**Senator Lindsey Graham, Ranking Member**
**Questions for the Record**
**Mr. Jamel Ken Semper Nominee to the United States District Court for the District of New Jersey**

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 do not agree or associate myself with that statement. If I am fortunate enough to be confirmed, I would be duty bound to apply binding Supreme Court and Third Circuit precedent to the facts of every case before me. None of the rulings I would make would be influenced by personal opinions or any interest in the outcome.

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 do not agree with this statement, and it is not the approach I would take if I were fortunate enough to be confirmed. If I were confirmed, I would be duty bound to apply binding precedent of the Supreme Court and Third Circuit.

3. **You have no experience in civil litigation. What steps will you take to ensure you are prepared to handle complex civil cases that come before you?**

   Response: I have had the opportunity to serve as a prosecutor in state and federal court where I was exposed to countless legal doctrines and litigation principles. Over my fifteen-year career, I have litigated over 40 trials to conclusion, and I had to study and become proficient in different areas of state and federal law, including the federal rules of evidence, state domestic terrorism, and federal racketeering. I believe my expansive experiences will help me get up to speed in areas of law that I have not yet been exposed to. I am comfortable with adjusting and learning new areas of the law. If confirmed, I would seek guidance from judges in my district, utilize training information resources from the federal judiciary, and aim to hire law clerks with legal backgrounds different from my own to expand my frame of knowledge in order to thoroughly work on the matters in my court.

4. **In your committee questionnaire, you state that you "inadvertently failed to register for the Selective Service before turning 26" and that you only learned of your obligation during an employment background check after turning 26. You further state: "Prior to my employment at the United States Attorney's Office, with the full support of my prior United States Attorney, the United States Office of Personnel**

**Management ('OPM') adjudicated my lack of registration as neither knowing nor willful and determined that it was not an impediment to my ability to serve in the Department of Justice."**

a. **Did you ever falsely indicate, either verbally or in writing, that you had registered for the Selective Service?**

Response: No.

5. **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: In accordance with 28 U.S.C. § 2254, a person in state custody following a judgment, and after the exhaustion of state appellate remedies, can file a writ of habeas corpus challenging their detention on the grounds that their conviction was contrary to clearly established laws of the United States.

6. **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 sentenced federal prisoner may seek for a court to vacate, set aside or correct the sentence if the sentence was imposed in violation of the Constitution or laws of the United States. Under 28 U.S.C. § 2255, a prisoner in custody under a 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." *Jones v. Hendrix*, 599 U.S. 465, 472 (2023).

7. **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 *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), the Supreme Court struck down the race-based admissions programs of the University of North Carolina and Harvard College. The Court held that the programs violated the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court found the schools' race-based admissions programs could not survive strict scrutiny because the asserted goals of the race-based admissions programs were not sufficiently measurable or coherent under the rubric of strict scrutiny. *Id.* at 2166.

8. **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: While I am tasked with conducting initial interviews of candidates seeking employment at the U.S. Attorney's Office in the District of New Jersey, I have not been involved in hiring decisions.

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

9. **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.

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

    Response: No.

11. **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?**

    **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: No.

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

    Response: Yes, in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), the Supreme Court held that racial classifications imposed by federal, state, or local governments must survive strict scrutiny.

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

Response: In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the owner of a limited liability company (LLC) that sought to produce wedding websites brought a pre-enforcement action against members of the Colorado Civil Rights Commission, and other Colorado officials, to enjoin the defendants from compelling the LLC, through enforcement of the Colorado Anti-Discrimination Act (CADA), to create wedding websites for same-sex couples that would convey messages inconsistent with the LLC owner's religious belief that marriage should be reserved to unions between one man and one woman. The Supreme Court found the wedding websites the LLC sought to create for customers qualified as "pure speech" under the First Amendment because the websites promised to contain images, words, symbols, and other modes of expression. *Id.* at 2312. In enjoining enforcement of the CADA, the Supreme Court held that the First Amendment does not allow for individuals to be compelled to produce or create speech that is inconsistent with their religious beliefs. *Id.* at 2313-2314.

14. **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: Yes, *Barnette* has been reaffirmed repeatedly, including recently in *303 Creative LLC*.

15. **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 held that unconstitutional "content-based" laws impermissibly bar certain speech because of its content or expressed message. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), citing *Carey v. Brown*, 447 U.S. 455, 462 (1980). When determining if a regulation is "content-based," courts must consider if the regulation of speech "on its face" draws a distinction based on the message a speaker conveys. The Supreme Court held that "content-based" regulations trigger strict scrutiny. Speech regulations that are facially content neutral will also trigger strict scrutiny if they were adopted by the government because of disagreement with the message conveyed in the speech.

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

Response: The Supreme Court has defined "true threats" as statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals, and the speaker need not actually intend to carry out the threat. *Virginia v. Black*, 538 U.S. 343, 359 (2003).

17. **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: In *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018), the Supreme Court has stated that "facts" address determinations of "who did what, when or where, how or why." *Id*., citing *Thompson v. Keohane,* 516 U.S. 99, 111 (1995). In the Third Circuit, facts in cases have been deemed "basic, primary or historical" occurrences. *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007). The Supreme Court and the Third Circuit have held that a court is better positioned to address matters when there is no direct statutory authority, and the issue is between a legal standard and a historical fact. *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *United States v. Brown*, 631 F.3d 638, 642–43 (3d Cir. 2011). In *Brown*, the Third Circuit stated the appropriate standard of review for mixed-question cases is determined by reference to the underlying principles of sound judicial administration. "If application of the rule of law to the facts requires an inquiry that is 'essentially factual'—one that is founded 'on the application of the fact-finding tribunal's experience with the mainsprings of human conduct'—the concerns of judicial administration will favor the district court, and the district court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo." *United States v. Brown*, 631 F.3d 638, 643 (3d Cir. 2011).

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

Response: 18 U.S.C. 3553(a) does not direct a court to give additional weight to a specific sentencing factor. As a federal prosecutor, I have uniformly applied 18 U.S.C. 3553(a) in a fact-specific manner without partiality to any one factor. If I am fortunate enough to be confirmed, I will consider all the sentencing factors and apply them appropriately to the facts of every matter that comes before me. Pursuant to 18 U.S.C. 3553(a), I will impose a sentence that is sufficient, but not greater than necessary in every criminal case.

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

Response: As a judicial nominee, I must not comment on the reasoning of Supreme Court precedent. If I am fortunate enough to be confirmed, I will be duty bound to apply binding Supreme Court and Third Circuit precedent to all the matters that will come before me.

20. **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 judicial nominee, I must not comment on the reasoning of Third Circuit precedent. If I am fortunate enough to be confirmed, I will be duty bound to apply binding Supreme Court and Third Circuit precedent to all the matters that will come before me.

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

Response: 18 U.S.C. § 1507 prohibits picketing and parading that is intended to obstruct, impede, or influence the administration of justice. The statutory language is: "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."

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

Response: In *Cox v. State of Louisiana*, 379 U.S. 559, 563 (1965), the Supreme Court upheld a Louisiana statute that tracks with 18 U.S.C. § 1507. The Supreme Court held that "picketing and parading—is subject to regulation even though intertwined with expression and association." *Id*. I am unaware of a case that has come before the Supreme Court, or any federal court, that directly addresses the constitutionality of 18 U.S.C. § 1507.

23. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

24. **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: Yes. The unconstitutionality of *de jure* racial segregation in our educational systems is well settled and is unlikely to be re-litigated in our courts, and thus I do not believe I am violating the Code of Conduct for United States Judges in answering this question.

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

Response: Yes. The constitutionality of interracial marriage is well settled and is unlikely to be re-litigated in our courts, and thus I do not believe I am violating the Code of Conduct for United States Judges in answering this question.

c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**
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?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response to sub-questions c to m: As a judicial nominee, I am subject to Canon 3(a)(6) of the Code of Conduct for United States Judges, and I cannot make public comment on cases which may come before me as a judge because this would violate Canon 3(A)(6). All of the cases above, with the exception or *Roe* and *Casey*, which were overturned by *Dobbs*, are binding precedent that I would be duty bound to follow and apply. If I am fortunate enough to be confirmed, I would unfailingly apply binding precedent.

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

Response: In *Bruen*, the Supreme Court held the government must demonstrate that the regulation is consistent with this nation's historical tradition of firearm regulation. The Supreme Court stated that, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The

government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2129-2130 (2022).

26. **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.

27. **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.

28. **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: No.

    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.

29. **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.

30. **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.

31. **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: On December 23, 2022, I applied to the judicial screening committee for Senator Cory Booker. On March 28, 2023, I interviewed with Senator Booker's screening committee. On June 7, 2023, I interviewed with Senator Robert Menendez. On June 16, 2023, I interviewed with Senator Booker. On June 29, 2023, the White House Counsel's Office informed me that I had been recommended as a potential candidate for nomination. On June 29, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on July 1, 2023, that I would be moving forward in the selection process. Since July 5, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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: No. The cases I selected were my own choices. In preparing my Senate Judiciary Questionnaire responses, I received formatting edits from the Department of Justice, Office of Legal Policy.

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

Response: On June 29, 2023, the White House Counsel's Office informed me that I had been recommended as a potential candidate for nomination. On June 29, 2023, I

interviewed with attorneys from the White House Counsel's Office, who informed me on July 1, 2023, that I would be moving forward in the selection process. Since July 5, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

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

Response: I received the questions on the evening of October 11, 2023. After reviewing the questions, I drafted responses after reviewing OLP's formatting directives for inserting answers. I received limited feedback from OLP and then finalized and submitted my responses.

**Senate Judiciary Committee**
**Nominations Hearing**
**October 4, 2023**
**Questions for the Record**
**Senator Amy Klobuchar**

**<u>Jamel Semper, to be U.S. District Court Judge for the District of New Jersey</u>**
**Since 2018, you have served as an Assistant U.S. Attorney for the District of New Jersey. You have served as Chief of the Violence Crimes Unit and later went on to serve as the Deputy Chief of the Office's Criminal Division. You have also supervised the New Jersey USAO's Violent Crime Initiative, which is a joint task force made up of dozens of federal, state, and local law enforcement personnel who investigate criminal enterprises and drug traffickers.**

- **How did these experiences prepare you to deal with the complexities you will encounter if confirmed to serve as a federal district court judge?**

  Response: Serving as a line prosecutor in state court allowed me to develop an intimate knowledge of every stage of litigation. The substantial volume of my caseload taught me how to multitask. My current role of leading dozens of federal prosecutors and law enforcement task force members has helped to sharpen my analytical approach to legal matters and my managerial skills. If I am fortunate enough to be confirmed, I would look to utilize my skill set to manage a large and complex docket while also leading a judicial chamber that will be comprised of junior lawyers looking for guidance. I am eager to take on the challenge.

- **What have you learned about our criminal justice system during your time as a prosecutor and how will these experiences serve you if confirmed as a federal district court judge?**

  Response: I have learned that people are complex, and they can end up on any side of our criminal justice system for countless reasons. I have learned that our democracy is strengthened by our institutions that endeavor to apply our collective will, distilled to laws, to complicated issues. If confirmed, I will use the breadth of my experiences to follow and apply the law as a district court judge.

**Senator Mike Lee**
**Questions for the Record**
**Jamel Semper, Nominee to the United States District Court for the District of New Jersey**

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

   Response: If I am fortunate enough to be confirmed, my judicial philosophy will be to approach every matter with an open mind, thoroughly review the record in order to target the key legal issues, scrupulously review applicable statutes and binding precedents, and craft well-reasoned clear opinions that are invariably rooted in binding precedent.

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

   Response: Binding Supreme Court precedent directs lower courts to begin by thoroughly examining the text of the statute itself. Statutory interpretation begins and ends with the statutory text. *National Assn. of Mfrs. v. Department of Defense*, 583 U.S. 109, 127 (2018). If I determined that the text of the statute was unambiguous after review, I would apply its plain meaning to the facts before me. If the statute is ambiguous, I would look to binding Third Circuit and Supreme Court precedent as to how to interpret the statute and apply the relevant canons of statutory construction.

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

   Response: I would begin by thoroughly examining the text of the provision because the Supreme Court's opinions have set forth the "primacy" of the role the Constitution's text plays in its interpretation. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1894 (2021). I would also look for binding Third Circuit and Supreme Court precedent on how to apply the provision and apply it to the facts of the case. If there is no binding precedent, I would look for analogous precedent to interpret the provision and apply it to the facts. I would also look to apply any analytical framework that the Third Circuit or the Supreme Court has proscribed.

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

   Response: The Supreme Court has used text and the original meaning of a constitutional provision to resolve certain constitutional questions. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004).

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: My approach would parallel my response in Question 2.

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

Response: A statute's meaning is fixed from the point of its ratification and does not change or evolve overtime. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022). "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives." *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1738 (2020).

**7. What are the constitutional requirements for standing?**

Response: To establish standing, a party must have suffered a particularized injury in fact that is connected or traceable to the challenged conduct and there must be likelihood of redressability through lawsuit.

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

Response: The Supreme Court has held that Article I of the Constitution granted Congress implied powers under the "Necessary and Proper Clause." *McCulloch v. Maryland*, 17 U.S. 316 (1819). Article I § 8 of the Constitution grants Congress the power to, "[t]o make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

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

Response: The Supreme Court has stated the constitutionality of a congressional action "does not depend on recitals of the power it undertakes to exercise." *National Federation of Independent Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If confirmed, I would follow binding precedent when examining the constitutionality of a statute.

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

Response: The Supreme Court has held that the Constitution protects fundamental rights that are deeply rooted in our national history and tradition and are implicit in the nation's scheme of ordered liberty. *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2242 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Examples of such rights include the right to travel freely between the

states, *Sáenz v. Roe*, 526 U.S. 489 (1999), and the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967).

**11. What rights are protected under substantive due process?**

Response: Please see my response to Question 10.

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

Response: The Supreme Court overturned *Lochner* and held that liberty to contract is subject to the restraints of due process. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). The Supreme Court in *Griswold* held that the right to contraceptives is a substantive due process right. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Response: Congress can set forth laws that regulate interstate and foreign commerce along with commerce to Indian tribes. In *United States v. Lopez*, 115 S.Ct. 1624, 1629 (1995), the Supreme Court held that Congress may regulate: 1) the channels of interstate commerce; 2) the instrumentalities of interstate commerce; and 3) the activities that substantially affect interstate commerce.

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

Response: The Supreme Court has stated that race, religion, and national origin are suspect classes that would trigger strict scrutiny. *City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976).

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

Response: The principle of checks and balances is an essential feature of our constitutional system where power among the branches is shared and balanced.

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

Response: I would utilize binding precedent to identify the framework for assessing the authorities of the branches of government. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: If I am fortunate enough to be confirmed, I would be duty bound to consider the facts of a matter, the applicable statutes, and binding legal precedent.

**18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both acts would violate the law.

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

Response: I have not studied this particular period of the Supreme Court's jurisprudence. If I am fortunate enough to be confirmed, I would be bound to adhere to binding precedent from the Supreme Court and the Third Circuit and render decisions on the matters before me.

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

Response: The principle of judicial review was first set forth by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Black's Law Dictionary defines "judicial supremacy" as the principle "that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Conversely, the Black's Law Dictionary defines "judicial review" as a court's "power to review the actions of other branches or levels of government."

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

Response: Pursuant to Article VI of the Constitution, every elected official is bound by oath to support the Constitution, which explicitly enumerates the role of the judicial branch in Article III. Elected officials are bound to adhere to the decisions of the Supreme Court based on the longstanding precedent of judicial supremacy. *Cooper v. Aaron*, 358 U.S. 1 (1958). As a judicial nominee, I cannot comment on how elected officials execute or discharge their duties. If I were confronted with an

issue involving a branch of government's response to a judicial opinion, I would be duty bound to follow binding precedent of the Supreme Court and the Third Circuit.

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

Response: Judicial officials are limited to resolve only the cases and controversies that come before them. If confirmed, I would scrupulously honor that principle.

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

Response: If confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit and I would have no authority to go outside the bounds of binding precedent. I would scrupulously honor that principle.

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

Response: None. 18 U.S.C. 3553(a) details the factors that courts must consider when sentencing a defendant. The defendant's "group identity" plays no role in the sentencing analysis.

**25. 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 unfamiliar with this statement, and I am unaware of the context in which it was given. I am not aware of any binding precedent relating to equity. Black's Law Dictionary defines "equity" as "impartiality." If confronted with a question related to "equity," I would be duty bound to follow binding precedent.

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

Response: Please see my response to Question 25 for a definition in "equity." Black's Law Dictionary defines "equality" as the "condition of being equal."

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

Response: The Constitution, including the Fourteenth Amendment, makes no reference to "equity." If confirmed, I would be duty bound to apply binding precedent of the Supreme Court and The Third Circuit.

**28. How do you define "systemic racism?"**

Response: "Systemic racism" is not a term that I have used in my career as a prosecutor. The Merriam Webster Dictionary has defined it as the "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems."

**29. How do you define "critical race theory?"**

Response: "Critical race theory" is not a term that I have used in my career as a prosecutor. Black's Law Dictionary defines the term as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

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

**31. In January or 2021, you were named as one of seven candidates "under active consideration" for appointment as U.S. Attorney for the District of New Jersey. Did you meet with, or speak to Senator Menendez between January and December 2021?**

Response: Yes, in 2021, I had a single interview with Senator Menendez to be considered for appointment as U.S. Attorney for the District of New Jersey.

**32. In 2021, did you discuss the prosecution of Mr. Fred Daibes with Senator Menendez? Did Senator Menendez attempt to influence you in one way or another regarding the Daibes matter?**

Response: No, Senator Menendez did not raise or discuss the Daibes matter, or any other investigation or prosecution, when I interviewed for the U.S. Attorney position in 2021. Senator Menendez did not attempt to influence me during the interview.

**33. You interviewed with Senator Menendez in consideration for this nomination on June 16, 2023. Did you discuss Mr. Daibes during that interview? Did you discuss Senator Menendez' personal involvement in that matter?**

Response: No, Senator Menendez did not raise or discuss the Daibes matter, or any other investigation or prosecution, when I interviewed with him on June 16, 2023. Prior to recent public reporting, I had no knowledge of the Daibes matter.

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

**Questions for the Record for Jamel Ken Semper, nominated to be United States District Judge for the District of New Jersey**

## I. Directions

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

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

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

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

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

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

## II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. For example, racial discrimination in the employment context is illegal under federal law pursuant to Title VII of the Civil Rights Act of 1964. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023), the Supreme Court referred to prior racial discrimination as "ignoble history" before it held that that the Equal Protection Clause of the Fourteenth Amendment barred racial discrimination.

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 judicial nominee, I am subject to the Code of Conduct for United States Judges, and I cannot make public comment on cases which may come before me as it would violate the directives of Canon 3(A)(6). If I were confronted with such an issue, I would be duty bound to faithfully apply binding precedent. The Supreme Court's test for determining if the existence of a fundamental right is whether the right is an essential component of "ordered liberty" and whether the right is "deeply rooted" in America's history and tradition. *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2242 (2022); *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997).

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: While I am not familiar with the specific philosophies of all the justices who served on those courts, if I am fortunate enough to be confirmed, my judicial philosophy will be to approach every matter with an open mind, thoroughly review the record in order to target the key legal issues, scrupulously review applicable statutes and binding precedents, and craft well-reasoned clear opinions that are invariably rooted in binding precedent.

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

Response: According to Black's Law Dictionary, "originalism" is the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." While I do not subscribe to a particular label, I am aware that the Supreme Court has repeatedly used this interpretative approach to resolve certain constitutional matters. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I will unfailingly apply binding legal precedent in all matters that will come before me.

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

Response: According to Black's Law Dictionary, "living constitutionalism" is the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not subscribe to this doctrine. If confirmed, I will unfailingly apply binding legal precedent in all matters that will come before me.

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 confronted with an issue of first impression while serving on the district court, I would be duty bound to apply the interpretative method proscribed by the Supreme Court and the Third Circuit to address the constitutional issue before me. If binding interpretative framework required the application of original public meaning, I would be duty bound to follow it.

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: The Supreme Court has used original public meaning when interpreting provisions of the Constitution. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *Crawford v. Washington*, 541 U.S. 36 (2004). While there are some examples when the Supreme Court used contemporary standards for questions related to the Eighth (*Atkins v. Virginia*, 536 U.S. 304, 311–12 (2002)) and First (*Miller v. California*, 413 U.S. 15, 24–25 (1973)) Amendments, the Supreme Court "normally 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, 1738 (2020).

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

Response: No. As Chief Justice Marshall said, the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Moreover, the Supreme Court has affirmed the principle that the meaning of the constitutional provisions is "fixed" from the time of their ratification. *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: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Dobbs*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

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

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Bruen*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

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

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: Due to the highly unlikely occurrence that *de jure* segregation will be re-litigated in our courts again, I do not believe I am violating the Code of Conduct for United States Judges by answering this question. Yes, *Brown* was correctly decided.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Students for Fair Admissions*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, the Supreme Court settled the issue, and its precedent is binding.

a. **Was it correctly decided?**

Response: If I am fortunate enough to be confirmed, I would unfailingly apply all binding precedent, including *Gibbons*. As a judicial nominee, I am subject to the Code of Conduct for United States Judges, and it would not be appropriate for me to opine on the merits of a Supreme Court opinion.

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

Response: Under 18 U.S.C. § 3142, there is a rebuttable presumption for pretrial detention for crimes of violence, a narcotics offense with a term of imprisonment of ten years or more, and an offense with a maximum punishment of life imprisonment or death.

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

Response: 18 U.S.C. § 3142 discusses the need to ensure a defendant's appearance for court proceeding and safety considerations for the community. As a federal prosecutor, I have seen matters when both factors were applicable. I cannot speak to the exact policy rationales of the drafters.

15. **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, there are limits on what government may impose on private institutions. In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the Supreme Court held that under the Religious Freedom Restoration Act, a closely held corporation's owners can deny contraception health care coverage to employees based on religious objections after the government failed to show that the mandate was the least restrictive means of furthering a compelling interest. In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the Supreme Court held that public accommodation laws cannot be used to compel speech that offends one's religious beliefs. If I am fortunate enough to be confirmed, I will apply binding precedent to every matter that comes before me.

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

Response: Religious discrimination is forbidden under our Constitution. The Supreme Court has repeatedly struck government regulations that lacked neutrality and were not generally applicable. *Carson v. Makin*, 142 S. Ct. 1987 (2021); *Espinoza v Montana*

*Department of Revenue*, 140 S. Ct. 2246 (2020). In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Court applied strict scrutiny to a regulation that was deemed to treat secular activity more favorably than religious activity.

17. **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: The Supreme Court held the applicants were entitled to injunctive relief because they were likely to succeed on the merits of the case because the New York Governor's Executive Order (Order) limiting attendance at religious services more than at secular activities, violated the Free Exercise Clause as a non-neutral restriction that was not narrowly tailored. The Order's disparate treatment of religious gatherings was not narrowly tailored to prevent the spread of COVID-19 because its restrictions were far more severe than had been shown to be required to prevent the spread of the virus at religious services. The Court found irreparable harm would result from this Free Exercise Clause violation, and New York could not show that granting relief would harm the public interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Supreme Court enjoined COVID-19 restrictions that barred the plaintiffs from engaging in certain religious gatherings. The Court found the plaintiffs were likely to win on the merits because the regulation was not neutral and generally applicable considering the Court's finding that secular practices were treated more favorably than religious practices.

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

Response: Yes.

20. **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 Colorado's Civil Rights Commission violated the Free Exercise Clause by treating religious objections with hostility while treating the objections of others more favorably. The Supreme Court found that Colorado's

Civil Rights Commission's did not comply with the Free Exercise Clause's requirement of religious neutrality because the Commission was hostile to the cakeshop owner's deep and sincere religious objections for not wanting to create cakes for same-sex couples. *Id.* at 1729. The Court also found that Colorado's Civil Rights Commission engaged in disparate treatment of the shop owner compared to other shop owners who had objected to making cakes with messages they deemed discriminatory. *Id.*

21. **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 has held that sincerely held religious beliefs are protected. *Burwell v. Hobby Lobby Stores*, *Inc.*, 573 U.S. 682, 720 (2014).

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

Response: Yes, so long as the religious beliefs are sincerely held, they are subject to the constitutional protection of the Free Exercise Clause. *Burwell v. Hobby Lobby Stores*, *Inc.*, 573 U.S. 682, 720 (2014).

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

Response: See my answer to part (a).

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

Response: I am not aware of the Catholic Church's official positions.

22. **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 applied the "Ministerial Exception" after finding the employees were hired under the agreement that their employment would be evaluated based upon their ability to develop and promote the Catholic faith in their community and teach religious instruction. The Court found that the First Amendment protects the internal governance decisions that touch on vital religious duties within religious institutions.

23. **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 Philadelphia's non-discrimination requirement that compelled Catholic Social Services (CSS) to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment because the policy was not neutral and lacked general applicability. The Supreme Court found Philadelphia's refusal to contract with a state-licensed foster care agency affiliated with the Roman Catholic Archdiocese unless the agency agreed to certify same-sex couples as foster parents, burdened the agency's religious exercise protected by the First Amendment. The Court found that Philadelphia failed to act neutrally because it was intolerant of the religious beliefs and practices of CSS. The lack of neutrality triggered strict scrutiny, and the Court found Philadelphia's actions violated the Free Exercise Clause.

24. **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*, the Supreme Court struck down Montana's tuition assistance program because it barred families from using the awarded tuition funds on private religious schools. The Supreme Court found the "no aid" provision of the statute was not neutral because it excluded otherwise eligible schools based on their religious exercise, and the exclusion of religious schools from the program promoted stricter separation of church and state than the Federal Constitution required. *Carson v. Makin*, 142 S. Ct. 1987, 1997-1998 (2022). The Court also found that under the program, private schools were treated more favorably because they did not have to offer an education that was equivalent to that available in Maine public schools in order to be eligible for state funds. *Id*. The Court held the program violated the Free Exercise Clause of the First Amendment because it was not neutral and generally applicable. The Court stated that governments cannot exclude religious individuals from obtaining public benefits on the grounds that those benefits would be used for religious endeavors. *Id*. at 2002.

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

Response: In *Kennedy*, a high school football coach was fired after he knelt midfield after games and engaged in personal prayer. The Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protected his individual engagement in personal religious observance without government reprisal. The Court found that the coach's midfield prayer was private speech, unattributable to his professional duties, that was conducted outside the presence of his players. The Court determined that such private speech was not "government speech" attributable to the school district he served. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2424

(2022).

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

Response: Justice Gorsuch stated the lower courts failed to give sufficient weight to the arguments for exemptions raised by other groups, and the government should give compelling reasons for denying such requests. Justice Gorsuch stated that courts cannot rely on broadly formulated governmental interests and must scrutinize the asserted harm of granting specific exemptions to religious claimants.

27. **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: In *Cox v. State of Louisiana*, 379 U.S. 559, 563 (1965), the Supreme Court upheld a Louisiana statute that tracked with 18 U.S.C. § 1507. The Supreme Court held that "picketing and parading—is subject to regulation even though intertwined with expression and association." *Id*. Pursuant to the Code of Conduct for United States Judges, it would be improper for me to offer my opinion of a statute. If I were fortunate enough to be confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit.

28. **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.

29. **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.

30. **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.

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

Response: Political appointments are the province of the individual vested with the appointment authority. As a judicial nominee, I am bound by the Code of Conduct for United States Judges, and I cannot offer commentary on political decisions. If I were fortunate enough to be confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit.

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

Response: In *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 533-534 (2015), the Supreme Court held that disparate-impact claims are identifiable under the Fair Housing Act and the Civil Rights Act of 1964. If a case involving a racially disparate outcome came before me, I would faithfully apply binding Supreme Court precedent.

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

Response: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, and I cannot opine on policy decisions. If confirmed, I would be duty bound to unfailingly apply binding precedent from the Supreme Court and the Third Circuit.

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

Response: No.

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

Response: In *Heller* and *McDonald*, the Supreme Court held that the Second

Amendment protects the right of law-abiding citizens to possess a handgun in the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 50 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010). In *Bruen* the Supreme Court held that the Second Amendment protects an individual's right to carry a handgun for self-defense outside the home. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

36. **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: To justify a regulation of firearms under the Second Amendment, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111, 2126 (2022).

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

Response: The Supreme Court has held the Second Amendment is a fundamental right.

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

Response: Per the Supreme Court, Second Amendment rights are not "second-class" rights. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: Per the Supreme Court, Second Amendment rights are not "second-class" rights. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: Under U.S. Const. art. II, § 3, the executive must "take care that the laws be faithfully executed." Under the separation of powers, the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law. *See United States v. Texas*, 599 U.S. 670 (2023).

41. **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, "prosecutorial discretion" is 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." As for substantive administrative rule changes, any changes would need to comport with 5 U.S.C. §§ 551-559.

42. **Does the President have the authority to abolish the death penalty?**

Response: No, such an act would conflict with separation of powers principles. The federal death penalty is codified at 18 U.S.C. 3591. "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

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

Response: In vacating the Centers for Disease Control's COVID-19 related moratorium on convictions, the Supreme Court held that agencies must have clear legislative authority when taking actions of such vast political and economic impact.

44. **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: No.

45. **In an article dated September 7, 2023, in the Hudson County View, Senator Menendez favorably spoke out in supporting you. Specifically, he stated that you were, "someone who I have gotten to know in my time as a member of the New Jersey Bar.**

a. **Given that you have only ever been a law clerk and a prosecutor, can you please explain what Senator Menendez meant?**

Response: I am not aware of this statement and the context in which it was given. I cannot offer any insight into its intended meaning. During my interview with Senator Menendez on June 16, 2023, he was familiar with my background as a violent crime prosecutor.

46. **In your United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees, you stated that you "inadvertently" failed to register for Selective Service. Specifically, you indicated, "During an employment background check after turning 26, I learned that I was obligated to register for the Selective Service and that I had an unregistered status." Importantly, nowhere in your paragraph-long SJQ response did you indicate that you were exempt or otherwise not required to register for Selective Service.**

a. **Where were you applying when you discovered your unregistered status?**

Response: I was applying for an Assistant Prosecutor possession at the Essex County Prosecutor's Office when I learned about my status.

b. **When exactly did you discover your unregistered status?**

Response: I discovered my status in January of 2013.

c. **What steps did you take upon learning that you were unregistered?**

Response: I was 31 when I learned my status, and I inquired if I was able to register at that time. I then learned that I could not register because I was too old.

d. **Are you aware that knowingly and willingly failing to register for Selective Service is a felony?**

Response: I have dedicated my life to public service. I did not knowingly or willfully fail to register for Selective Service. Before I began my service to the country as a federal prosecutor in 2018, the Office of Personnel Management determined that my lack of registration was not knowing or willful.

47. **You also indicated that prior to employment at the U.S. Attorney's Office, the Office of Personnel Management adjudicated your lack of registration as neither knowing nor willful and determined that it was not an impediment of your ability to serve in the Department of Justice.**

a. **Did OPM provide written findings? If so, please provide them.**

Response: Yes, the Office of Personnel Management did provide me with written findings, and I have turned them over to the committee.

b. **What evidence did you provide OPM explaining that you did not know about Selective Service registration?**

Response: I provided OPM an explanation that I did not knowingly or willfully avoid registration.

48. **Also in your questionnaire, you indicated that you still carry approximately $10,000 in student debt. Given that you were born in 1981, graduated college in 2003, and graduated law school in 2007, it seems that you likely incurred this debt during a period in which you were required to register for Selective Service.**

a. **Have you ever received federal student aid, to include, but not limited to, loans and grants?**

Response: No. The $10,000 in student debt was accrued by my spouse before we met. I have never received federal student aid, loans, or grants.

b. **If so, did you complete a Free Application for Free Student Aid (FAFSA) form?**

Response: No, please see my response to Question 48(a).

c. **Prior to 2020, the FAFSA informed applicants that male students 18 to 25 years of age were required to register with the Selective Service in order to receive student aid. If an applicant had not already registered for Selective Service, they were given the option to check a box to register through their FAFSA form. How did you respond to this question on each of your FAFSA aid applications? Please provide a copy of each of your FAFSA applications.**

Response: I do not have FAFSA aid applications. I did not take out loans for school. Please see my response to Question 48(a) and (b).

d. **Have you <u>ever</u>, under penalty of perjury, completed, signed, or affirmed a federal form, indicating that you had registered for Selective Service when, in fact, you had not?**

Response: No.

**Questions from Senator Thom Tillis**
**for Jamel Ken Semper, nominee to the U.S. District Court for the District of New Jersey**

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views are irrelevant and should play no role in interpreting and applying the law.

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

   Response: It is a requirement. The integrity of our legal system is rooted in the principle of the fair and impartial administration of justice. Judges are duty bound to be impartial.

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

   Response: I do not believe "judicial activism" is appropriate. Black's Law Dictionary 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, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents."

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: Judges are duty bound to interpret and apply the law without regard for a specific outcome.

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

   Response: To ensure the public's confidence in the protection of their rights, I will unfailingly apply binding precedent without reservation. If confirmed, I would be duty bound to apply binding precedent from the Supreme Court and the Third Circuit to ensure that all constitutional rights are protected. In the Second Amendment context, I would unfailingly apply the precedents of *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

7. **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: If confirmed, I would faithfully apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters. The Supreme Court has repeatedly stated that, "[q] ualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015); citing *Reichle v. Howards,* 566 U.S. 658, 664 (2012). When applied properly, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Id*.

8. **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 judicial nominee, it is not appropriate for me to opine about the sufficiency of binding legal doctrines. If confirmed, I would be duty bound to apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters.

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

   Response: The scope of qualified immunity protections is a policy decision for lawmakers. As a judicial nominee, it is not appropriate for me to opine about the scope of qualified immunity. If confirmed, I would be duty bound to apply binding Supreme Court and the Third Circuit precedent to every matter, including qualified immunity matters.

10. **What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?**

    Response: If confirmed, I would aim to ensure that all rights, including IP rights, are enforced in matters that may come before me. The Supreme Court has stated that under the Copyright and Patent Clause of Article I § 8 of the Constitution, Congress' copyright authority is tied to the progress of science, its patent authority, to the progress of the useful arts. *Golan v. Holder*, 565 U.S. 302, 325 (2012). If confirmed, I would apply all binding authority to the cases and controversies that may come before me.

11. **In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will**

**hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"**

Response: As a judicial nominee, it would be improper for me to opine about the litigation strategies of litigants. The District of New Jersey randomly assigns cases to its judges to eliminate the possibility of "judge shopping." If I were to face a matter involving a venue issue, I would carefully review governing precedent and apply it faithfully.

12. **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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?**

Response: As a judicial nominee to a district court, I cannot opine on the Supreme Court's patent eligibility jurisprudence. If confirmed, I commit to unfailingly apply binding Supreme Court and Third Circuit precedent on all matters, including patents.