemic racism is defined by Cambridge dictionary as "policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and an unfair or harmful treatment of others based on race."

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

Response: Critical race theory is defined by Britannica as "an intellectual and social movement and loosely organized framework of legal analysis based on the premise

that race is not a natural biological grounded feature of physically distinct subgroups of human beings but a socially constructed category that is used to oppress and exploit people of color."

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

Response: I have never reviewed or evaluated any data or information comparing critical race theory and systemic racism. I do not have an opinion regarding differences or similarities between the two concepts.

30. Under what circumstances should a judge recuse themselves from a case?

Response: 28 U.S.C. §455 outlines specific instances when a judge should recuse themselves from a matter. Broadly speaking under the code, a judge should recuse themselves "in any proceeding in which their impartiality might reasonably be questioned."

31. In 2021, while serving as a judge on the Pennsylvania Court of Common Pleas you received a referral fee of $500k. Is it ethical for a judge to receive referral fees from attorneys who may appear before them?

Response: The attorney from whom I received the referral fee has never practiced before me. As my Senate Judicial Questionnaire indicates, I take great care to recuse myself from any matter where my impartiality could be questioned. Additionally, as my record indicates, it is my practice to inform any parties of any potential conflicts, either actual or perceived. The referral was made in October of 2012 and the fee structure was agreed upon at that time. There is no provision within the Pennsylvania Code of Judicial Conduct that prohibits the acceptance of referral fees earned prior to being elected to the bench.

32. Is it true that this fee was more than double your salary from the State of Pennsylvania?

Response: Yes.

33. The attorney from whom you accepted the $500k referral fee has since been disbarred, what were the circumstances in which you recommended a potential client to this attorney?

Response: The referral was made in October of 2012 and the fee structure was agreed upon at that time. I attended high school and law school with the attorney to whom I referred the case. At the time of the referral, the attorney was an associate at a well-regarded plaintiff's firm specializing in medical malpractice and had no prior disciplinary board complaints.

34. If you are confirmed to the District Court, would it be appropriate for you to give referrals or accept referral fees from attorneys or law firms?

Response: I can assure this body that I have no outstanding referral fees from my time as a practicing attorney. Additionally, since becoming a judge in 2016, I have not made any referrals, nor would I do so in the future.

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

Questions for the Record for Mia Perez, Nominee for the Eastern District of Pennsylvania

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Congress has prohibited discrimination based on race through several federal laws including Title VI and Title VII of the Civil Rights Act of 1964. The Supreme Court has held that race –based government action is subject to strict scrutiny and, as such, is only permissible when narrowly tailored to achieve a compelling government interest.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court explained that the court may find that an unenumerated fundamental right exists within the Constitution where the carefully defined liberty interest is objectively deeply rooted in the nation's history and tradition. As a sitting state court judge and federal judicial nominee, it would not be appropriate for me to comment on issues which may come before me in the future. If confirmed, I would follow all Supreme Court and Third Circuit precedent relating to the existence of unenumerated rights.

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, my judicial philosophy has been guided by several principles. I treat all parties and counsel equally and with respect, and I work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions which apply the law in a manner which is fair and impartial. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

I have not researched the judicial philosophies of individual United States Supreme Court Justices on the Warren, Burger, Rehnquist, and Roberts Courts, and so cannot comment on whose philosophy is the most analogous with mine.

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

Response: According to Black's Law Dictionary (11th ed. 2019), originalism is the doctrine that "words of a legal instrument are to be given the meaning they had when they were adopted, specifically, the canon that that legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully-informed observer at the time when the text first took effect." I have never characterized myself as an originalist or applied any other label related to a specific theory of constitutional interpretation to myself. If confirmed, I would faithfully deploy the constitutional mode of interpretation that is appropriate given the circumstances and as set forth by the Supreme Court and Third Circuit precedent.

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

Response: According to Black's Law Dictionary (11th ed. 2019) living constitutionalism is "the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I have never characterized myself as a living constitutionalist or applied any other label related to a specific theory of constitutional interpretation to myself. If confirmed, I would faithfully deploy the constitutional mode of interpretation that is appropriate given the circumstances and as set forth by the Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has repeatedly discussed the proper steps to be taken when a court is attempting to interpret the meaning of a statute. In *Exxon Mobil Corp. v. Allapattah Servs., Inc*, 545 U.S. 546, 568 (2005), the Supreme Court explained that "the authoritative statement is the statutory text." If the plain meaning of the text of the Constitutional provision was clear, I would apply that meaning to resolve the issue. *Id*.

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

Response: Judicial decisions should be based on the law. Previously, the Supreme Court has considered contemporary community standards in analyzing a free speech defense in obscenity cases. *Miller v. California*, 413 U.S. 15 (1973). More recently however in *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) and *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court interpreted a statute or phrase based on the ordinary public meaning at the time of its enactment. If confirmed, I would faithfully deploy the constitutional mode of interpretation that is appropriate given the circumstances and as set forth by the Supreme Court and Third Circuit precedent.

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

Response: The Constitution is an enduring document that can only be amended when the requirements of Article V have been met.

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

Response: Yes, it is binding precedent.

a. Was it correctly decided?

Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on whether the Supreme Court has correctly decided a case. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit, including *Dobbs v. Jackson Women's Health Organization*.

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

Response: Yes, is binding precedent.

a. Was it correctly decided?

Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on whether the Supreme Court has correctly decided a case. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit, including *New York Rifle & Pistol Association v. Bruen*.

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

Response: Yes, it is binding precedent.

a. Was it correctly decided?

Response: Although it is typically problematic for a judicial nominee to state whether they believe a case was rightly or wrongly decided, *Brown v. Board of Education* represents an exception to that rule. Given that *Brown* is so

fundamental to American jurisprudence and unlikely to ever be relitigated, I believe it was correctly decided.

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

Response: 18 U.S.C. § 3142(e)(3) establishes that in certain types of cases a rebuttable presumption of detention arises that no release conditions will reasonably assure the defendant's appearance in court and the safety of the community. These types of cases include drug offenses carrying ten years or maximum sentences carrying ten years or more, offenses involving underage victims, crimes involving slavery or human trafficking, and other enumerated offenses.

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

Response: The rule itself states that where "the judicial officer finds that there is probable cause to believe that the person committed" one of the enumerated offenses, "it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(e)(3). Beyond that assertion, I am not familiar with the policy rationales underpinning the presumption.

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

Response: Yes. The First Amendment and the Religious Freedom Restoration Act create limitations on what the government may impose on, or require of, private institutions including religious organizations and small businesses being operated by observant owners. The Supreme Court held in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), that the Affordable Care Act authorized the Health Resources and Services Administration to exempt or accommodate employers' religious or moral objections to providing coverage for contraceptives. Similarly, the Religious Freedom Restoration Act prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability' unless the Government 'demonstrates that application of the burden to the person (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *Burwell v. Hobby Lobby Stores, Inc,* 573 U.S. 682 (2014).

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

Response: Under the Free Exercise Clause of the First Amendment, laws that burden the free exercise of religion are first analyzed to determine whether they are neutral and

generally applicable. *Masterpiece Bakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018). The government is only permitted to regulate religious activity in a manner different than comparable secular activity if the discriminatory law or regulation is narrowly tailored to achieve a compelling government interest. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66-67 (2020), the Supreme Court held that the church and synagogues were entitled to a preliminary injunction because they were likely to succeed on the merits of their First Amendment claims. The Court found that because the challenged Covid-19 order was an outright ban rather than a quantitative restriction on attendance, it was insufficiently narrowly tailored to survive strict scrutiny. The Court also held that the restrictions caused irreparable harm because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* Lastly, the Court found insufficient evidence that granting the injunction would affect the further spread of Covid-19. *Id.*

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

Response: In *Tandon v. Newsom,* 141 S. Ct. 1294 (2021), the Supreme Court granted injunctive relief against a California Covid-19 regulation because it failed to survive strict scrutiny analysis. In determining whether a state governmental action is unconstitutionally discriminatory under the Free Exercise Clause of the First Amendment, a court must first examine whether the action is "neutral and generally applicable." *Id.* at 1297. Here, the restriction was not neutral and generally applicable because it treated secular gatherings more favorably than religious ones. Government actions that are not neutral and generally applicable are subject to strict scrutiny. In order to prevail, such actions would need to be narrowly tailored to further a compelling governmental interest. *See Tandon v. Newsom,* 141 S. Ct. 1294 (2021).

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment in evaluating a cakeshop owner's rationale for declining to make a wedding cake for a same-sex couple. The Court found that the Colorado law in question here, which prohibited discrimination against gay people in purchasing products and services, was not being applied in a neutral manner with regard to religion. The Court held the Commission was motivated by a hostility toward the sincerely held religious beliefs of the cakeshop owner.

19. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes, such beliefs would be protected by the Free Exercise Clause assuming they are sincerely held by the claimant. "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protections." *Thomas v. Review Board of the Indiana Emp't Security Division*, 450 U.S. 707 (1981). The Supreme Court has held that a person's sincerely held religious belief is still protected even if it is not "the command of a particular religious organization." *Frazee v. Illinois Dep't of Emp't Sec.,*489 U.S. 829, 834 (1989). The Supreme Court has indicated, however, that it may be appropriate for courts to probe further into the sincerity of such beliefs: "One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Id.* at 715. The Supreme Court held that the question of whether a particular claimant's religious belief is sincerely held would be a factual determination. *Id*.

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

Response: No. Please see my response to Question 19.

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 19.

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

Response: As a judicial nominee, it would not be appropriate for me to comment on the morality of the Catholic Church's position on particular issues.

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

Response: The Court found that, under the First Amendment, courts are bound to stay out of employment disputes involving those holding certain important positions within churches and other religious organizations. The independence of religious institutions in matters of "faith and doctrine" is closely linked to independence in what the Court has termed "matters of church government." The Court explained that the analysis used to determine whether a particular position falls within the ministerial exception turns not on an employee's title, but their function, and rejected use of a rigid test for making such determinations. Instead, the Court determined that both teachers in this case "performed vital religious duties, such as educating their students in the Catholic Faith and guiding their students to live their lives in accordance with that faith" and so were entitled to benefit from the exception.

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

Response: The Court found that Philadelphia's refusal to contract with Catholic Social Services (CSS) for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). The city's action failed to pass strict scrutiny analysis. *Id.* The Court also held that as a foster care agency, CSS was not a "public accommodation" and therefore not subject to a city ordinance prohibiting discrimination. *Id.* at 1881.

22. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: The Court held that Maine's tuition assistance program violated the Free Exercise Clause because it barred families that participate in educational choice programs from choosing schools that provide religious instruction. *Carson v. Makin*, 142

S. Ct. 1987, 2002 (2022). "Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise." *Id.* at 2002.

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

Response: The Supreme Court held that a school district violated the First Amendment rights of a public-school football coach by firing him for kneeling on the field in prayer after games. *Kennedy v. Bremerton School Dist.,* 142 S. Ct. 2047, 2415 (2003). The school's policy prohibiting his conduct was not neutral or generally applicable and was therefore subject to strict scrutiny. The Court found that it was not narrowly tailored to further a compelling governmental interest.

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

Response: Justice Gorsuch explained that the courts had misapplied strict scrutiny by "treating the County's general interest in sanitation regulations as 'compelling' without reference to the specific application of those rules to this community" and failing to scrutinize whether the County had a compelling interest in denying an exemption to the complainants specifically. *Mast v. Fillmore Cnty.*, 141 S. Ct. 2430, 2432 (2021).

25. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on hypotheticals or issues which may come before me in the future. In all cases, I would listen to the facts and apply all relevant statutory law and binding Supreme Court and Third Circuit precedent.

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

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

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

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

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

Response: I am not familiar with the employment training programs offered by the United States District Court for the Eastern District of Pennsylvania or other federal courts.

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

Response: I am unaware of any trainings being offered that teach meritocracy.

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

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

Response: I am not familiar with Third Circuit or Supreme Court precedent addressing this issue. As a sitting state judge and federal judicial nominee, it would not be appropriate for me to opine on whether a specific action such as the one contemplated in this question is constitutional, as this issue could come before me in the future.

30. Is the criminal justice system systemically racist?

Response: Whether the criminal justice system is systemically racist is a question for policymakers to consider. As a sitting judge in Pennsylvania state court, I treat all parties equally without regard to race and if confirmed I would continue to do the same.

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

Response: Whether Congress should alter the number of justices on the United States Supreme Court is a question for policymakers to consider. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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

Response: No.

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

Response: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), that the text and original public meaning of the Second Amendment "guarantees the individual right to possess and carry weapons in case of confrontation." Thus, protecting the right of a law-abiding citizen with ordinary self-defense needs to possess a firearm both inside and outside of the home with no requirement that it be tied to service in a militia. *Id.*

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

Response: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), that the municipality was prohibited from banning the possession of handguns for self-protection in the home. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2132 (2022), the Supreme Court held that states may not prohibit the possession of handguns outside of the home for self-protection. Additionally, in *Bruen* the Court provided guidance on how to determine the validity of a firearm regulations

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

Response: Yes, the Supreme Court has held that an individual has a right to bear arms and extended that right to include carrying a firearm in public. See *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022); *District of Columbia v. Heller,* 554 U.S. 570 (2008).

36. 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 Supreme Court precedent that has held that the right to own a firearm should receive less protection than other individual rights under the Constitution.

37. 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 Supreme Court precedent that has held that the right to own a firearm should receive less protection than the right to vote under the Constitution.

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

Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on current or future jurisprudence. In all cases, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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

Response: As a state court judge for almost seven years, I have not had the opportunity to encounter this issue. If confirmed, I would follow the precedent established by the Supreme Court and the Third Circuit.

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

Response: No, abolishing the federal death penalty would require legislation passed by Congress.

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

Response: In *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2486 (2021), the Supreme Court vacated a "nationwide moratorium on evictions of tenants who live in a county that is experiencing substantial or high levels of COVID-19 transmission and make certain declarations of financial need." The Court held that the Center for Disease Control lacked the authority to impose a nationwide moratorium during the Covid-19 pandemic. *Id.*

42. When asked about your judicial philosophy, you stated "I can be impartial to the parties that are involved but if someone is coming to me with a specific set of circumstances, I need to have the education, or the background, to understand those circumstances. When it comes to family law and criminal law in particular, familiar backgrounds come into play. If we don't understand the cultural aspect, we are working without understanding." Can you explain what extent you believe a district court should take into account a defendant's culture when resolving a criminal case or sentencing?

Response: My recollection of that statement made in 2015 is that I was referring to the benefits of being aware of my own cultural beliefs and values and how they may be different from other cultures. Learning and valuing the differences between cultures

creates an environment of fairness and impartiality. A defendant's cultural background should not be taken into account when resolving a criminal case or at sentencing. However, ensuring that all parties receive a fair trial and are granted the ability to be heard serves in enhance the public's confidence in the court. If I am confirmed, I will consider the factors laid out in 18 U.S.C. § 3553(a) when fashioning appropriate sentences for criminal defendants, including: "the nature and circumstances of the offense and the history and characteristics of the defendant" (§ 3553(a)(1)); the need for the sentence imposed "to protect the public from further crimes of the defendant" (§ 3553 (a)(2)(c)); the need for the sentence imposed "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" (§ 3553(a)(2)(d)); and all others.

43. You've previously described mandatory minimum sentences as "political in nature." These mandatory minimums are democratically-enacted statutes, same as the criminal laws that trigger them. What did you mean by "political in nature?"

Response: The Federal Sentencing Commission indicated in their report to congress that the guidelines flexibility increases the likelihood that offenders with similar criminal histories convicted of similar offenses will receive similar sentences and that dissimilar offenders will receive different sentences. The guidelines measure offense severity using a variety of facts, and as a result, draw more precise distinctions among offenders. https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Executive_Summary.pdf

If confirmed, I would faithfully apply all applicable mandatory provisions and follow Supreme Court and Third Circuit precedent in all cases.

44. You stated "there is nothing Republican in your DNA." How can any Republican who comes into your courtroom expect a fair process?

Response: The above statement was made in response to a question regarding why I did not run as both a Democrat and Republican during my 2015 primary election for a seat on the Court of Common Pleas. In that same statement, I indicated that it would have been disingenuous to do so. This was largely based on my political registration as a Democrat. My consistent record as a fair and impartial jurist in the nearly three thousand cases I have presided over indicates that I would treat all litigants who appear before me fairly and impartially.

Senator Ben Sasse
Questions for the Record for Mia Roberts Perez
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
September 7, 2022

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

   Response: No.

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

   Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, I have been guided by several principles. I treat all parties and counsel equally and with respect, and I work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions that apply the law in a manner which is fair, impartial, and consistent. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

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

   Response: According to Black's Law Dictionary (11th ed. 2019), originalism is the doctrine that "words of a legal instrument are to be given the meaning they had when they were adopted, specifically, the canon that that legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully-informed observer at the time when the text first took effect." I have never characterized myself as an originalist or applied any other label related to a specific theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all binding Supreme Court and Third Circuit precedent.

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

   Response: According to Black's Law Dictionary (11th ed. 2019), textualism is the doctrine that "the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." I have never characterized myself as a textualist or applied any other label related to a specific theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all binding Supreme Court and Third Circuit precedent.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: According to Black's Law Dictionary (11th ed. 2019) living constitutionalism is "the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." *In New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court stated that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understanding of those who ratified it." I have never characterized myself as a living constitutionalist or applied any other label related to a specific theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all binding Supreme Court and Third Circuit precedent.

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

   Response: While I have read and studied countless Supreme Court opinions throughout my career, I have not studied the jurisprudence of individual justices appointed since January 20, 1953, and so cannot identify one which I admire most.

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

   Response: As a judge in the Eastern District of Pennsylvania, I would be required to follow the precedent set by the Third Circuit. A federal circuit court is required to follow its own precedent and that of the United States Supreme Court and can only overrule its own precedent when it sits *en banc*.

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

   Response: Please see my response to Question 7.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

   Response: The Supreme Court has repeatedly discussed the proper steps to be taken when a court is attempted to interpret the meaning of a statute. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005), the Supreme Court explained that a court should always look to the plain meaning of the statutory text before considering any other extrinsic material. If the meaning of the text is ambiguous and there is no precedential case law to resolve the ambiguity, the court may then look to extrinsic

materials which may "shed a reliable light on the exacting Legislature's understanding of otherwise ambiguous terms." *Id.* That court explained that legislative history is a particularly unreliable tool for statutory interpretation should be used only as a last resort. *Id.*

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

Response: If confirmed, I would apply precedent and all of the factors set forth by Congress in 18 U.S.C. Section 3553(a) as well as the sentencing guidelines. Congress has previously identified the "need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." As a district court judge I would follow the Third Circuit and Supreme Court precedent on matters of sentencing.

Senator Josh Hawley
Questions for the Record

Mia Perez
Nominee, Eastern District of Pennsylvania

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on hypotheticals or issues which may come before me in the future. In all cases, I would listen to the facts and apply all relevant statutory law and binding precedent.

    I have not specifically studied Judge Jackson's sentencing practices as a district court judge and therefore cannot offer any comment. If confirmed, I will render sentencing decisions by applying the factors Congress has established in 18 U.S.C. § 3553(a) as well as any relevant sentencing enhancements as are appropriate on a case-by-case basis.

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    Response: Please see my response to Question 1a.

    c. **The enhancement for offenses involving the use of a computer**

    Response: Please see my response to Question 1a.

    d. **The enhancements for the number of images involved**

    Response: Please see my response to Question 1a.

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's**

0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.

a. **Do you agree that the penalties should be aligned?**

   Response: Whether the Sentencing Guidelines should be modified is a question for policymakers to consider. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

b. **If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

   Response: Please see my response to Question 2a.

c. **If an offender before you is charged only with possession even though uncontested evidence shows the offender also committed the crime of receiving child pornography, will you aim to sentence the offender to between 5 and 10 years?**

   Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on hypotheticals or issues which may come before me in the future. In all cases, I would listen to the facts and apply all relevant statutory law and binding precedent.

3. **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: As a state court judge for the past six years, I have applied the law to the facts in each case before me. If I am confirmed to serve in the Eastern District of Pennsylvania, I will continue to do the same.

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

      Response: I am not familiar with the context in which this remark was made and cannot opine in the abstract.

4. **Do you believe that the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization* is settled law?**

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

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

Response: Generally, the abstention doctrine reflects the principle that federal courts do not hear cases within their jurisdiction where the case is also within the jurisdiction of a state court.

There are several forms of abstention recognized by the Supreme Court. *See generally Railroad Comm'n v. Pullman Co*., 312 U.S. 496 (1941) (abstention is appropriate where a challenged state statute can be construed by the state court in a manner that would modify or avoid a federal constitutional question ("*Pullman* abstention")); *Younger v. Harris*, 401 U.S. 37 (1971) (abstention is appropriate to avoid intrusion on a state's enforcement of state laws in state courts ("*Younger* abstention")); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (abstention is appropriate to avoid unnecessary conflict in the administration of state affairs ("*Burford* abstention")); *Colorado River Water Conservation*, 424 U.S. at 817–820 (1976) (abstention is appropriate where is will avoid duplicative litigation ("*Colorado River* abstention")).

Each of these forms of abstention have been recognized and applied by the Third Circuit. The Third Circuit has also issued rulings which clarify how these doctrines should be applied. In *Kelly v. Maxum Specialty Insurance Group*, 868 F.3d 274 (3d. Cir. 2017), the court explained that when determining whether Colorado River abstention is applicable "the mere potential or possibility that two proceedings will resolve related claims between the same parties is not sufficient to make those proceedings parallel; rather, there must be a substantial similarity in issues and parties between contemporaneously pending proceedings." In *Smith & Wesson Brands, Inc. v. Attorney General of New Jersey,* 27 F.4th 886 (3d Cir. 2022), the court held that *Younger* abstention only applies in "exceptional circumstances."

6. **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 6.

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

Response: If confirmed, I will apply any and all relevant Supreme Court and Third Circuit precedent concerning the interpretation of particular constitutional provisions.

For instance, the Supreme Court has established that the Second Amendment should be interpreted according to its original public meaning. *New York State Rifle & Pistol Assoc. v. Bruen,* 142 S. Ct. 2111, 2132 (2022). *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: The Supreme Court has repeatedly discussed the proper steps to be taken when a court is attempting to interpret the meaning of a statute. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005), the Supreme Court explained that a court should always look to the plain meaning of the statutory text before considering any other extrinsic material. If the meaning of the text is ambiguous and there is no precedential case law to resolve the ambiguity, the court may then look to extrinsic materials which may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id.* That court explained that legislative history is a particularly unreliable tool for statutory interpretation and should be used only as a last resort. *Id.*

   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: The Supreme Court discussed the risks it perceived to naturally follow judicial examination of various forms of legislative history in *Exxon Mobil Corp. v. Allapattah Servs., Inc*, 545 U.S. 546, 567-70 (2005). However, the Court has "repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill." *Garcia v. United States*, 469 U.S. 70, 76 (1984) (*citing Zuber v. Allen*, 396 U.S. 168, 186 (1969); *United States v. O'Brien*, 391 U.S. 367, 385 (1968)).

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

   Response: It is rare that the Supreme Court consults the laws of foreign nations when interpreting the text of the U.S. Constitution. However, in *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2135-42 (2022), the Supreme Court consulted historical English law when interpreting the Second Amendment. The Court undertook a similar analysis of English common law

in *District of Columbia v. Heller*, 554 U.S. 570, 592-595 (2008). If confirmed, I would follow all binding Supreme Court and Third Circuit precedent relating to whether it appropriate and prudent to consult the laws of a foreign nation in a given case.

9. **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: To prevail on a claim that an execution protocol violates the 8th Amendment, an inmate would need to demonstrate that: (1) the method presents a "substantial risk" of severe pain beyond that experienced by death itself and (2) a "known and available alternative method" exists which has a lower risk of pain. *Glossip v. Gross*, 576 U.S. 863 (2015).

   The Third Circuit has reiterated the standard set forth in *Glossip v. Gross*, holding that "a stay of execution may only be granted where "the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain ... [and] that the risk is substantial when compared to the known and available alternatives." *Jackson v. Danberg*, 656 F.3d 157, 163 (3d. Cir. 2011) (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)).

10. **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: Yes.

11. **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: The United States Supreme Court has found no constitutional basis for habeas corpus petitioner's right to DNA testing. *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009).

    To my knowledge, the Third Circuit has not offered any legal opinion on whether the due process clause confers a right to DNA testing in these cases.

12. 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.

13. 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: Strict scrutiny is the standard applied to any government regulations burdening the free exercise of religion which are "not neutral and generally applicable." Government actions are not neutral and generally applicable "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). A law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993); *See Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231 (3d Cir. 2008). However, a facially neutral government action that is motivated by a hostility to religion does trigger a strict scrutiny analysis. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 138 S. Ct. 1719, 1729-31 (2018). Strict scrutiny requires that the law or regulation in question be narrowly tailored to meet a compelling governmental interest. *Lukumi,* 508 U.S. at 531.

14. 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: In determining whether a state governmental action is unconstitutionally discriminatory under the Free Exercise Clause of the First Amendment, a court must first examine whether the action is "neutral and generally applicable." *Tandon v. Newsom,* 141 S. Ct. 1294 (2021). Government actions that are not neutral and generally applicable are subject to strict scrutiny. In order to prevail, such actions would need to be narrowly tailored to further a compelling governmental interest. *See Tandon v. Newsom,* 141 S. Ct. 1294 (2021).

15. 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: The Third Circuit has held that a claimant's avowed religious beliefs must meet two threshold requirements to gain first amendment protection. "A court's task is to decide whether the beliefs avowed are (1) sincerely held, and (2) religious in nature, in the claimant's scheme of things." *Africa v. Com. of Pa.*, 662 F.2d 1025, 1030 (3d Cir. 1981) (*referencing United States v. Seeger*, 380 U.S. 163, 185 (1965). "It is inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith." *Africa*, 662 F.2d at 1030; *See United States v. Ballard*, 322 U.S. 78, 85-88 (1944). "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protections." *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981). The Supreme Court has indicated, however, that it may be appropriate for courts to probe further into the sincerity of such beliefs: "One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Id.* at 715. It is my understanding that the question of whether a particular claimant's religious belief is sincerely held would be a factual determination.

16. 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: The *Heller* Court held that D.C.'s law banning handguns in the home unconstitutionally burdened an individual's Second Amendment 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: To the best of my recollection, I have not.

17. 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: It is my understanding that Justice Oliver Wendell Holmes was stating that the constitution does not prescribe or promulgate any particular economic theory.

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

Response: *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937) upheld the constitutionality of state minimum wage laws and is generally understood as ending the *Lochner* era.

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

a. If so, what are they?

Response: If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit in all cases.

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

Response: Yes, I commit to faithfully applying all binding United States Supreme Court precedent that has not been explicitly overturned.

19. 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: If confirmed, I will follow all precedent established by the Supreme Court and Third Circuit regarding what constitutes a monopoly.

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

Response: Please see my response to Question 19a.

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: The Supreme Court has not established a minimum percentage of market share for a company to constitute a monopoly. "Legal presumptions that rest on formalistic distinctions rather than actual market realities are generally disfavored in antitrust law. [The Supreme] Court has preferred to resolve antitrust claims on a case-by-case basis, focusing on the 'particular facts disclosed by the record.'" *Eastman Kodak Co. v. Image Tech. Servs.*,

504 U.S. 451, 466-467 (1992) (*quoting Maple Flooring Manufacturers Assn. v. United States*, 268 U.S. 563, 579 (1925)).

In *Eastman Kodak,* the supreme Court held that evidence showing that the company controlled at least 80% of the relevant markets was sufficient to survive a motion for summary judgment under the standard for a finding of monopoly power. *Id.* at 481. The Court had previously found that company holdings of 87% of the market and over two-thirds of the market constituted monopolies. *See United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966); *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946).

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

Response: Black's Law Dictionary defined "federal common law" as "a group of laws established by the federal courts that is not influenced by laws and decisions of state courts."

21. 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: The Supreme Court has discussed how federal courts should approach interpreting state constitutions, holding that "[i]t is fundamental that state courts be left free and unfettered by [the U.S. Supreme Court] in interpreting their state constitutions." *Minnesota v. National Tea Co.*, 309 U.S. 551, 555 (1940).

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

Response: Please see my response to Question 21.

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

Response: Generally, yes. A state may provide greater, but not less protection, under their state's constitution than is provided by the federal constitution. *See Rice v. Santa Fe Elevator Grp.*, 331 U.S. 218 (1947).

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

Response: As a sitting state judge and federal judicial nominee, it would generally not be appropriate for me to comment on whether the Supreme Court has correctly decided a case. However, given that *Brown v. Board of Education* is so fundamental

to American jurisprudence and unlikely to ever be relitigated, I can offer the opinion that it was correctly decided.

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

Response: The issuance of injunctive relief is governed by Federal Rule of Criminal Procedure 65. Whether district courts have the authority to issue nationwide injunctions has not been directly addressed by the United States Supreme Court. The Third Circuit did uphold a nationwide preliminary injunction issued by a district court judge in *Pennsylvania v. President of United States of America*, 930 F.3d 543 (2019), based on the specific facts of that case. That case was reviewed by the United States Supreme Court, which reversed on the merits but did not rule on the propriety of the issuance of a nationwide preliminary injunction. *See Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020). If faced with this issue, I would review the facts of the case and all applicable rules and binding Supreme Court and Third Circuit to determine the appropriate scope of any injunction prior to its issuance.

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

Response: Please see my response to Question 23.

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

Response: Pursuant to Federal Rule of Criminal Procedure 65, injunctive relief may be granted where the party seeking such relief demonstrates a likelihood of success on the merits, that they will suffer irreparable harm if the injunction is denied, that granting preliminary relief will not result in even greater harm to the nonmoving party; and that the public interest favors such relief. When determining the appropriate scope of an injunction, Third Circuit precedent dictates that "injunctive relief [must be] no more burdensome to the defendant than necessary to provide complete relief to plaintiffs." *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 598 (3d Cir. 2002).

24. 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 23.

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

Response: Federalism describes the system of dual sovereignty whereby the United States Constitution divides power between federal government and the states. The Tenth Amendment provides that "powers not delegated to the United States … are reserved to the States respectively, or to the people." As such, the federal government has limited authority and may only exercise the powers that are specifically enumerated in the Constitution.

Justice Anthony Kennedy's opinion in *Bond* stated that federalism "protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions…. By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power." *Bond v. United States*, 564 U.S. 211, 222 (2011).

26. 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 5.

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

Response: Challenges to statutes and regulations are typically susceptible to injunctive relief, while commercial cases are susceptible to monetary damages. If a case is susceptible to both injunctive and monetary relief then the court should conduct a fact-based analysis to determine the remedy that best addresses the harm suffered by the petitioner.

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

Response: The Supreme Court just recently reaffirmed in Dobbs that certain substantive rights, though not enumerated in the Constitution, nevertheless enjoy due process protection where those rights are "deeply rooted in [our] history and tradition" and "implicit in the concept of ordered liberty." *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228, 2246 (2022) (quoting *Washington v. Glucksburg,* 521 U.S. 702, 721 (1997) (internal quotations omitted)).

29. 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: Please see my responses to Questions 13, 14 and 15.

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 freedom to worship generally refers to a person's right to participate in religious services. The First Amendment protects both the freedom to believe and freedom to act, including the freedom to live out one's their faith in daily life. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303-304 (1940).

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: Strict scrutiny is the standard applied to any government regulations burdening the free exercise of religion which are "not neutral and generally applicable." Government actions are not neutral and generally applicable "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). A law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993); *See Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231 (3d Cir. 2008). However, a facially neutral government action that is motivated by a hostility to religion does trigger a strict scrutiny analysis. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018). Strict scrutiny requires that the law or regulation in question be narrowly tailored to meet a compelling governmental interest. *Lukumi*, 508 U.S. at 531.

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: The Third Circuit has held that a claimant's avowed religious beliefs must meet two threshold requirements to gain first amendment protection. "A court's task is to decide whether the beliefs avowed are (1) sincerely held, and (2) religious in nature, in the claimant's scheme of things." *Africa v. Com. of Pa.*, 662 F.2d 1025, 1030 (3d Cir. 1981) (referencing *United States v. Seeger*, 380 U.S. 163, 185 (1965)). "It is inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith." *Africa*, 662 F.2d at 1030; *See also United States v. Ballard*, 322 U.S. 78, 85-88 (1944). "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protections." *Thomas v. Review Board of the Indiana Emp't Security Division*, 450 U.S. 707 (1981). The Supreme Court has indicated, however, that it may be appropriate for courts to probe further into the sincerity of such beliefs: "One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Id.* at 715.

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: The Supreme Court has held that the Religious Freedom Restoration Act applies to all federal law. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

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.

30. 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: Although I am not familiar with the greater context in which Justice Scalia made this remark, I understand this quote to mean that a judge's role is to scrupulously apply the law to the facts of a case rather than make decisions based on their personal beliefs.

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

Response: To the best of my recollection, I have not taken the position that a federal or state statute was unconstitutional.

a. If yes, please provide appropriate citations.

Response: Please see my response to Question 31.

32. 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: No.

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

Response: Whether America is a systemically racist country is a question for policymakers to consider. As a sitting judge in Pennsylvania state court, I treat all parties equally without regard to race and if confirmed I would continue to do the same.

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

Response: Yes, I have.

35. How did you handle the situation?

Response: Despite my personal views, I zealously advocated for my client as was my duty under the Pennsylvania Rules of Professional Conduct.

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

Response: Yes.

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

Response: No one particular Federalist Paper has had a more significant impact on my view of the law than any other.

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

Response: As a sitting state court judge and federal judicial nominee, it would not be appropriate to comment on this issue, as it implicates current litigation and could be an issue that comes before me. Whether an unborn child is a human being may also be a question for policymakers to discuss.

39. 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: I have testified in two Post Conviction Relief Appeal hearings: *Commonwealth v. Larry Nibblin*, CP-51-CR-0008692-2012 (Mar. 12, 2014) and *Commonwealth v. James DePaul*, CP-46-CR-0000403-2011 (Feb. 6, 2012). I do not have a transcription of either hearing.

40. 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.

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

a. Apple?

Response: The only securities I own are through the State of Pennsylvania pension program. I am not aware of the individual holdings within this pension fund.

b. Amazon?

Response: The only securities I own are through the State of Pennsylvania pension program. I am not aware of the individual holdings within this pension fund.

c. Google?

Response: The only securities I own are through the State of Pennsylvania pension program. I am not aware of the individual holdings within this pension fund.

d. Facebook?

Response: The only securities I own are through the State of Pennsylvania pension program. I am not aware of the individual holdings within this pension fund.

e. Twitter?

Response: The only securities I own are through the State of Pennsylvania pension program. I am not aware of the individual holdings within this pension fund.

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

Response: No.

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

Response: Please see my response to Question 42.

43. Have you ever confessed error to a court?

Response: To the best of my recollection, I have not.

a. If so, please describe the circumstances.

Response: Please see my response to Question 43.

44. 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: Canon 3(A)(6) of the Code of Conduct for United States Judges, which applies to judicial nominees, provides that a judge "should not make public comment on the merits of a matter pending or impending in any court." It is the duty of any nominee to testify truthfully and in accordance with Canon 3(A)(6).

Questions for the Record
Senator John Kennedy

Mia Perez

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

   Response: For the past several years I have had the honor of serving as a judge in the Pennsylvania Court of Common Pleas in Philadelphia. Throughout that time, it has been guided by several principles. I treat all parties and counsel equally and with respect, and I work diligently to move cases along quickly and efficiently. In each case that comes before me, I meticulously review all evidence presented, listen carefully to the facts of each case, and issue well-reasoned rulings and opinions which apply the law in a manner which is fair and impartial. I never let my personal beliefs or opinions influence my judicial decisions. If confirmed, I will continue to act in this manner and will recognize my obligation to follow all binding Supreme Court and Third Circuit precedent.

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

   Response: No.

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

   Response: No.

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

   Response: The United States Supreme Court held in *Lloyd Corp., Ltd. v. Tanner,* 407 U.S. 551 (1972), that a private owner of a shopping center does not violate the First Amendment when they impose speech restrictions, such as prohibiting distribution of handbills, on their private property where the speech was unrelated to any activity within the center and the individuals had adequate alternative means of communication.

5. **What does the repeated reference to "the people" mean within the Bill of Rights? Is the meaning consistent throughout each amendment that contains reference to the term?**

   Response: Supreme Court discussed the uses of the term "the people" in the Constitution in *District of Columbia v. Heller*, 554 U.S. 570 (2009), where it explained that "the people refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with his country to be considered part of that community."

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

   Response: I am not aware of any Supreme Court or Third Circuit precedent which specifically addresses whether non-citizens unlawfully present in the United States are entitled to a right of privacy. However, the Supreme Court has consistently held that the Due Process Clause of the Fourteenth Amendment, applies equally to citizens and non-citizens even if such non-citizens are present unlawfully. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953); *Mathews v. Diaz*, 426 U.S. 67 (1976).

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: The Supreme Court and Third Circuit have held that the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment apply equally to citizens and non-citizens even if such non-citizens are present unlawfully. *See Yoc-Us v. Attorney General*, 932 F.3d 98 (3d. Cir. 2019); *Wong Wing v. United States*, 163 U.S. 228 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953); *Mathews v. Diaz*, 426 U.S. 67 (1976). The Third Circuit has held that individuals may move to exclude evidence at removal proceedings where they can demonstrate that a federal, state, or local law enforcement officer committed an "egregious violation of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Oliva Ramos v. Attorney General*, 6 94 F.3d 259 (3d Cir. 2012) (*quoting INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51 (1984). *See also Yoc-Us v. Attorney General*, 932 F.3d 98 (3d. Cir. 2019).

   Additionally, the Supreme Court has held that searches at the border are inherently different than searches conducted by law enforcement officers within our borders and are "not subject to any requirement of reasonable suspicion, probable cause, or warrant." *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

8. **At what point is a human life entitled to equal protection of the law under the Constitution?**

   Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on this issue as it may come before me in the future. If this issue did come before me, I would listen to the facts and apply all relevant statutory law and binding precedent.

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

Response: In *Crawford v. Marion Cnty. Election Bd.,* 553 U.S. 181(2008), the Supreme Court upheld an Indiana law requiring voters to provide photographic identification, based on the facts of that case. Whether such laws are draconian or racist may be a question for policymakers to consider. If confirmed, I would apply Crawford and other applicable Supreme Court and Third Circuit precedent to the facts presented.

Questions from Senator Thom Tillis
for Mia Roberts Perez
Nominee to be United States District Judge for the Eastern District of Pennsylvania

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: According to Black's Law Dictionary (11th ed. 2019), judicial activism is "a philosophy of judicial decision-making whereby judges allow their personal view about public policy, among other factors, to guide their decisions." As a sitting judge, I have applied the law to the facts in every case before me without regard to my personal opinions. If I am fortunate enough to be confirmed, I would do the same as a federal district court judge.

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

   Response: Impartiality is an expectation for a judge.

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

   Response: No.

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

   Response: As a sitting state court judge, I have always endeavored to faithfully apply to the law to the facts of the case before me without regard to my personal views or anyone one participant's desire for a specific 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 I am confirmed, I will faithfully apply all binding Supreme Court and Third Circuit precedent when faced with an issue relating to an individual's Second Amendment rights, including *District of Columbia v. Heller*, 544 U.S. 570 (2008); *McDonald v. City of*

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

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? 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: How local officials should respond to a crisis such as COVID-19 is an issue for policymakers to consider. As a sitting state court judge and federal judicial nomiee, it would not be appropriate for me to speculate how I would rule in a hypothetical case or on issues that may come before me in the future. In all cases relating to potential limitations to individual's Second Amendment rights, I would apply all relevant Supreme Court and Third Circuit precedent, including *District of Columbia v. Heller*, 544 U.S. 570 (2008) and *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022).

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

   Response: The doctrine of qualified immunity protects government officials from liability for civil damages, as long as their conduct does not violate a federal statutory or constitutional right which was clearly established as the time of its violation. *See Saucier v. Katz*, 533 U.S. 194 (2001); *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

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

    Response: As a sitting state judge and federal judicial nominee, it would not be appropriate for me to comment on current or future jurisprudence. In all cases, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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

    Response: The proper scope of qualified immunity protections for law enforcement is a question for policymakers to consider. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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: Under 35 U.S.C. § 101, laws of nature, natural phenomena, and abstract ideas are generally not patentable. However, applications of abstract concepts to a new and useful end remain eligible for patent protection. *See Alice Corp. Pty. Ltd. v. CLS Bank*, 573 U.S. 208 (2014).

As a sitting state judge and a federal judicial nominee, it would not be appropriate for me to comment on the current state of the Supreme Court's jurisprudence on a particular issue which may come before me in the future.

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?**

    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?**

    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?**

    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?**

    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?

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?

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 *BioTech Co* 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?

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?

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?

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: If confirmed, I would apply the Patent Act, 35 U.S.C. § 101, and all binding Supreme Court and Third Circuit precedent, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), when deciding any case involving patent eligibility. As a sitting state judge and federal judicial nominee, it would not be appropriate for me to speculate on hypothetical cases involving issues which may come before me in the future.

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: If confirmed, I would apply the Patent Act, 35 U.S.C. § 101, and all binding Supreme Court and Third Circuit precedent, including *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), when deciding any case involving patent eligibility. Whether the state of the Supreme Court's eligibility jurisprudence merits amendment to the Patent Act, 35 U.S.C. § 101 is a question for policymakers.

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: During my nearly seven years as a state court judge presiding over thousands of cases in both criminal and civil court, I have not had the opportunity to participate in a case involving copy right law.

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

Response: During my nearly seven years as a state court judge presiding over thousands of cases in both criminal and civil court, I have not had the opportunity to participate in a case involving the Digital Millennium Copyright Act.

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

Response: During my nearly seven years as a state court judge presiding over thousands of cases in both criminal and civil court, I have not had the opportunity to participate in a case involving this issue.

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: During my nearly seven years as a state court judge presiding over thousands of cases in both criminal and civil court, I have not had the opportunity to participate in a case involving this issue.

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: The Supreme Court has repeatedly discussed the proper steps to be taken when a court is attempted to interpret the meaning of a statute. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.,* 545 U.S. 546, 568 (2005), the Supreme Court explained that a court should always look to the plain meaning of the statutory text before considering any other extrinsic material. If the meaning of the text is ambiguous and there is no precedential case law to resolve the ambiguity, the court may then look to extrinsic materials which may "shed a reliable light on the exacting Legislature's understanding of otherwise ambiguous terms." *Id.* That court explained that legislative history is a particularly unreliable tool for statutory interpretation should be used only as a last resort. *Id.*

    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: Pursuant to the Supreme Court's holding in *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), courts should give deference to a federal agency's interpretation of its operating statute. The Supreme Court has noted, however, that this deference only applies to agency interpretations set forth through formal adjudications or rulemaking, not to interpretations contained in opinion letters, policy statements, agency manuals, and enforcement guidelines. *See Skidmore v. Swift & co*., 323 U.S. 134 (1994); *Christensen v. Harris Cnty.*, 529 U.S. 576 (2000).

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: This issue is a question for policymakers to consider. If confirmed, I will faithfully follow all precedent established by the Supreme Court and Third Circuit.

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 confirmed, I would faithfully apply all currently binding statutory law and Supreme Court and Third Circuit precedent as it is written. Whether laws like the DMCA should be updated is a question for policymakers to consider.

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: If confirmed, I would faithfully apply all currently binding statutory law and Supreme Court and Third Circuit precedent as it is written. Whether laws like the DMCA should be updated is a question for policymakers to consider.

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: I have not studied the issues of "judge shopping" or "forum shopping" in litigation and so cannot provide an answer. It is my understanding that cases in the Eastern District of Pennsylvania are randomly assigned to all judges without regard to subject matter.

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.

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.

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

Response: Yes, I commit to abiding by the rules and procedures of the Third Circuit and the Eastern District of Pennsylvania.

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: As a sitting state court judge and federal judicial nominee, it would generally not be appropriate for me to comment on this issue.

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

Response: As a sitting state court judge and federal judicial nominee, it would generally not be appropriate for me to comment on this issue.

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?

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: I have not studied this issue and so cannot provide a response. This is a question best discussed by policy makers. It is my understanding that cases in the

Eastern District of Pennsylvania are randomly assigned to all judges without regard to subject matter.

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.

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 is a question for policymakers to consider. As a judicial nominee, it would not be appropriate for me to comment on this issue.

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

Response: Please see my response to Question 21a.