

Senator Chuck Grassley, Ranking Member
Questions for the Record
Margaret Strickland
Nominee to be United States District Judge for the District of New Mexico

1. During your hearing I asked you what your relationship is with the group Demand Justice or its leaders, Brian Fallon and Chris Kang. You responded that you had spoken with Chris Kang.

a. How many conversations have you had with Chris Kang?

Response: I recall having spoken with Mr. Kang two or three times.

b. How did you come into contact with him?

Response: After I submitted my application to Senator Heinrich's office, I contacted Mr. Kang to find out more about the process and help answer my questions about the judicial nominations process since I have never been through this process before.

c. What was the nature of your conversations?

Response: We discussed the judicial nomination process. He helped me to understand how this process works.

d. Have you discussed a possible nomination to the district court with Chris Kang?

Response: Yes, I contacted him after I had already applied to my home state senators.

e. What relationship, if any, do you believe these conversations had with your selection to serve on the District Court?

Response: None.

2. On your firm website, in the "about" page, you note that your firm "never represent[s] insurance companies, corporations or the government; we only represent people who need help."¹

a. What is your business justification for this policy?

Response: Most lawyers at small firms like mine specialize in their work. This allows them to develop expertise in a certain area and avoid conflicts of interest.

¹ McGraw & Strickland, LLC, "About: Why Choose Us", available at: <https://lawfirmnm.com/about/>

- b. How can you assure insurance companies, corporations, and the government that you will be fair to them in cases before you as a judge?**

Response: I fully understand the role of judge is to be neutral and fair to all sides and I am committed to fulfilling that role and obligation if confirmed. Many judges have never represented certain types of clients before assuming the bench and have been fair and neutral jurists. I have practiced in front of many judges who only represented corporations or government and found them to be fair judges.

- 3. Someone said of you in the *Albuquerque Journal*, “Strickland is somebody who has actually represented real people and not corporations.” In what ways should a lawyer’s kind of client matter in evaluating her fitness for the bench?**

Response: I think it is important for our federal bench to include qualified judges from a variety of professional backgrounds, which reflects the diversity of the bar.

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

Response: I am not familiar with that term. If confirmed as a district judge in the District of New Mexico, I would be bound by all precedents of the Supreme Court and Tenth Circuit.

- 5. Under the Supreme Court’s First Amendment jurisprudence, can someone shout “fire” in a crowded theater?**

Response: In dicta the Supreme Court used the example of shouting “fire” in a crowded theater when there is no fire and causing a panic as speech that would not be protected by the First Amendment. *Schenck v. United States*, 249 U.S. 47, 52 (1919). The Supreme Court case of *Brandenburg v. Ohio*, 395 U.S. 444 (1969) is the current applicable standard, which allows the government to proscribe speech that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Id.* at 447.

- 6. Do you agree that DOJ litigation positions, such as the failure to defend in court agency actions like the “Remain in Mexico” policy, have contributed to the perceived incentives that underlie this border crisis? If not, why not?**

Response: I am not familiar with DOJ litigation policies outside of decisions about criminal prosecutions.

- 7. Illegal border crossings are a serious problem in Las Cruces, New Mexico. Have you ever objected to the constitutionality of Operation Streamline?**

Response: I have never made a constitutional challenge to Operation Streamline.

- 8. Illegal border crossings are a serious problem in Las Cruces, New Mexico. Have you ever objected to the wisdom of Operation Streamline as a matter of policy?**

Response: I have never objected to Operation Streamline as a matter of policy.

- 9. What do you understand the costs of illegal immigration to be on border communities?**

Response: If confirmed as a judge, I would apply the law to the facts in every case, including cases involving immigration.

- 10. In a New Mexico Criminal Defense Lawyers Association (NMCDLA) newsletter discussing the year ahead in 2019, you stated that the organization “supported bills to change possession of a controlled substance from a felony to a misdemeanor.”**

- a. If confirmed to the bench, how can I be assured that you will not allow your prior advocacy efforts to influence the sentences you give to defendants charged with possession of heroin or fentanyl?**

Response: Prior positions that I took as an advocate or that were taken by an organization of which I was a member will not influence my work as a judge. I am very familiar with mandatory minimums and the sentencing factors created by Congress, and if I am confirmed I will follow those laws.

- b. Do you believe that heroin and fentanyl, two highly addictive and devastating controlled substances, should be illegal?**

Response: I would like to clarify that I have never advocated for the legalization of heroin or fentanyl and neither has the New Mexico Criminal Defense Lawyers Association. The statement you initially quoted was in reference to marijuana. However, I would like to emphasize again that prior positions that I took as an advocate or that were taken by an organization of which I was a member will not influence my work as a judge. What activities are legal or illegal is a question for legislators not judges.

- 11. In another NMCDLA newsletter, you explained that the organization successfully lobbied against the passage of bills that included, what appear to me, to be common-sense reforms.**

- a. Why did you lobby against a bill that increased the penalties for child abuse?**

Response: While I cannot recall the specifics of any of these bills, the New Mexico Criminal Defense Lawyers Association generally opposed legislation that increased criminal penalties. I would like to emphasize again prior positions that I

took as an advocate or that were taken by an organization of which I was a member will not influence my work as a judge.

b. Why did you lobby against a bill that increased the penalties for DWI?

Response: Please see my answer to 12(a).

c. Why did you lobby against a bill that increased the penalties for firearms involving elderly or disabled victims?

Response: Please see my answer to 12(a).

12. In the same article noted above, you lobbied against a bill that increased penalties for sex crimes.

a. Why did you lobby against a bill that increased penalties for sex crimes?

Response: While I cannot recall the specifics of this bill, the New Mexico Criminal Defense Lawyers Association generally opposed legislation that increased criminal penalties.

b. Mere *allegations* of sexual misconduct routinely scuttle employment prospects of judicial nominees and public officials. If a defendant is *convicted* of sex crime, why do you believe that the perpetrator should not incur a harsh, increased penalty for such a terrible crime?

Response: What punishment is appropriate for any crime is a question for legislators. Prior positions of organizations to which I have belonged or worked for will not be considerations in my work if I am confirmed as a judge, and I commit to sentencing all criminal defendants in accordance with federal law and the sentencing factors set forth by Congress.

13. In the same article, you lobbied against a bill that would “mak[e] absconding from probation or parole a felony.” It would appear to me that requiring faithful and consistent communication with the defendant’s parole or probation officer would be a hallmark trait of community policing, which you appear to support. Why did you lobby against a bill that would improve accountability for defendants on community release?

Response: While I cannot recall the specifics of this bill, the New Mexico Criminal Defense Lawyers Association generally opposed legislation that created new crimes.

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

Response: The Supreme Court ruled in *Terry v. Ohio* that police officers may stop and frisk a person when the officers have reasonable suspicion that the person is armed and involved in a crime.

15. During the course of your legal practice have you ever taken a representation or lobbying position in favor of violent-crime victims?

Response: Yes, I have represented victims of violent crimes.

16. In response to a questionnaire from the New Mexico Civil Rights Commission, you stated that “[q]ualified immunity was created by activist judges with no basis in the original law.” How is this consistent with your statement to Senator Kennedy that you are not opposed to qualified immunity?

Response: At the time I made the statement quoted above, New Mexico was considering civil rights legislation including a provision that would disallow the qualified immunity defense in the state. At the time I was a member of the New Mexico Trial Lawyers Association and the New Mexico Criminal Defense Lawyers Association, both of which were actively working for the bill’s passage and opposed to an inclusion of the qualified immunity defense.

As a pending federal judicial nominee, at my hearing I sought to make clear that as an advocate I have always represented my clients within the bounds of federal law regarding qualified immunity, and if confirmed I would apply the federal qualified immunity defense as interpreted by the Supreme Court and Tenth Circuit.

17. Do you agree with the Supreme Court’s statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?

Response: I am familiar with the *Bostock* case, and the majority opinion stated in part “[w]e are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.” *Id.* at 1754. If confirmed I would follow *Bostock* and all other precedent.

18. During your time as a state public defender, did the Government ever employ strategic communications firms in supporting their prosecutions? How would you have reacted if they did?

Response: I am not aware of prosecutors ever using strategic communications firms in supporting their prosecutions. If that occurred and I believed it was somehow improper, I would have researched the law in this area and made any appropriate motions on behalf of my client.

19. You have argued against increased penalties for a broad range of crimes including child abuse and sex crimes, advocated against the death penalty, and advocated for the broad release of convicted defendants from jail due to the COVID-19 pandemic. Given your advocacy, what crimes do you believe warrant jail time for a convicted defendant? Or, do you believe that no crime warrants a term of incarceration?

Response: I have served on the board of the New Mexico Criminal Defense Lawyers Association. That group broadly opposed changes in New Mexico law that increased criminal penalties. I would like to emphasize again, prior positions that I took as an advocate or that were taken by an organization of which I was a member will not influence my work as a judge.

Congress has clearly specified that mandatory minimums are required pursuant to certain statutes. Congress has also specified the sentencing factors in 18 U.S.C. § 3553(a) that federal judges are to consider in sentencing any defendants who are found guilty of federal crimes, and those would be my only considerations should I be confirmed.

20. Please tell me how many of the below types of defendants you represented as clients:

Response: As a state public defender, I represented many hundreds of clients. My large caseload makes it difficult for me to recall all of the representations.

a. Firearms traffickers;

Response: I estimate I have represented less than ten.

b. Felons in possession of a firearm;

Response: I estimate I have represented around one hundred.

c. Sex offenders in conjunction with sex crimes.

Response: I estimate I have represented around fifty.

21. During your years as a criminal-defense lawyer have you ever raised a Second Amendment defense on behalf of your clients?

Response: I do not recall raising a Second Amendment defense to a criminal charge.

22. Do you agree with the following statement: Not everyone deserves a lawyer, there is no civil requirement for legal defense?

Response: In *Gideon v. Wainwright* the Supreme Court held that the Constitution requires individuals accused of crimes to be provided with counsel. The Supreme Court has not held that a similar requirement exists for civil cases.

23. Do you think law firms should allow their paying clients to influence which pro bono clients they take?

Response: I am not familiar with this issue or the ramifications of either allowing or disallowing paying clients to influence which pro bono clients a law firm takes.

24. As noted above, you don't represent governments at your firm. Should law firms undertake the pro bono prosecution of crimes?

Response: I am not very familiar with this as an issue or its potential ramifications. I have never had a private law firm prosecute a case in which I was involved.

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

Response: No.

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

Response: Yes.

27. Should a judge stay discovery during the pendency of dispositive motions? Why or why not?

Response: This issue would require an evaluation of case-specific considerations. There are cases, for example cases involving qualified immunity claims, in which discovery is normally stayed until dispositive motions are resolved.

28. In what ways, if any, has the judicial vacancy crisis in New Mexico over the past few years affected your clients?

Response: It has taken longer to get both my criminal and civil cases resolved.

29. Is climate change real?

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding the existence of climate change, I would carefully review the facts of the case and faithfully apply Supreme Court and Tenth Circuit precedents.

30. Do sugary drinks contribute to obesity?

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding sugary drinks' contribution to obesity, I would carefully review the facts of the case and faithfully apply Supreme Court and Tenth Circuit precedents.

31. Can someone change his or her biological sex?

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding individuals' biological sex, I would carefully review the facts of the case and faithfully apply Supreme Court and Tenth Circuit precedents.

32. Please explain, with detail, the process by which you became a district court nominee.

Response: I sent an initial application to the office of Senator Heinrich. After that initial application I was interviewed twice by Senator Heinrich and Senator Lujan's offices. I was then asked to send in a second application. I was then interviewed by people at the White House Counsel's Office. After that interview I was in contact with officials from the Office of Legal Policy and the Department of Justice. Then on April 19, 2021, my nomination was submitted to the Senate.

33. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

34. Have you had any conversations with individuals associated with the Lawyers Committee for Civil and Human Rights, including but not limited to Vanita Gupta, in connection with this or any other potential judicial nomination. If so, please explain the nature of those conversations.

Response: No.

35. Have you had any conversations with individuals associated with the Open Society Foundations in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

36. Please explain with particularity the process by which you answered these questions.

Response: I received these questions from the Office of Legal Policy on June 2, 2021. I prepared draft answers by reviewing the questions and conducting research. After I returned my draft answers, I received feedback from the Office of Legal Policy. I then finalized and submitted my answers on June 7, 2021.

37. Do these answers reflect your true and personal views?

Response: Yes.

**Nomination of Margaret Irene Strickland
to be United States District Judge for the District of New Mexico Questions
for the Record**

Submitted June 2, 2021

QUESTIONS FROM SENATOR COTTON

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

Response: No.

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

Response: No.

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

Response: I received these questions from the Office of Legal Policy on June 2, 2021. I prepared draft answers by reviewing the questions and conducting research. After I returned my draft answers, I received feedback from the Office of Legal Policy. I then finalized and submitted my answers on June 7, 2021.

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

Response: No.

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

Questions for the Record for Ms. Margaret Irene Strickland to be United States District Judge for the District of New Mexico

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

Response: Because I have never been a judge, I have not had an opportunity to develop a judicial philosophy. If confirmed I would work to model the excellent trial court judges before whom I have appeared who demonstrated excellent temperament and fairness to all parties.

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

Response: Our Constitution is an enduring document. If confirmed as a judge, if I were called upon to rule on the meaning of a constitutional provision, I would follow Supreme Court and Tenth Circuit precedent.

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

Response: As a judicial nominee it would not be proper for me to comment on the Supreme Court or its makeup.

4. **Do you personally own any firearms? If so, please list them.**

Response: Yes. My husband and I own a shotgun.

5. **Have you ever personally owned any firearms?**

Response: Yes, please see my answer to question four.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

Response: Yes. When I was young, I fired a rifle with my father on several occasions. As an adult I have fired firearms at a range.

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

Response: The Supreme Court in *District of Columbia v. Heller* ruled that the Second Amendment protects an individual right to bear arms.

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

Response: I would not use that term to describe our criminal justice system.

Senator Josh Hawley
Questions for the Record

Margaret Strickland
Nominee, U.S. District Court for the District of New Mexico

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

Response: In some cases our Supreme Court has looked to the original public meaning of the Constitution's text for interpretation, like in *Heller*. If I were confirmed and a case presenting a constitutional question came before me, I would review Tenth Circuit and Supreme Court cases to determine whether their precedents relied on the original public meaning or not. I would follow binding Supreme Court and Tenth Circuit precedent regardless of whether those courts had decided the case based on the Constitution's original public meaning.

- 2. As a judge, how would you approach a case involving an issue of first impression?**

Response: If I am confirmed as judge, when confronted with an issue of first impression on a statute, I would first look at the statutory text and use any canons of interpretation needed to interpret the text. I may also look to precedent from other courts that might be informative.

- 3. Can you discuss how you view the role of precedent in judicial decision making, and how you as a judge would approach cases involving precedents from the Supreme Court?**

Response: Precedent is a cornerstone of our judicial system. Judges must follow Supreme Court precedents. If confirmed I would follow all Supreme Court precedent.

- 4. In your view, what is the difference in how you approach a case as a policy maker or an advocate as opposed to how you would as a judge deciding a case?**

Response: Advocates are essentially given their positions by the clients whom they represent. As an advocate I have sought to make the best arguments I can for my clients based on the facts of their cases and the applicable law. It has been my responsibility to specifically advocate for the best results for my clients. Judges, on the other hand, deliberately approach cases from a neutral position and only allow the law and facts to determine their decisions.

5. Are there circumstances when you believe judges should consider the policy results of their decisions when deciding a case? When might those circumstances arise?

Response: Judges do not set policy and should not consider policy results when deciding a case.

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

Response: The Supreme Court has held that a substantive due process protects those fundamental rights and liberties which are, objectively "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997).

In my practice, for example, the Supreme Court found the Bail Reform Act was constitutional because protected liberty concerns were given appropriate procedural protections. *United States v. Salerno*, 481 U.S. 739 (1987).

Senator Mike Lee
Questions for the Record
Margaret Irene Strickland, District of N.M.

1. How would you describe your judicial philosophy?

Response: Because I have never been a judge, I have not had an opportunity to develop a judicial philosophy. If confirmed I would work to model the excellent trial court judges before whom I have appeared who demonstrated excellent temperament and fairness to all parties.

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

Response: I would first look to the text of the statute. If the text is clear, no further interpretation is needed. If the text is ambiguous, I would use tools of statutory construction and consult Supreme Court and Tenth Circuit precedent.

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

Response: I would consult the Supreme Court and Tenth Circuit. It would be highly unusual to have to decide an issue of first impression regarding the Constitution, but in such a case I would first look at the text and then interpret the text using interpretive methods that the Supreme Court has used.

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

Response: In some cases, our Supreme Court has looked to the original public meaning of the Constitution's text for interpretation, like in *Heller*. If I were confirmed I would review Tenth Circuit and Supreme Court cases to determine whether the precedent relied on original public meaning or not.

5. What are the constitutional requirements for standing?

Response: In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) our Supreme Court found three elements must be met for constitutional standing, First the plaintiff must have suffered an injury in fact--that is, an invasion of a legally protected interest which is (a) concrete and particularized, meaning that the injury must affect the plaintiff in a personal and individual way, and (b) actual or imminent, not conjectural or hypothetical, second there must be a causal connection between the injury and the conduct complained of--that is, the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court, and third it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

6. Do you believe there is a difference between “prudential” jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: The Supreme Court has used the term prudential standing in the past, however that term’s accuracy was questioned by the Supreme Court in 2014. *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). I would be bound by *Lexmark* and Tenth Circuit precedent following *Lexmark*. See e.g. *Kerr v. Polis*, 930 F.3d 1190, 1194 n.3 (10th Cir. 2019) (“*Lexmark* made clear that the first two principles previously labelled as prudential standing are not independent jurisdictional hurdles. See *id.* at 128 n.4 (clarifying that the zone-of-interests test does ‘not implicate subject matter jurisdiction’ but is a question of whether plaintiff has a valid cause of action), 127 n.3 (generalized grievances are ‘barred for constitutional reasons, not ‘prudential’ ones’). If the last principle—the limitation on third-party standing—retains any potency at this stage of litigation, that inquiry is inextricably intertwined with the merits of the present case. See *infra.*”).

7. How would you define the doctrine of administrative exhaustion?

Response: A plaintiff must fully pursue all of the agency’s available remedies before bringing a suit in court.

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

Response: The Constitution grants Congress the powers that are necessary to implement the powers given to Congress in the “Necessary and Proper Clause” or “Elastic Clause” at the end of Article I, Section 8. The existence of this power has been affirmed by the Supreme Court in *McCulloch v. Maryland*, 17 U.S. 316 (1819). The power to establish a bank, enact the military draft, tax, borrow money, and establish a post office, for example, have been found to be within Congress’ implied powers.

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

Response: I would follow Supreme Court and Tenth Circuit precedent to determine the constitutionality of that law. The methods of evaluation the Supreme Court has used are laid out in cases such as *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000) (regarding congressional powers under the Commerce Clause).

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

Response: Yes, the Supreme Court has held that the Constitution protects some rights that are not expressly enumerated. Two examples are the right to travel and right to privacy. *Saenz v. Roe*, 526 U.S. 489 (1999); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

11. What rights are protected under substantive due process?

Response: The liberty interest protected by the Due Process clause has been found to protect many different rights, including the right to marry, the right to parent, and the right to use contraception. *Loving v. Virginia*, 388 U.S. 1 (1967), *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Griswold v. Connecticut*, 381 U.S. 479 (1965).

12. 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: Any personal beliefs I have about the scope of substantive due process would not be relevant if I were confirmed. If confirmed as a district court judge I will follow the precedent of the Supreme Court and the Tenth Circuit regarding what rights are protected by substantive due process.

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

Response: Our Supreme Court has found Congress has the power to regulate the channels of interstate commerce, regulate and protect the instrumentalities of interstate commerce, and regulate activity that substantially affects interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

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

Response: Under Supreme Court and Tenth Circuit precedents, race, alienage, national origin, and religion are "suspect classes" requiring strict scrutiny. *Edwards v. Valdez*, 789 F.2d 1477, 1482 (10th Cir. 1986).

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

Response: The separation of powers created by our Constitution is foundational. In general terms, Congress alone has the power to make law. Courts interpret the laws as they apply to actual cases in controversy before the court. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The executive branch enforces the laws. This structure was meant by the framers of our Constitution to ensure no single branch of government is made all powerful.

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

Response: Similar to my answer in number nine above, if I were to be confirmed and a case like this came before me, I would review Supreme Court and Tenth Circuit precedent to determine the constitutionality of any action by a branch of government. For example, if the case involved congressional powers under the Commerce Clause, I would look to cases like *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000).

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

Response: Judges are to follow the law without fear or favor and without consideration of their own personal feelings.

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

Response: Both of these scenarios should never occur.

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

Response: As a trial court litigator, I have not studied the history of Supreme Court decisions. The areas in which I have practiced center heavily on the current state of the law.

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

Response: Judicial review is the Court's duty to review law and governmental actions to ensure they are constitutional. I am not familiar with the term "judicial supremacy." My research shows it is a term used by some to argue that the Supreme Court may have more power than other branches of government.

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent

practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Government officials must follow the law and the Constitution, which includes following judicial decisions regarding the law and Constitution.

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

Response: Courts have the power of judgment, which relies upon the trust and respect of the rule of law. Courts must ensure their integrity by adherence to the rule of law.

- 23. How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: I would first look to the text of the statute. If the text is clear, no further interpretation is needed. If the text is ambiguous, I would use tools of statutory construction and consult Supreme Court and Tenth Circuit precedent.

- 24. 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: Lower court judges must follow precedent of the higher courts even if the judge disagrees with such precedent. If there is a new case to which the precedent does not apply, the judge may – depending on the facts and circumstance of the case and the relevant caselaw – be able to distinguish that case.

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

Response: Judges may not rule on cases in which they lack jurisdiction.

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

Response: 18 U.S.C. § 3553(a) directs the Court to determine the sentence to be imposed by considering many factors, including “the nature and circumstances and the history and characteristics of the defendant.”

- 27. In 2020, you stated that qualified immunity—a legal doctrine that offers law enforcement a high degree of protection from most lawsuits—“should not be a defense.” You clarified that it had no basis in statutory law, and was entirely the creation of judges. Were you to be confirmed, how would you apply the doctrine of qualified immunity in your capacity as a district judge?**

Response: I would apply the doctrine of qualified immunity as decided by the Supreme Court and Tenth Circuit. Any prior positions I have taken as an advocate or prior positions taken by organizations which I belonged to would have no influence on my considerations should I be confirmed as a judge.

- 28. You have also publicly opposed the death penalty; how would you engage with capital punishment as a federal judge?**

Response: I would follow federal law regarding the death penalty. Any prior positions I have taken as an advocate or prior positions taken by organizations which I belonged to would have no influence on my considerations should I be confirmed as a judge.

- 29. In a letter to a group of criminal defense lawyers, you “encourage[d] all members” to take “an implicit bias test to help uncover some of the stereotypes and biases that even ‘enlightened’ criminal defense attorneys have.” Do you think public servants (public defenders, judges, etc.) should be required to take an implicit bias test? If so, what should the consequences be for “failing” such a test?**

Response: In my capacity as the president of the New Mexico criminal defense lawyer association, I did urge other criminal defense lawyers to consider taking an implicit bias test, though taking such a test was in no way required for membership in that association. Whether or not government employees should be required to take any test is a policy matter for legislative bodies. I would note that such tests are not generally “pass” or “fail.”