Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Kelly Harrison Rankin
Nominee to be United States District Judge for the District of Wyoming

1. **Are you a citizen of the United States?**

   Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**
   a. **If yes, state countries and dates of citizenship.**
   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
      i. **If not, please explain why.**

   Response: At no time have I been a citizen of another country.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: The Supreme Court has explained that "an immutable characteristic [is] determined solely by the accident of birth." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (*quoting Frontiero v. Richardson*, 411 U.S. 677, 686 (1973)). Webster's dictionary defines "immutable" as not capable of or susceptible to change. *Immutable*, Merriam-Webster's Dictionary (11th ed. 2019). Under this framework, I do not believe it is appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No. Please see my response to Question 3.

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

   Response: The Supreme Court has, on rare occasions, considered foreign law in its analysis of constitutional interpretation. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 316, (2002). If confirmed, I would follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

6. **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 disagree with the statement. A judge's value judgment, personal preferences, or beliefs are not an acceptable basis on which to resolve constitutional issues. A judge should apply the law to the facts in a fair and impartial manner and follow binding precedent when answering constitutional questions. If confirmed, I would faithfully follow all binding Supreme Court and Tenth Circuit precedent.

7. **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 that statement or the context in which it was made. To the extent the statement suggests it is appropriate for a judge not to follow binding precedent, I disagree. As a magistrate judge I faithfully follow all Supreme Court and Tenth Circuit precedent. If confirmed as a district court judge, I would continue to faithfully follow all binding precedent.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be a disqualification for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

   Response: Yes.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

   Response: Yes.

10. **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: A prisoner subject to a federal criminal judgment may seek relief from the judgment and sentence under the following: direct appeal of the federal judgment (28 U.S.C. § 1291); petition for writ of habeas corpus (28 U.S.C. § 2241); a motion to vacate, set aside, or correct a sentence (28 U.S.C. § 2255); and a compassionate release motion for modification of a term of imprisonment (18 U.S.C. § 3582(c)).

11. 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: The University of North Carolina and Harvard College both considered the applicants' race in offering admission to prospective students. The Supreme Court held that both schools' race-based admissions policies and processes failed strict scrutiny and violated the Equal Protection Clause of the Fourteenth Amendment.

12. 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?

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

Response: I participated in hiring decisions in my role as Park County Attorney, United States Attorney, Criminal Chief in the United States Attorney's Office, and in my current role as Chief Magistrate Judge for the District of Wyoming.

13. 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.

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

Response: No.

15. 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.

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

Response: Yes. *See, e.g., Students for Fair Admissions v. Harvard College*, 143 S. Ct. 2141, 2162 (2023); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1109 (10th Cir. 2008).

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

Response: The Supreme Court held that a Colorado law violated the First Amendment free speech rights of a website designer who refused to provide their design services to same-sex couples. Doing so violates the website designer's free speech rights if it goes against their values as it requires the designer to create designs with which the designer disagrees.

18. 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: *Barnette* is good law and binding precedent. The Supreme Court cited part of this quotation in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023).

19. 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: A law regulating speech under the First Amendment is "content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022). To answer the question, the first step is to determine "whether the law is content neutral on its face," which must be

decided 'before turning to the law's justification or purpose.'" *Id*. at 165-166. If the law being analyzed "imposes content- based restrictions on speech, those provisions can stand only if they survive strict scrutiny." *Id*. at 171

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

Response: Speech that threatens violence is not protected by the First Amendment. *See Virginia v. Black*, 538 U.S. 343, 359 (2003); *United States v. Heineman*, 767 F.3d 970, 976 (10th Cir. 2014). Whether the threat violates the law depends on "what the statement conveys" to the person being threatened. The person making the threat must have "had some understanding of his statements' threatening character," and the prosecution need only prove "a recklessness standard" of *mens rea*. *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023).

21. Under Supreme Court and Tenth 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: The Supreme Court has defined facts as "questions of who did what, when or where, how or why." *E.g., U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Black's Law Dictionary defines "question of law" as "[a]n issue to be decided by the judge, concerning the application or interpretation of the law." Black's Law Dictionary (11th ed. 2019).

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

Response: The Supreme Court held in *Gall* that the court should consider all seven factors under 18 U.S.C. § 3553(a) before imposing a sentence. *Gall v. United States*, 552 U.S. 38, 49-50 (2007). Further, under § 3553(a) a judge must make an individualized decision to formulate a sentence that is "sufficient, but not greater than necessary" to achieve the four statutory sentencing purposes. The statute does not rank or give any greater weight of importance to any one factor. If confirmed, I would follow 18 U.S.C. § 3553(a) and apply binding precedent from the Supreme Court and the Tenth Circuit interpreting those factors.

23. 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 magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the

reasoning of Supreme Court precedents. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the reasoning of Tenth Court precedents. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: 18 U.S.C. § 507 provides that, "[w]hoever, 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."

26. Is 18 U.S.C. § 1507 constitutional?

Response: I am not aware of any precedent of the Supreme Court or the Tenth Circuit holding that has addressed the constitutionality of 18 U.S.C. § 1507. I am aware that the Supreme Court rejected a constitutional challenge to a similar state statute in *Cox v. Louisiana*, 379 U.S. 559 (1965). As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from offering personal opinions about the constitutionality of a federal statute because that issue could come before me, and I do not want to prejudge any issue. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

27. 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 constitutionality of racial segregation in schools is not likely to come before the courts again. I therefore believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

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

Response: Yes. The constitutionality of interracial marriage is not likely to come before the courts again. I therefore believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it faithfully and to the best of my ability.

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

Response: The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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 judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: I would apply the standard set forth in binding precedent of the Supreme Court and Tenth Circuit. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held: "[w]hen 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.'" *Id*. at 2126.

29. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

n. **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?**

o. **Are you currently in contact with anyone associated with Demand Justice? If so, who?**

p. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response to all subparts: No.

30. 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."

q. **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?**

r. **Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?**

s. **Have you ever been in contact with anyone associated with the Alliance for Justice? If so, who?**

Response to all subparts: No.

31. 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."

t. **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?**

u. **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.**

v. **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.**

w. **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 to all subparts: No.

32. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

x. **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?**

y. **Are you currently in contact with anyone associated with the Open Society Foundations? If so, who?**

z. **Have you ever been in contact with anyone associated with the Open Society Foundations? If so, who?**

Response to all subparts: No.

33. 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."

aa. **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?**

bb. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**

cc. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response to all subparts: No.

34. 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 June 11, 2021, I communicated with Governor Dave Freudenthal and Governor Mike Sullivan regarding an opening on the United States District Court for the District of Wyoming. On June 14, 2021, I sent a letter expressing my interest for the position to Senator John Barrasso and Senator Cynthia Lummis. Over the course of the next several months I maintained communications with both Governors and the offices of both Senators regarding the position. On October 25, 2021, I was contacted by the White House Counsel's Office to set up an interview with attorneys from that office. The interview occurred on October 26, 2021. Since November 2, 2021, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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 11, 2021, I communicated with Governor Dave Freudenthal and Governor Mike Sullivan regarding an opening on the United States District Court for the District of Wyoming. On June 14, 2021, I sent a letter expressing my interest for the position to Senator John Barrasso and Senator Cynthia Lummis. Over the course of the next several months I maintained communications with both Governors and the offices of both Senators regarding the position. On October 25, 2021, I was contacted by the White House Counsel's Office to set up an interview with attorneys from that office. The interview occurred on October 26, 2021. Since November 2, 2021, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

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

Response: On January 31, 2024, I received questions from the Committee through the Department of Justice Office of Legal Policy. I drafted my answers, and, where

necessary, conducted legal research. I reviewed my records where appropriate. I shared my draft with OLP, which provided feedback. I reviewed and considered the feedback and submitted my answers to the Committee.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR KELLY HARRISON RANKIN

Sexual Harassment

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

QUESTIONS:

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

   Response: No.

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

   Response: No.

Senator Jon Ossoff
Questions for the Record for Judge Kelly Rankin
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

   Response: Yes.

2. **How will you approach First Amendment cases?**

   Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, I would approach First Amendment cases in the same way by faithfully researching the factual record and applying binding precedent from the Supreme Court and the Tenth Circuit. For example, if confronted with a case that involved the "fighting words" doctrine, I would follow Supreme Court and Tenth Circuit precedent. *See, e.g., Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); *Cannon v. City & Cnty. Of Denver,* 998 F.2d 867 (10th Cir. 1993). In the unusual event there is no applicable precedent, I would follow the interpretive methods set out by the Supreme Court and Tenth Circuit. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided.

   a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

      Response: The rights enumerated in the First Amendment of the U.S. Constitution allow us all to express our ideas and beliefs by our words and actions, with few limitations. The freedom to do so is a bedrock right in our Nation's history and tradition – protected by a careful and thoughtful history of jurisprudence that provides an enduring freedom to think and act as we wish. The courts play a vital role in assuring these rights are protected for everyone. If confirmed as a district judge, I will faithfully follow all binding precedent from the Supreme Court and Tenth Circuit in matters involving the First Amendment, and in all cases and controversies brought before me.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

   Response: In *Gideon*, the Supreme Court held the Due Process Clause of the Fourteenth Amendment applies to extend the constitutional right to an attorney in federal cases for indigent defendants. *Gideon v. Wainright*, 372 U.S. 335 (1963). I have a deep appreciation for the importance of our federal public defenders and Criminal Justice Act (CJA) panel attorneys who represent indigent persons charged in our courts. For nearly

12 years, I have overseen the appointment process of all attorneys in our court. I see firsthand how critical their role is from the initial appearance to appeal. Approximately 95 percent of all our criminal defendants are without the financial resources to hire their own attorney. Every day the men and women who are dedicated to upholding the right to counsel under the Sixth and Fourteenth Amendments provide competent and essential representation to their clients. If confirmed, I will continue to protect this critical and fundamental right.

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

   Response: As a state and federal prosecutor for 18 years, and more recently as a magistrate judge for the past nearly 12 years, the biggest challenge is making sure we have enough certified court interpreters. It is important to ensure that non-English-speaking litigants have access to court in the same way as English-speaking litigants. In criminal matters, it is equally important to have quality interpreters assisting in their defense to assure the defendant's rights are fully protected. This can only occur with effective communication between the accused and their attorney.

   a. **What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

      Response: A litigant that cannot communicate effectively with her attorney, or the court, is denied access to justice. Improving language access in court through interpreters can help to ensure each litigant gets their fair day in court.

Senator Mike Lee
Questions for the Record
Kelly Harrison Rankin, Nominee for District Court Judge for the District of Wyoming

1. How would you describe your judicial philosophy?

Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

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 faithfully apply Supreme Court and Tenth Circuit precedent. If there is no such precedent, I would first review the statutory text and any relevant statutory definitions. If the text is clear, the inquiry ends there. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end."). If the text is not clear, I would consult the sources authorized by Supreme Court and Tenth Circuit precedent, which include cases from other jurisdictions and recognized canons of statutory construction and interpretive principles. If the question remains unresolved, to the extent authorized by the Supreme Court and Tenth Circuit, I would consider the legislative history of the statute. *Id*. At 1750.

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

Response: In deciding cases that turned on the interpretation of a constitutional provision, I would faithfully apply Supreme Court and Tenth Circuit precedent. In certain contexts, the Supreme Court has held that constitutional interpretation begins by applying the original public meaning of the text. See *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (interpreting the Second Amendment under the original public meaning). If there is no applicable precedent, I would follow the interpretive methods set out in the binding precedent of the Supreme Court and the Tenth Circuit. For example, when evaluating a firearm regulation under the Second Amendment, the Supreme Court "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *New York State Rifle & Pistol Ass'n, v. Bruen*, 142 S. Ct. 2111, 2131 (2022).

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

Response: The Supreme Court has analyzed the original public meaning of the

Constitution's text in interpreting the meaning of a constitutional provision including, for example, the Fifth and Second Amendments. *See, e.g., Currier v. Virginia*, 138 S. Ct. 2144, 2153-54 (2018) (referring to "original public understanding of the Fifth Amendment"); *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) (defining "original public meaning"). If confirmed, I would faithfully follow binding precedent from the Supreme Court and the Tenth Circuit when interpreting the Constitution.

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.

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: The Supreme Court has said that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Similarly, the Supreme Court has said that when interpreting the Constitution, we are to use the "normal meaning" of the text known at the time of ratification. *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). If confirmed, I would faithfully follow binding precedent of the Supreme Court and the Tenth Circuit in determining the plain meaning of a statute or constitutional provision.

7. What are the constitutional requirements for standing?

Response: To establish standing under Article III of the Constitution, a plaintiff needs a "personal stake" in the case and must suffer "an injury in fact—a concrete and imminent harm to a legally protected interest, like property or money—that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit." *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023).

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

Response: Article I, Section 8 of the Constitution enumerates the powers of Congress. Congress is limited to those powers. The Supreme Court has recognized, however, that the express grant of powers to Congress in the Constitution "necessarily implies the grant of all usual and suitable means for the execution of the powers granted," and that "Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it." *McCulloch v. Maryland*, 17 U.S. 316, 323-324 (1819).

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 that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise." *Nat'l Fed. of Ind. Bus. v. Sebelius*, 132 S. Ct. 2566, 2598 (2012). If confirmed, I would evaluate the constitutionality of such a law by following the procedure outlined in my response to Question 3.

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

Response: Yes. The Supreme Court has held that the Due Process Clause protects fundamental rights and liberties that are "objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–721 (1997). These rights include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

11. What rights are protected under substantive due process?

Response: The Supreme Court has recognized several rights that are protected under substantive due process. Please see my response to Question 10. Others the Supreme Court has determined are fundamental are based on the test articulated in *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997).

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: A judge has an absolute duty to apply binding precedent. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a state law banning the use of contraceptives by married couples was a violation of substantive due process under the Constitution. The Court further held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York.* If confirmed, I will faithfully follow all Supreme Court and Tenth Circuit precedent.

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

Response: Congress's power under the Commerce Clause is limited by Article I, Section 8. The Supreme Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities" and (3) "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-559 (1995).

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

Response: The Supreme Court explained that a group qualifies as a "suspect class" if it "possess[es] an immutable characteristic determined solely by the accident of birth" or if it is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1975). The suspect classification to which strict scrutiny applies include race, religion, national origin, and alienage. *See, e.g., Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868, 1876-77 (2021).

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

Response: The separation of powers is a constitutional doctrine under which the Constitution grants separate, unique powers to each of the three branches of government. Each branch is given the power to check and balance the other two branches to prevent the excessive power of any one branch. "[T]he 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) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)).

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: If confirmed, I would decide a case of this type in the same way I would decide all cases, by faithfully applying binding precedent from the Supreme Court and the Tenth Circuit in a fair and impartial manner to the facts presented. As an example, I would apply the Supreme Court's decision in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952), holding that the President had no power to act except in those cases that are expressly or implicitly authorized by the Constitution or an Act of Congress. Please also see my responses to Questions 2, 3, 4, and 5.

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

Response: Judges must apply the law in a fair and impartial manner to the facts of each case. A judge's personal feelings, opinions, or beliefs are not proper in considering a case.

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

Response: A judge should avoid both outcomes; each is equally undesirable. If confirmed, I would faithfully apply the Supreme Court and Tenth Circuit precedent in determining the constitutionality of a 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 researched nor am I familiar with judicial trends over time. I therefore do not have a basis to form an opinion on this subject. If confirmed, I will faithfully apply binding precedent of the Supreme Court and the Tenth Circuit in a fair and impartial manner.

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

Response: "Judicial review" is defined as "[a] court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). By contrast, "Judicial supremacy" is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review…are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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: As a sitting magistrate judge and a judicial nominee, I should not counsel elected officials on their independent obligation to follow the Constitution. Regardless, the Supreme Court has held elected officials have an obligation to obey federal decisions in *Cooper v. Anderson*, 358 U.S. 1, 4 (1955) (rejecting argument state officials have no duty to obey federal court orders). Further, Article VI of the Constitution requires government officials, elected and appointed, to take an oath to uphold the Constitution. U.S. Const. art. VI, §3.

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: Hamilton expressed his belief that the role of the federal courts is to interpret and apply the law, while the role of the legislative and executive branches is

to make or enforce the law. As written in Article III of the Constitution, judges must only decide the cases and controversies brought before them. If confirmed, it will be important that I not make law nor impose my personal view about the law; instead, my role is strictly limited to applying the law to the facts of the case before me.

23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed, I would continue to apply binding precedent from the Supreme Court and the Tenth Circuit, regardless of the foundations of that precedent. If there is no controlling precedent on point, I would utilize the constitutional framework employed by the Supreme Court and Tenth Circuit in the most similar case. Moreover, the Supreme Court has made clear that only it, not lower courts, has the ability to overrule its precedent. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478-79 (2018).

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: A defendant's group identity is not an appropriate consideration for the determination of a sentence. Therefore, I would not consider it. The factors to be applied at sentencing include those set out in 18 U.S.C. § 3553(a), binding precedent from the Supreme Court and the Tenth Circuit, and the relevant provisions of the United States Sentencing Guidelines. The Sentencing Guidelines provide that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S.S.G. §5H1.10.

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 not familiar with the Biden Administration's definition of "equity" or in what context the Administration used it. If presented with a question involving these terms, I would faithfully apply the binding precedent of the Supreme Court and the Tenth Circuit.

26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: I do not have my own definition for these terms. However, in the context of the Fourteenth Amendment the Supreme Court has reiterated the general principle of "equality" for all persons. *Students for Fair Admissions, Inc., v. President & Fellows of Harvard Coll.,* 600 U.S. 181, 206 (2023). What the law requires is determined by applying binding precedent from the Supreme Court and Tenth Circuit, both of which I would follow and apply faithfully.

27. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?

Response: As noted above, I am not familiar with the Biden Administration's statement and its use of the term "equity" or the context in which the statement was made. The Equal Protection Clause of the Fourteenth Amendment guarantees "the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Tenth Circuit precedent analyzing and applying the Equal Protection Clause to the definition provided in Question 25.

28. Without citing Black's Law Dictionary, how do you define "systemic racism?"

Response: I do not have my own definition for this phrase. I am not aware of any Supreme Court or Tenth Circuit decision defining "systemic racism."

29. Without citing Black's Law Dictionary, how do you define "critical race theory?"

Response: I do not have my own definition for this phrase. I am not aware of any Supreme Court or Tenth Circuit decision defining "critical race theory."

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

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

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

Questions for the Record for Kelly Harrison Rankin, nominated to be United States District Judge for the District of Wyoming

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. The United States Supreme Court recently reiterated that "the central purpose of the Fourteenth Amendment was to eliminate racial discrimination." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2161 (2023) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)). Additionally, Congress has passed laws that prohibit racial discrimination such as the Civil Rights Act and the Fair Housing Act.

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: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment guarantees rights not enumerated in the Constitution. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022). The test for making this determination is that the right must be "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). While the Judicial Code of Conduct precludes me from offering my opinion on unenumerated, unarticulated rights, should I be confirmed I would faithfully and to the best of my ability apply the *Glucksberg* test and all applicable Tenth Circuit and Supreme Court precedent.

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: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

The work of a district judge is considerably different from the work of a Supreme Court Justice, and I have not closely analyzed the judicial philosophies in the Warren, Burger, Rehnquist, and Roberts Courts to determine which Justice's philosophy is most analogous to my own.

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

Response: "Originalism" is defined as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., 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). If confirmed, I would faithfully follow the binding precedent of the Supreme Court and Tenth Circuit when interpreting the Constitution. If there is no binding precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

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

Response: Black's Law Dictionary (11th ed. 2019) defines the term "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I am unaware of any case in which the Supreme Court has directed lower courts to use a living constitutionalism method. If confirmed as a district judge, I will faithfully follow all Supreme Court and Tenth Circuit precedent concerning interpretative methods of constitutional analysis.

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: As a district court judge dealing with a rare issue of first impression, I would faithfully utilize the analytical framework set forth by the Supreme Court and Tenth Circuit that pertains to the constitutional question presented. This begins with the text of the Constitution. I would then apply all interpretive principles required under Supreme Court and Tenth Circuit precedent.

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 said that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Similarly, the Supreme Court has said that when interpreting the Constitution, we are to use the "normal meaning" of the text known at the time of ratification. *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). In certain limited circumstances, the Supreme Court has looked to contemporary standards when deciding the bounds of constitutional activity. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (noting that Eighth Amendment excessive punishment claims are determined by the evolving standards of decency).

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

Response: No. The Constitution has a fixed and enduring meaning, and it can only be

modified through the amendment process in Article V of the Constitution. *New York State Rifle & Pistol Assoc., Inc. v. Bruen,* 597 U.S. 1, 31 (2022).

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

Response: Yes, *Dobbs* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: Yes, *Bruen* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: Yes, *Brown* is binding precedent.

a. **Was it correctly decided?**

Response: Yes. Because the constitutionality of racial segregation in schools is not likely to ever come before the court again, I believe it is permissible as a sitting judge and judicial nominee to state my opinion that this case was correctly decided.

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

Response: Yes, *Harvard* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: Yes, *Ogden* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

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

Response: A rebuttable presumption that no condition or combination of conditions can reasonably assure the safety of the community and the appearance of a federal criminal defendant can arise depending on the defendant's criminal history or if the defendant is charged with a specified offense (including weapons offenses, certain offenses involving a minor victim, and serious drug trafficking offenses). 18 U.S.C. § 3142(e)(2), (3).

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

Response: The Supreme Court considered the policy rationales behind the Bail Reform Act of 1984 in *United States v. Salerno*, 481 U.S. 739, 747-51 (1987). In *Salerno*, the Supreme Court identified the government's interest in promoting community safety and preventing crime with the Act. *Id.*; *see also* 18 U.S.C. §§ 3142(e)-(f) (listing offenses that Congress determined present a greater risk of flight or danger to the community).

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 both constitutional limits under the First Amendment Free

Exercise Clause and statutory limits under the Religious Freedom Restoration Act. They each limit what the government can require of religious organizations or observant business owners. *See, e.g., 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2315 (2023); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014).

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

Response: The Supreme Court has held that discrimination against religious organizations or religious people must survive strict scrutiny; that is, the challenged activity must be narrowly tailored to advance a compelling governmental interest. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022); The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.; Tandon v. Newsom,* 141 S. Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise).

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 weighed the factors that govern injunctive relief. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) ("A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."). The Court concluded that, under the strict scrutiny standard, New York's restrictions on gatherings within certain zones were not facially neutral, and therefore failed to meet strict scrutiny. Thus, the plaintiffs were entitled to injunctive relief.

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

Response: The Supreme Court held that California's COVID-19 related restrictions that included religious gatherings in homes were not neutral and treated secular activity more favorably than comparable religious activity. Thus, the Court enjoined enforcement of the limitations finding that the applicants would likely prevail on the merits and that the government must satisfy strict scrutiny.

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

Response: Yes. The Supreme Court held in *Kennedy v. Bremerton School District,* 142 S. Ct. 2407, 2421 (2022), that the Free Exercise Clause of the Constitution protects religious exercise in activities of daily life.

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

Response: The Supreme Court in *Masterpiece Cakeshop* held that the Colorado Civil Rights Commission violated the Free Exercise Clause when it enforced the Colorado Antidiscrimination Act against a bakery that had religious objections to same-sex weddings.

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 so long as the plaintiff's religious practices are sincere, she will be afforded First Amendment protection under the Free Exercise Clause. *See Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 720 (2014); *Frazee v. Ill. Dep't of Emp. Sec*., 489 U.S. 829, 834 (1989); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) ("religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

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

Response: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. *Kennedy v. Bremerton School District,* 142 S. Ct. 2407 (2022). This is the legal framework I would faithfully apply if confirmed and confronted with such a case.

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

Response: The First Amendment protects beliefs that are rooted in religion, and "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). Granted, religious practices cannot violate viewpoint neutral law such as criminal conduct.

c. **Is it the official position of the Catholic Church that abortion is acceptable**

and morally righteous?

Response: I am not personally familiar with the official position of the Catholic Church on this subject.

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: The Supreme Court held that the "ministerial exception" derived from the First Amendment's Religion Clauses foreclosed the adjudication of the employment-discrimination claims of two Catholic school teachers. The Court reasoned that because their "vital religious duties" involved educating young people in their faith they qualified for the exception. The Court added that judicial intervention between the school and teachers threatened the school's independence, which was not permitted under the First Amendment.

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: In *Fulton*, the Supreme Court held that Philadelphia's refusal to contract with a foster care agency, which was affiliated with the Catholic Church, and which declined to certify same-sex couples as foster parents, violated the Free Exercise Clause. The Court found that the city burdened the organization's religious beliefs and because it was not generally applicable, failed to meet the strict scrutiny standard.

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 held that Maine's tuition assistance program, which excluded "nonsectarian" schools violated the Free Exercise Clause of the First Amendment. Under the program, parents living in districts without a public high school could direct state-funded subsidies to secular private schools but not to religious private schools. The Court reasoned that excluding some students from the program for purely religious reasons, when it was otherwise available to the public, was unconstitutional.

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

Response: In *Kennedy*, the Supreme Court held that the school district who disciplined a football coach engaged in prayer with a number of students after a game violated the Establishment Clause under the First Amendment. The Court determined the coach's prayer was his sincerely held religious practice and that the government's prohibition of this practice was not neutral and could not satisfy strict scrutiny.

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's concurrence in *Mast* provided additional guidance to the lower courts on his view of the proper strict scrutiny analysis required under the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc(a). He wrote that the government's compelling interest must be more than general. He further wrote that the lower court's analysis should carefully consider the harm to the government's interest in granting an exception to this particular religious group.

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: If faced with a dispute over the meaning of a specific word or phrase in a statute, I would start with the plain text of the disputed word or phrase. If the plain meaning is subject to more than one reasonable interpretation, I would consider the arguments presented, all legal authority relating to those arguments, and, if necessary, the applicable definitions of the disputed text. If the plain meaning of the disputed text was not clear at that point, I would apply the interpretive principles relied on in Supreme Court and Tenth Circuit precedent.

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 governed by Article II, Section 2, Clause 2 of the U.S. Constitution. I will faithfully follow Supreme Court and Tenth Circuit precedent should this issue come before me as a judge.

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

Response: If confronted with a legal claim under the Civil Rights Act of 1964, the Equal Protection Clause, or some other racial disparate outcome, I would faithfully examine the factual record and apply binding precedent from the Supreme Court and Tenth Circuit.

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

Response: The appropriate number of Justices on the Supreme Court presents a political question unfit for judicial determination. If confirmed as a district judge, I will follow all Supreme Court precedent regardless of the number of Justices.

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

Response: No. Each of the Justices was nominated by the President and confirmed by the Senate, as required under Article II, Section 2, of the Constitution.

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

Amendment?

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

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: When considering the constitutionality of a restriction on firearms, district courts must consider whether the government has carried its burden "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: Yes. The Supreme Court held in *District of Columbia v. Heller* that the right to own a firearm is an individual right protected by the Second Amendment.

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

Response: The United States Supreme Court recently held that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *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: The United States Supreme Court recently held that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S. Ct. 2111, 2156 (2022). Both rights would invoke the strict scrutiny standard.

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

Response: Article II, Section 3 of the Constitution requires the President to "take Care that the Laws be faithfully executed." Further, the Supreme Court has explained that the Executive Branch has discretion in enforcement matters. *See, e.g., United States v.*

Texas, 143 S. Ct. 1964, 1970-72 (2023).

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

Response: An act of prosecutorial discretion involves a decision whether and how to enforce a criminal statute. Black's Law Dictionary (11th ed. 2019) defines "prosecutorial discretion" 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." A substantive administrative rule change involves a decision by an administrative agency to change a substantive rule. A rule change must be consistent with applicable law, including the Administrative Procedure Act.

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

Response: No. Congress authorized capital punishment for certain criminal offenses such as murder; attempted murder of a witness, juror, or court officer; treason; and large-scale drug trafficking. *See* 18 U.S.C. § 3591. The President does not have the authority to unilaterally abolish a statute.

43. 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*, the Court vacated the stay and enjoined a nationwide moratorium, concluding that the Centers for Disease Control exceeded the scope of its authority pertaining to residential evictions during the COVID-19 pandemic. The Court concluded the petitioners were likely to succeed on the merits of their claim and the court would expect "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." 141 S. Ct. 2485, 2489 (2021).

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: As a former federal prosecutor, I know firsthand that the Department of Justice Manual prohibits the disclosure of information to the public before charges are filed. However, as a sitting magistrate judge and judicial nominee, it would be inappropriate for me to discuss a hypothetical case that could come before me. If confirmed and should a case with this specific issue be presented to me, I would faithfully review the factual record, understand the arguments of the parties, and fairly and impartially apply the applicable law and precedent from the Supreme Court and Tenth Circuit.

Senator John
Kennedy Questions
for the Record

Kelly Rankin

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

   Response: Yes. The death penalty is constitutional in the United States. *See Gregg v. Georgia*, 428 U.S. 153 (1976). The legislature of each state decides which offenses, if any, are capital offenses. Under federal law, 18 U.S.C. § 3591 defines which offenses are eligible for the death penalty. These offenses include persons convicted of murder; attempted murder of a witness, juror, or court officer; treason; and large-scale drug trafficking. *Id*. The procedure for federal courts to follow in determining whether death is the appropriate sentence are also set out under 18 U.S.C. §§ 3591-3599. The canons of judicial conduct prohibit judges and judicial nominees from commenting on legal issues that could become the subject of litigation, and it would therefore be inappropriate for me to comment further. If confirmed, however, I would faithfully follow all binding precedent of the Supreme Court and the Tenth Circuit as well as the federal statutory procedure for sentencing defendants. If there is no clear guidance, I would look at the law in other circuits in accordance with the traditional weight of authority.

   a. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

      Response: No.

2. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes.

3. **Is the current composition of the U.S. Supreme Court legitimate?**

   Response: Yes.

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

   Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come

before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

5. **Is originalism a legitimate method of constitutional interpretation?**

   Response: Yes. "Originalism" is defined as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., 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). If confirmed, I would faithfully follow the binding precedent of the Supreme Court and Tenth Circuit when interpreting the Constitution.

6. **If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

   Response: As a district court judge dealing with a rare issue of first impression, I would faithfully utilize the analytical framework set forth by the Supreme Court and Tenth Circuit that pertains to the constitutional question presented. This begins with the text of the Constitution. I would then apply all interpretive principles required under Supreme Court and Tenth Circuit precedent.

7. **Is textualism a legitimate method of statutory interpretation?**

   Response: Yes. The Supreme Court has held that the ordinary public meaning of a statute at the time of enactment controls its meaning. *Bostock v. Clayton County,* 140 S. Ct. 1731, 1749 (2020) (stating "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.").

8. **When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

   Response: It is appropriate to look beyond the text only when there remains some ambiguity as to the meaning of the statute or provision. Otherwise, if the text is clear, the analysis ends there. *Bostick v. Clayton County*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, I would study the structure of the statute, examine all statutory definitions, consider how terms have been used elsewhere in the statute, and all other canons of construction authorized by the Supreme Court and Tenth Circuit.

9. **Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.**

   Response: No. The Constitution has a fixed and enduring meaning, and it can only be

modified through the amendment process in Article V of the Constitution. *New York State Rifle & Pistol Assoc., Inc. v. Bruen,* 597 U.S. 1, 31 (2022).

10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).

Response: In Part II(A) of *Brown v. Davenport*, 596 U.S. 118 (2022), the Supreme Court provides a historical account of the writ of habeas corpus. The Court noted writ of habeas corpus petitions developed through common law. The Court also noted that in both English and American law, a habeas court could examine only the power and authority of a court to act, not the correctness of its conclusions. The Court further noted that in *Brown v. Allen*, 344 U.S. 443 (1953), the U.S. Supreme Court expanded habeas review by allowing federal courts to review state court proceedings for constitutional error. The *Brown v. Davenport* decision cited to this increase and held that before relief could be granted, a state prisoner had to show "serous and injurious effect or influence on the verdict." *See Brecht v. Abrahamson*, 507 U.S. 619 (1993).

11. Please summarize Part IV of the U.S. Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Response: In Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,* 600 U.S. 181 (2023), the Supreme Court held that race-based admissions at Harvard College and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. It held that schools must now meet the strict scrutiny test for any race-based admissions policies. Specifically, the Court held these two schools failed to meet the strict scrutiny test because they used race as an impermissible "negative," as an impermissible stereotype, and without a logical endpoint.

12. Please summarize Part III of the U.S. Supreme Court's decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Response: In Part III of *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held the First Amendment prohibits the State of Colorado from forcing a website designer to create designs with which the designer disagrees. The owner filed a lawsuit to prevent the State from requiring her to create website designs for same-sex couples, which was against her beliefs. The Court held the website designs are protected speech and the First Amendment exists to protect an "uninhibited marketplace of ideas." The Court added that Colorado's law intending to enforce non-discrimination must bow to the Constitution when the law compels individuals to express messages with which they disagree.

13. Please summarize Part II of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).

Response: In Part II of *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215 (2022), the Court overturned *Roe v. Wade* and concluded that "the Fourteenth Amendment does protect the right to an abortion." In reaching that result, the Court relied on *Washington v. Glucksberg* to find that the right to abortion is not deeply rooted in our Nation's history and traditions. The Court also distinguished the abortion right from rights recognized in the cases on which *Roe* and *Casey* relied, as noted below.

14. Please summarize Part III of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

Response: In Part III of *Dobbs v. Jackson Women's Health Org.*, 596 U.S. 215 (2022), the Court considered the doctrine of stare decisis and the factors under which the Court may overturn its own precedent. To overturn precedent the Court applies five factors: the workability of the rule, quality of the reasoning, nature of the error, effect on other areas of law, and reliance. Applying those factors, the Court concluded that *Roe v. Wade* and *Casey v. Planned Parenthood* must be overturned.

15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), involved the doctrine of qualified immunity in a Fourth Amendment context. The Court reviewed whether the officer's alleged conduct involving excessive force violated a clearly established statutory or constitutional right. The Court held that "[a] right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' Although 'this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.'" Because a determination of excessive force is fact specific, the officer was entitled to qualified immunity when neither the Circuit Court nor the respondent identified any case that held similar conduct clearly put the officer on notice that a right was being violated.

16. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.

Response: Federal Rule of Civil Procedure 65 governs the issuance of injunctions by federal courts. As a general matter, injunctions are an extraordinary remedy. *Nken v.* Holder, 556 U.S. 418, 428 (2009). Injunctions having nationwide effect have been issued by federal courts, however, neither the Supreme Court nor the Tenth Circuit has issued binding precedent as to the precise circumstances in which a nationwide injunction can be issued. The Tenth Circuit has stated in *dicta* that an individual class representative may not have standing to seek a nationwide injunction in her own right over actions not directly affecting her. *Colorado Cross Disability v. Abercrombie & Fitch,* 765 F.3d 1205, 1212 (10th Cir. 2014).

17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?

Response: No.

18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.

Response: If confirmed, I will follow binding precedent of the Supreme Court and Tenth Circuit. Dicta is not binding precedent.

19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.

Response:
United States v. Cortez, Sr., No. 01-CR-16-B (D. Wyo.)
United States v. Magallanez, No. 02-CR-125-D (D. Wyo.)
United States v. Griebel, No. 05-CR-133-D (D. Wyo.)
United States v. Burnell, No. 07-CR-238-J (D. Wyo.)
United States v. Leiker, No. 02-CR-125-D (D. Wyo.)
United States v. Jackett, No. 03-CR-260-D (D. Wyo.)
United States v. Medina, No. 03-CR-159-D (D. Wyo.)
United States v. Johnson, No. 06-CR-139-D (D. Wyo.)

20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?

Response: None.

21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.

Response: I have not had a social-media account.

22. Why should Senator Kennedy support your nomination?

Response: I have had the honor and privilege of serving as the Chief Magistrate Judge in the District of Wyoming for nearly 12 years. During that time, I have presided over a wide variety of civil and criminal cases – issuing thousands of orders and hundreds of written opinions. On the civil side, the parties routinely consent to my jurisdiction

and over time my consent cases have increased. I have also presided over 12 civil trials, 9 of which were before a jury. I also routinely mediate cases – over 150 in total. I co-chair our local rules committee and am involved in the administration of our courts. Prior to taking the bench, I spent approximately 18 years as a prosecutor, both in federal and state court. I tried approximately 35 jury trials during that time. I was the presidentially appointed United States Attorney, Criminal Chief, and lead attorney for the Organized Crime and Drug Enforcement Task Force. Prior to 2003, when my federal service began, I was the twice elected Park County Attorney, overseeing all civil and criminal matters for the county. I served as a deputy county attorney. I also served as counsel to the Governor. For nearly 30 years, I have been in the courtroom. I strive to be an evidence technician and keep up on new developments in the law. As a judge, I have done my best to uphold my oath to the Constitution. I have approached each case with an open mind and an appreciation for the positions of the lawyers and litigants who appear before me. In each case, I have faithfully and impartially applied the rule of law to the facts. As a judge, I hold myself to a high standard. I approach my work and my life with great humility knowing that I am blessed to serve.