

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Jennifer Lee Mascott
Nominee to be U.S. Circuit Judge for the Third Circuit Court of Appeals
September 10, 2025

1. I am troubled by your lack of ties to Delaware since you have been nominated to a Delaware seat on the U.S. Court of Appeals for the Third Circuit.

- a. **Have you ever lived in the state? Have you ever lived in any state within the Third Circuit?**

Response: As a public servant and law professor at Washington, D.C.-area schools, I have been living in Maryland. We have a long-time home in Delaware, and if I am confirmed, I will comply with all statutory residency requirements applicable to the Third Circuit.

- b. **Have you ever practiced in Delaware? Have you ever practiced in the Third Circuit?**

Response: I have been nominated to a federal appeals court seat in the Third Circuit and have not practiced law in the State of Delaware. I am admitted to practice law in the Third Circuit and have participated in litigation within the circuit.

- c. **Are you licensed to practice in Delaware? If so, when were you admitted to the bar?**

Response: As a public servant and law professor at Washington, D.C.-area schools, I am licensed to practice law in Maryland and Virginia, not Delaware.

- d. **According to your Questionnaire, you were only admitted to the Third Circuit in 2025. In which month you were admitted?**

Response: May 2025.

2. In your Questionnaire, you stated: "I was interviewed by a group of lawyers with the White House Counsel's Office and interviewed with both a Deputy White House Counsel and the White House Counsel who inquired about my availability and fitness for the potential judicial nomination."

- a. **Please provide the date/s you interviewed with each of these individuals.**

Response: I interviewed with the White House Counsel on May 14, 2025.

b. Did the topic of Third Circuit vacancies—including the one to which the President has nominated you—come up in this discussion?

Response: Yes.

3. It is unsurprising that President Trump has nominated you, given your longstanding and expansive view of presidential power. President Trump has been quite clear that he wants to rule without regard for checks and balances. As far back as 2018, at a Federalist Society event, you agreed with John Eastman—one of the architects of President Trump’s efforts to overturn the 2020 election—that any independence for independent agencies is, “too much.” In March of this year, you asserted that *Humphrey’s Executor* was wrongly decided because “the president needs to be able to...get rid of folks who don’t follow his instructions.”

Recently, President Trump has used unproven mortgage fraud allegations to try to terminate Federal Reserve Board Member Lisa Cook, all because he is unhappy that the Fed has exerted its independence and refused to do his bidding.

Your views suggest that, if confirmed, you would uphold the legality of President Trump’s troubling actions. Why should any party who comes before you with a challenge to the Trump Administration have confidence that you will treat them fairly in court?

Response: The U.S. Supreme Court has repeatedly indicated that the vesting of executive authority in the President of the United States means that the President must be able to exercise adequate supervision over officials wielding a portion of executive power. *See, e.g., Seila Law v. Consumer Financial Protection Bureau*, 591 U.S. 197, 204 (2020) (“The President’s power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers v. United States*.”). *See also Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025) (referring to the Court’s “judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty”). If I am confirmed, I will faithfully and with impartiality apply all binding U.S. Supreme Court precedent.

4. When then-Judge Kavanaugh was nominated to the Supreme Court, you said that he sought out “diverse perspectives from a diverse group of law clerks,” noting that among other things, your clerk class came from diverse racial backgrounds and distinct religious traditions. You also praised then-Judge Kavanaugh as “somebody who’s going to be a powerful voice helping to make sure women get equal career opportunities.”

In contrast, the Trump Administration has repeatedly attacked the importance of diversity.

- a. **Is diversity within the legal profession important? If it is no longer important, why was it important when you were hired by then-Judge Kavanaugh?**

Response: Nobody should ever be excluded from the opportunity to serve and thrive in the legal profession based on race, ethnicity, sex, religion, or any other protected characteristic. It is valuable for the legal profession to be open to persons of varying backgrounds, life experiences, and viewpoints. Being an effective lawyer depends upon one's ability to effectively intake, understand, and articulate a broad range of methodological and legal viewpoints. Lawyers and indeed all professionals should be evaluated based on merit rather than based on a particular racial or otherwise protected classification.

- b. **If you are confirmed to the bench, will diversity in your selection of clerks be an important criterion?**

Response: If I am confirmed, I will seek to hire law clerks with respect to merit rather than on the basis of membership in a particular protected classification.

In December 2021, you testified before the House Judiciary Committee on the Administrative Procedure Act. In an exchange with then-Representative Ken Buck, you agreed with him that affirmative action programs discriminate against Asian students. You added that you “[did] not think that imposing a particular view of racial justice should be done by the Executive Branch.”

- c. **Given President Trump's attacks on diversity, are you willing to say the same today—that the Executive Branch should not impose a particular view of racial justice?**

Response: In 2023, the U.S. Supreme Court indicated that racial classifications are an impermissible ground for admission into private and public universities. *See generally Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). As a prospective judicial nominee, it would be improper for me to express my views on executive branch policies, but consistent with constitutional requirements as explained by the Supreme Court, evaluation of individuals should be based on merit or otherwise permissible considerations and not based on one's racial classification.

5. In your Questionnaire, you state that you have served in the White House Counsel's Office since 2025, but you provide little information about your role.

- a. **On what date did you begin your position as Senior Counsel in the White House Counsel's Office?**

Response: March 12, 2025.

b. What issue areas do you work on and what is the nature of your work in the White House Counsel's Office?

Response: I have worked on statutory interpretation questions and matters related to the constitutional structural separation of powers. I have also participated on teams of White House Counsel lawyers interviewing potential judicial nominees.

6. Recently, failed U.S. Attorney nominee and current Pardon Attorney Ed Martin reposted a message that “the jury trial is a great example of how an Anglo-Saxon tradition gets short-circuited by multiculturalism.”¹

As an academic who has studied the jury trial system, do you agree with this statement? Why or why not?

Response: The jury system is a fundamental feature of our constitutional system of accountability and separated powers. The right to a criminal jury trial was established in the original text of the U.S. Constitution and the civil jury trial right confirmed soon thereafter in the text of the Seventh Amendment. *See* U.S. Const. art. III, § 2, cl. 3; *id.* amend. VII. As a pending judicial nominee, it would be inappropriate for me, and consistent with past practice not to comment on others' personal policy and political views.

7. During President Trump's first term, you were appointed by then-Attorney General Bill Barr to positions in the U.S. Department of Justice.

a. During your time serving under former Attorney General Barr, did you trust his judgment, legal analysis, and leadership?

Response: I was very honored to have the opportunity to serve under President Trump at the Department of Justice led by Attorney General Barr during President Trump's first Administration. I had the honor of serving as both a Deputy Assistant Attorney General in the Office of Legal Counsel and as Associate Deputy Attorney General during President Trump's first term.

b. President Trump later attacked Attorney General Barr as a “disgruntled former employee,” “lazy,” “weak,” and “totally ineffective.”² Is this an accurate characterization of your former boss?

Response: As a pending judicial nominee, and consistent with the past practice of prior nominees, it would be inappropriate for me to comment on others' personal statements and policy views.

¹ Eagle Ed Martin (@EagleEdMartin), X (July 28, 2025, 10:58 AM), <https://x.com/EagleEdMartin/status/1949846838321856827>.

² Donald J. Trump (@realDonaldTrump), Truth Social (June 11, 2023, 2:54 PM), <https://truthsocial.com/@realDonaldTrump/posts/110527097618810290>.

8. Did President Trump lose the 2020 election?

Response: President Biden was certified the winner of the 2020 election. President Trump was certified the winner of the 2016 and 2024 elections.

9. Where were you on January 6, 2021?

Response: On January 6, 2021, I was in Washington, D.C., working at the Department of Justice.

10. Do you denounce the January 6 insurrection?

Response: I denounce any and all acts of violence against law enforcement and government officials. How the events at the Capitol on January 6, 2021, are characterized is a matter of political debate and was the subject of litigation in *Trump v. Anderson*, 601 U.S. 100 (2024). Moreover, the effect of pardons issued to those prosecuted for actions taken related to the events at the Capitol on January 6, 2021, is subject to ongoing litigation that could arise in cases that could come before me if I am confirmed to serve as a district court judge. Thus, under the Code of Conduct for United States Judges, it would be inappropriate for me to address these issues.

11. Do you believe that January 6 rioters who were convicted of violent assaults on police officers should have been given full and unconditional pardons?

Response: As an Article III judicial nominee, it would not be appropriate for me to comment on the application of the pardon power wielded by a separate but equal branch of government in Article II of the United States Constitution. Furthermore, the pardons themselves are the subject of ongoing litigation, and I may not comment on any matter that is or may come before me as a judge.

12. The Justice Department is currently defending the Trump Administration in a number of lawsuits challenging executive actions taken by the Administration. Federal judges—both Republican and Democratic appointees—have enjoined some of these actions, holding that they are illegal or unconstitutional. Alarming, President Trump, his allies, and even some nominees before the Senate Judiciary Committee have responded by questioning whether the executive branch must follow court orders.

a. What options do litigants—including the executive branch—have if they disagree with a court order?

Response: Generally, if there is a lower-court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome.

- b. Do you believe a litigant can ever lawfully defy an order from a lower federal court? If yes, in what circumstances?**

Response: All proper parties to federal court proceedings including federal executive officials have a responsibility to comply with lawful court orders. The standard process for challenging an order that one concludes is unlawful is to appeal that order. There might be rare circumstances such as a lack of jurisdiction or the complete impossibility of compliance with the terms of a particular order that would make compliance untenable, but it is hard to imagine such a situation.

- c. Under the separation of powers, which branch of the federal government is responsible for determining whether a federal court order is lawful?**

Response: If the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. If the order relates to the interpretation of a statute with which a party might disagree, the party also might push for legislative amendment of the statute. Similarly, if a party or Congress or a state legislature believes a Supreme Court order has incorrectly applied the Constitution, such parties could push for a constitutional amendment. Congress also has legislative power to shape Supreme Court jurisdiction and authority related to the issuance of orders.

- 13. District judges have occasionally issued non-party injunctions, which may include “nationwide injunctions” and “universal injunctions.”**

- a. Are non-party injunctions constitutional?**

Response: The lawfulness of universal injunctions was addressed by the Supreme Court in *Trump v. CASA*, 145 S. Ct. 2540 (2025), which held that “[a] universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.” *Id.* at 2550. As described in *Trump v. CASA*, the equitable power of courts generally extends only to granting complete relief to the parties before the court.

- b. Are non-party injunctions a legitimate exercise of judicial power?**

Response: Please see the response to question 13(a).

- c. Is it ever appropriate for a district judge to issue a non-party injunction? If so, under what circumstances is it appropriate?**

Response: Please see the response to question 13(a).

- d. As a litigator, have you ever sought a non-party injunction as a form of relief? If so, please list each matter in which you have sought such relief.**

Response: No.

- 14. At any point during your selection process, did you have any discussions with anyone—including individuals at the White House, the Justice Department, or any outside groups—about loyalty to President Trump? If so, please provide details.**

Response: No.

- 15. Does the U.S. Constitution permit a president to serve three terms?**

Response: The 22nd Amendment provides that presidents may serve up to two terms.

- 16. On May 26, 2025, in a Truth Social post, President Trump referred to some judges whose decisions he disagrees with, as “USA HATING JUDGES” and “MONSTERS”, who “...SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY...”³**

- a. Do you agree that these federal judges are “USA HATING” and “MONSTERS” who “...SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY...”?**

Response: It is important for all federal judges to abide by all constitutional, statutory, and equitable limits on their authority to exercise the “judicial Power” under Article III of the U.S. Constitution, and I would seek to abide by those limits if confirmed. Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

- b. Do you believe this rhetoric endangers the lives of judges and their families?**

Response: Consistent with the Code of Conduct for U.S. Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

- 17. In addition to the President’s own attacks on judges, his adviser Stephen Miller took to social media to call a federal trade court’s ruling against President Trump’s tariffs a**

³ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22AM), <https://truthsocial.com/@realDonaldTrump/posts/114573871728757682>.

“judicial coup”⁴ and later reposted the images of the three judges who decided the case and wrote, “we are living under a judicial tyranny.”⁵

a. Do you agree that these judges are engaged in a “judicial coup” and that “we are living under a judicial tyranny”?

Response: It is important for all federal judges to abide by all constitutional, statutory, and equitable limits on their authority to exercise the “judicial Power” under Article III of the U.S. Constitution, and I would seek to abide by those limits if confirmed. Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

b. Do you believe this rhetoric endangers the lives of judges and their families?

Response: Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment further on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

c. Would you feel comfortable with any politician or their adviser sharing a picture of you on social media if you issue a decision they disagree with?

Response: Please see my response to Question 17(b).

18. When, if ever, may a lower court depart from Supreme Court precedent?

Response: Lower courts must follow directly controlling Supreme Court precedent. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”); *United States v. Morosco*, 822 F.3d 1, 7 (1st Cir. 2016).

19. When, in your opinion, would it be appropriate for a circuit court to overturn its own precedent?

Response: I would follow the practices and precedents of the Third Circuit with respect to evaluation of whether to reverse circuit precedent. In general, the Third Circuit standard

⁴ Stephen Miller (@StephenM), X, (May 28, 2025, 7:48PM), <https://x.com/StephenM/status/1927874604531409314>.

⁵ Stephen Miller (@StephenM), X, (May 29, 2025, 8:25AM), <https://x.com/StephenM/status/1928065122657845516>.

is that is inappropriate for a circuit panel to conflict with the precedential decision of a priori panel and reversal of an earlier decision would need to be undertaken by the en banc circuit court. Federal Rule of Appellate Procedure 40 also provides relevant guidance

20. When, in your opinion, would it be appropriate for the Supreme Court to overrule its own precedent?

Response: In determining whether to overrule precedent, the Supreme Court applies stare decisis factors such as those set forth in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 268-90 (2022), and *Janus v. AFSCME, Council 31*, 585 U.S. 878, 916-29 (2018).

21. Please answer yes or no as to whether the following cases were correctly decided by the Supreme Court:

Response: Consistent with the approach explained by Justice Kagan and followed by many other judicial nominees from various administrations, it is generally not appropriate for a judicial nominee to grade or give a thumbs up or down to particular Supreme Court decisions. Should I be confirmed, all Supreme Court precedent would bind me.

a. *Brown v. Board of Education*

Response: Consistent with the practice of past nominees, the decision in *Brown* is so canonical and deeply rooted that the correctness of the judgment in the decision is clear and beyond question.

b. *Plyler v. Doe*

Response: *Plyler* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

c. *Loving v. Virginia*

Response: Consistent with the practice of past nominees, the decision in *Loving* is so canonical and deeply rooted that the correctness of the judgment in the decision is clear and beyond question.

d. *Griswold v. Connecticut*

Response: *Griswold* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

e. *Trump v. United States*

Response: *Trump v. United States* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

f. *Dobbs v. Jackson Women’s Health Organization*

Response: *Dobbs* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

g. *New York State Rifle & Pistol Association, Inc. v. Bruen*

Response: *Bruen* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

h. *Obergefell v. Hodges*

Response: *Obergefell* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

i. *Bostock v. Clayton County*

Response: *Bostock* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

j. *Masterpiece Cakeshop v. Colorado*

Response: *Masterpiece Cakeshop* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

k. *303 Creative LLC v. Elenis*

Response: *303 Creative* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

l. *United States v. Rahimi*

Response: *Rahimi* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

m. *Loper Bright Enterprises v. Raimondo*

Response: *Loper Bright* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

22. With respect to constitutional interpretation, do you believe judges should rely on the “original meaning” of the Constitution?

Response: Consistent with the past practice of the Supreme Court in cases like *District of Columbia v. Heller*, 554 U.S. 570 (2008), I believe that lower court judges should faithfully apply all binding precedent of the Supreme Court and then apply an originalist methodology to address any unanswered and open questions of constitutional interpretation. But those questions are likely to be infrequent at the circuit court level.

23. How do you decide when the Constitution’s “original meaning” should be controlling?

Response: Please see my answer to Question 22.

24. Does the “original meaning” of the Constitution support a constitutional right to same-sex marriage?

Response: The Supreme Court in *Obergefell* concluded that the Constitution provides a constitutional right to same-sex marriage, and I would faithfully apply that precedent.

25. Does the “original meaning” of the Constitution support the constitutional right to marry persons of a different race?

Response: The Supreme Court in *Loving* concluded that the Constitution provides a constitutional right to marry persons of a different race, and I would faithfully apply that precedent.

26. What is your understanding of the Equal Protection and Due Process clauses of the Fourteenth Amendment?

Response: Based on my understanding of these principles as established by the Supreme Court, the Equal Protection Clause (1) requires that all persons similarly situated by treated alike, *see City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), and (2) prevents discrimination based on suspect and quasi-suspect classifications, *see, e.g., Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *United States v. Virginia*, 518 U.S. 515 (1996); *Nyquist v. Mauclet*, 432 U.S. 1 (1977). Under Supreme Court precedent, the Fourteenth Amendment Due Process Clause establishes both procedural protections, *see, e.g., Mathews v. Eldridge*, 424 U.S. 319 (1976), and substantive rights, *see, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923). Justice Thomas in concurring opinions has indicated that history suggests substantive rights might be more properly situated under Privileges and Immunities Clause, although that conclusion does not reflect contemporary controlling Supreme Court precedent.

27. How do these clauses apply to individuals that the Framers of the amendment likely did not have in mind, such as women? Or LGBTQ+ individuals?

Response: The Supreme Court has held that these constitutional provisions prevent discrimination based on sex, *see, e.g., United States v. Virginia*, 518 U.S. 515 (1996), and sexual orientation, *see, e.g., Romer v. Evans*, 517 U.S. 620 (1996). As a lower court

judge, I would be bound to apply all Supreme Court precedents, including these decisions. Because matters related to this question are the subject of ongoing litigation, it would be improper for me as judicial nominee to further comment.

28. Do you believe that judges should be “originalist” and adhere to the original public meaning of constitutional provisions when applying those provisions today?

Response: Please see my answer to Question 22.

29. If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today?

Response: Please see my answer to Question 22.

30. Under the U.S. Constitution, who is entitled to First Amendment protections?

Response: Generally speaking, the U.S. Supreme Court has held that the First Amendment protects speech regardless of whether the government considers the speech to be right or wrong, *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 537 (1995), and even if it is outrageous, *Snyder v. Phelps*, 562 U.S. 442 (2011); *United States v. Stevens*, 559 U.S. 460 (2010). The Supreme Court has also held that First Amendment protections may apply to individuals, *McIntyre v. Ohio Elecs. Comm’n*, 514 U.S. 334 (1995), as well as corporations, *see, e.g., Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310 (2010); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). As a lower court judge, I would be bound to apply all Supreme Court precedents.

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

Response: The Supreme Court has addressed this issue in cases such as *City of Austin, Texas v. Reagan Nat’l Advertising of Austin, LLC*, 596 U.S. 61 (2022), and *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Among other things, those cases instruct that a “regulation of speech is facially content based under the First Amendment if it target[s] speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed.” *City of Austin*, 596 U.S. at 69 (quoting *Reed*, 576 U.S. at 163). By contrast, a law is content-neutral if it can be “justified without reference to the content of the regulated speech.” *Reed*, 576 U.S. at 166 (quotation omitted). As a lower court judge, I would be bound to apply all Supreme Court precedents.

32. What is the standard for determining whether a statement is protected speech under the true threats doctrine?

Response: The Supreme Court has addressed this issue in cases such as *Counterman v. Colorado*, 600 U.S. 66, 74 (2023), and *Virginia v. Black*, 538 U.S. 343 (2003). Among other things, these cases instruct that “[t]rue threats’ of violence is [a] historically unprotected category of communications.” *Counterman*, 600 U.S. at 74. These cases establish that “true threats are serious expressions conveying that a speaker means to commit an act of unlawful violence.” *Id.*; see *Black*, 538 U.S. at 359. As a lower court judge, I would be bound to apply all Supreme Court precedents.

33. Is every individual within the United States entitled to due process?

Response: The Fifth and Fourteenth Amendments to the U.S. Constitution provide, respectively, that no person shall “be deprived of life, liberty or property, without due process of law” and that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amends. V, XIV. The Supreme Court has stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Agency for Int’l Dev. v. All. For Open Soc’y Int’l, Inc.*, 591 U.S. 430 (2020). The Supreme Court has an extensive body of precedents discussing what due process requires in various contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents in addressing due process claims.

34. Can U.S. citizens be transported to other countries for the purpose of being detained, incarcerated, or otherwise penalized?

Response: Please see my answer to Question 33.

35. The Fourteenth Amendment states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

a. Is every person born in the United States a citizen under the Fourteenth Amendment?

Response: The Citizenship Clause of the 14th Amendment to the United States Constitution provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The meaning of this provision and its application in certain circumstances has been addressed in cases such as *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). As a lower court judge, I would be bound to apply all Supreme Court precedents, including this decision, in addressing any citizenship claims. Because this question asks about matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to further comment. See Code of Conduct of U.S. Judges, Canon 3A(6).

- b. Is the citizenship or immigration status of the parents of an individual born in the United States relevant for determining whether the individual is a citizen under the Fourteenth Amendment?**

Response: Please see my answer to Question 35(a).

- 36. Do you believe that demographic and professional diversity on the federal bench is important? Please explain your views.**

Response: It is inappropriate for any person to be excluded from the opportunity to serve in the judicial branch simply based on, for example, that person's race, sex, or religion. In addition, it is valuable for the federal bench to benefit from a wide variety of professional experiences.

- 37. The bipartisan *First Step Act of 2018*, which was signed into law by President Trump, is one of the most important pieces of criminal justice legislation to be enacted during my time in Congress. At its core, the Act was based on a few key, evidence-based principles. First, incarcerated people can and should have meaningful access to rehabilitative programming and support in order to reduce recidivism and help our communities prosper. Second, overincarceration through the use of draconian mandatory minimum sentences does not serve the purposes of sentencing and ultimately causes greater, unnecessary harm to our communities. With these rehabilitative principles in mind, one thing Congress sought to achieve through this Act was giving greater discretion to judges—both before and after sentencing—to ensure that the criminal justice system effectively and efficiently fosters public safety for the benefit of all Americans.**

- a. How do you view the role of federal judges in implementing the *First Step Act*?**

Response: As with any other constitutional or statutory provision, I would be obligated as a judge to faithfully and impartially apply the First Step Act, and governing precedents interpreting it.

- b. Will you commit to fully and fairly considering appeals that come before you when reviewing sentencing law and its application to ensure that criminal sentences are properly tailored to promote the goals of sentencing and avoid terms of imprisonment in excess of what is necessary?**

Response: I commit to faithfully and impartially applying all applicable laws and precedents that govern the sentencing of criminal defendants.

- 38. The Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law.”**

- a. **In your Questionnaire, you state that you are currently or were previously a member of the Federalist Society. What is your understanding of “traditional values”?**

Response: As a pending judicial nominee, it would be inappropriate for me to express cultural or policy views. If I am confirmed, I will seek to apply the law fairly and impartially without respect to any individual policy views.

- b. **President Trump wrote on Truth Social that the Federalist Society gave him “bad advice” on “numerous Judicial Nominations.” He also wrote that Leonard Leo is a “sleazebag” who “probably hates America.” If you are not familiar with this post, please refer to it in the footnote.⁶**

As a pending judicial nominee, it is inappropriate for me to comment on others’ public statements.

- i. **Do you agree with President Trump that the Federalist Society provided President Trump with bad advice during his first term? Why or why not?**

Response: Please see my response to Question 38(b).

- ii. **Do you agree with President Trump that Leo is a sleazebag who probably hates America? Why or why not?**

Response: Please see my response to Question 38(b).

- iii. **If you are confirmed, do you plan to remain affiliated with the Federalist Society?**

Response: If I am confirmed, I would plan to remain affiliated to the extent consistent with any obligations under judicial ethics and conflicts of interest rules.

- c. **During your selection process, have you spoken to or corresponded with any individuals associated with the Federalist Society, including Leonard Leo or Steven G. Calabresi? If so, please provide details of those discussions.**

Response: I have had a number of professional acquaintances and colleagues affiliated with the Federalist Society for a number of years and would have maintained correspondence with these individuals during my selection process.

⁶ Donald J. Trump (@realDonaldTrump), Truth Social (May 29, 2025, 8:10 PM), <https://truthsocial.com/@realDonaldTrump/posts/114593880455063168>.

- d. Have you ever been asked to and/or provided services to the Federalist Society, including research, analysis, advice, speeches, or appearing at events?**

Response: Yes, please see my more detailed response at Question 38(e).

- e. Have you ever been paid honoraria by the Federalist Society? If so, how much were you paid, and for what services?**

Response: Yes, I have received honoraria for speaking to student chapters of the Federalist Society. There may also have been a handful of national events for which I received honoraria, but I frequently spoke at national organization conferences without the payment of honoraria. Separately, I received a stipend from a fellowship affiliated with the Federalist Society before starting my full-time academic career.

- 39. The Teneo Network states that its purpose is to “Recruit, Connect, and Deploy talented conservatives who lead opinion and shape the industries that shape society.”**

- a. During your selection process, have you spoken to or corresponded with any individuals associated with the Teneo Network, including Leonard Leo? If so, please provide details of those discussions.**

Response: I have had a number of professional acquaintances and colleagues affiliated with Teneo for a number of years and would have maintained correspondence with these individuals in the ordinary course during my selection process.

- b. Have you ever been asked to and/or provided services to the Teneo Network, including research, analysis, advice, speeches, or appearing at events?**

Response: No, not to my knowledge.

- c. Have you ever been paid honoraria by the Teneo Network? If so, how much were you paid, and for what services?**

Response: No, not to my knowledge.

- 40. The Heritage Foundation states that its mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Action, which is affiliated with the Heritage Foundation, seeks to “fight for conservative policies in Washington, D.C. and in state capitals across the country.”**

- a. During your selection process, have you spoken to or corresponded with any individuals associated with the Heritage Foundation or Heritage Action, including Kevin D. Roberts? If so, please provide details of those discussions.**

Response: I have had a number of professional acquaintances and colleagues affiliated with Heritage for a number of years and would have maintained correspondence with these individuals in the ordinary course during my selection process.

- b. Have you ever been asked to and/or provided services to the Heritage Foundation or Heritage Action, including research, analysis, advice, speeches, or appearing at events?**

Response: Yes, I have participated in a number of conferences and events at Heritage as disclosed on my Senate Judiciary Questionnaire.

- c. Were you ever involved in or asked to contribute to Project 2025 in any way?**

Response: Yes, I was asked to contribute. As I recall, I was unable to do so because most of the project's ongoing efforts occurred during the time period when an immediate family member was terminally ill.

- d. Have you ever been paid honoraria by the Heritage Foundation or Heritage Action? If so, how much were you paid, and for what services?**

Response: I do not believe I have been paid honoraria by the Heritage Foundation or Heritage Action.

- 41. The America First Policy Institute (AFPI) states that its "guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do."**

- a. During your selection process, have you spoken to or corresponded with any individuals associated with AFPI? If so, please provide details of those discussions.**

Response: I have had a number of professional acquaintances and colleagues affiliated with AFLI for a number of years and would have maintained correspondence with these individuals in the ordinary course during my selection process.

- b. Have you ever been asked to and/or provided services to AFPI, including research, analysis, advice, speeches, or appearing at events?**

Response: I have at times provided advice to AFPI or participated in internal meetings or discussion groups hosted by the organization.

- c. Have you ever been paid honoraria by AFPI? If so, how much were you paid, and for what services?**

Response: No.

- 42. The America First Legal Institute (AFLI) states that it seeks to “oppose the radical left’s anti-jobs, anti-freedom, anti-faith, anti-borders, anti-police, and anti-American crusade.”**

- a. During your selection process, have you spoken to or corresponded with any individuals associated with AFLI, including Stephen Miller, Gene Hamilton, or Daniel Epstein? If so, please provide details of those discussions.**

Response: I have had a number of professional acquaintances and colleagues affiliated with AFLI for a number of years and would have maintained correspondence with these individuals in the ordinary course during my selection process.

- b. Have you ever been asked to and/or provided services to AFLI, including research, analysis, advice, speeches, or appearing at events?**

Response: Yes, the principal appearance that I recall providing for AFLI is the provision of a lecture during an annual educational fellows program that AFLI provides, as disclosed in my Senate Judiciary Questionnaire.

- c. Have you ever been paid honoraria by AFLI? If so, how much were you paid, and for what services?**

Response: No.

- 43. The Article III Project is an organization which claims that, “The left is weaponizing the power of the judiciary against ordinary citizens.”**

- a. During your selection process, have you spoken to or corresponded with any individuals associated with the Article III Project, including Mike Davis, Will Chamberlain, or Josh Hammer? If so, please provide details of those discussions.**

Response: No.

- b. Have you ever been asked to and/or provided services to the Article III Project, including research, analysis, advice, speeches, or appearing at events?**

Response: No.

c. Have you ever been paid honoraria by the Article III Project? If so, how much were you paid, and for what services?

Response: No.

Less than an hour after President Trump announced your nomination, Mr. Davis posted on social media that the Article III project will “ensure she is confirmed,” referring to you.⁷ You reposted Mr. Davis’s social media post and wrote, “I’m very grateful for your gracious words of support.”⁸

d. What is your familiarity with Mr. Davis?

Response: I have known Mr. Davis as a professional acquaintance for a number of years.

Mr. Davis has made offensive comments on numerous occasions. For example, in an October 2023 social media post, he wrote, “[t]he violent Black underclass is a danger to America” and, “[t]hese monsters will kill.”⁹

e. Do you condemn this offensive statement by Mr. Davis?

Response: Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on others’ public statements. *See* Code of Conduct of U.S. Judges, Canon 5.

Mr. Davis referred to Anita Hill, Christine Blasey Ford, and Jean Carroll as “three Democrat women who let Democrat operatives use them like cheap whores. (And liked it).”¹⁰

f. Do you condemn this offensive statement by Mr. Davis?

Response: Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on others’ public statements. *See* Code of Conduct of U.S. Judges, Canon 5.

⁷ Mike Davis (@mrddmia), X (July 16, 2025, 7:36 PM), <https://x.com/mrddmia/status/1945628668329447749>.

⁸ Jenn Mascott (@jennmascott), X (July 17, 2025, 5:31 PM), <https://x.com/jennmascott/status/1945959624454107581>.

⁹ Mike Davis (@mrddmia), X (Oct. 1, 2023, 4:01 PM), <https://x.com/mrddmia/status/1708572983944523811>.

¹⁰ Mike Davis (@mrddmia), X (Jan. 17, 2024, 8:22 PM), <https://x.com/mrddmia/status/1747791643057565944>.

Mr. Davis has also made offensive statements about immigrants. For example, in September 2023, he called the children of immigrants “anchor babies” and said: “We’re gonna put kids in cages. It’s gonna be glorious.”¹¹

g. Do you condemn this offensive statement by Mr. Davis?

Response: Consistent with the Code of Conduct for federal judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on the statements of others’ public statements. *See* Code of Conduct of U.S. Judges, Canon 5.

44. The Alliance Defending Freedom (ADF) states that it is “the world’s largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage and family, and parental rights.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with ADF? If so, please provide details of those discussions.

Response: I have a number of professional acquaintances affiliated with ADF and would have spoken with them in the ordinary course before and during the selection process.

b. Have you ever been asked to and/or provided services to ADF, including research, analysis, advice, speeches, or appearing at events?

Response: I have not provided research, analysis, advice, a speech, or an appearance to ADF.

c. Have you ever been paid honoraria by ADF? If so, how much were you paid, and for what services?

Response: No.

45. The Concord Fund, also known as the Judicial Crisis Network, states that it is committed “to the Constitution and the Founders’ vision of a nation of limited government; dedicated to the rule of law; with a fair and impartial judiciary.” It is affiliated with the 85 Fund, also known as the Honest Elections Project and the Judicial Education Project.

a. During your selection process, have you spoken to or corresponded with any individuals associated with these organizations, including Leonard Leo or Carrie Severino? If so, please provide details of those discussions.

Response: I have a number of professional and personal acquaintances affiliated with these organizations and would have spoken with them in the ordinary course before and during the selection process.

¹¹ *Dems RAGE As Republicans EXPOSE Biden Crimes, DNC in PANIC to REPLACE Joe | Sen. Feinstein DEAD, THE BENNY SHOW* (Sept. 29, 2023), <https://www.youtube.com/watch?v=-s9-SotiUkI>.

- b. Have you ever been asked to and/or provided services to these organizations, including research, analysis, advice, speeches, or appearing at events?**

Response: To my knowledge, I have not been asked to provide research, speeches, or appearances to the Concord Fund or the Judicial Education Project. I do maintain professional and personal ties to individuals in these organizations and as part of those ongoing relationships I may have engaged in legal discussions and advice over the years.

- c. Have you ever been paid honoraria by these organizations? If so, how much were you paid, and for what services?**

Response: To my knowledge I have not been paid honoraria by these organizations. I have been paid honoraria for student chapter Federalist Society events.

- d. Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Concord Fund or 85 Fund in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.**

Response: I am unaware of whether outside groups or special interests might be making donations in support of my confirmation. If I am confirmed, any public advocacy for or against my confirmation will be irrelevant to my decision-making as a judge.

- e. If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have this information when you make decisions about recusal in cases that these donors may have an interest in?**

Response: Both the appearance of impartiality and actual impartiality are important in maintaining public confidence in our system of justice. If confirmed, I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

- f. Will you condemn any attempt to make undisclosed donations to the Concord Fund or 85 Fund on behalf of your nomination?**

Response: Please see my answers to questions 45(a) through (e).

Nomination of Jennifer Mascott
Nominee to the United States Court of Appeals for the Third Circuit
Questions for the Record
Submitted September 10, 2025

QUESTIONS FROM SENATOR WHITEHOUSE

Please answer each question and sub-question individually and as specifically as possible.

1. Did you or someone else first raise with the Trump Administration the possibility of your nomination to the Delaware seat on the Third Circuit? If not you, who first raised the subject?
 - a. When did you first discuss with any member of the Administration the possibility of your nomination to the Delaware seat on the Third Circuit?

Response: Congress has allocated at least one seat to each state within a circuit. By custom, there are two Third Circuit seats in Delaware. The White House Counsel first inquired about whether I was interested in consideration for this Third Circuit seat in April or May 2025. I interviewed with the White House Counsel on May 14, 2025.

- b. Did you discuss with any member of the Administration the possibility of being nominated to fill any other judicial vacancies? If so, which vacancies?

Response: I conveyed to White House Counsel staff a general interest in judicial service along with service in any other appointed role in which the President might want me to serve. I am unaware of any additional vacancies for which I may or may not have been under consideration.

2. What issues have you worked on during your time in the Office of White House Counsel?

Response: I have worked on statutory interpretation questions and matters related to the constitutional structural separation of powers. I also participated on teams of White House Counsel lawyers interviewing potential judicial nominees.

3. You said in your questionnaire that you met with President Trump regarding your possible nomination on July 2, 2025.

- a. What did you discuss in that meeting?

Response: The President congratulated me on the nomination, and we discussed my professional background and my understanding of the proper role of an Article III judge.

- b. Did President Trump ask you to make any commitments? If yes, please describe.

Response: No.

**Nomination of Jeniffer Mascott to the
United States Circuit Court for the Third Circuit
Questions for the Record
Submitted September 10, 2025**

QUESTIONS FROM SENATOR COONS

1. At any point during the process that led to your nomination, did you make any representations or commitments to anyone—including but not limited to individuals at the White House, at the Justice Department, or at outside groups—as to how you would handle a particular case, investigation, or matter, if confirmed? If so, explain fully.
 - a. At any point during the process that led to your nomination, were you asked about your opinion on any cases that involve President Trump or the Trump administration?

Response: No.

2. Are you a member of the Delaware Bar?
 - a. Why not?

Response: As a public servant and law professor at Washington, D.C.-area schools, I am licensed to practice law in Maryland and Virginia, not Delaware. I have been nominated to a federal appeals court based in the Third Circuit and am admitted to that court as well as admitted to the Supreme Court and a number of other circuit courts consistent with the federal appellate practice that is the focus of the docket for the Third Circuit.

- b. If confirmed to the Delaware-based seat on the U.S. Court of Appeals for the Third Circuit, do you plan to sit for the Delaware Bar?

Response: My understanding is that admission to the Delaware Bar includes a requirement of clerking for a judge on a Delaware state court, and my service on the Third Circuit if I am confirmed would preclude my service in such a clerkship.

- c. If not, why not?

Response: Please see my response to Question 2(b).

3. Have you ever practiced law in Delaware?
 - a. Have you ever presented oral argument in any state or federal court in Delaware? If so, please list the name of the case, the party you were representing, and the date of the argument.

Response: No. As a public servant in federal government and a long-time academic, my principal practice has involved teaching and working in federal government positions.

- b. Have you ever filed a brief in any state or federal court in Delaware? If so, please list the name of the case, the party you were representing, and the date the brief was filed.

Response: No. As a public servant in federal government and a long-time academic, my principal practice has involved teaching and working in federal government positions.

- 4. Are you admitted to practice law in the U.S. Court of Appeals for the Third Circuit?

- a. When were you admitted to the Third Circuit bar?

Response: Yes, and I was admitted in May 2025.

- b. Why did you apply for admission on that date? Was it because you had been told by the White House that you were under consideration for the nomination to Judge Kent Jordan's seat?

Response: As is standard practice of lawyers, I applied for admission to the Third Circuit when I had reason to believe I would be engaging in regular legal work within the Third Circuit in particular. As a long-time academic and public servant, my practice has been principally teaching and the filing of briefs at the Supreme Court level, rather than practicing within any particular regional circuit court. The federal appellate issues considered by all regional circuits is generally similarly, as only the Federal Circuit and the D.C. Circuit to a much lesser degree have specialized dockets.

- c. Have you ever presented oral argument in the Third Circuit? If so, please list the name of the case, the party you were representing, and the date of the argument.

Response: No, as a long-time academic and federal public servant, my practice has principally consisted of teaching, the filing of briefs in the Supreme Court, and legal work on behalf of the federal government within various appointed executive branch positions, rather than oral argument within any particular regional circuit court.

- d. Have you ever filed a brief in the Third Circuit? If so, please list the name of the case, the party you were representing, and the date the brief was filed.

Response: Yes. *CFPB v National Collegiate Master Student Loan Trust*, on behalf of the Separation of Powers Clinic at Scalia Law School on October 3, 2022.

5. If confirmed to the Delaware-based seat on the Third Circuit to which you have been nominated, where will you establish your chambers?
- a. How many days per week do you intend to work in your chambers?

Response: If I am confirmed, my intention would be to establish chambers in the Wilmington Courthouse directly following confirmation. I would intend for my law clerks to work in Wilmington as well, and we would all comply with any mandatory residency requirements. The location of the work from day to day would depend on the assignments received within the Third Circuit, such as assignment to circuit court panels which as I understand it typically involve oral argument in the Third Circuit's main courthouse in Philadelphia.

- b. Where do you intend for your law clerks to work?

Response: Please see my response to Question 5(a).

- c. How many days per week do you expect that your law clerks will work in chambers?

Response: Please see my response to Question 5(a).

6. Where is your current primary residence?

- a. If confirmed, will you move to Delaware full time?

Response: As a public servant and law professor at Washington, D.C.-area schools, I have been living in Maryland. We have a long-time home in Delaware, and if I am confirmed, I will comply with all statutory residency requirements applicable to the Third Circuit.

- b. Will you change your primary residence to Delaware?

Response: Please see my response to Question 6(a).

- c. Will you register to vote in Delaware?

Response: Please see my response to Question 6(a).

- d. Will you obtain a Delaware driver's license?

Response: Please see my response to Question 6(a).

7. How would you respond to the members of the Delaware Bar—many of whom have contacted me—who are upset that a Washington, D.C.-based law professor with minimal ties to Delaware has been nominated to this Third Circuit seat instead of a member of the legal community in Delaware?

Response: I would not presume to comment on communication with your constituents. Since the announcement of my nomination, I have met with many members of the Delaware bar, including the leadership of the University of Wilmington at which I have indicated interest in teaching at the law school in addition to my judicial service in the area. In addition, I have met with the leadership of many Delaware-based firms and received significant positive encouragement and welcoming to the Delaware legal community in which I would enthusiastically desire to participate if I am confirmed.

8. How would you describe your judicial philosophy?

Response: My judicial philosophy is that judges should be carefully to apply the rule of law impartially and fairly, consistent with their constitutional oath. Article III of the Constitution intentionally and plainly permits only a limited judicial role—contained to resolution of discrete cases and controversies with jurisdiction in the “inferior” courts that is regulated and delimited by Congress through legislation. My role as a lower court judge would be to faithfully apply Supreme Court precedent and follow the stare decisis rules and principles of the Third Circuit. To the extent such precedents do not govern a case before me, I would apply textualist and originalist approaches to address interpretive questions consistent with the role of the judge and the significance of the text and structure of positive law within the federal constitutional scheme.

9. What sources would you employ to discern the contours of a constitutional provision?

Response: I would apply an originalist methodology to the extent there was a concrete open constitutional question before me, not governed by preexisting Supreme Court or Third Circuit precedent. If I were faced with an open question, I would consult the range of sources unpacked in my interpretive originalist academic work on “officers of the United States” in the *Stanford Law Review*. Such sources include the constitutional text, surrounding provisions, the constitutional structure, and a range of sources unpacking the public understanding of the relevant phrase or term at the time. Those sources could include Founding-era dictionaries, the ratification and drafting debates, the Federalist and anti-Federalist Papers, historical sources, Continental Congress debates and practice, among a number of other sources.

10. You testified during your Senate Judiciary Committee confirmation hearing that the Constitution should be interpreted according to its “original public meaning,” which you defined as “the meaning of the text that was understood by the public at the time it became law.” You also testified that you believe that *Brown v. Board of Education* was correctly decided.

- a. Do you consider yourself an originalist?

Response: Yes.

- b. Can you explain how the Court's decision in *Brown* comports with an originalist interpretation of constitutional law?

Response: The Fourteenth Amendment of the Constitution requires equal protection of all citizens under the laws, which is consistent with *Brown*'s requirement that schools be integrated as segregation was causing inequality. See U.S. Const. amend. xiv ("[N]or shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.").

11. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Response: If I were confirmed, I would apply the standards set forth in applicable Supreme Court precedent, such as *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). Supreme Court precedent has identified express enumeration as a relevant consideration. See, e.g., *Timbs v. Indiana*, 586 U.S. 146, 150 (2019); *McDonald v. City of Chicago*, 561 U.S. 742, 763-66 (2010).

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Response: The Supreme Court has identified history and tradition as a relevant consideration. See, e.g., *Timbs*, 586 U.S. at 151-54; *McDonald*, 561 U.S. at 767-78. The Supreme Court has explained the types of sources to be considered in cases such as *Dobbs*, 597 U.S. at 215, and *Washington v. Glucksberg*, 521 U.S. 702 (1997).

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

Response: As a judge, should I be confirmed, any applicable precedent of the Supreme Court or the Third Circuit that recognized the right at issue would be

controlling precedent. In the absence of controlling precedent, relevant decisions of other circuits may be consulted for their persuasive value.

- d. Would you consider whether a *similar* right has previously been recognized by Supreme Court or circuit precedent?

Response: Yes.

- e. What other factors would you consider?

Response: As a judge, should I be confirmed, I would consider any other factor identified by Supreme Court or Third Circuit precedents as relevant to assessing whether a right is fundamental and protected by the Fourteenth Amendment.

- 12. When, if ever, is it permissible for a circuit court to overturn its own precedent? Please explain.

Response: Under the rules of the Third Circuit, a panel of the circuit court may not overturn the precedent of a previous panel decision. The court must sit en banc to overturn circuit precedent.

- 13. Under 28 U.S.C. § 455, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify [themselves] in any proceeding in which [their] impartiality might reasonably be questioned.”

- a. Given your service in the White House Counsel’s Office, would you recuse yourself from cases challenging executive orders promulgated by the Trump administration?

Response: The statute cited above lists a number of specific provisions governing recusals. The particular provision addressing government service requires recusal where, during that governmental employment, the individual “participated as counsel, adviser or material witness concerning [a] proceeding or expressed an opinion concerning the merits of the particular case in controversy.” 28 U.S.C. 455 § (b)(2). If I were confirmed, I would fully comply with these requirements.

- b. What about cases challenging other Trump administration executive actions?

Please see my response to Question 13(a).

- c. Given your statement to me that you provided the Trump administration with advice on its obligations vis-à-vis spending money appropriated by Congress, would you recuse yourself from cases challenging how and whether the Trump administration is obligated to spend money appropriated by Congress?

Please see my response to Question 13(a).

14. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a higher court? Please explain.

Response: It would not be appropriate for a lower court judge to depart from controlling precedent from a higher court. A court of appeals judge must follow controlling Supreme Court precedent. *See Rodriguez de Quimas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989).

15. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, “[h]igher education at the time was considered dangerous for women,” a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, “As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.” This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

- a. When is it appropriate for a court to consider evidence that sheds light on our changing understanding of society?

Response: In certain contexts, the Supreme Court has considered “evolving standards” in determining the meaning of a constitutional provision. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). If confirmed, I would be bound to apply all Supreme Court precedents and Third Circuit precedent in these contexts.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Response: Generally, the admissibility of scientific, technical, or other specialized knowledge in the determination of adjudicative facts is governed by Federal Rule of Evidence 702. If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the Third Circuit governing the consideration of such evidence.

16. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

Response: Generally, the Take Care Clause provides that the President “Shall take Care that the Laws be faithfully executed.” Art. II, § 3, cl. 3. Under this provision, the Executive Branch has certain authority to prioritize enforcement of federal law. *United States v. Texas*, 599 U.S. 670, 679 (2023). How these or any other legal principles apply in presidential action, and what the remedy is for any violation of the Take Care Clause,

implicates issues that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to further comment. *See Code of Conduct of U.S. Judges, Canon 3A(6).*

17. Is President Trump eligible to be elected President for a third term?

Response: The 22nd Amendment to the U.S. Constitution provides that “[n]o person shall be elected to the office of the President more than twice”

18. Who won the 2016 U.S. Presidential Election?

Response: President Trump was certified as the winner of the 2016 presidential election and served as the 45th President of the United States.

19. Who won the 2020 U.S. Presidential Election?

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States.

20. Who won the 2024 U.S. Presidential Election?

Response: President Trump was certified as the winner of the 2024 presidential election is serving as the 47th President of the United States.

21. Do you agree with me that the attack at the U.S. Capitol on January 6, 2021, was an insurrection? Why or why not?

Response: Because the conduct of persons at the U.S. Capitol on January 6, 2021, generated significant political debate and because the import of pardons issued to individuals prosecuted for involvement in the activities at the Capitol on January 6, 2021, is subject to ongoing litigation, it would be inappropriate for me to provide comment as a judicial nominee. *See Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.*

22. Do you think the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021, deserved to be pardoned?

Response: Please see my response to Question 21.

23. If you were the President on January 20, 2025, would you have pardoned the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021?

Response: Please see my response to Question 21.

24. Would it be constitutional for the President of the United States to punish a private person for a viewpoint that person expresses in a newspaper op-ed?

Response: Generally speaking, the Supreme Court has recognized that the First Amendment prohibits the government from engaging in viewpoint discrimination. *See, e.g., Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995). The Supreme Court has further recognized that viewpoint discrimination is proscribed even if the speech (fighting words, for instance) generally would be categorically unprotected. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). Viewpoint discrimination occurs when the government “targets not subject matter, but particular views taken by speakers on a subject.” *Rosenberger*, 515 U.S. at 829.

25. Would it be constitutional for the President of the United States to terminate government contracts with a private person specifically because that person donated to members of the opposite political party?

Response: Please see my response to Question 24.

26. Would it ever be appropriate for the President of the United States to punish a law firm for taking on a client that the President did not like?

Response: Please see my response to Question 24. To the extent this question asks about hypothetical cases or particular matters that are the subject of ongoing litigation, it would be inappropriate for me as a judicial nominee to further comment. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

27. Do you agree that there is a constitutional right to privacy that protects a woman’s right to use contraceptives? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

Response: The Supreme Court has recognized a right to privacy protecting the use of contraceptives. *See Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). If confirmed, I would faithfully apply relevant precedents of the Supreme Court and the Third Circuit relating to privacy.

28. Do you agree that there is a constitutional right to privacy that protects the right to in vitro fertilization (IVF)? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

Response: As my answer to Question 27 indicates, the Supreme Court has recognized a right to privacy in certain contexts. Whether that right extends to IVF has been the subject of litigation and therefore it would be inappropriate for me to opine on that particular question. *See Code of Conduct of U.S. Judges*, Canon 3A(6).

29. Do you believe that immigrants, regardless of legal status, are entitled to due process and fair adjudication of their claims?

Response: The Fifth and Fourteenth Amendments to the U.S. Constitution provide, respectively, that no person shall “be deprived of life, liberty or property, without due

process of law” and that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amends. v, xiv. The Supreme Court has stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001); see *Dep’t of Homeland Sec. v.*

Thuraissigiam, 591 U.S. 103, 107 (2020); *Agency for Int’l Dev. v. All. For Open Soc’y Int’l, Inc.*, 591 U.S. 430 (2020). The Supreme Court has an extensive body of precedents discussing what due process requires in various contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents in addressing due process claims.

30. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?

Response: Generally speaking, the original public meaning of a provision constrains its application decades later, consistent with the Supreme Court’s application of originalist methodology in resolving open constitutional questions. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008). But the Constitution includes general as well as specific terms, which governs how much discretion governmental actors have in exercising authority under the Constitution. Further, many of the Constitution’s requirements are procedural rather than substantive, establishing rules for how governmental actors are to make decisions responsive to the needs and political will of the current and contemporary electorate. That said, as a lower court judge, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the Third Circuit without regard to whether that binding precedent comports with the original public meaning of the Constitution.

31. What role does morality play in determining whether a challenged law or regulation is unconstitutional or otherwise illegal?

Response: As a general matter, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. See 28 U.S.C. § 453. Judges should apply judgment, not will. The Federalist No. 78. Accordingly, judges must evaluate legal claims and determine the merits of those claims based on a fidelity to the legal text of any applicable constitutional or statutory provision, as well as any binding precedents.

32. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Response: There may be certain contexts in which a judge will be required to consider the practical consequences of a particular order on the parties and the public. See, e.g., *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (injunctive relief). As a general matter, however, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. See 28 U.S.C. § 453.

33. What role, if any, should empathy play in a judge's decision-making process?

Response: As a general matter, a judge should not decide cases based on their personal views or policy preferences but rather based on the Constitution and laws of the United States. *See* 28 U.S.C. § 453. Judges should apply judgment, not will. The Federalist No. 78. Accordingly, judges must evaluate legal claims and determine the merits of those claims based on a fidelity to the legal text of any applicable constitutional or statutory provision, as well as any binding precedents.

34. What role, if any, should a judge's personal life experience play in his or her decision-making process?

Response: A judge's life experiences hopefully will have provided the judge with the requisite legal acumen to fulfill the judicial role as well as the integrity to treat all others with civility, fairness, honesty, and respect.

35. Should you be confirmed, would you ever inform parties before you that they do not need to comply with your orders?

- a. Under what circumstances would you tell a party they could decide not to comply with your orders?

Response: The rules governing civil and appellate proceedings allow for mechanisms by which a party may request that a judge stay or defer a party's obligation to comply with a judicial order. *See, e.g.*, Fed. R. App. P. 8, 41; Fed. R. Civ. P. 62. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6).

- b. What would you do if a party refuses to comply with one of your orders?

Response: As a circuit judge, any issue relating to refusal to comply with a court order would likely be taken up by a panel of Third Circuit judges, so I would consult with my colleagues regarding the appropriate remedy.

36. When is it appropriate for an en banc federal appellate court to reconsider a panel decision?

Response: Generally speaking, to determine when the Third Circuit should sit en banc to reconsider a panel decision, I would need to consult factors and considerations like those set forth in Federal Rule of Appellate Procedure 40. One relevant consideration would be whether the earlier panel decision conflicts with binding Supreme Court precedent.

37. When it comes to conducting yourself ethically, who in the legal profession do you see as a role model?

Response: I see as role models the judges, academics, and private practitioners who transparently and fully comply with ethical obligations and serve with humility, mindful of the modest and limited role of the judiciary to resolve concrete cases and controversies and the legal profession's general role more broadly to help facilitate the fair and impartial administration of justice.

38. Discuss your proposed hiring process for law clerks.

a. Do you think law clerks should be protected by Title VII of the Civil Rights Act?

Response: I plan to hire law clerks using a merit-based system, based on recommendations from practitioners, judges, and academics whose judgment I trust. Regarding Title VII, judges should treat everyone including law clerks and judicial staff with dignity, courtesy, respect, and fairness. If confirmed, I will seek to ensure that discrimination has no place in my chambers. That said, as a pending judicial nominee, I cannot speak to any particular policy questions regarding congressional application of general Title VII provisions to the federal judiciary.

39. In the past year, multiple studies have revealed ongoing problems with workplace conduct policies and outcomes in the federal judiciary. In a national climate survey, hundreds of judiciary employees reported that they experienced sexual harassment, discrimination, or other forms of misconduct on the job. A study by the Federal Judicial Center and the National Academy of Public Administration found the branch has failed to set up trusted reporting systems for employees who experience misconduct or ensure that those handling complaints are adequately trained.

a. If confirmed, what proactive steps would you take to ensure that the clerks and judicial assistants who work in your chambers are treated with respect and are not subject to misconduct?

Response: Fundamentally, people should be treated with dignity. If confirmed to serve as a judge, I will have the responsibility and duty to set the tone for my chambers. I would seek to facilitate and preserve an atmosphere of respect and humility by example.

b. What proactive steps would you take to ensure that any workplace-related concerns that your clerks and judicial assistants may have are fully addressed?

Response: If confirmed, I will ensure that any rules and internal policies of the Third Circuit be followed. I will also foster an open-door policy to ensure that any workplace-related concerns are fully addressed.

- c. If you are confirmed and you later hear from a colleague or your chambers staff that another judge is acting inappropriately, what steps would you take to help ensure the problem is addressed?

Response: Please see my response to Question 39(b).

40. Do you think Congress can constitutionally restrict the removal of any official within the Executive Branch?

Response: Under Supreme Court precedent, Congress cannot restrict the removal of officials who exercise executive power in a manner that would curtail the President's ability to take care that the laws be faithfully executed. *See, e.g., Seila Law LLC v. Consumer Financial Protection Bureau*, at 203-04 (2020) (observing that without supervisory and removal authority the President "could not be held fully accountable for discharging his own responsibilities" (quotation omitted)). According to the Court, as "a general matter," the Constitution provides the President with "the authority to remove those who assist him in carrying out his duties." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 513-14 (2010).

Questions for the Record for Professor Jennifer Mascott
Submitted by Senator Richard Blumenthal
September 10, 2025

1. The Trump Administration is facing litigation and opposition in a wide variety of jurisdictions for successively appointing the same individuals to serve as interim or acting U.S. Attorney—essentially bypassing Senate confirmation and the role of district judges in naming acting head prosecutors.

In a 2024 briefing on appointments, removals, and congressional supervision of executive branch staffing, you discussed the federal Vacancies Reform Act. Specifically, your notes stated that “Congress could encourage Presidents to fill vacant offices more quickly and with more politically palatable candidates by tightening the vacancies provisions that permit a multiple succession of acting officials in key roles” and that the Act could be “tightened to enhance this function by reducing the number of positions from which the President can select acting officials, or the 210-day time period for which acting officers can serve without Senate consent.”

- a. Do you still believe that Congress should “encourage Presidents to fill vacant offices more quickly and with more politically palatable candidates by tightening the vacancies provisions that permit a multiple succession of acting officials in key roles[?]”

Response: The quoted excerpts above are included in outline notes that I developed in connection with a separation of powers briefing series that I used to conduct in my academic capacity for Senate legal and policy staff. Those statements are part of a series of observations stating the potential legislative powers that Congress possesses related to temporary vacancies in certain federal Senate-confirmed positions under the Vacancies Reform Act. Those statements do not necessarily express any view of mine about particular action that Congress should take. Rather, they describe measures Congress could choose to take if Congress had the legislative will and policy desire to provide more detailed guidance and limitations on the temporary filling of acting executive branch offices. Notably, the particular vacancies provisions that I was referencing in the excerpts are part of the general Vacancies Reform Act structure, 5 U.S.C. §§ 3345-3349e. Vacancies in U.S. Attorney positions are also governed by the separate provisions directed to the Department of Justice in 28 U.S.C. § 546.

- b. Do you support the Administration’s current actions regarding vacancy U.S. Attorney positions?

Response: Consistent with the Code of Conduct for United States Judges and positions taken by prior nominees, it would be inappropriate for me, as a pending judicial nominee, to comment on a political issue. *See* Code of Conduct of U.S. Judges, Canon 5.

2. If confirmed, will you recuse yourself from any case where a reasonable person, knowing all the relevant facts, might question your impartiality, even if you personally believe you can be fair?

- a. If confirmed, will you recuse yourself from cases involving individuals, organizations, or entities to which you or your family members have made political contributions or provided political support?

Response: I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States judges, and any and all other laws, rules, and practices governing such circumstances. I will comply with all recusal requirements in section 455 and the code of conduct.

- b. If confirmed, will you recuse yourself from cases involving former clients, former law firms, or organizations with which you have had significant professional relationships?

Response: I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States judges, and any and all other laws, rules, and practices governing such circumstances. I will comply with all recusal requirements in section 455 and the code of conduct.

- c. If confirmed, will you recuse yourself from cases involving personal friends, social acquaintances, or individuals with whom you have ongoing personal relationships?

Response: I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States judges, and any and all other laws, rules, and practices governing such circumstances. I will comply with all recusal requirements in section 455 and the code of conduct.

3. If confirmed, will you commit to avoiding all *ex parte* communications about pending cases, including informal discussions at social events or professional gatherings?

- d. If confirmed, will you avoid discussing pending cases or judicial business with elected officials, political appointees, or political operatives?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct.

- e. If confirmed, will you commit to declining meetings or communications with lobbyists, advocacy groups, or special interests seeking to influence your judicial decisions?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct.

- f. If confirmed, will you refrain from making public statements about legal or political issues that could reasonably be expected to come before your court?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct.

- 4. If confirmed, will you commit to filing complete and accurate financial disclosure reports that include all required information about your financial interests and activities?

- g. If confirmed, will you decline all gifts from parties who might appear before your court or who have interests that could be affected by your judicial decisions?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct. I will file all required reports and comply with all requirements related to potential conflicts of interest and gifts.

- h. If confirmed, will you decline privately funded travel, hospitality, or entertainment that could create an appearance of impropriety or special access?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct. I will inform myself of all relevant requirements and comply with all rules and obligations related to privately funded travel, hospitality, or entertainment.

- i. If confirmed, will you ensure that any teaching, speaking, or writing activities comply with judicial ethics requirements and do not create conflicts with your judicial duties?

Response: If confirmed, I will faithfully adhere to all ethical rules and obligations governing judicial conduct. I will comply with all rules and obligations including any that impact teaching, speaking, or writing activities.

- 5. The House Republican-authored budget reconciliation bill had included a provision that would have limited federal judges' ability to hold government officials in contempt. While the Senate Parliamentarian ruled that the provision violated the Byrd Rule, and it was, therefore, removed, it would have prohibited federal courts from issuing contempt penalties against officials who disobey preliminary injunctions or Temporary Restraining Orders if the party seeking the order did not provide financial security to cover potential future damages for wrongful enjoining.

The contempt power was first codified in law in the Judiciary Act of 1789. In 1873, the Supreme Court described it as "inherent in all courts" and "essential to the preservation of order in judicial proceedings and to the enforcement of the judgements, orders, and

writs of the courts, and consequently to the due administration of justice.” Yet House Republicans are seeking to exempt government officials from this key tool for judicial enforcement.

- a. Do you believe the contempt power is “essential . . . to the due administration of justice[?]”

Response: Historically, the contempt power has been viewed as an aspect of “judicial Power,” which the U.S. Constitution vests in the U.S. Supreme Court and “inferior courts as the Congress may from time to time ordain and establish.” U.S. Const. art. III, § 1. Through Article III and the express power to create “inferior” tribunals that the Constitution allocates to Congress via its legislative authority in Article I sections 7 and 8, Congress has the ability to create rules and regulations relevant to the contempt authority. As a pending judicial nominee, it would be inappropriate for me to express an opinion on the manner in which Congress should exercise this legislative authority. The Supreme Court opinion passage quoted above regarding the inherent role of contempt authorities is followed in that same opinion by the observation that an 1831 legislative act had “limited and defined” that power. *See Ex Parte Robinson*, 86 U.S. 505, 510 (1873). The opinion continued on to observe that it was an open constitutional question the degree to which Congress could limit the contempt authority of the U.S. Supreme Court, which Article III directly vests with judicial power (a principle analogous to my testimony before the committee on June 14, 2023 and on September 3, 2025 regarding enforcement of Supreme Court recusal determinations). *See id.* But the opinion expressly stated that “there can be no question” the congressional authority to limit contempt powers “applies to the Circuit and District Courts” as “[t]hese courts were created by act of Congress.” *Id.* at 510-11. The powers and duties of those courts “depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction.” *Id.* at 511.

- b. Do you believe that federal judges should be limited in their ability to hold government officials who defy court orders in contempt?

Response: As explained more fully in my answer to Question 5a, Congress has the legislative and policy authority under Article I and III of the Constitution to regulate the contempt authority of “inferior” federal courts. As a pending judicial nominee and consistent with the practice of past nominees and the Code of Judicial Conduct, it would be inappropriate for me to opine on how Congress should use its legislative and policy authorities.

6. If confirmed, you, like all other members of the federal bench, would have the ability to issue orders. On February 9, 2025, Vice President Vance posted on X that “[j]udges aren’t allowed to control the executive’s legitimate power.” This raises an extremely concerning specter of Executive Branch defiance of court orders.

- a. If confirmed, would you have the ability to issue orders?

Response: Yes.

- i. Would you have the ability to enforce those orders?

Response: It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions, civil and criminal contempt procedures as appropriate, and requirements that parties file status reports and make appearances to explain compliance efforts and progress.

- ii. What powers would you have to enforce those orders?

Response: See previous answer.

- b. Does there exist a legal basis for federal Executive Branch officials to defy federal court orders? If so, what basis and in which circumstances?

Response: All proper parties to federal court proceedings including federal executive officials have a responsibility to comply with lawful court orders. The standard process for challenging an order that one concludes is unlawful is to appeal that order. There might be rare circumstances such as a lack of jurisdiction or the complete impossibility of compliance with the terms of a particular order that would make compliance untenable, but it is hard to imagine such a situation.

- c. Does there exist a legal basis for state officials to defy federal court orders? If so, what basis and in which circumstances?

Response: The U.S. Constitution's Supremacy Clause directs that the U.S. Constitution, federal laws, and treaties "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. Article VI of the U.S. Constitution continues on to require that "the Judges in every State shall be bound" by this supreme federal law. *Id.* And all federal and state executive, legislative, and judicial officers take a constitutionally required oath to support the U.S. Constitution. U.S. Const. art. VI, cl. 3. Consequently, state officials are bound by lawful federal judicial orders. If there is a lower court order that binds a party, including a state executive official, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome. That said, treatises and cases have identified a number of circumstances where compliance with a court order is not required, such as if the court lacked jurisdiction or if compliance was impossible. *E.g.*, 17 Corpus Juris Secundum Contempt §§ 56-65. The Supreme Court has identified additional circumstances, such as where an order must be violated to be appealed. *See Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) (opinion of Sotomayor, J.) (listing

defiance of a disclosure order and the consequent incursion of court-imposed sanctions as a potential triggering mechanism for review of a challengeable mandatory disclosure order to avoid improper disclosure of privileged information).

d. What would make a court order unlawful?

i. What is the process a party should follow if it believes a court order to be unlawful?

Response: The standard process for challenging court orders is appeal. If the U.S. Supreme Court has issued a final judgment and there is no more recourse for appeal, certain federal policies could be altered or changed through the legislative or constitutional amendment processes. The finality of a federal court judgment is one of the principal reasons why the drafters and ratifiers of the U.S. Constitution fashioned Article III with significant limits on the contours of federal judicial power limiting it to the resolution of cases and controversies subject to congressional regulation of federal jurisdiction.

ii. Is it ever acceptable to not follow this process? When and why?

Response: Please see my answers to Questions 6(b), 6(c), and 6(d)(i).

7. Were you in Washington, D.C. on January 6, 2021?

a. Were you inside the U.S. Capitol or on the U.S. Capitol grounds on January 6, 2021?

Response: I was in Washington, D.C. on January 6, 2021. I was not inside the U.S. Capitol or on the U.S. Capitol grounds on January 6, 2021.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nomination Hearing
Questions for the Record for Jennifer Mascott

1. As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two initial 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.

2. Before the *Dobbs* argument, you wrote an article in which you contended that “the most constitutionally correct outcome in *Dobbs* would be for the Court to conclude that the Fourteenth Amendment Due Process Clause—a guarantee of process protections—contains no substantive right.”
 - a. In *Pierce v. Society of Sisters*, the Supreme Court grounded the right to control the education of one’s children in substantive due process. **Was that ruling “constitutionally correct”?**
 - i. **If yes, please explain how you square this position with what you wrote in the article referenced above.**

Response: As Justice Kagan explained and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to “grade” or give a “thumbs-up or thumbs-down” to particular precedents of the Supreme Court. Were I confirmed as a judge, all of the Supreme Court’s pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court’s binding precedents, because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties’ cases.

- ii. **If no, do you believe parents have the right under the Constitution to control the education of their children?**
 1. **If yes, from where in the Constitution does this right derive?**
 2. **If no, do you believe overturning *Pierce* would be “constitutionally correct”? Why or why not?**

Response: *Pierce* is binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it. Otherwise, please see my answer to Question 2(a)(i).

- iii. **If you have declined to answer any of the questions above on the basis that the issue may come before you (or another court), please identify the case(s) currently pending in the federal courts that raise this issue. If you cannot identify any such cases, please explain your basis for believing that this is a “live” issue that is before or that may come before the courts.**

Response: Please see my answer to Question 2(a)(i) on the Code of Conduct for United States Judges and my role as a lower court judge in faithfully applying, and consequently not grading, Supreme Court precedent. Under longstanding principles of vertical stare decisis, I would be bound by and would faithfully apply all of that precedent.

- b. In *Loving v. Virginia*, the Supreme Court grounded the right to interracial marriage in substantive due process, explaining “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men” and describing marriage as a “basic civil right[] of man, fundamental to our very existence and survival” (citation omitted). **Was that ruling “constitutionally correct”?**

- i. **If yes, please explain how you square this position with what you wrote in the article referenced above.**

Response: The Loving decision is constitutionally correct and represents a canonical decision.

- ii. **If no, do you believe people have the right under the Constitution to marry those of other races?**

1. **If yes, from where in the Constitution does this right derive?** (If you identify the Equal Protection Clause in your response, please explain whether the right to interracial marriage would be different in scope under the Equal Protection Clause alone than under both the Equal Protection Clause and the Due Process Clause, on which it was grounded in *Loving*.)

Response: Please see my responses to Question 2(b).

2. **If no, do you believe overturning *Loving* would be “constitutionally correct”? Why or why not?**

Response: Please see my responses to Question 2(b).

- iii. **If you have declined to answer any of the questions above on the basis that the issue may come before you (or another court), please identify the case(s) currently pending in the federal courts that raise this issue. If you cannot identify any such cases, please explain your basis for believing that this is a “live” issue that is before or that may come before the courts.**

Response: Please see my responses to Question 2(b).

- c. In *Lawrence v. Texas*, the Supreme Court overturned state laws criminalizing private intimacy by same sex couples, holding “their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.” **Was that ruling “constitutionally correct”?**
- i. **If yes, please explain how you square this position with what you wrote in the article referenced above.**

Response: Please see my responses to Question 2(a).

- ii. **If no, do you believe states have the ability under the Constitution to outlaw private intimate relations between consenting adults of the same sex?**
1. **If no, what part of the Constitution prohibits such laws?**

Response: Please see my responses to Question 2(a).

2. **If yes, do you believe overturning *Lawrence* would be “constitutionally correct”? Why or why not?**

Response: Please see my responses to Question 2(a).

- iii. **If you have declined to answer any of the questions above on the basis that the issue may come before you (or another court), please identify the case(s) currently pending in the federal courts that raise this issue. If you cannot identify any such cases, please explain your basis for believing that this is a “live” issue that is before or that may come before the courts.**

Response: Please see my responses to Question 2(a).

- d. In *Obergefell v. Hodges*, the Supreme Court grounded the right to same sex marriage in substantive due process. **Was that ruling “constitutionally correct”?**
- i. **If yes, please explain how you square this position with what you wrote in the article referenced above.**

Response: Please see my responses to Question 2(a).

- ii. **If no, do you believe states have the ability under the Constitution to prohibit same sex marriage (or to define marriage as only being between a man and a woman)?**

Response: Please see my responses to Question 2(a).

1. **If no, what part of the Constitution prohibits such laws?** (If you identify the Equal Protection Clause in your response, please explain whether the right to same sex marriage would be different in scope under the Equal Protection Clause alone than under both the Equal Protection Clause and the Due Process Clause as it was grounded in *Obergefell*.)

Response: Please see my responses to Question 2(a).

2. **If yes, do you believe overturning *Obergefell* would be “constitutionally correct”? Why or why not?**

Response: Please see my responses to Question 2(a).

- iii. **If you have declined to answer any of the questions above on the basis that the issue may come before you (or another court), please identify the case(s) currently pending in the federal courts that raise this issue. If you cannot identify any such cases, please explain your basis for believing that this is a “live” issue that is before or that may come before the courts.**

Response: Please see my responses to Question 2(a).

3. On the day of the *Dobbs* argument in 2021, you “reposted” a tweet from conservative commentator Hugh Hewitt paraphrasing Chief Justice Roberts:



(For the record, the Chief Justice was misstating how our laws compared to those of other countries.) **Do you believe a judge should apply as a tool of judicial interpretation an evaluation of the laws of “countries we keep company with?”** If no, what caused you to “repost” the tweet excerpted above?

Response: Under Supreme Court precedent interpreting and applying the Due Process Clause in the Fourteenth Amendment, any right not explicitly mentioned in the constitutional text is “implicitly protected” only if it is “‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’” *See Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 231 (2023); *see also Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Under that precedent, sources that unpack the relevant history and tradition would be appropriate for consideration. The context of the interpretive question would impact whether such sources would ever include rules and practices from other countries. As an academic, I posted thousands of tweets on legal issues, often when a tweet was of interest or relevant to constitutional interpretive doctrines that were the subject of my research or teaching.

4. You co-authored a brief in 2023 supporting a challenge to the validity of the CFPB’s appropriations under the Appropriations Clause. The argument was so far outside the legal mainstream that even *this* Supreme Court rejected it 7 to 2. Subsequently you have been working in the White House Counsel’s office as we’ve seen attempts to dramatically curtail the power and scope of the CFBP.

- a. **While serving in the White House, have you worked on or advised on any matters related to the CFPB?**

Response: Yes, I have advised on several discrete matters related to statutory interpretation or the separation of powers and the CFPB. Notably, the brief referenced in the question above was filed on behalf of 123 Members of Congress and does not necessarily reflect my personal academic views on the Constitution. The brief was a pro bono matter handled by the student separation of powers clinic at the Scalia Law School of George Mason University.

- b. **While serving in the White House, have you worked or advised on any matters surrounding impoundment of congressionally appropriated funds?**

Response: Yes, I have advised on a handful of discrete questions related to appropriated funds and impoundment.

- c. **Given your evident animosity toward the CFPB, will you recuse yourself from any cases related to the CFPB if confirmed?**

Response: I do not have animosity toward the CFPB. As explained above, the relevant brief was a product of pro bono legal representation of more than one hundred Members of Congress and thus constituted a relatively widely held view of a significant portion of a federal institution coequal to the Supreme Court. If confirmed, I will follow all recusal requirements, which include the requirement in 28 U.S.C. § 455 that government lawyers recuse from cases in which during their government employment they “participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.” *Id.* § 455(b)(3).

Nomination of Jennifer Mascott
United States Court of Appeals for the Third Circuit
Questions for the Record
Submitted September 10, 2025

QUESTIONS FROM SENATOR BOOKER

1. Traditionally, home state senators for nominees for the federal appellate courts have a significant role in the nomination process, largely due to their connections with the local legal community, connections which the President and Administration may not have. The presumption is that a nominee will have strong ties to the state in which they will serve. The judicial vacancy to which you have been nominated is in Wilmington, Delaware. Yet, you do not reside in Delaware, you are not a member of the Delaware State Bar Association, and you have no prior experience practicing in Delaware courts.

- a. What are the benefits of selecting a federal appellate judge with professional ties and practice experience in the state where a judicial seat is located?

Response: The nomination and advise and consent authorities are held entirely by the President and the Senate. I defer to those political actors on weighing the benefits and qualifications of particular judicial nominees. Under Article I section 8 of the Constitution and Article III, Congress has authority to create “inferior” courts, vest those courts with jurisdiction, and establish the numbers of various seats on those courts. I have been nominated by President Trump to a seat within the federal appeals court for the Third Circuit, and if confirmed I will comply with all relevant statutory residency and service requirements.

- b. If you are confirmed to the federal bench, will you move to Delaware?

Response: Please see my response to Question 1(a).

- c. Why are you interested in a federal appellate judgeship in Delaware as opposed to Virginia or the District of Columbia or any other jurisdiction with which you have any connection or ties to?

Response: The federal judicial nomination authority belongs exclusively to the President. I am very grateful for the President’s nomination to a seat on the Third Circuit. When asked by the White House Counsel about interviewing for a nomination to a seat on the court, I expressed willingness to do so. Previously I had indicated willingness and interest in serving generally in the federal judiciary.

2. During the century before President Trump’s first term, the Senate had *never* confirmed a judicial nominee over the objections of *both* home-state Senators, according to the

Congressional Research Service.¹ The departure from that longstanding Senate tradition of respect for the views of home-state Senators through the blue slip process first occurred in 2017 during the first Trump Administration.²

- a. Do you think the Trump Administration meaningfully consulted with your home-state Senators about your nomination?

Response: The presidential nomination authority is fullsome and it is not for me or anyone else to evaluate how a president is to exercise that authority within his constitutional discretion. I leave it to the Senate to evaluate the proper exercise of its advise and consent authority on this nomination. I am very grateful for the Senate and the Judiciary Committee's consideration.

- b. Did you indicate any objection or concerns to anyone in the Administration or on the majority side of the Senate Judiciary Committee about consultations with your home-state Senators? If yes, describe the content of that communication and identify to whom it was communicated.

Response: Please see my response to Question 2(a).

3. In a 2018 Stanford Law Review article titled *Who Are Officers of the United States*, you argued that the president must maintain control over all executive officers.³ In 2023, you filed an amicus brief on behalf of Republican lawmakers arguing that the Supreme Court should “Overrule the Remnants of *Humphrey’s Executor*,” citing Article II concerns and arguing for accountability to the President.⁴ During a 2025 Federalist Society panel, you expressed concern about *Humphrey’s Executor* and remarked that “some of us . . . have reason to be concerned” regarding the inability of the president to remove FTC commissioners.⁵

- a. If you are confirmed to the federal bench, will you recuse yourself from any case that relates to the continuing viability of *Humphrey’s Executor*?

Response: If I am confirmed, I will comply with all statutory recusal requirements in 28 U.S.C. § 455. The amicus brief referenced above was filed on behalf of the Member clients of the student Separation of Powers Clinic and does not necessarily represent my personal academic research. As a judge, if I were confirmed, I will faithfully apply Supreme Court precedent and prior academic views in areas of the law where I teach will not be relevant to the extent they are distinct from Supreme Court precedent that would bind me as a lower court judge.

¹ See generally BARRY J. McMILLION, CONG. RESEARCH SERV., R44975, THE BLUE SLIP PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS (2023), <http://www.crs.gov/Reports/pdf/R44975>.

² *Id.* at 12.

³ Jennifer L. Mascott, *Who Are Officers of the United States?*, 70 Stan. L. Rev. 443 (2018).

⁴ Br. for Sens. Cruz et al. as Amici Curiae at 7, *Consumers’ Research*, No. 23-1323 (U.S. July 18, 2024).

⁵ Jennifer L. Mascott, Remarks at the Federalist Society Panel on the Unitary Executive (2025).

4. During your testimony to the House Judiciary Committee on the Administrative Procedure Act in December 2021, you stated that you do not believe that Executive Branch should “[impose] a particular view of racial justice.”⁶

- a. Can you define “racial justice” as you intended it in this statement?

Response: The statement that you are referencing was about the constitutional separation of powers. Whatever one’s concept of “racial justice,” it is not directly relevant to the scope of constitutional authority to execute the laws.

- b. Please elaborate what you meant by “imposing a particular view.”

Response: Please see my response to Question 4(a).

- c. Is it still your view that the Executive Branch should not impose a particular view on racial justice?

Response: Please see my response to Question 4(a). Additionally, as a judge my personal policy views would not be relevant. I will faithfully apply the rule of law as set forth in statutes, the Constitution, and binding judicial precedent.

- d. Do President Trump’s executive actions relating to diversity, equity, and inclusion impose a particular view on racial justice?

Response: As a pending judicial nominee, and consistent with the past practice of nominees, it would be inappropriate for me to opine on executive branch policies. Further, this question touches on legal questions and executive actions that could come before me if I were confirmed to the judiciary, and it would be inappropriate for me to comment on them.

5. The American Bar Association (ABA) Standing Committee on the Federal Judiciary has conducted extensive peer evaluations of the professional qualifications of a president’s nominees to become federal judges for seven decades. This practice has endured through 18 presidential administrations, under Republican and Democratic presidents.

On May 29, 2025, Attorney General Pam Bondi ended this longstanding practice when she informed the ABA that, “[T]he Office of Legal Policy will no longer direct nominees to provide waivers allowing the ABA access to nonpublic information, including bar records. Nominees will also not respond to questionnaires prepared by the ABA and will not sit for interviews with the ABA.”⁷

⁶ *The Administrative Procedure Act at 75: Ensuring the Rulemaking Process is Transparent, Accountable, and Effective*: Hearing Before the Subcomm. On Antitrust, Commercial & Admin. L. of the H. Comm. On the Judiciary, 117th Cong. 89 (2021) (statement of Jennifer Mascott).

⁷ Letter from Attorney General Pam Bondi to William R. Bay, President, American Bar Association (May 29, 2025), <https://www.justice.gov/ag/media/1402156/dl?inline>.

- a. Do you agree with AG Bondi that “the ABA no longer functions as a fair arbiter of nominees’ qualifications and its ratings invariably and demonstrably favor nominees put forth by Democratic administrations”?

Response: It would be inappropriate for me, as a judicial nominee, to opine on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct of U.S. Judges, Canon 5.

6. How would you characterize your judicial philosophy?

Response: My judicial philosophy is that judges should be carefully to apply the rule of law impartially and fairly, consistent with their constitutional oath. Article III of the Constitution intentionally and plainly permits only a limited judicial role—contained to resolution of discrete cases and controversies with jurisdiction in the “inferior” courts that is regulated and delimited by Congress through legislation. My role as a lower court judge would be to faithfully apply Supreme Court precedent and follow the stare decisis rules and principles of the Third Circuit. To the extent such precedents do not govern a case before me, I would apply textualist and originalist approaches to address interpretive questions consistent with the role of the judge and the significance of the text and structure of positive law within the federal constitutional scheme.

7. What do you understand originalism to mean?

Response: I understand originalism to refer to a method of interpretation that requires a judge to interpret a constitutional provision in accordance with his or her best understanding of the original public meaning of that provision. Original public meaning is the meaning that words conveyed to reasonable people at the time when they were written, viewed in their full context. As a general matter, seeking the original public meaning of a constitutional text does not involve a subjective inquiry into the intent of the drafters of that text.

8. Do you consider yourself an originalist?

Response: Yes, I consider myself an originalist. In many cases involving interpretation of a constitutional provision, the Supreme Court has sought to give words their original public meaning. This approach has routinely been used by the Supreme Court when interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). In certain contexts, the Supreme Court has utilized other approaches. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (Eighth Amendment). As a lower court judge, I would be bound to faithfully apply all applicable precedent of the Supreme Court and the Third Circuit, without regard to whether that binding precedent did or did not comport with the original public meaning of the Constitution.

9. What do you understand textualism to mean?

Response: Textualism refers to a method of interpretation that requires a judge to interpret a statutory provision in accordance with his or her best understanding of the original public meaning of that provision. Original public meaning is the meaning that the term or phrase conveyed to reasonable people at the time the statute became law. Seeking the original public meaning of the text does not include a subjective inquiry into the intent of the drafters of the text.

10. Do you consider yourself a textualist?

Response: Yes, I consider myself a textualist. This interpretive methodology is consistent with Supreme Court precedent. The Court has regularly sought to “confine [a] provision’s meaning to its words,” when viewed in full context, consistent with textualism. *See Milner v. Dep’t of Navy*, 562 U.S. 562, 572 (2011). That said, as a lower court judge, I would faithfully follow all applicable precedent of the Supreme Court and Third Circuit whether or not the methodology of that binding precedent had comported with analysis of the original public meaning of a statutory provision.

11. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. Some federal judges consider legislative history when analyzing the meaning of a statute.

- a. If you are confirmed to serve on the federal bench, would you consult and cite legislative history to analyze or interpret a federal statute?

Response: As a general matter, reliance on legislative history is unnecessary when a statute is unambiguous. *See Carciere v. Salazar*, 555 U.S. 379, 392 (2009). Even where the meaning of a statute with respect to the particular question before the court is not immediately clear, I would consult the context of the statute and a broad base of evidence of the communicative content of the term under interpretation. I would not rely on the subjective intent of individual legislators as set forth in bits of legislative history. The subject intent of a sole legislator can never definitively set the meaning of a statute that becomes law only when a majority of legislators has approved it via the bicameralism and presentment procedures set forth in Article I, Section 7 of the Constitution.

- b. Do you believe that congressional intent matters when interpreting a statute? Why or why not.

Response: As a general matter, seeking the original public meaning of a statutory text does not involve a subjective inquiry into the intent of the drafters of that text. Courts “do not inquire what the legislature meant; [courts] ask only what the statute means.” *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U.S. 384, 396 (1951) (Jackson, J., concurring) (quoting Justice Holmes). Thus, to the extent that congressional intent is relevant, it is generally determined from the plain language of the statute. *United States v. Locke*, 471 U.S. 84, 95 (1985).

12. According to an academic study, Black men were 65 percent more likely than similarly-situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.⁸

a. What do you attribute this to?

Response: Any unfair treatment of individuals on the basis of race is a significant cause for concern. The Supreme Court has held that the “core purpose” of the Fourteenth Amendment was “doing away with all governmentally imposed discrimination based on race.” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023). Should I be confirmed as judge, it would be important to be aware of the possibility for bias and endeavor to conduct all judicial duties free from such bias. Otherwise, the cause of racial disparities, and the solution for such disparities, are important issues for consideration by the political branches. As such, it would be inappropriate for me, as a judicial nominee, to comment further on a subject of political controversy. See Code of Conduct of U.S. Judges, Canon 5.

13. A recent report by the United States Sentencing Commission observed demographic differences in sentences imposed during the five-year period studied, with Black men receiving federal prison sentences that were 13.4 percent longer than white men.⁹

a. What do you attribute this to?

Response: Please see my response to Question 12.

14. What role do you think federal judges, who review difficult, complex criminal cases, can play in ensuring that a person’s race did not factor into a prosecutor’s decision or other instances where officials exercise discretion in our criminal justice system?

Response: It is the obligation of all judges, and government officials, to be aware of the possibility of bias and to endeavor to minimize any bias in the conduct of their duties.

15. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? Why or why not.

Response: I welcome diversity in the judicial branch and in all walks of life. It is never appropriate for any person to be excluded from the opportunity to serve based on, for example, a person’s race, sex, or religion. The Supreme Court has held that racial preferences are an unconstitutional basis for classifications of individual and everyone should

⁸ Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

⁹ U.S. SENTENCING COMM’N, DEMOGRAPHIC DIFFERENCES IN SENTENCING 2 (Nov. 2023), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf.

have equal opportunities irrespective of race. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

16. Please indicate whether you have ever published written material or made any public statements relating to the following topics. If so, provide a description of the written or public statement, the date and place/publication where the statement was made or published, and a summary of its subject matter. Mere reference to the list of publications and statements provided in your Senate Judiciary Questionnaire is insufficient; provide specific responses. If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, please attach a copy or link to the materials and please explain why you have not previously disclosed them.

a. Abortion

Response: I have not written about the policy of abortion, but I spoke publicly a number of times to explain the contours of the *Dobbs* decision after it was handed down and the *Dobbs* decision impacted abortion. In addition, I wrote columns and provided congressional testimony and other analysis of the Supreme Court's likely methodological approach in the *Dobbs* litigation prior to the release of the decision.

b. Affirmative action

Response: I have not written or spoken expressing a policy view on affirmative action, but I had a number of public appearances explaining the Supreme Court's *Student for Fair Admissions* decision, which impacted affirmative action.

c. Contraceptives or birth control

Response: To my recollection I have not specifically spoken or written about contraception and birth control.

d. Gender-affirming care

Response: To my recollection I have not specifically spoken or written about gender-affirming care.

e. Firearms

Response: I have not written or spoken expressing a policy view on firearms, but I had a number of public appearances discussing the interpretive methodology and holding of the Supreme Court's decision in *Bruen*.

f. Immigration

Response: I do not recall any public writing or appearance directed specifically toward immigration, but I may have talked about immigration statutes and policy actions in passing when discussing my work at the Department of Justice.

g. Same-sex marriage

Response: To my recollection I have not specifically spoken or written about same-sex marriage.

h. Miscegenation

Response: To my recollection I have not specifically spoken or written about miscegenation.

i. Participation of transgender people in sports

Response: To my recollection I have not specifically spoken or written about transgender participation in sports.

j. Service of transgender people in the U.S. military

Response: To my recollection I have not specifically spoken or written about transgender participation in the U.S. military.

k. Racial discrimination

Response: I have not written or spoken on racial discrimination in particular, but I had a number of public appearances explaining the Supreme Court's *Student for Fair Admissions* decision.

l. Sex discrimination

Response: To my recollection I have not specifically spoken or written about sex discrimination.

m. Religious discrimination

Response: I hosted and provided introductory remarks at a C. Boyden Gray Center conference on religious liberty in 2022.

n. Disability discrimination

Response: To my recollection I have not specifically spoken or written about disability discrimination.

o. Climate change or environmental disasters

Response: To my recollection I have not specifically spoken or written about climate change or environmental disasters.

p. “DEI” or Diversity Equity and Inclusion

Response: To my recollection I have not specifically spoken or written about DEI.

17. Under what circumstances would it be acceptable for an executive branch official to ignore or defy a federal court order?

Response: Generally, judicial orders are binding on the parties before the court. Relief from a lower court order generally must be pursued through the appellate process. The Supreme Court’s decision, at the conclusion of appellate review, provides the final resolution and is binding. I am aware that certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding, following defiance of the court order. *See, e.g., Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009); *Gill v. Gulfstream Park Racing Ass’n*, 399 F.3d 391, 397 (2005). In addition, there could be instances where a federal court has entirely lacked jurisdiction to issue the order or compliance with the order is a physical impossibility.

a. If an executive branch official ignores or defies a federal court order, what legal analysis would you employ to determine whether that official should be held in contempt?

Response: As an appellate judge, if confirmed, my primary role would be to review orders issued by district court judges on appeal. As a general matter, district courts may seek to enforce compliance with court orders civil and criminal contempt procedures. *See Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994); *Michaelson v. United States ex rel. Chicago, St. P., M., & O.R. Co.*, 266 U.S. 42, 45 (1924). But the Supreme Court has cautioned that “the contempt power” is something that “uniquely is ‘liable to abuse,’” *Bagwell*, 512 U.S. at 831, and that “care is needed to avoid arbitrary or oppressive conclusions,” *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted).

b. Is there any legal basis that would allow an executive branch official to ignore or defy temporary restraining orders and preliminary injunctions issued by federal district court judges? Please provide each one and the justification.

Response: Please see my answer to Question 17.

18. Does the president have the power to ignore or nullify laws passed by Congress?

Response: The President has the constitutional authority to veto legislation passed by Congress. U.S. Const. art. I, § 7, cl. 2. Otherwise, the Take Care Clause provides that the President “shall take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3, cl. 5.

Under this provision, the Executive Branch has discretion to prioritize enforcement and prosecution of federal law. *See United States v. Texas*, 599 U.S. 670, 679 (2023); *United States v. Nixon*, 418 U.S. 683, 693 (1974). The application of these legal principles implicates issues that could arise before me as a judge; thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See Code of Conduct of U.S. Judges*, Canon 3A(6).

19. Does the president have the power to withhold funds appropriated by Congress?

Response: This question relates to an issue that is the subject of litigation, so it is inappropriate for me to comment. *See Code of Conduct of U.S. Judges*, Canon 3A(6).

20. Does the president have the power to discriminate by withholding funds against state or local jurisdictions based on the political party of a jurisdiction's elected officials?

Response: This question raises general issues related to impoundment and appropriations on which it is inappropriate for me to comment in case a matter raising these issues were to come before me.

21. Does the Supremacy Clause of the U.S. Constitution establish that federal laws supersede conflicting state laws?

Response: The Supremacy Clause provides that the Constitution, along with federal laws and treaties made under its authority, constitutes the "supreme Law of the Land." Art. VI, cl. 2. Under Supreme Court precedent, federal laws may preempt state law either expressly or implicitly through field or conflict preemption. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 476-79 (2018); *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77 (2008). As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in addressing preemption claims.

22. Does the Fifth Amendment of the U.S. Constitution apply to non-citizens present in the United States?

Response: According to the Supreme Court, "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Agency for Int'l Dev. v. All. For Open Soc'y Int'l, Inc.*, 591 U.S. 430 (2020). Various Supreme Court precedents address the process that is due in particular contexts. As a lower court judge, I would be bound to apply all Supreme Court precedents, including these decisions, in addressing due process claims. To the extent this question asks about hypothetical cases or matters that are the subject of ongoing litigation, it would be improper for me as a judicial nominee to comment further. *See Code of Conduct of U.S. Judges*, Canon 3(A)(6).

23. Is it constitutional for Congress to delegate to federal agencies the power to implement statutes through rulemaking?

Response: The Supreme Court has held that it is lawful for Congress to delegate power to federal agencies so long as Congress provides an “intelligible principle” to guide the action. *See, e.g., J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394 (1928).

24. Was *Brown v. Board of Education*, 347 U.S. 483 (1954), correctly decided?

Response: Yes.

25. Is *Griswold v. Connecticut*, 381 U.S. 479 (1965), binding precedent? Please describe the facts and holding of this case.

Response: In *Griswold*, the Supreme Court held that the Fourteenth Amendment protects the use of contraceptives. *Griswold* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

26. Is *Lawrence v. Texas*, 539 U.S. 558 (2003), binding precedent? Please describe the facts and holding of this case.

Response: In *Lawrence*, the Supreme Court held that laws that criminalized sexual intimacy between members of the same sex violate the Fourteenth Amendment. *Lawrence* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

27. Is *Obergefell v. Hodges*, 576 U.S. 644 (2015), binding precedent? Please describe the facts and holding of this case.

Response: In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires a state to license marriages between two people of the same sex on the same terms and conditions as marriages between two people of the opposite sex. *Obergefell* is a binding precedent of the Supreme Court, and if confirmed, I would faithfully apply it.

28. Do you believe that President Biden won the 2020 election? Note that this question is not asking who was certified as president in the 2020 election.

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canons 3(A)(6), 5.

a. Did Biden win a majority of the electoral vote in the 2020 election?

Response: Please see my response to Question 28.

- b. Do you believe that the results of the 2020 election, meaning the vote count, were accurate? If not, please provide why not and examples.

Response: Please see my response to Question 28.

29. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”¹⁰

- a. Do you agree that President Trump was elected to the office of the President in the 2016 election?

Response: President Trump was certified as the winner of the 2016 presidential election and served as the 45th President of the United States.

- b. Did Trump win a majority of the electoral vote in the 2016 election?

Response: Please see my response to Question 29(a).

- c. Do you agree that President Trump was elected to the office of the President in the 2024 election?

Response: President Trump was certified as the winner of the 2024 presidential election and served as the 47th President of the United States.

- d. Did Trump win a majority of the electoral vote in the 2024 election?

Response: Please see my response to Question 29(c).

- e. Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents President Trump from running for a third presidential term?

Response: The 22nd Amendment prohibits any person from being “elected to the office of the President” for a third term. U.S. Const., amend. XXII.

30. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Response: No.

31. Have you spoken or corresponded with Elon Musk since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

¹⁰ U.S. CONST. amend. XXII.

Response: I am a lawyer on White House staff and have talked to a number of the people referenced in questions 31 through 37 in the course of my governmental duties. Consistent with general principles of confidentiality in public service and the discussion or provision of legal advice, I cannot disclose details about those conversations.

32. Have you spoken or corresponded with any member of the Department of Government Efficiency (DOGE) since November 2024? If yes, identify the member(s) and provide the dates, mode, and content of those discussions and communications.
33. Have you spoken or corresponded with Stephen Miller since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.
34. Have you spoken or corresponded with Chad Mizelle since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.
35. Have you spoken or corresponded with Pam Bondi since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.
36. Have you spoken or corresponded with Todd Blanche since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.
37. Have you spoken or corresponded with Emil Bove since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.
38. Have you spoken or corresponded with Leonard Leo since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: I do not believe that I have.

39. Have you—personally or through any of your affiliated companies or organizations, agents, or employees—provided financial support or other resources to any members of the Proud Boys or of the Oath Keepers for their legal fees or for other purposes? If yes, state the amount of financial support provided, dates provided, and for what purposes.

Response: No.

40. Have you ever spoken or corresponded with any of the following individuals? If yes, provide the dates, mode, and content of those discussions and communications.

Response: I do not know any of the individuals listed below and do not believe I have spoken with any of them. If I have, I would not have known their identity at the time.

- a. Enrique Tarrio
- b. Stewart Rhodes
- c. Kelly Meggs
- d. Kenneth Harrelson

- e. Thomas Caldwell
- f. Jessica Watkins
- g. Roberto Minuta
- h. Edward Vallejo
- i. David Moerschel
- j. Joseph Hackett
- k. Ethan Nordean
- l. Joseph Biggs
- m. Zachary Rehl
- n. Dominic Pezzola
- o. Jeremy Bertino
- p. Julian Khater

41. Have you ever spoken or corresponded with any individuals convicted and later pardoned of offenses related to the January 6, 2021 attack on the U.S. Capitol? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

Response: To my knowledge I have not spoken or corresponded with anyone convicted and pardoned of offenses committed on January 6, 2021.

42. Have you ever been demoted, terminated, or experienced any other adverse employment action?

Response: No.

- a. If yes, please describe the events that led to the adverse employment action.

Response: There has been no such action.

- b. If no, please affirm that, since becoming a legal adult, you have left each place of employment voluntarily and not subject to the request or suggestion of any employer.

Response: Yes.

43. Federal judges must file annual financial disclosure reports and periodic transaction reports. If you are confirmed to the federal bench, do you commit to filing these disclosures and to doing so on time?

Response: Yes, unless I seek and obtain a permissible and lawful extension.

44. Article III Project (A3P) “defends constitutionalist judges and the rule of law.” According to Mike Davis, Founder & President of A3P, “I started the Article III Project in 2019 after I helped Trump win the Gorsuch and Kavanaugh fights. We saw then how relentless—and

evil—too many of today’s Democrats have become. They’re Marxists who hate America. They believe in censorship. They have politicized and weaponized our justice systems.”¹¹

- a. Do you agree with the above statement?

Response: As a judicial nominee it would be inappropriate for me to comment on others’ public statements, consistent with principles under the Code of Judicial Conduct and the past practice of nominees.

- b. Have you discussed any aspect of your nomination to the federal bench with any officials from or anyone directly associated with A3P, or did anyone do so on your behalf? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

Response: No.

- c. Are you currently in contact with anyone associated with A3P? If so, who?

Response: No.

- d. Have you ever been in contact with anyone associated with A3P? If so, who?

Response: I have known Mike Davis as a professional acquaintance since his time working in the Senate on judicial nominations.

45. Since you were first approached about the possibility of being nominated, did anyone associated with the Trump Administration or Senate Republicans provide you guidance or advice about which cases to list on your Senate Judiciary Questionnaire (SJQ)?

- a. If so, who? What advice did they give?

Response: No.

- b. Did anyone suggest that you omit or include any particular case or type of case in your SJQ?

Response: No.

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

Response: I have known a number of people affiliated with the Federalist Society personally and professionally over the years and consulted a significant proportion of my lawyer friends

¹¹ <https://www.article3project.org/about>

and colleagues about the nomination process including individuals affiliated with the Federalist Society.

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

Response: As a member of the White House legal staff, I had a number of discussions with White House and Department of Justice staff in preparation for my nomination hearing. In addition, on May 14, 2025, I interviewed with the White House Counsel regarding the nomination following a formal interview with a broader group of White House Counsel staff. In addition, I had a number of information conversations with colleagues about the Third Circuit and other judicial openings.

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

Response: I prepared a draft response to these questions consulting my records, legal precedent, statutory text, constitutional text, and responses addressing similar questions and issues submitted by other judicial nominees. After receiving feedback from persons at the Office of Legal Policy at the U.S. Department of Justice, I finalized my answers and authorized them to be submitted to the Senate Judiciary Committee.