

Senator Chuck Grassley, Ranking Member
Questions for the Record
The Hon. Zahid Quraishi
Nominee to be United States District Judge for the District of New Jersey

- 1. You have served our country in many capacities: you are a decorated Army JAG captain, who was stationed in Germany and deployed to Iraq twice; you served in the Department of Homeland Security as an assistant chief counsel for ICE; you were a federal prosecutor in the District of New Jersey, to which you are now nominated; and you are now a magistrate judge in the District of New Jersey. In addition, you have volunteered for public service in a range of ways, including service with the District of New Jersey’s Criminal Justice Act Panel and the District’s reentry program. Please describe how your significant history of service to our country has prepared you to serve as a federal district judge.**

Response: I believe my professional experience has prepared me to serve as a district judge. As a magistrate judge, I have managed civil cases through completion. Additionally, I have also decided dispositive motions and stepped into the role of a district judge in civil matters when the parties have consented to my jurisdiction. Prior to serving as a federal judge, I practiced in federal court in my district as a civil practitioner. I also have a background in criminal law, serving as both a federal prosecutor and criminal defense attorney and as a military prosecutor in the United States Army. I am proud to have taken the oath to support and defend the Constitution of the United States on more than one occasion in my lifetime – and if confirmed, it would be my honor to perform all the duties incumbent upon me as a district judge under the very same Constitution I have previously sworn to protect.

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

Response: The U.S. Supreme Court’s opinion in *Bostock v. Clayton County* is binding precedent which I would continue to follow if confirmed as a district judge. Writing for the majority in *Bostock*, Justice Gorsuch explained: “we are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.” *Bostock c. Clayton County*, 140 S. Ct. 1731, 1754 (2020). I would likewise be bound by Supreme Court precedent, including cases regarding the Free Exercise Clause.

- 3. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization’s right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.**

Response: I have not had occasion to closely study Supreme Court precedent in this area, though I am aware of recently Supreme Court cases including *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). I agree that the Supreme Court's decisions regarding the First Amendment and religious liberty are binding authority which I would faithfully continue to follow if confirmed as a district judge.

- 4. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. What is the applicable level of scrutiny to a Second Amendment challenge in the Third Circuit?**

Response: Pursuant to Third Circuit precedent post-*Heller*, a Second Amendment Challenge is subject to the following two-part approach: "ask first whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee of the right to bear arms. If it does, the second step is to evaluate the law under some form of heightened scrutiny." *Ass'n of N.J. Rifle & Pistol Clubs Inc. v. A.G. N.J.*, 974 F.3d 241-42 (3d Cir. 2020) (citing *United States v. Marzarella*, 614 F.3d 85, 89 (3d Cir. 2010)). "The level of scrutiny to be applied is determined by whether the law burdens the core of the Second Amendment guarantee. . . . Laws that do burden that core receive strict scrutiny, whereas those that do not burden it receive intermediary scrutiny." *Id.* at 242 (citing *Marzarella*, 61 F.3d at 89, 92, 96-97).

- 5. Is the Second Amendment personal right to "keep" arms at all different from the right to "bear" arms?**

Response: The Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this right was identified as a fundamental right that applies to the states pursuant to the Fourteenth Amendment. As with any issue that may come before me, I would review and apply binding precedent from the Third Circuit and Supreme Court.

- 6. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: The Supreme Court has never specifically addressed the issue of whether shouting "fire" is unprotected speech under the First Amendment. However, the Supreme Court has held that certain speech is not protected if it "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

7. One of the federal district court’s important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.

a. How would you determine whether statutory or regulatory text was ambiguous?

Response: In a case of first impression where there was not already Supreme Court or Third Circuit precedent that specifically interpreted the statutory provision, I would first review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would look to precedent from the Third Circuit and Supreme Court interpreting analogous provisions and I also would consider canons of interpretation that those courts have approved. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?

Response: No.

c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?

Response: I would refer to canons of interpretation approved by the Third Circuit and Supreme Court. I might also refer to Supreme Court or Third Circuit precedent interpreting analogous provisions in other statutes.

d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?

Response: I would consider whether the Supreme Court or Third Circuit has offered any guidance on weighing the two cannons at issue.

8. When you were in private practice, you advised clients on how to prepare for opening marijuana businesses in New Jersey. You also said, in 2018, that your firm was focusing on the “key issue” of how state marijuana laws would interact with the federal Controlled Substances Act.¹ You said that “[n]o state act of legalization by itself can override this federal criminal statute.”² Of course, under federal law, marijuana is still illegal.

¹ Jeannie O’Sullivan, *Riker Danzig, Cole Schotz Launch NY Cannabis Practice*, Law360 (Mar. 5, 2018) (SJQ Attachments at 118).

² *Id.*

- a. When you were in private practice, did you ever advise a client to take steps that were inconsistent with the federal Controlled Substances Act? If so, please explain.**

Response: No. The Controlled Substance does not prohibit an individual from applying for a distribution license with the State of New Jersey. I assisted clients with the application process in accordance with the Rules of Professional Conduct and at all times provided legal advice consistent with the Controlled Substances Act.

- b. As a district judge, would you apply the Controlled Substances Act as it is written—even if a state law was more permissive than the federal law?**

Response: Yes.

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

Response: I first communicated with Senator Booker's office regarding an opening on the United States District Court in February 2020. I later interviewed with members of Senator Booker's Federal Selection Committee, his staff, and then Senator Booker himself. I also interviewed with Senator Robert Menendez. I first received an email communication from attorneys from the White House Counsel's Office on January 27, 2021, to further discuss my potential candidacy with them. I spoke with attorneys from White House Counsel's Office that same day and was advised that I was being considered for one of the district judge vacancies in my district. Since January 27, 2021, I have been in contact with officials from White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President announced his intent to nominate me.

- 10. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No.

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

Response: No.

- 12. Please explain with particularity the process by which you answered these questions.**

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. I later shared my answers with the Office of Legal Policy for input before submitting my answers to the Committee. The answers that I have submitted to the Committee are my own.

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

Response: Yes.

**Nomination of the Honorable Zahid N. Quraishi
to be United States District Judge for the District of New Jersey
Questions for the Record
Submitted May 5, 2021**

QUESTIONS FROM SENATOR COTTON

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

Response: No.

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

Response: No.

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

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. I later shared my answers with the Office of Legal Policy for input before submitting my answers to the Committee. The answers that I have submitted to the Committee are my own.

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

Response: No.

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

Questions for the Record for Zahid N. Ouraishi, Nominee for the District of New Jersey

I. Directions

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

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

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

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

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

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

II. Questions

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

Response: As a magistrate judge, I have adhered to a judicial philosophy of applying the law to the particular facts of a case without regard for personal opinion or the end result. If confirmed, I would continue to employ this same philosophy. I do not associate my personal judicial philosophy with any justice who served on the Supreme Court.

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

Response: No. I would faithfully follow Supreme Court and Third Circuit precedent on interpreting the Constitution.

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

Response: I am not in a position to assess whether Congress should increase or decrease the number of justices on the Supreme Court and defer to Congress on that issue. However, regardless of Congress's decision on this issue, as a magistrate judge, and if confirmed as a district judge, I would remain bound by any decisions issued by the Supreme Court as binding precedent.

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

Response: No.

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

Response: No.

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

Response: Yes. I was qualified to carry and use firearms while serving in the United States Army.

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

Response: Yes. The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), held as much in its precedential decision.

8. Is the criminal justice system systemically racist?

Response: I am not in a position to assess the nature of the entire criminal justice system. As a sitting magistrate judge, I treat all individuals who appear before me equally and would continue to do so if confirmed to serve as a district judge.

**Questions for the Record for Zahid N. Quraishi
From Senator Mazie K. Hirono**

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

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

Response: No.

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

Response: No.

Senator Mike Lee
Questions for the Record
Zahid N. Quraishi, District of N.J.

1. How would you describe your judicial philosophy?

Response: As a magistrate judge, I have adhered to a judicial philosophy of applying the law to the particular facts of a case without regard for personal opinion or the end result. If confirmed, I would continue to employ this same philosophy.

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

Response: I would first look to binding precedent from the Supreme Court and Third Circuit interpreting the part of the statute that was at issue. If there was no binding precedent as to that part of the statute, I would review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would also consider canons of interpretation that those courts have approved, and I would look to precedent from the Third Circuit and Supreme Court interpreting similar provisions in other statutes. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

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

Response: I would look to binding precedent from the Supreme Court and Third Circuit. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

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

Response: If confirmed, I would follow Supreme Court and Third Circuit precedent about the role of text and the original meaning of the Constitution when interpreting the Constitution.

5. What are the constitutional requirements for standing?

Response: The constitutional requirements for standing as provided by the Supreme Court is derived from Article III of the Constitution. The Supreme Court identified a three-part test for establishing standing in federal court: (1) injury in fact; (2) causation; and (3) likelihood of redress. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

6. Do you believe there is a difference between “prudential”

jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: If confirmed, my view of jurisdictional issues will be guided by Supreme Court and Third Circuit precedent. Article III standing requires a showing that plaintiff has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 300 (2016) (citation omitted). If Article III standing has been met, prudential standing requires “(1) that a litigant assert his or her own legal interest rather than those of a third party; (2) that the grievance not be so abstract as to amount to a generalized grievance; (3) and that the [plaintiff’s] interests are arguably within the ‘zone of interests’ protected by statute, rule, or constitutional provision on which the claim is based.” *Lewis v. Alexander*, 685 F.3d 325 (3d Cir. 2012).

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

Response: The doctrine of administrative exhaustion refers to the notion that a person challenging an agency decision should first pursue all remedies available at the agency level before seeking judicial review. *See, e.g., McKart v. United States*, 395 U.S. 185, 193 (1969) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938)).

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

Response: The Supreme Court has held that Congress has implied powers under the Necessary and Proper Clause. *See, e.g., McCulloch v. Maryland*, 17 U.S. 316, 411-412 (1819). If confirmed, I would faithfully follow such precedent.

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

Response: I would faithfully follow precedent from the Third Circuit and Supreme Court on this issue.

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

Response: The Supreme Court has found that the Constitution protects some rights that are not expressly enumerated. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965). I would faithfully follow Supreme Court

precedent here.

11. What rights are protected under substantive due process?

Response: Fundamental rights are protected under substantive due process. The Supreme Court has identified the basis for such protection from the due process clauses of the Fifth and Fourteenth Amendments to the Constitution. The Supreme Court “has regularly observed that the Due Process Clause specially protects those fundamental rights and liberties, which are, objectively, deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would adhere to Supreme Court precedent.

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

Response: My views on substantive due process will be guided by Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has addressed the scope of Congress’s power under the Commerce Clause in *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995), among other cases. In these cases, the Supreme Court struck down the statute at issue because of the absence of a nexus to economic activity. If confirmed, I would adhere to Supreme Court precedent.

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

Response: The Supreme Court has identified race, national origin, religion, and alienage as suspect classes. If confirmed, I would be bound by Supreme Court and Third Circuit precedent on suspect classifications and I would faithfully apply such precedent. *See, e.g., City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, (1985).

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

Response: Separation of powers refers to the division of responsibility into our three branches of government in order to check and limit the powers of the other in order to protect constitutional liberties.

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

Response: I would faithfully follow precedent from the Third Circuit and Supreme Court on this issue.

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

Response: None.

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

Response: Invalidating a law that is constitutional and upholding a law that is unconstitutional are both improper.

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

Response: I cannot speak for the Supreme Court nor can I speak to changes in circumstances from 1789-1857 to the present that would have necessarily led to the Supreme Court increased invalidations of federal statutes. Nonetheless, I would faithfully follow its decisions and the decisions of the Third Circuit as binding precedent when reviewing the constitutionality of a federal statute.

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

Response: Judicial review refers to the authority of the Supreme Court to review the actions of the other branches of government and determine whether such actions are in compliance with the Constitution. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and that its decisions are binding on the other branches of government unless and until a constitutional amendment or subsequent Supreme Court decision overrules them.

- 21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed**

by decisions of the Supreme Court

. . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: No one, including elected officials, is above the law. Elected officials are duty bound to follow the Constitution.

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

Response: Judges are not policy makers. Judges are to remain impartial and apply the law to the facts of a case without consideration of personal opinion or end result.

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

Response: I would first look to binding precedent from the Supreme Court and Third Circuit interpreting the part of the statute that was at issue. If there was no binding precedent as to that part of the statute, I would review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would also consider canons of interpretation that those courts have approved, and I would look to precedent from the Third Circuit and Supreme Court interpreting similar provisions in other statutes. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

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

appropriate and reasonably possible?

Response: A lower court judge should apply precedent regardless of whether the lower court judge agrees with the decision or reasoning. It is not for a lower court judge to insert his or her opinion on what precedent should be – but rather – should apply precedent as it is.

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

Response: No. Federal courts are courts of limited jurisdiction and I would be bound by those jurisdictional limits.

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

Response: None. The factors to be considered in sentencing are found in 18 U.S.C. § 3553(a). Group identities are not factors listed in the statute.

- 27. Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities?**

Response: No. The factors to be considered in sentencing are found in 18 U.S.C. § 3553(a); historical disadvantage or advantage are not among those factors. One of the factors set forth in § 3553(a) is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
April 28, 2021

For all nominees:

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

Response: No.

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

Response: No.

- 3. Was *Marbury v. Madison* correctly decided?**

Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, the Court’s decision in *Marbury v. Madison* is a seminal decision establishing judicial review which I believe is not an issue that will arise again before the Court.

- 4. Was *Brown v. Board of Education* correctly decided?**

Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, when it comes specifically to the Court’s decision in *Brown v. Board of Education*, a decision that is so intertwined in the very fabric of American life and our country’s history, I do believe it was correctly decided and is not an issue that will arise again before the Court.

- 5. Was *Loving v. Virginia* correctly decided?**

Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, when it comes specifically to the Court’s decision in *Loving v. Virginia*, a decision that is so intertwined in the very fabric of American life and our country’s history, I do believe it was correctly decided and is not an issue that will arise again before the Court.

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

Response: As a sitting magistrate judge on a lower court, I do not believe it is proper for me to opine on the correctness of Supreme Court decisions other than the exceptions above, but I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit.

7. Was *United States v. Virginia* correctly decided?

Response: Please see my answer to Question 6.

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

Response: Please see my answer to Question 6.

9. Was *Boumediene v. Bush* correctly decided?

Response: Please see my answer to Question 6.

10. Was *Citizens United v. FEC* correctly decided?

Response: Please see my answer to Question 6.

11. Was *Obergefell v. Hodges* correctly decided?

Response: Please see my answer to Question 6.

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

Response: Pursuant to Chapter 9.1 of the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, “the holding of a panel in a precedential opinion is binding on subsequent panels.” The Third Circuit must sit *en banc* to overturn its precedent. Federal Rule of Appellate Procedure 35 provides that sitting *en banc* should only occur when the panel’s decision conflicts with Supreme Court precedent, is “necessary to secure and maintain uniformity of the court’s decisions,” or the case involves “one or more questions of exceptional importance.” As a sitting magistrate judge on a lower court, I defer to the Third Circuit on its consideration of these factors when determining whether it is appropriate for an *en banc* court to reaffirm its own precedent “that conflicts with the original public meaning of the text of the Constitution.”

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

Response: Pursuant to Chapter 9.1 of the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, “the holding of a panel in a precedential opinion is binding on subsequent panels.” The Third Circuit must sit *en banc* to overturn its precedent. Federal Rule of Appellate Procedure 35 provides that sitting *en banc* should only occur when the panel’s decision conflicts with Supreme Court precedent, is “necessary to secure and maintain uniformity of the court’s decisions,” or the case involves “one or more questions of exceptional importance.” As a sitting magistrate judge on a lower court, I defer to the Third Circuit on its consideration of these factors when determining whether it is appropriate for an *en banc* court to reaffirm its own precedent “that conflicts with the original public meaning of the text of a statute.”

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

Response: Congress has identified certain factors, codified in 18 U.S.C. § 3553(a), to be considered when sentencing a criminal defendant. One of these factors is “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” If confirmed as a district judge, I would consider all the factors identified in the statute.

For Judge Zahid Quraishi:

1. Please list some examples from your time as a federal magistrate court judge of when your rulings conflicted with your personal policy preferences.

Response: I do not recall having any personal policy preferences which conflicted with a judicial decision while serving as a magistrate judge.

**Questions for the Record for
Senator Thom Tillis for
Questions for Judge Zahid Nisar Quraishi**

1. Judge Quraishi, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?

Response: Yes.

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

Response: Judicial activism occurs when judges go beyond applicable law to decide cases based on personal views and a desired outcome. I do not consider judicial activism appropriate.

3. Judge Quraishi, do you believe impartiality is an aspiration or an expectation for a judge?

Response: Expectation.

4. Judge Quraishi, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?

Response: No.

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

Response: Yes. There is nothing to reconcile - the role of a judge is to apply the law to the particular facts of a case irrespective of whether the result is desired.

6. Judge Quraishi, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

Response: No.

7. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a sitting magistrate judge on a lower court, I do not believe it is proper for me to opine on the current state of Supreme Court decisions other than to note that I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit.

8. Judge Quraishi, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: The right to freedom of religion is a core freedom protected by the First Amendment of the Constitution. If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this and any other issue.

9. Judge Quraishi, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: The First Amendment protects the freedom of speech including the freedom to peacefully protest. However, the First Amendment does not protect all speech. *See, e.g., Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942). If confirmed, I would have to carefully review the facts of the particular case and apply controlling Third Circuit and Supreme Court precedent to these facts to determine whether any particular activity falls within the protection of the First Amendment.

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

Response: If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this issue.

11. Judge Quraishi, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: The Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this right was identified as a fundamental right that applies to the states pursuant to the Fourteenth Amendment. If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this issue.

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

Response: Qualified immunity provides government officials immunity from suit for their actions in certain circumstances. In considering whether qualified immunity is appropriate in a particular case, I would consider whether the defendant was acting as a government official performing a discretionary function. I would then consider whether the specific acts taken by the official met the “good faith” and “objectively reasonable” test set forth in *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). Supreme Court precedent makes clear that “qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)).

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

Response: If confirmed as a district judge, I would faithfully apply Supreme Court and Third Circuit precedent regarding issues of qualified immunity.

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

Response: This is an issue which is under review by state and federal agencies and legislatures. I would leave the policy determinations to the legislative and executive branches.

15. Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?

Response: If confirmed as a district judge, I would faithfully apply Supreme Court and Third Circuit precedent, including *Chevron*.

16. How have your views on agency deference developed during your time as a district judge?

Response: I have not served as a district judge. If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent, including *Chevron*, regardless of any personal views I may have if any.