Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Karoline Mehalchick
Nominee to be United States District Judge for the Middle District of Pennsylvania
August 2, 2023

1. **You have served as a federal magistrate judge since 2013. During your confirmation hearing, you noted that you have issued over 1,200 written opinions, memorandum decisions, and reports and recommendations in civil matters. You also noted that you have issued over 1,000 criminal orders relating to detention and release that were subject to review.**

    a. **Please give a general overview of your role as a federal magistrate judge. What types of cases do you routinely handle?**

    Response: As a federal magistrate judge for the Middle District of Pennsylvania, I preside over both criminal and civil cases. In criminal matters, I consider applications for search warrants, pen registers, trap and trace devices, and criminal complaints; conduct initial appearances, arraignments, bail and detention hearings, and guilty plea colloquies; and preside over trial in petty offense and misdemeanor cases. In civil matters, I am assigned cases both directly and in a referral role. If the parties consent to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636, I am the presiding judge in the case through initial review, discovery issues, dispositive motions, trial, and post-trial motions. In the referral role, I handle all pretrial matters, including issuing reports and recommendations on dispositive motions. In addition to the above, I regularly conduct settlement conferences in a wide variety of cases referred to me by the other judges of the Middle District.

    b. **In how many cases have your decisions been reversed by a reviewing court or affirmed with significant criticism of your substantive or procedural rulings?**

    Response: In my over ten years on the bench, I have issued over 1,200 opinions and reports and recommendations, and over 1,000 criminal orders related to pretrial detention and release. Of these, only 31 have been reversed, affirmed with significant criticism, or not adopted. This represents less than 2% of all opinions, reports and recommendations, and criminal orders. Of those 31, 25 were reversed only in part or adopted only in part.

2. **Federal district court judges are trial court judges. District court judges must be familiar with trial court practice and procedure.**

    a. **While in private practice, how many cases did you try to verdict, judgment, or final decision?**

Response: While in private practice, I tried ten cases to verdict. Eight of those trials were in federal court, and I was chief or sole counsel in four. I also tried two cases to verdict in state court, both as sole counsel. Additionally, I argued seven appeals before the Court of Appeals for the Third Circuit, and two appeals before the Commonwealth Court of Pennsylvania.

b. While serving as a federal magistrate judge, how many cases have you presided over that have gone to verdict or judgment?

Response: I have presided over 16 trials that have gone to verdict. A review in the Court's Electronic Case Filing (ECF) system shows that I have presided over 685 civil cases as the trial judge to whom the parties consented pursuant to 28 U.S.C. § 636 (as described in Question 1a). These cases are in addition to those civil cases assigned to me in a referral basis, for review of a discovery motion, to conduct a settlement conference, or my criminal docket.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Karoline Mehalchick
Nominee to be a United States District Judge for the Middle District of Pennsylvania

1. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: I am not familiar with this statement or the context in which it was made. I do not agree with it. Judges are required to faithfully and impartially apply and adhere to binding precedent without consideration of their "independent value judgments." This is how I have approached all matters before me as a sitting magistrate judge and how I will continue to address cases if confirmed as a district judge.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: I am not familiar with this statement or the context in which it was made. This is not the approach I take as a sitting magistrate judge. Lower courts are bound to follow binding precedent, and as a sitting magistrate judge, I faithfully apply binding precedent from the Supreme Court and the Third Circuit Court of Appeals to the issues and facts of the case before me. If confirmed as a district judge, I would faithfully continue this practice.

3. **In 2022, you issued a report in *Yentzer v. Potter County*, No. 3:20-CV-1579, 2022 WL 903937 (M.D. Pa. Mar. 28, 2022), which the district court criticized on numerous grounds. Some of the court's criticism concerned your analysis of the Eleventh Amendment to the Constitution. The court noted:**

   "*Judge Mehalchick's report recommends the claims for punitive damages be dismissed, but the analysis appears to be grounded in an incorrect legal premise—that it is "qualified immunity afforded per the Eleventh Amendment" which bars the punitive damages request. It is not the Eleventh Amendment (which applies to states and not municipalities) but rather Supreme Court precedent which holds punitive damages are unavailable against municipalities like Potter County pursuant to common law principles*." (citations omitted).

   Elsewhere, the court also noted:

"*It appears the report misinterprets defendants' argument with respect to the official-capacity claims. The report frames the issue as implicating "qualified immunity ... per the Eleventh Amendment" and cites to decisional law addressing Eleventh Amendment sovereign immunity, but ultimately seems to conclude that immunity does not apply because Yentzer has adequately pled a claim against Potter County, and so likewise has adequately pled his official-capacity claims against the individual defendants. For purposes of clarifying the record, we hold such immunity does not apply for a separate reason: Eleventh Amendment immunity, which differs from qualified immunity, applies only to state actors, not to municipal actors like defendants sub judice.*" (citations omitted).

a. **Please explain the doctrine of qualified immunity.**

Response: The judicially-created doctrine of qualified immunity shields governmental officials from claims brought pursuant to § 1983 if their conduct does not violate clearly established statutory or constitutional rights. "Clearly established" means that, at the time of the officer's conduct, "the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *District of Columbia v. Wesby,* 583 U.S. 48, 63 (2018); *Mack v. Yost*, 63 F.4th 211 (3d Cir. 2023).

b. **Please explain the Eleventh Amendment, its purpose, and it's effect.**

Response: The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Eleventh Amendment "bar[s] all private suits against non-consenting States in federal court," with the goal of protecting "the States' solvency and dignity." *Allen v. New Jersey State Police*, 974 F.3d 497, 504 (3d Cir. 2020); quoting *Lombardo v. Pa., Dep't of Pub. Welfare*, 540 F.3d 190, 194 (3d Cir. 2008) and *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 52 (1994).

c. **Please explain the difference between sovereign immunity and qualified immunity.**

Response: Sovereign immunity protects non-consenting states and state agencies from suit brought in federal court. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 144 (1993); *Capogrosso v. Supreme Court of N.J.,* 588 F.3d 180, 185 (3d Cir. 2009). This protection extends to state agencies and departments. *See Capogrosso,* 588 F.3d at 185. Qualified immunity protects a government actor or agent from suit or liability when his or her conduct does not violate clearly established statutory or constitutional rights of which a reasonable

person would have known. *District of Columbia v. Wesby,* 583 U.S. 48 (2018); *Mack v. Yost*, 63 F.4th 211 (3d Cir. 2023).

4. **A panel of the Third Circuit unanimously reversed your decision to vacate the conviction of Graham Spanier, who was convicted in the courts of Pennsylvania for his role in covering up Jerry Sandusky's child sexual abuse. The Third Circuit criticized you for not citing or closely examining the relevant Supreme Court cases. Specifically, the Third Circuit said: "*The District Court cited Bouie and Rogers, but did not examine them closely. Nor did it mention Metrish*."**

   a. **Please explain the holding of *Bouie v. City of Columbia*, 378 U.S. 347 (1964).**

      Response: In affirming the convictions of individuals who refused to leave the premises of a drugstore in 1960 after being asked to leave, the South Carolina Supreme Court applied its 1961 construction of a statute prohibiting entry on the lands of another after notice not to enter as prohibiting the act of remaining on premises after being asked to leave. The United States Supreme Court held that the application of the 1961 construction of the statute to the acts committed in 1960 deprived the individuals of liberty and property without due process of law.

   b. **Please explain the holding of *Rogers v. Tennessee*, 532 U.S. 451 (2001).**

      Response: In affirming the conviction of Rogers for murder, the Tennessee Supreme Court abolished the state's "year-and-a-day" rule, under which no defendant could be convicted of murder unless the victim died by defendant's act within a year and a day of the act. The United States Supreme Court held that Rogers was not denied due process, as the retroactive application of the decision to abolish the year-and-a-day rule was not unexpected or indefensible and thus could be applied retroactively without offending the fair warning principle of the Due Process Clause.

   c. **Please explain the holding of *Metrish v. Lancaster*, 569 U.S. 351 (2013).**

      Response: In his second criminal trial, Lancaster raised the defense of diminished capacity. Since his first trial, the state had abolished the defense of diminished capacity, and the trial court applied that ruling retroactively, finding that Lancaster could not use the defense of diminished capacity. Lancaster was convicted and the state appellate courts declined to hear his appeals. In a federal habeas petition, Lancaster argued that the abolition of the diminished capacity defense was a substantive change in the law and that the trial court violated his Fifth and Fourteenth rights to due process by retroactively applying that change to his case. The United States Supreme Court determined that the retroactive application of the ruling did not violate due process because it represented a foreseeable interpretation of statutory language by the state Supreme Court.

d. **Your decision to grant the habeas petition of Graham Spanier rested, in part, on analysis regarding the retroactive application of law. Why did you not cite or analyze *Metrish v. Lancaster*, a relatively recent, unanimous Supreme Court decision that addressed retroactive application of law in the context of habeas petitions?**

Response: Whenever there is a pending motion or petition before me, I carefully review the parties' filings, perform independent research, conduct oral argument as needed, and carefully apply the law to the facts of the case. In my over ten years on the bench, I have issued over 1,200 opinions and reports and recommendations, and over 1,000 criminal orders related to pretrial detention and release. Of these, only 31 decisions have been reversed, affirmed with significant criticism, or not adopted. This represents less than 2% of all opinions, reports and recommendations, and criminal orders I have issued. Of those 31 decisions, 25 were reversed only in part or adopted only in part. In those 31 cases, I carefully read the reviewing court's opinions, which are binding on me and serve as further guidance should the issues come before me again.

In my review of the parties' submissions and at oral argument on the Spanier habeas petition, neither party cited to or relied on *Metrish v. Lancaster*. In my own research and review of the relevant and binding Third Circuit and Supreme Court precedent, including *Metrish*, I concluded that *Bouie v. City of Columbia*, 378 U.S. 347 (1964), was the most applicable and relevant precedent to the facts of the case before me. The Third Circuit Court of Appeals disagreed, finding other precedent more relevant. Just as I have in other matters, I carefully reviewed the Third Circuit's opinion in this case, which is binding on me and serves as further guidance should this issue come before me again.

5. **In *Myers v. Clinton County Correctional Facility*, No. CV 3:21-867, 2022 WL 738740 (M.D. Pa. Mar. 11, 2022), the district court concluded that you applied the incorrect legal standard to analyze an alleged Eighth Amendment violation in the context of an attempted suicide by an inmate.**

Please explain the Third Circuit's holding in *Colburn v. Upper Darby Township*., 946 F.2d 1017 (3d Cir. 1991).

Response: In *Colburn v. Upper Darby Township*, the Third Circuit recognized that a "particular vulnerability to suicide" is a serious medical need and that, in a prisoner suicide case, the plaintiff must establish: "(1) the detainee had a 'particular vulnerability to suicide,' (2) the custodial officer or officers knew or should have known of that vulnerability, and (3) those officers 'acted with reckless indifference' to the detainee's particular vulnerability." *Colburn v. Upper Darby Township*., 946 F.2d 1017, 1023 (3d Cir. 1991).

6. **In *Dennis v. Sheridan*, No. 1:18-CV-01131, 2020 WL 4003614 (M.D. Pa. July 15, 2020), the district court concluded that you improperly excused a self-represented party from complying with the service of process requirements of Federal Rule of Civil Procedure 4.**

   Please summarize the service of process requirements of Federal Rule of Civil Procedure 4.

   Response: Federal Rule of Civil Procedure 4(c) requires that a summons be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within 90 days after the complaint is filed. Fed. R. Civ. P. 4(c)(1), 4(m). The summons and complaint must be served by a person of at least 18 years of age and who is not a party. Fed. R. Civ. P. 4(c)(2). At the plaintiff's request, the court may order service by the United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916. Fed. R. Civ. P. 4(c)(3). Federal Rules of Civil Procedure 4(e)-(j) set forth the specific requirements for serving particular types of parties.

7. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

   Response: Pursuant to 28 U.S.C. § 2254, a federal court shall entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court only on the ground that his custody is "in violation of the Constitution or the laws or treaties of the United States."

8. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

   Response: Pursuant to 28 U.S.C. § 2255, "a prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

9. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: In the Harvard College case, the Petitioner, Students for Fair Admissions, sued Harvard College over its admissions process, alleging that it violated Title VI of the Civil Rights Act of 1964 by using race as one of its factors in its admissions process. In the University of North Carolina case, the same Petitioner sued the University of North Carolina over its admissions process, alleging that it violated the Fourteenth Amendment by using race as a factor in admissions. Both the University of North Carolina and Harvard admitted that they did consider race in their admissions processes but argued that their processes adhered to the requirements for race-based admissions outlined in the Supreme Court's decision in *Grutter v. Bollinger*. The Supreme Court determined that while the schools may allow an applicant to explain how their race influenced their character in a way that would have a concrete effect on the university, a student "must be treated based on his or her experiences as an individual — not on the basis of race." The Court concluded the use of race as a factor in the admissions process violates the Equal Protection Clause of the Fourteenth Amendment. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023).

10. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?**

    Response: Yes.

    If yes, please list each job or role where you participated in hiring decisions.

    Response: As a partner at my former law firm, I participated in hiring decisions for support staff at the law firm. As a magistrate judge, I have a lead role in hiring decisions for my chambers staff, including my courtroom deputy and law clerks.

11. **Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

    Response: No.

12. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

    Response: No.

13. **Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

Response: No.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable.

14. **Under current Supreme Court and Third Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. It is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny. *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720 (2007); *Doe ex rel. Doe v. Lower Merion School Dist.*, 665 F.3d 524, 545 (3d Cir. 2011).

15. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that the First Amendment prohibits the State of Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees. The Colorado Act in question impermissibly compelled speech in violation of the First Amendment when it compelled speakers to accept a message with which they disagreed.

16. **In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."**

Is this a correct statement of the law?

Response: As a sitting United States Magistrate Judge, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of any United States Supreme Court decision. I faithfully apply all binding precedent of the Supreme Court and of the Third Circuit to all matters that come before me, and I would continue to do so if confirmed as a district judge. To the extent that this question asks if *Barnette* is good law, it is.

17. **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 held that Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163–64 (2015). A court should consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.* While some distinctions may be obvious, defined by particular subject matter, others may be more subtle, defining regulated speech by its function or purpose. *Id.* The first step in this analysis is to determine whether the law is content neutral on its face. *Id.* at 165. Only after that step should a court look to the purpose and justification for the law. *Id.*

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

Response: In *Counterman v. Colorado*, the Supreme Court determined that the "true threats" doctrine required the government to prove that an individual must have some understanding of the threatening nature of his communications in order for the speech to be outside the bounds of First Amendment protections. The Court further held that a recklessness standard is enough; a more specific intent to threaten need not be proven by the government. *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023).

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

Response: A "fact" is defined by *Black's Law Dictionary* (11th ed. 2019) as "[s]omething that actually exists; an aspect of reality" or "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." The Third Circuit follows the Supreme Court's definition of "factual issues" as "basic, primary or historical facts: facts in the sense of a recital of external events and the credibility of their narrators." *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007)*; Berryman v. Morton,* 100 F.3d 1089, 1094 (3d Cir. 1996) (quoting *Townsend v. Sain,* 372 U.S. 293 (1963); *Brown v. Allen,* 344 U.S. 443, 506 (1953)). The Supreme Court has acknowledged, however, that there is not an "entirely clear course in this area" and that "the proper characterization of a question as one of fact or law is sometimes slippery." *Williams v. Taylor*, 529 U.S. 362, 385 (2000); quoting *Thompson v. Keohane,* 516 U.S. 99, 110–111 (1995).

20. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: The four purposes a judge should consider during sentencing – retribution, deterrence, incapacitation, and rehabilitation – are set forth in 18 U.S.C. § 3553(a). That statute does not assign greater weight to one purpose over any other. As a sitting magistrate judge, I have applied the law in a fair and neutral manner to the facts and circumstances of each defendant's case and have faithfully applied binding precedent from the Supreme Court and the Third Circuit, along with the factors set forth in § 3553(a) and any relevant provisions of the United States Sentencing Guidelines. I also consider the information provided in the presentencing reports prepared by the United States Probation Department, along with any materials and argument prepared or presented by the parties. If confirmed, I will continue this approach to sentencing.

21. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a sitting United States Magistrate Judge, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of any United States Supreme Court decision, or whether any decision is well-reasoned. As a sitting judge, I am bound to issue opinions that are faithful to Supreme Court and Third Circuit precedent, and that are written in a way that are easily understood by the parties, lawyers, and public. I would continue to do so if confirmed as a district judge.

22. **Please identify a Third Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.**

Response: As a sitting United States Magistrate Judge, the Code of Conduct for United States Judges generally precludes me from commenting on the correctness of any United States Supreme Court decision, or whether any decision is well-reasoned. As a sitting judge, I am bound to issue opinions that are faithful to Supreme Court and Third Circuit precedent, and that are written in a way that are easily understood by the parties, lawyers, and public. I would continue to do so if confirmed as a district judge.

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

Response: 18 U.S.C. § 1507 states: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

24. **Is 18 U.S.C. § 1507 constitutional?**

Response: To my knowledge, neither the Supreme Court nor the Third Circuit Court of Appeals has explicitly ruled on the constitutionality of § 1507. The Supreme Court upheld a state statute modeled after 18 U.S.C. § 1507, holding that the "statute on its face [wa]s a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." *Cox v. Louisiana*, 379 U.S. 559, 564 (1965).

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

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. That said, because the constitutionality of laws prohibiting interracial marriage is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Loving v. Virginia* was correctly decided.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *Griswold v. Connecticut* is binding precedent, and I would apply it fully and faithfully.

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

Response: The Supreme Court's decision in *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022). The *Dobbs* decision is binding precedent, and I would apply it fully and faithfully.

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

Response: The Supreme Court's decision in *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022). The *Dobbs* decision is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *Gonzales v. Carhart* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *McDonald v. City of Chicago* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church*

and School v. EEOC is binding precedent, and I would apply it fully and faithfully.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent, and I would apply it fully and faithfully.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent, and I would apply it fully and faithfully.

l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* are binding precedent, and I would apply them fully and faithfully.

m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court's decision in *303 Creative LLC v. Elenis* is binding precedent, and I would apply it fully and faithfully.

26. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court instructed that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" 142 S. Ct. 2111, 2126 (2022). If confirmed, I will faithfully and fully apply this binding precedent.

27. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

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

       Response: No.

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

       Response: No, not to my knowledge.

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

       Response: No.

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

Response: No.

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

Response: No, not to my knowledge.

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

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

Response: No.

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

Response: Not applicable.

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

Response: No.

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

Response: No, not to my knowledge.

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

       Response: No.

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

       Response: No.

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

       Response: No, not to my knowledge.

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

       Response: No.

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

       Response: No.

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

       Response: No, not to my knowledge.

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

Response: In July 2021, I submitted my application for the vacancy on the United States District Court for the Middle District of Pennsylvania. On August 23, 2021, I interviewed with a joint committee appointed by Senator Robert Casey and former Senator Patrick Toomey. On September 24, 2021, I interviewed with members of Senator Casey's staff. On October 8, 2021, I interviewed with Senator Casey and his staff. On May 9, 2022, I interviewed with Senator Toomey's staff and then with Senator Toomey on May 17, 2022. On April 26, 2023, I interviewed with Senator John Fetterman. On April 28, 2023, I interviewed with attorneys from the White House Counsel's Office. Since April 28, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 28, 2023, the President announced his intent to nominate me. On July 11, 2023, the President sent my nomination to the United States Senate.

33. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

38. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**

    a. **If yes,**
        i. **Who?**
        ii. **What advice did they give?**
        iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

    Response: In preparing for my nomination, I discussed my committee questionnaire with several officials from the Office of Legal Policy. These discussions focused on how to accurately display the breadth and depth of my legal and judicial career, including cases that highlighted trial experience, and cases tried to verdict while in practice and as a sitting magistrate judge.

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

    Response: Please see my response to Question 32.

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

    Response: I received these questions on August 2 and 3, 2023 from the Office of Legal Policy, conducted legal research as necessary and prepared draft responses. After receiving limited feedback from the Office of Legal Policy, I finalized and submitted my answers.

Senate Judiciary Committee
Nominations Hearing
July 26, 2023
Questions for the Record
Senator Amy Klobuchar

Karoline Mehalchick, nominee to be U.S. District Court Judge for the Middle District of Pennsylvania

In 2013, you were appointed to serve as a magistrate by the sitting Article III judges of the Middle District of Pennsylvania. You have served as the Chief Magistrate Judge since 2021. Out of the more than 1,200 cases in which you have authored opinions and recommendations, only 31 have been reversed or criticized.

- **How has your experience serving as a magistrate judge prepared you to serve as a federal district court judge?**

  Response: My decade as a federal magistrate judge for the Middle District of Pennsylvania has greatly prepared me to serve as a federal district judge with the same court. If I were to be confirmed as a district judge, I would largely preside over the same types of civil cases and much of the same criminal docket I already handle as a magistrate judge. Over the last ten years, I have presided over both criminal and civil cases. In criminal matters, I have considered applications for search warrants, pen registers, trap and trace devices, and criminal complaints; conducted initial appearances, arraignments, bail and detention hearings, and guilty plea colloquies; and presided over trials and sentencings in petty offense and misdemeanor cases. In nearly every type of civil matter that comes before the district court, I have addressed discovery issues, dispositive motions such as motions to dismiss, motions for summary judgment, and motions in limine, and presided over non-jury and jury trials. My decade of service to the people and litigants in the Middle District of Pennsylvania has prepared me to serve as a district court judge, and it would be my honor to continue my service should I be confirmed.

- **What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?**

  Response: During my ten years as a sitting magistrate judge, I have engaged in an open-minded, independent, and neutral consideration of each matter before me, giving all parties the opportunity to be heard, performing a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and, importantly, issuing oral decisions and written opinions that are easily understood by the parties, lawyers, and public. During all proceedings, whether in court or during a settlement conference, it is most important to me that the parties in a case feel heard and understand the reasons for my decisions. The number of cases in which parties have consented to my jurisdiction is evidence of the confidence members of the bar and

litigants have in my work. Further, in July 2021, my district court colleagues unanimously reappointed me to a second term as a magistrate judge, demonstrating the bench's confidence in my work and abilities as a federal judge.

Senator Mike Lee
Questions for the Record
Karoline Mehalchick, Nominee to the United States District Court for the Middle District of Pennsylvania

1. How would you describe your judicial philosophy?

Response: During my ten years as a sitting magistrate judge, my judicial philosophy has been to engage in an open-minded, independent, and neutral consideration of each matter before me, give all parties the opportunity to be heard, perform a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and issue opinions that are easily understood by the parties, lawyers, and public. I would continue to do so if confirmed as a district judge.

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

Response: In deciding a case that turned on the interpretation of a federal statute, I would first consider the text of the statute and any binding Supreme Court and Third Circuit precedent interpreting the statute. If there is no binding precedent and the statutory text is ambiguous, I would employ methods of statutory interpretation deemed appropriate by the Supreme Court, including consulting dictionary definitions, appropriate canons of construction. Finally, if necessary, I would consider forms of legislative history that the Supreme Court has determined to be of probative value, but with the Court's caution that these extrinsic materials "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms" and that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings." *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568 (2005). The Supreme Court further held that "legislative history is itself often murky, ambiguous, and contradictory." *Id.* at 568. The Supreme Court has held that committee reports are "more authoritative" sources of legislative history because they "represent the considered and collective judgement of those Congressmen involved in drafting and studying the proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would first consider the text of the provision and any binding Supreme Court and Third Circuit precedent interpreting the provision. If necessary, I would look to how the Supreme Court and Third Circuit have interpreted analogous constitutional provisions. Where the Supreme Court or Third Circuit has set forth a method for interpreting a provision, I would apply that interpretative method to the case.

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

Response: If I were to be presented with a constitutional issue, I would look first to the plain language of the text of constitutional provision. I would also consider Supreme Court and Third Circuit cases construing similar provisions, and I would use the interpretive methods set forth by the Supreme Court in certain types of cases, such as looking to original public meaning in cases concerning the Second Amendment, *see e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: Please see my response to Question 2.

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

Response: The Supreme Court interprets a statute "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

6. What are the constitutional requirements for standing?

Response: The Supreme Court has held that the constitutional minimum of standing contains three elements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). A plaintiff must demonstrate that (1) he or she has suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent;" (2) "there must be a causal connection between the injury and the conduct complained of" such that the injury is "fairly ... trace[able] to the challenged action of the defendant; and (3) it must be "likely" that the injury will be "redressed by a favorable decision." *Id.* at 560-561.

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

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized that the Necessary and Proper Clause gives Congress certain implied powers beyond those enumerated in the Constitution.

8. 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 first look to the text of the Constitution and then to relevant Supreme Court and Third Circuit precedent. The "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Federation of Independent Business v. Sebelius*,

567 U.S. 519, 570 (2012); quoting *Woods v. Cloyd W. Miller Co.,* 333 U.S. 138, 144 (1948).

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

Response: The Supreme Court has determined that an unenumerated right must be *"*deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed…." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). These rights include but are not limited to the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to marital privacy, *Griswold v. Connecticut*; 381 U.S. 479 (1965); to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and to direct the education of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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

Response: As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge. As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. However, in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court held that the Constitution does not protect a right to abortion, and in *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court explained that "The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *Id.* at 392.

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power - the use of the channels of interstate commerce, the instrumentalities of interstate commerce, and those activities that substantially affect interstate commerce. *U.S. v. Lopez*, 514 U.S. 549, 558–59 (1995). Congress may not, however, regulate activity that does not substantially affect interstate commerce. *Id.*

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

Response: The Supreme Court has determined that a particular group is a "suspect class" if, historically, they have been subject to discrimination, exhibit "obvious, immutable, or distinguishing characteristics that define them as a discrete group;" and are a "minority or politically powerless." *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

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

Response: In *Bond v. U.S.*, 564 U.S. 211 (2011), the Supreme Court noted that "[s]eparation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others." The Supreme Court has repeatedly reaffirmed the importance in our constitutional scheme of the separation of governmental powers into the three coordinate branches, noting that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Morrison v. Olson*, 487 U.S. 654, 693 (1988).

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

Response: As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge. If confronted with this case, I would evaluate the legal arguments of the parties, research binding precedent, and look to that precedent for guidance and authority to evaluate the issue of one branch assuming authority not granted it by the text of the Constitution.

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

Response: A judge should approach each case with an open, fair, and impartial mind, and faithfully apply binding precedent to the facts in each case without consideration of personal beliefs or values, including empathy.

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

Response: These two hypotheticals and their outcomes are equally improper for a federal court.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly

more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I am not familiar with any statistics about the frequency with which the Supreme Court has invalidated federal statutes as unconstitutional, and am unable to provide any comment on this topic. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government, esp[ecially] the courts' power to invalidate legislative and executive actions as being unconstitutional." It defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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

Response: Government officials take an oath to defend and uphold the Constitution of the United States, and they must follow Supreme Court precedent interpreting the Constitution. *Cooper v. Aaron*, 358 U.S. 1 (1958).

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

Response: The role of the judiciary is to interpret and uphold the laws of the United States, not to enforce or make the laws. Further, the judiciary may only interpret the laws of the United States in the actual cases and controversies that come before it.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has

questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: The role of a district judge is to apply all binding precedent faithfully and impartially to the facts of each case before him or her. Controlling and binding precedent must be applied regardless of constitutional underpinnings. If there is no binding precedent, then the court must take guidance from relevant precedent, authorities deemed acceptable by the Supreme Court, and issue a well-reasoned opinion based in law and fact.

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

Response: A defendant's group identities do not play any role in a judge's sentencing analysis. The four purposes a judge should consider during sentencing – retribution, deterrence, incapacitation, and rehabilitation – are set forth in 18 U.S.C. § 3553(a). As a sitting magistrate judge, I have applied the law in a fair and neutral manner to the facts and circumstances of each defendant's case and have faithfully applied binding precedent from the Supreme Court and the Third Circuit, along with the factors set forth in § 3553(a) and any relevant provisions of the United States Sentencing Guidelines. I also consider the information provided in the presentencing reports prepared by the United States Probation Department, along with any materials and argument prepared or presented by the parties. If confirmed, I will continue this approach to sentencing.

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

Response: I am not familiar with this statement or the context in which it was made. "Equity" is defined by *Black's Law Dictionary* (11th ed. 2019) as "[f]airness; impartiality; evenhanded dealing."

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

Response: "Equity" is defined by *Black's Law Dictionary* (11th ed. 2019) as "[f]airness; impartiality; evenhanded dealing." "Equality" is defined by *Black's Law*

Dictionary (11th ed. 2019) as "[t]he quality, state, or condition of being equal; esp[ecially] likeness in power or political status."

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

Response: The Fourteenth Amendment's equal protection clause does contain the word "equity" or reference the word "equity." I am not aware of any Supreme Court or Third Circuit precedent that considers whether "equity" as defined by the Biden Administration (as referenced in Question 24) is guaranteed under the Fourteenth Amendment, and as a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A.

27. How do you define "systemic racism?"

Response: *Black's Law Dictionary* (11th ed. 2019) does not define "systemic racism" but defines "racism" as "[t]he belief that some races are inherently superior to other races" and "[u]nfair treatment of people, often including violence against them, because they belong to a different race from one's own." It defines "systemic discrimination" as "[a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location." Further, *Merriam-Webster's Dictionary* (2022) defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "critical race theory" as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Please see my answers to Questions 28 and 29.

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

Questions for the Record for Karoline Mehalchick, nominated to be United States District Judge for the Middle District of Pennsylvania

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. The Supreme Court has determined that an unenumerated right must be *"*deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed…." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). If confirmed, I would faithfully and fully apply the binding precedent of the Supreme Court to this issue, including the test set forth in *Glucksberg*.

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

Response: I do not identify with a specific Supreme Court Justice that typifies my own judicial philosophy. During my ten years as a sitting magistrate judge, my judicial philosophy has been to engage in an open-minded, independent, and neutral consideration of each matter before me, give all parties the opportunity to be heard, perform a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and issue opinions that are easily understood by the parties, lawyers, and public. I would continue to do so if confirmed as a district judge.

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

Response: "Originalism" is defined in *Black's Law Dictionary* as "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" or "the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." *Black's Law Dictionary* (11th ed. 2019). I do not subscribe to a particular label, but fairly and faithfully apply Supreme Court and Third Circuit precedent, including using the interpretive methods set forth by the Supreme Court in certain types of cases, such as looking to original public meaning in cases concerning the Second Amendment, *see e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would continue to do so if confirmed to the district court.

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

Response: "Living constitutionalism" is defined in *Black's Law Dictionary* as "the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." *Black's Law Dictionary* (11th ed. 2019). As a sitting magistrate judge, I do not subscribe to a particular label, but fairly and faithfully apply Supreme Court and Third Circuit precedent. The Supreme Court held in *Bruen* that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I would continue to do so if confirmed to the district court.

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

Response: If I were to be presented with a constitutional issue of first impression for which there was no binding precedent, I would look first to the plain language of the text of the constitutional provision at issue. I would also consider Supreme Court and Third Circuit cases construing similar provisions, and I would use the interpretive methods set forth by the Supreme Court in certain types of cases, such as looking to original public meaning in cases concerning the Second Amendment, *see e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: As a sitting magistrate judge, I follow the interpretive methods dictated by the Supreme Court for different constitutional or statutory provisions. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (looking to original public meaning of the Second Amendment); *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) ("This Court interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564 (2002) (the Court looks to "contemporary community standards" in evaluating obscenity under the First Amendment).

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

Response: The Constitution is a document that does not change unless amended in accordance with the Article V amendment process. The Supreme Court explained that "[a]lthough its meaning is fixed according to the understandings of those who ratified it,

the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

a. Was it correctly decided?

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A.

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

Response: The Supreme Court's decision in *New York Rifle & Pistol Association v. Bruen* is binding precedent, and I would apply it fully and faithfully.

a. Was it correctly decided?

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A.

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

Response: The Supreme Court's decision in *Brown v. Board of Education* is binding precedent, and I would apply it fully and faithfully.

a. Was it correctly decided?

Response: As a sitting magistrate judge and nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

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

Response: Pursuant to the Bail Reform Act of 1984, 18 U.S.C. §§ 3141, et seq., a presumption of pretrial detention exists for defendants who have previously been convicted of certain offenses, including convictions for certain crimes of violence, crimes for which the maximum term of imprisonment is 10 years or more as prescribed in the Controlled Substance Act or the Controlled Substances Import and Export Act, and crimes for which the maximum sentence is life imprisonment, or where the judge finds that there is probable cause that the defendant committed certain drug offenses for which the maximum penalty is 10 years or more, certain firearm offenses, certain offenses involving minor victims, and offenses involving slavery and human trafficking. 18 U.S.C. § 3142(e)(2) and (3).

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

Response: I am unaware of the policy rationale for the presumption. In my ten years as a sitting magistrate judge, I have faithfully applied the statute as written and interpreted by the Supreme Court and the Third Circuit Court of Appeals and would continue to do so if confirmed as a district judge.

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

Response: Yes. In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the Supreme Court held that a government regulation violated the First Amendment when it compelled speech that was against a business owner's beliefs. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that California's restrictions on private gatherings contained myriad exceptions and accommodations for secular activities comparable to religious activities in violation of the First Amendment's Free Exercise Clause. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that the Religious Freedom Restoration Act of 1993 prohibited the government from placing a substantial burden on the religious exercise of religious organizations and small businesses, even if the burden results from a rule of general applicability, unless the government can show that the application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

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

Response: The First Amendment and the Religious Freedom Restoration Act prohibit the government from discriminating against religious organizations or religious people unless the law or regulation in question is narrowly tailored or the least restrictive means to achieve a compelling government interest. *See Tandon v. Newsom*, 141 S. Ct.

1294 (2021), *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), *303 Creative LLC v. Elenis,* 143 S. Ct. 2298 (2023).

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court held that the church and synagogues were entitled to a preliminary injunction. Specifically, the Court found that the church and synagogues had shown a likelihood of success on the merits of their claims, that the restrictions violated a "requirement of neutrality" by allowing secular businesses to remain open, and that denial of relief would cause irreparable harm to the church and synagogues, as the loss of First Amendment freedoms, even for a minimal amount of time, constituted irreparable injury.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that government regulations are not neutral and generally applicable when they treat any comparable secular activity more favorably than religious exercise. The Court further held that it does not matter if the regulation treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue. Such regulations trigger strict scrutiny under the Free Exercise Clause, and the government has the burden to establish that the challenged law satisfies strict scrutiny. To do so, the government must show that measures less restrictive of the First Amendment activity could not address its interest, in this case, reducing the spread of COVID. If the government allows other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Finally, the Court held that even if the government withdraws or modifies a COVID restriction in the course of litigation, the case is not necessarily moot, as the applicants remain entitled to such relief where the applicants "remain under a constant threat" that government officials will use their power to reinstate the challenged restrictions.

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

Response: Yes. For example, in *Kennedy v. Bremerton*, 142 S. Ct. 2407 (2022), the Supreme Court held that the discipline of a football coach for praying after high school football games his First Amendment rights to free exercise of religion and free speech.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that a cake maker could not be compelled to design and make a cake that violated his sincerely held religious beliefs about same-sex marriage, as religious and philosophical objections to same-sex marriage are protected views and can also be protected forms of expression. The Court concluded that the public accommodations law that compelled him to do so would be in violation of the Free Exercise Clauses of the First Amendment.

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

Response: Yes. The Supreme Court determined that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1876 (2021), quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981). Further, the Supreme Court has held that federal courts have no business addressing whether sincerely held religious beliefs asserted in a Religious Freedom Restoration Act case are reasonable. *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014).

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

Response: The Supreme Court has explained that the Court's "narrow function ... is to determine" whether the plaintiffs' asserted religious belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 686 (2014), quoting *Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 716 (1981).

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

Response: The Supreme Court has explained that the Court's "narrow function ... is to determine" whether the plaintiffs' asserted religious belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 686 (2014), quoting *Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 716 (1981).

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

Response: I am not familiar with the official position of the Catholic Church. Further, as a sitting magistrate judge and nominee, it would not be appropriate for me to comment or opine on the positions of the Catholic Church or any other religious institution.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the First Amendment protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. The First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions but was not otherwise a "minister." This is the "ministerial exception," which derives from the religion clauses of the First Amendment; the exception prevents civil courts from adjudicating employee's discrimination claims in this case against the religious schools that employed them.

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

Response: The Supreme Court held that the contractual non-discrimination requirement was subject to strict scrutiny, as it burdened the religious exercise of Catholic Social Services ("CSS") and was not generally applicable. The Court further held that the question was not whether the City had a compelling interest in enforcing its non-discrimination policies generally, but whether it had such an interest in denying an exception to CSS. The Court concluded that under the circumstances, the City did not have a compelling interest in refusing to contract with CSS, as CSS only sought an accommodation that would allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; the agency was not seeking to impose those beliefs on anyone else. The refusal of Philadelphia to contract with CSS for the provision of foster care services unless the agency agrees to certify same-sex couples as foster parents could not survive strict scrutiny and violated the Free Exercise Clause of the First Amendment. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1871 (2021).

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

Response: In *Carson v. Makin,*142 S. Ct. 1987 (2022), the Supreme Court held that Maine's tuition assistance program was subject to strict scrutiny, violated the Free Exercise Clause of the First Amendment, and could not be justified on the grounds it imposed a use-based, and not a status-based, restriction on state funds.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that the school district burdened an employee's rights under the Free Exercise Clause by suspending him for his decision to persist in praying quietly at midfield. The Court determined that the Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal and the Constitution neither mandates nor permits the government to suppress such religious expression. The school district's discipline of Kennedy for praying after football games violated his First Amendment rights to free exercise and free speech.

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

Response: In *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430 (2021), the Supreme Court vacated the lower court's judgment and remanded for further proceedings in light of *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1871 (2021). In his concurrence, Justice Gorsuch explained that the lower court failed to properly apply the strict scrutiny test required by the Religious Land Use and Institutionalized Persons Act. Justice Gorsuch explained that strict scrutiny demands a more precise analysis and courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. If confronted with a case that required

interpretation of 18 U.S.C. § 1507, I would assess the matter based on the facts presented and binding Supreme Court and Third Circuit precedent.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Political appointments are governed by the Appointments Clause, found in Article II, Section 2, Clause 2 of the Constitution. As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge this issue, as it may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. If confirmed, I would faithfully and fully apply the binding precedent of the Supreme Court and Third Circuit to this issue should it come before me.

30. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge or speculate about this question, as it may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. If confirmed, I would faithfully and fully apply the binding precedent of the Supreme Court and Third Circuit to the facts of the case before me.

31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: Whether to increase or decrease the number of justices on the Supreme Court is a question for policymakers, and as a sitting magistrate judge and nominee, it is not appropriate for me to comment on the size of the Supreme Court. As a sitting magistrate judge, I faithfully and fully apply the binding precedent of the Supreme Court and would continue to do so if confirmed as a district judge.

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

Response: No.

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

Response: The Supreme Court has held that the original public meaning of the Second Amendment guarantees the right of an individual to keep and bear arms in the home and outside of the home for the purpose of self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government must demonstrate that the regulation is consistent with historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

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

Response: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008) the Supreme Court held that the right to keep and bear arms is an individual right; in *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 778 (2010), the Supreme Court held that the right to keep and bear arms is a fundamental right.

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

Response: No. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2130 (2022), the Supreme Court held that the "Second Amendment standard accords with how we protect other constitutional rights."

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

Response: No. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2130 (2022), the Supreme Court held that the "Second Amendment standard accords with how we protect other constitutional rights."

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge this question, as it may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. If confirmed, I would faithfully and fully apply the binding precedent of the Supreme Court and Third Circuit to the facts of the case before me, including *United States v. Texas*, 143 S. Ct. 1964 (2023), in which the Supreme Court held that "Under Article II, the Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" *Id.* at 1971, quoting *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021).

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

Response: According to *Black's Law Dictionary* (11th ed. 2019), "prosecutorial discretion" is defined as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court" and "administrative rule" as "[a]n officially promulgated agency regulation that has the force of law." A substantive administrative rule change would be a change in that administrative rule.

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

Response: No. The death penalty is authorized by federal statute, 18 U.S.C. § 3591. The President does not have the authority to abolish federal statutes.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court vacated the nationwide eviction moratorium imposed by the Centers for Disease Control during the COVID-19 pandemic. *Id.* at 2490. The Court held that the petitioners had substantial likelihood of success on the merits of their claim that the authority to promulgate such a regulation under the Public Health Service Act, 42 U.S.C. § 264, and that the balance of equities weighed against stay of judgment pending appeal. *Id.* at 2488. The Court further determined that scope of the agency's claimed authority would counsel against the Government's interpretation, and that it expects "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489 (internal quotation marks omitted) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

42. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge this question, as it may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A.

43. During your hearing, you stated that you had been reversed over 30 times during your time on the magistrate judge bench, a staggering number. Some of these reversals were accompanied by scathing criticisms from the Third Circuit Court of Appeals, wherein the highlighted your failure to cite relevant precedent as well as your poor analysis of precedent you did cite. What steps will you take to improve your performance as a judge to avoid similar reversals in the future?

Response: In my decade on the bench, I have endeavored to engage in an open-minded, independent, and neutral consideration of each matter before me, give all parties the opportunity to be heard, perform a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and issue opinions that are easily understood by the parties, lawyers, and public. In those ten years on the bench, I have issued over 1,200 opinions and reports and recommendations, and over 1,000 criminal orders related to pretrial detention and release. Of these, only 31 decisions have been reversed, affirmed with significant criticism, or not adopted. This represents less than 2% of all opinions, reports and recommendations, and criminal orders I have issued. Of those 31 decisions, 25 were reversed only in part or adopted only in part. In all cases, I carefully read the reviewing court's opinions, which are binding on me and serve as further guidance should the issues come before me again.

44. In a Profile of Women Trailblazers for the Pennsylvania Bar Association in May 2020, when asked when your passion for justice and equity emerged, you reiterated that "whenever I render a decision, whether from the bench or in a written opinion, at the forefront of my mind is always the question of, "What is just here?"

a. Shouldn't the relevant question be "what does the law require?"

Response: In my decade as a sitting magistrate judge, I have endeavored to engage in an open-minded, independent, and neutral consideration of each matter before me, give all parties the opportunity to be heard, perform a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and issue opinions that are easily understood by the parties, lawyers, and public. My consideration of "what is just" includes the question of "what does the law require."

b. Would the Penn State victims consider your opinion in *Spanier v. Libby* "just"?

Response: I have not discussed the opinion with any of the Penn State victims, and it would be inappropriate for me to speculate as to what their thoughts on the opinion are.

c. Was then-Attorney General, now Governor, Josh Shapiro, wrong for publicly celebrating your reversal in *Spanier v. Libby*?

Response: To my knowledge, Governor Shapiro was within his rights to make public comment about the case. It would be inappropriate for me to comment on his or any litigant's views on any decision I have rendered.

Senator John Kennedy
Questions for the Record

Judge Karoline Mehalchick

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

   Response: During my ten years as a sitting magistrate judge, my judicial philosophy has been to engage in an open-minded, independent, and neutral consideration of each matter before me, give all parties the opportunity to be heard, perform a careful review of the record and application of binding precedent of the Supreme Court and the Third Circuit, and issue opinions that are easily understood by the parties, lawyers, and public. I would continue to do so if confirmed as a district judge.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Constitution is a document that does not change unless amended pursuant to the Article V amendment process. The Supreme Court explained that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

   Response: The Supreme Court has explained that when "the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020); *see also Lawrence v. City of Philadelphia, Pa.*, 527 F.3d 299, 314 (3d Cir. 2008).

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

   Response: The Supreme Court has explained that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which "represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Garcia v. U.S.*, 469 U.S. 70, 76 (1984); quoting *Zuber v. Allen,* 396 U.S. 168, 186 (1969). The Supreme Court has cautioned that extrinsic materials "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms" and that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings." *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568

(2005). The Supreme Court further held that "legislative history is itself often murky, ambiguous, and contradictory." *Id.* at 568.

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

   Response: The Supreme Court has noted that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." *Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 569 (1972). In a later case, the Supreme Court upheld a California state constitutional provision requiring a shopping center owner to permit individuals to exercise free speech and petition rights at the shopping center but affirmed that the owner "may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 83 (1980).

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

   Response: The Supreme Court held that the protections of the Fourteenth Amendment extend to "all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). The Supreme Court held 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 also Calderon-Rosas v. Attorney General United States*, 957 F.3d 378, 385 (3d Cir. 2020).

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

   Response: The Supreme Court held in *United States v. Ramsey*, 431 U.S. 606, 616 (1977) that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border."

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

   Response: In *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), the Supreme Court explained that the "opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." *Id.* at 2261. Further, the Court returned the issue of abortion "to the people and their elected representatives." *Id.* at 2279. As such, this is a question for policymakers. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

9. **A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.**

    a. **Do you agree?**

    Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

    b. **Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?**

    Response: No. Lower court judges must follow binding precedent.

10. **Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

    Response: No. District court judges must follow binding precedent.

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

    Response: States may require voters to present identification in order to cast a ballot. *Crawford v. Marion Cnty. Election Board*, 553 U.S. 181 (2008).

12. **Please describe the analysis you will use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.**

    Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government must demonstrate that the regulation is consistent with historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

13. **The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.**

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Supreme Court identified five factors in considering whether to overturn precedent: "the quality of [the prior decision's] reasoning; the workability of the rule it established; its consistency with other related decisions; developments since the decision was handed down; and reliance on the decision." *Id.* at 2478-79. I am unaware of any Supreme Court case specifying how many factors must be present to overturn precedent.

b. Is one factor alone ever sufficient?

Response: In *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Supreme Court identified five factors in considering whether to overturn precedent; I am unaware of any Supreme Court case specifying whether one factor alone is sufficient.

14. Please explain the difference between judicial review and judicial supremacy.

Response: *Black's Law Dictionary* (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government, esp[ecially] the courts' power to invalidate legislative and executive actions as being unconstitutional." It defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: The Supreme Court held in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 2132.

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: I am unaware of any binding Supreme Court precedent on this question, but note that in his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), Justice Thomas wrote that "certain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the First Amendment's Establishment Clause, which 'does not purport to protect individual rights.'" *Id.* at 851 n.20 (citations omitted).

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: Yes. The Ninth Amendment expressly references the enumeration of other rights in the Constitution.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: The Supreme Court has examined original public meaning and historical practices in reviewing other provisions of the Bill of Rights. *See, e.g.*, *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (Second Amendment); *Kennedy v. Bremerton*, 142 S. Ct. 2407, 2428 (2022) (First Amendment); *Crawford v. Washington*, 541 U.S. 36, 60 (2004) (Confrontation Clause). I am unaware of any Supreme Court precedent specifically addressing this issue and the Ninth Amendment.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: The Supreme Court has defined "'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, as a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990).

b. Is the term's meaning consistent in each amendment?

Response: Please see my response to Question 19(a).

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: The Supreme Court held in *Plyler v. Doe*, 457 U.S. 202, 210 (1982) that "[a]liens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." *See also, Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (the Due Process Clause applies to "all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *Calderon-Rosas v. Attorney General United States*, 957 F.3d 378, 385 (3d Cir. 2020).

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices

like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: Per the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022), "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated."

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment be a source of unenumerated rights?

Response: The Supreme Court has noted that "[s]ome scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2248 n.22 (2022); quoting *McDonald v. Chicago*, 561 U.S. 742, 813–850 (2010) (Thomas, J., concurring in part and concurring in judgment). As a sitting magistrate judge, I fully and faithfully follow Supreme Court and Third Circuit precedent and would continue to do so if confirmed as a district judge.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my response to Question 22.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: In *Chevron*, the Supreme Court set forth a doctrine of judicial deference that generally requires a federal court, when reviewing federal agency action, to defer to the agency's reasonable interpretation of an ambiguous statute. Specifically, the Supreme Court directed that "first, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984).

In 2022, the Supreme Court adopted the "major questions" doctrine in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022). The Court in that case held that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Id.* at 2609.

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Supreme Court held that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Id.* at 2609. The agency must point to "clear congressional authorization" for the power it claims to have. *Id.* In *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661 (2022), the Supreme Court held that administrative agencies are "creatures of statute" and as such, "possess only the authority that Congress has provided." *Id.* at 665.

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The Constitution limits the powers of Congress through federalism, the separation of powers, and through the Bill of Rights. Within the Bill of Rights, there are specific prohibitions on actions by Congress, such as in the First Amendment, which prohibits Congress from restricting the freedom of speech, religion, petition, press, and assembly. The Constitution sets out the separation of powers in the first three Articles by dividing authority between Congress, the Executive, and the Judiciary. Finally, through federalism, the Constitution divides powers between the federal and state governments.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power - the use of the channels of interstate commerce, the instrumentalities of interstate commerce, and those activities that substantially affect interstate commerce. *U.S. v. Lopez*, 514 U.S. 549, 558–59 (1995). Congress may not, however, regulate activity that does not substantially affect interstate commerce. *Id.*

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: In *U.S. v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that the Gun-Free School Zones Act, which made it a federal offense for any individual knowingly to possess a firearm at a place that the individual knows or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority, since possession of gun in local school zone was not economic activity that substantially affected interstate commerce.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: In *Adarand Constructos, Inc. v. Pena*, 515 U.S. 200 (1995), the Supreme Court reaffirmed its general rule that "the equal protection obligations imposed by the Fourteenth and Fifth Amendments are indistinguishable." *Id.* at 217-18.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: In *West Virginia v. EPA,* 142 S. Ct. 2587 (2022), the Supreme Court held that in order for the Court to be determine that an agency's action did not violate the Major Question doctrine, the agency must point to "something more than a merely plausible textual basis for the agency action" and instead must show "clear congressional authorization" for the power it claims. *Id.* at 2609.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The anti-commandeering doctrine is a recognition that the Constitution does not confer on Congress the power to issue direct orders to the governments of the States. *Murphy v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018).

33. Does the meaning of the Eighth Amendment change over time? Why or why not?

Response: The Constitution is a document that does not change unless amended pursuant to the Article V amendment process. The Supreme Court explained that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). In the context of the Eighth Amendment, the Supreme Court has held that "[t]o enforce the Constitution's protection of human dignity," it "look[s] to the evolving standards of decency that mark the progress of a maturing society," recognizing that "[t]he Eighth Amendment is not fastened to the obsolete." *Moore v. Texas*, 581 U.S. 1, 12 (2017); quoting *Hall v. Fla.*, 572 U.S. 701, 708 (2014).

34. Is the death penalty constitutional?

Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008), *modified* 554 U.S. 945 (2008).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my response to Question 5.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: Article VI of the Constitution contains the Supremacy Clause, which establishes that the Constitution and federal law generally take precedence over state laws and state constitutions. Where a state court decision is based on adequate and independent state grounds, the Supreme Court will refuse to hear a case arising out of that state court decision, out of respect for the independence of state courts, as well as avoidance of rendering advisory opinions. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983).

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: I am unaware of any Supreme Court or Third Circuit precedent ruling on this question. As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: I am unaware of a textual source cited by the Supreme Court for different standards of review for determining whether state laws or regulations violate constitutional rights. The standards of review come from the Court's decisions, including *Skinner v. State of Oklahoma ex rel Williamson,* 315 U.S. 789 (1942) (strict scrutiny), *Craig v. Boren*, 429 U.S. 535 (1976) (intermediate scrutiny), and *Nebbia v. People of New York*, 291 U.S. 502 (U.S.) (rational basis).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Federal Rule of Civil Procedure 65 authorizes a court to issue an injunction as an equitable form of relief. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge on the issue of universal injunctions.

43. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

Response: There is not a singular federal judge or justice whose service to the bench most inspires me or that I would seek to emulate.

Questions from Senator Thom Tillis
for Karoline Mehalchick Nominee to be United States District Court for the Middle District of Pennsylvania

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes. A judge should approach each case with an open, fair, and impartial mind, and faithfully apply binding precedent to the facts in each case without consideration of personal beliefs or values.

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

   Response: *Black's Law Dictionary* (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu[ally] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not believe judicial activism is appropriate.

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

   Response: It is beyond cavil that impartiality is an expectation for a judge.

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

   Response: No.

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

   Response: A judge should approach each case with an open, fair, and impartial mind, and faithfully apply binding precedent to the facts in each case without consideration of personal beliefs as to the desirability of the outcome.

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

   Response: No.

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

   Response: As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge. This precedent includes the Supreme Court's holdings in *District of Columbia v.*

Heller, 554 U.S. 570 (2008), in which the Court held that the Second Amendment confers an individual right to keep and bear arms, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), in which the Court incorporated the Second Amendment against the states, and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), in which the Court clarified that laws regulating the right to keep and bear arms must be consistent with the country's historical tradition of firearm regulation.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge. This precedent includes the Supreme Court's holdings in *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court held that the Second Amendment confers an individual right to keep and bear arms, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), in which the Court incorporated the Second Amendment against the states, and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), in which the Court clarified that laws regulating the right to keep and bear arms must be consistent with the country's historical tradition of firearm regulation.

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

Response: The judicially-created doctrine of qualified immunity shields governmental officials from claims brought pursuant to § 1983 if their conduct does not violate clearly established statutory or constitutional rights. "Clearly established" means that, at the time of the officer's conduct, "the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *District of Columbia v. Wesby,* 138 S. Ct. 577 (2018); *Mack v. Yost*, 63 F.4th 211 (3d Cir. 2023). If a government official's conduct does not violate a clearly established statutory or constitutional right, then they are entitled to qualified immunity. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit on questions of qualified immunity and would continue to do so if confirmed as a district judge.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

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

Response: The question of what the proper scope of qualified immunity protections for law enforcement should be is a question for policy makers. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: I have not had occasion to study the Supreme Court's decisions on patent eligibility, nor would it be appropriate for me to comment on the correctness of Supreme Court precedent. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Please see my response to Question 12.

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

a. What experience do you have with copyright law?

Response: To the best of my recollection, in my twelve years as an attorney and ten years as a magistrate judge, I have not had the opportunity to work with copyright law. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit to matters that come before me and would continue to do so if confirmed as a district judge, including on matters involving copyright law.

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

Response: To the best of my recollection, in my twelve years as an attorney and ten years as a magistrate judge, I have not had the opportunity to work on any matters involving the Digital Millennium Copyright Act. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit to matters that come before me and would continue to do so if confirmed as a district judge, including on matters involving the Digital Millennium Copyright Act.

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

Response: To the best of my recollection, in my twelve years as an attorney and ten years as a magistrate judge, I have not had the opportunity to address the issue of intermediary liability for online service providers that host unlawful content posted by users. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit to matters that come before me and would continue to do so if confirmed as a district judge, including on matters involving intermediary liability for online service providers.

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

Response: As a magistrate judge, I have been assigned in the referral role to a handful of cases involving the First Amendment and free speech issues, but to the best of my recollection, none of those cases address free speech and intellectual property issues, including copyright. As an attorney, I defended four cases in which plaintiffs made claims of First Amendment retaliation based on their speech. None of those cases addressed free speech and intellectual property issues, including copyright.

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

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

Response: I would first consider the text of the Digital Millennium Copyright Act and any binding Supreme Court and Third Circuit precedent interpreting the statute. If there is no binding precedent and the statutory text is ambiguous, I would employ methods of statutory interpretation deemed appropriate by the Supreme Court, including consulting dictionary definitions and appropriate canons of construction. Finally, if necessary, I would consider forms of legislative history that the Supreme Court has determined to be of probative value, but with the Court's caution that these extrinsic materials "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms" and that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings." *Exxon Mobil Corp. v. Allapattah Services*, Inc., 545 U.S. 546, 568 (2005). The Supreme Court further held that "legislative history is itself often murky, ambiguous, and contradictory." *Id*. at 568. The Supreme Court has held that committee reports are "more authoritative" sources of legislative history because they "represent the considered and collective judgement of those Congressmen involved in drafting and studying the proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: Pursuant to *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), a federal court, when reviewing federal agency action, must defer to the agency's reasonable interpretation of an ambiguous statute.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

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

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge questions of venue or forum that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply federal and local procedural rules and policies related to random case assignment, venue, and forum, as well as binding precedent of the Supreme Court and the Third Circuit. In the District Court for the Middle District of Pennsylvania, case assignments are equally divided and randomly assigned to the active district judges of the court. I would continue to fully and faithfully follow these rules and precedent if confirmed as a district judge.

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

Response: Please see my response to Question 17a.

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

Response: I do not think it is appropriate to engage in this type of conduct as a judge.

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

Response: I will not take affirmative steps to attract a particular set of cases, parties, or issues.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge questions of venue or forum that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply federal and local procedural rules related to random case assignment, venue, and forum, as well as binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.

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

Response: As a sitting magistrate judge and nominee, it is not appropriate for me to comment on or prejudge questions of venue or forum that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3A. As a sitting magistrate judge, I fully and faithfully apply federal and local procedural rules related to random case assignment, venue, and forum, as well as binding precedent of the Supreme Court and the Third Circuit and would continue to do so if confirmed as a district judge.