Senator Lindsey Graham, Ranking Member
Questions for the Record
Meredith A. Vacca
Nominee to be United States District Judge for the Western District of New York

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?**

   Response: Yes.

   a. **If yes, list all countries of citizenship and dates of citizenship.**

      Response: South Korea from birth (September 1980) to date I was naturalized as a U.S. citizen (October 1982). I have not been a citizen of South Korea since 1982.

   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.**

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

   Response: No.

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

   Response: No.

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: In general, foreign law should never be considered in constitutional interpretation. However, the Supreme Court did consider English common law in the context of evaluating the Second Amendment in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). In the rare instances that the Supreme

Court or Second Circuit look to foreign law in determining a constitutional issue, I will apply the appropriate legal precedent.

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 that statement. Judges must make decisions about the Constitution based upon its text and the relevant binding legal precedent. A judge's personal judgments about the Constitution are wholly irrelevant and should have no bearing on a judge's decisions.

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Yes.

8. **Please define the term "prosecutorial discretion."**

   Response: 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."

9. **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: No. A federal judge should faithfully and impartially apply the appropriate legal precedent to the facts of each case that comes before them.

10. **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 disqualifying 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.

11. **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.

12. **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: There are multiple avenues available to incarcerated individuals under sentence of a federal court to seek relief from their sentence. A prisoner can directly appeal their conviction and sentence from the federal district court to the federal appellate court. If their appeal is denied, they may file a petition for a writ of certiorari to have their case reviewed by the Supreme Court. Pursuant to 28 U.S.C. § 2255, a prisoner can file a motion to vacate or set aside their sentence "on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." Within fourteen days of sentencing, a prisoner may make a motion under Rule 35(1) of the Federal Rules of Criminal Procedure to correct a sentence made in error. A prisoner may file a petition for a writ of habeas corpus challenging the reasons or conditions of their custody status. In the event that the Sentencing Commission subsequently lowers the relevant sentencing range pursuant to 28 U.S.C. § 944(o), a prisoner may move the court pursuant to 18 U.S.C. § 3582 to reduce the term of imprisonment based upon a consideration of certain factors.

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

    Response: In *Students for Fair Admissions v. University of North Carolina*, the petitioner argued that the university's admission process which used race as a factor, violated the Fourteenth Amendment. The district court ruled in favor of the University of North Carolina. The Fourth Circuit held the case in abeyance after the Supreme Court granted review. The Supreme Court held that the university's admissions process, which used race as a factor, was in violation of the Equal Protection Clause of the Fourteenth Amendment after applying strict scrutiny analysis. In *Students for Fair Admissions v.*

Harvard, the petitioner alleged that Harvard's admission process discriminated against Asian American applicants in favor of white applicants in violation of Title VI of the Civil Rights Act of 1964 by using race as a factor in admissions. The district court ruled in favor of Harvard, and the First Circuit affirmed. The Supreme Court held that Harvard's race-based admissions process violated the Equal Protection Clause of the Fourteenth Amendment after applying strict scrutiny analysis.

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

    Response: Yes.

    > **If yes, please list each job or role where you participated in hiring decisions.**
    >
    > Response: Confidential Law Clerk and Legal Secretary

15. **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, sex, sexuality, or gender identity?**

    Response: No.

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

    Response: No.

17. **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, sex, sexuality, or gender identity?**

    Response: No.

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

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

    Response: Yes.

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

    Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that forcing a website designer to create designs conveying messages that were in opposition to her religious beliefs, violated her First Amendment right to free speech.

20. **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: This statement made by Justice Jackson delivering the opinion of the court in *Barnette*, is part of the opinion's binding legal precedent. The statement was made in support of the Court's decision that compelling school children to salute the flag was a violation of their freedom of speech under the First Amendment.

21. **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: In general, the distinction between "content-based" laws and "content-neutral" laws in the realm of the First Amendment hinges on whether the government is attempting to regulate the substance, subject matter, or message of the speech. If the answer is "yes", then the law is "content-based" and a strict scrutiny analysis applies. In *City of Austin v. Reagan National Advertising*, 596 U.S. __ (2022), the petitioner argued that the City of Austin's code prohibiting the digitization of off-premises signs was content-based and, therefore, unconstitutional. The Supreme Court held that the city code was content-neutral as it did not apply disparate treatment to signs based on their subject matter, but rather, focused on the location of the signs. Based on this case and other relevant Supreme Court cases, an important question to ask in this analysis is whether the law provides ordinary time, place or manner restrictions and is, therefore, subject to intermediate scrutiny, or whether the law regulates the actual subject matter of the speech implicating strict scrutiny.

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

Response: In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court held that to demonstrate a "true threat" not protected by the First Amendment, the defendant must have had some subjective understanding of the statements' threatening nature. The Court further stated that a showing of recklessness was sufficient: "[t]he state must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 1.

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

Response: In *Thompson v. Keohane*, 516 U.S. 99 (1995), the Supreme Court looked at the differences between issues of fact and issues of law in determining whether a defendant was "in custody" for purposes of *Miranda.* The Court cited to *Townsend v. Sain*, 372 U.S. 293 (1963) which defined "issues of fact" as "basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators…." *Thompson* at 110 (internal citations omitted). In looking at other cases classifying questions as issues of fact, the Court clarified that "their resolution depends heavily on the trial court's appraisal of witness credibility and demeanor." *Id*. at 111. The Court described issues of law as the "ultimate question" due to its "uniquely legal dimension." *Id*. at 111-112 (*citing Miller v. Fenton*, 474 U.S. 104 (1985)). Of course, many issues are not so easily distinguished and contain a mixed question of law and fact. For example, in *Wilkinson v. Garland*, 601 U.S. __ (2024), the Supreme Court held that an immigration judge's determination as to whether a set of facts satisfied the "exceptional and extremely unusual" hardship standard in 8 U.S.C. § 1229(b)(1)(D) was a mixed question of law and fact and, therefore, reviewable as a question of law.

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

Response: 18 U.S.C. § 3553(a) sets forth seven factors that a court must consider in imposing a sentence. These four primary purposes of sentencing, and the need for a sentence to reflect those purposes, is one factor that a court must consider. The statute does not suggest or require a particular purpose be given more weight than others. If confirmed, I will consider all the factors as required when imposing sentence, independent of any personal beliefs.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting as to whether a particular Supreme Court decision was well-reasoned.

Rather, I currently apply all binding Supreme Court precedent and will continue to do so if confirmed.

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

    Response: As a state court judge and federal judicial nominee, I am precluded from commenting as to whether a particular Second Circuit decision was well-reasoned. Rather, I currently apply all binding Supreme Court and Second Circuit precedent and will continue to do so if confirmed.

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

    Response: 18 U.S.C. § 1507 prohibits conduct such as picketing or parading in or near a courthouse or residence of a judge, juror, witness, or court officer, with the intent to interfere with the administration of justice or influence such individual in the discharge of their duty.

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

    Response: I am unaware of any Supreme Court or Second Circuit ruling on the constitutionality of this particular statute. However, in *Cox v. Louisiana*, 397 U.S. 559 (1965), the Supreme Court considered a state statute modeled after 18 U.S.C. § 1507. *Id*. at 561. The Supreme Court stated that the state statute did not "infringe upon the constitutionality protected rights of free speech and free assembly. The conduct which is the subject of this statute picketing and parading – is subject to regulation even though intertwined with expression and association." *Id*. at 563. If confirmed, I will apply all binding legal precedent with respect to this issue.

29. **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. As a state court judge and federal judicial nominee, I am normally precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. However, since this issue of *de jure* racial segregation in public schools will likely never come before me, and consistent with other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

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

       Response: Yes. As a state court judge and federal judicial nominee, I am normally precluded from commenting whether a case was correctly decided in order to

maintain the appearance of impartiality. However, since the issue of *de jure* government prohibition on interracial marriage will likely never come before me, and consistent with other judicial nominees, I can state that *Loving v. Virginia* was correctly decided.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. *Roe v. Wade* was overturned by the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. If confirmed, I will faithfully apply all binding legal precedent, including *Dobbs*, to each case that comes before me.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on the merits of a matter previously decided. *Planned Parenthood v. Casey* was overturned by the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. If confirmed, I will faithfully apply all binding legal precedent, including *Dobbs*, to each case that comes before me.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *Gonzales v. Carhart.*

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *District of Columbia v. Heller.*

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *McDonald v. City of Chicago*.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *Dobbs v. Jackson Women's Health*.

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 state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College.*

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

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a case was correctly decided in order to maintain

the appearance of impartiality. If confirmed, I will faithfully apply all binding legal precedent to each case that comes before me, including *303 Creative LLC v. Elenis*.

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

    Response: In determining whether a regulation or statute infringes on an individual's Second Amendment rights, the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) articulated the following legal standard: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id*. at 24 (*citing Konigsberg v. State Bar of California*, 366 U.S. 36 (1961)).

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

       Response: No.

    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

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

       Response: No.

    b. **Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

       Response: No.

33. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

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

          Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

Response: No.

i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

Response: No.

i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

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

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

   Response: No.

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

       Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

36. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

       Response: No.

c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

   Response: No.

d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

   Response: No.

37. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**
    a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

       Response: No.

       Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

       Response: No.

38. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**
    a. **Has anyone associated with the American Constitution Society, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No.

39. **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 February 22, 2023, I learned about the upcoming vacancy on the United States District Court for the Western District of New York. On March 8, 2023, I submitted my application to the office of Senator Chuck Schumer. On April 27, 2023, I interviewed with Senator Schumer's screening committee. On April 2, 2024, I met with Senator Schumer. Later that day, I was notified that I had been recommended to the White House as a potential candidate. On April 3, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 8, 2024, the President announced his intent to nominate me.

40. **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.

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

Response: No.

42. **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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

43. **During or leading up to 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.

44. **During or leading up to 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.

45. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

46. **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.

47. **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?**

Response: I decided what cases to include on the committee questionnaire. Attorneys from the Office of Legal Policy provided general advice to include cases that reflected my breadth of experience.

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?**

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

Response: On April 3, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 8, 2024, the President announced his intent to nominate me.

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

Response: I received these questions on June 12, 2024. I completed a draft of my answers to these questions. I provided a draft of my answers to the Office of Legal Policy and had one conversation with them about my draft. I submitted my final answers to the Office of Legal Policy for submission to the Senate Judiciary Committee.

Senate Judiciary Committee
Nominations Hearing
June 5, 2024
Questions for the Record
Senator Amy Klobuchar

<u>For Meredith Anne Vacca, nominee to be U.S. District Judge for the Western District of New York</u>

You have previously stated: “We need diversity in…lawyers and judges and other members of our legal community.” You further explained that a lack of diversity erodes trust in the judiciary and impacts the public’s belief as to whether the system is truly fair.

Can you speak to why diverse representation is important for all Americans to maintain trust in the judicial system?

Response: Our courts serve diverse communities. When individuals from these communities come to court, whether they be litigants, family members of victims, or student observers, and they see lawyers, judges, and court staff of all different backgrounds, including from their own background, this helps instill confidence and trust in the fairness and open-mindedness of our judicial system. This trust is essential to the functioning of our judicial system.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | June 5, 2024
Questions for the Record for Meredith Vacca

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 Mike Lee
Meredith A. Vacca, nominee to the United States District Court for the Western District of New York

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

   Response: My judicial philosophy centers around being fair and respectful to all parties before the court and ensuring a fair, thoughtful, and impartial process when deciding various issues. I thoroughly prepare by reviewing the filings and binding legal precedent on the controversies that are presented. I maintain an open mind while considering the facts and legal arguments presented by the parties. I faithfully and impartially apply the appropriate legal precedent to the facts, and issue decisions that clearly articulate the factual basis and legal authority for all of my decisions.

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

   Response: When deciding a case that turns on the interpretation of a federal statute, I would apply the applicable binding legal precedent from the Supreme Court and the Second Circuit. If there is no such precedent, then I would look to the text of the statute. If the text is clear and unambiguous, then the inquiry ends. If ambiguity remains, then I would apply any legal precedent interpreting similar laws or other provisions of the same law and look to canons of construction and interpretation, persuasive authority from other courts, and legislative history consistent with Supreme Court and Second Circuit precedent.

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

   Response: I would apply the applicable binding precedent from the Supreme Court and the Second Circuit. If there is no such precedent, then I would look to the text of the constitutional provision. If the text is clear and unambiguous, then the inquiry ends. If ambiguity remains, then I would interpret the text utilizing the methods of interpretation that have been used by the Supreme Court and the Second Circuit in similar cases and/or constitutional provisions.

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

   Response: The Supreme Court has held that the text and original understanding are significant to interpreting the Constitution. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022); *see also District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

   Response: Please see my response to Question 2.

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 held that plain meaning refers to the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 590 U.S. 644 (2020).

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

Response: Under Article III, a party invoking jurisdiction must establish that the plaintiff (1) has suffered an injury in fact, which is an invasion of a legally protected interest that is "concrete and particularized" and "actual or imminent", (2) that injury can be connected to the challenged action of the defendant; (3) it must be likely that the injury will be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016) (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).

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

Response: Congress has the powers enumerated in Article I of the Constitution. Congress also has unenumerated powers, pursuant to Article I, Section 8, to enact laws that are "necessary and proper for carrying into execution the foregoing enumerated powers". *McCulloch v. Maryland*, 17 U.S. 316 (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: I would apply all relevant and binding Supreme Court and Second Circuit precedent in evaluating the constitutionality of a law. The Supreme Court held that the constitutionality of an act of Congress "does not depend on the recitals of the power which it undertakes to exercise." *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519 (2012).

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

Response: Yes. As stated in the Ninth Amendment, "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Supreme Court has also held that the Fourteenth Amendment's Due Process Clause protects "fundamental rights and liberties which 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, 720-21 (1997) (internal citations omitted). Those asserted fundamental liberty interests require a 'careful description'. *Id.* at 721. The Supreme Court, in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), provided some of the fundamental liberty

interests recognized in prior Supreme Court decisions including the right to marry a person of a different race or the same sex; the right to obtain contraceptives; the right to make decisions about education of one's children; and the right to have children.

11. What rights are protected under substantive due process?

Response: Please see relevant portion of my answer to Question 10.

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

Response: If confirmed, I will determine any issue involving substantive due process based on binding legal precedent of the Supreme Court and Second Circuit, not on my own personal beliefs. The Supreme Court has decided that certain fundamental rights are protected under the Due Process Clause. On the other hand, *Lochner v. New York*, 198 U.S. 45 (1905) was overturned by the Supreme Court's decision in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

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

Response: "[T]here are three categories of activity that Congress may regulate under its commerce power: (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 having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce.'" *Taylor v. United States*, 579 U.S. 301, 306 (2016) (*quoting United States v. Lopez*, 514 U.S. 549-559 (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 has held that a determination of a "suspect class" requires the court to look for "traditional indicia of suspectness […] 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." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973). The Supreme Court has held that strict scrutiny should apply to classifications by race, alienage, or national origin because these "factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such consideration are deemed to reflect prejudice and antipathy." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 441 (1985).

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

Response: "[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, 694 (1988) (*quoting Buckley v. Valeo*, 424 U.S. 1, 122 (1976)). While dividing and allocating power across the three branches of government, "the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence." *United States v. Nixon*, 418 U.S. 683 (1974).

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 deciding a case where one branch of government assumed an authority not granted it by the text of the Constitution, I would apply all relevant and binding legal precedent from the Supreme Court and Second Circuit. This analysis would include whether the Supreme Court has recognized certain unenumerated powers of a particular branch of government. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (holding that the President did not have the authority to issue an executive order directing the Secretary of Commerce to seize operation of most of the country's steel mills).

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

Response: Empathy should play no role in a judge's consideration of a case. A judge should faithfully and impartially apply the applicable law to the facts of the case without regard to a judge's personal feelings.

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

Response: Both should be avoided.

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

Response: I have not studied the trends or frequency of the Supreme Court striking down federal statutes as unconstitutional for the different periods. Further, as a judge and federal judicial nominee, I am precluded from commenting on the validity of prior Supreme Court decisions. If confirmed, I would faithfully and impartially apply all Supreme Court and Second Circuit precedent.

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

Response: Judicial review is the power of the court to determine whether an action by the executive or legislative branch, such as enactment of a statute, is constitutional. *Marbury v. Madison*, 5 U.S. 137 (1803). Black's Law Dictionary (11th ed. 2019) defines judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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 judge and federal judicial nominee, I cannot advise elected officials on their obligations. Elected officials are required to take an oath of office to support the Constitution. If confirmed and faced with litigation implicating an elected official failing to follow the Constitution or duly rendered judicial decisions, I would faithfully apply all relevant Supreme Court and Second Circuit precedent. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: My understanding of this excerpt from Federalist 78 is that Hamilton was explaining the importance of a separate and independent judicial branch of government that would interpret the Constitution and the laws impartially, and would leave policy decisions and enforcement of laws to the remaining two political branches of government.

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 be bound to follow controlling legal precedent from the Supreme Court and the Second Circuit, regardless of any personal views.

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 judge's sentencing analysis?

Response: None.

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 this statement. Equity is defined in Black's Law Dictionary (11th ed. 2019) as "fairness; impartiality; evenhanded dealing."

26. Without citing a dictionary definition, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: My understanding is that equity is generally used in the context of fairness in the way people are treated, and equality is in reference to individuals being treated in the same way.

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

Response: As stated in response to Question 25, I am not familiar with the statement. The Fourteenth Amendment's Equal Protection Clause guarantees "the equal protection of the law." I am unaware of any Supreme Court or Second Circuit precedent that has held that the Fourteenth Amendment guarantees equity as defined in Question 25.

28. According to your current understanding, and without citing a dictionary definition, how do you define "systemic racism?"

Response: I do not have a personal definition for "systemic racism." My general understanding is that the term refers to patterns or practices that disproportionately affect people based on race.

29. According to your current understanding, and without citing a dictionary definition, how do you define "Critical Race Theory?"

Response: I do not have a personal definition for "Critical Race Theory." My general understanding is that the term refers to an academic field or framework, but it is not a

field or framework that I have studied. In addition, I am unaware of any Supreme Court or Second Circuit precedent that employs "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.

31. What are the competing standards of review? When are they applied?

Response: The term "standards of review" is used in various ways throughout the law depending on the context. For instance, there are different standards of review for an appellate court to apply depending upon whether an issue raised is a question of law or question of fact. For questions of law, a *de novo* standard of review applies. For questions of fact, a clear error standard of review applies.

In the context of reviewing the constitutionality of governmental actions, the Supreme Court has provided three standards of review: rational basis, intermediate scrutiny, and strict scrutiny. These standards of review are utilized in evaluating the constitutionality of actions under different portions of the Constitution. Typically, the rational basis standard of review applies to economic regulations where fundamental rights are not implicated. Intermediate scrutiny has been applied to cases involving classifications of gender and illegitimacy. Strict scrutiny has been applied to suspect classifications such as race, national origin and alienage, and where fundamental rights are implicated.

32. At the drafting of the Constitution, our Founders could not have foreseen the invention of radios, TV, airplanes, and the internet, yet all of these things are, for the most part, governed by federal law. Is that constitutional? Why or why not?

Response: If confirmed and confronted with a claim that a particular federal law is unconstitutional, I would evaluate the facts and follow any applicable Supreme Court and Second Circuit precedent. In general, the Constitution provides certain powers to Congress to enact laws. Further, the Supreme Court has held that Congress has the authority to regulate channels, instrumentalities, and articles of commerce, and activities that substantially affect interstate commerce. *See United States. v. Lopez*, 514 U.S. 549 (1995). Additionally, in *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court recognized that the text of a law is not necessarily limited to expected applications at the time of its enactment: "the fact that [a statute] has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity; instead, it simply demonstrates [the] breadth of a legislative command." *Id*. at 24 (*citing Sedima, S. P. R. L. v. Imrex Co.*, 473 U.S. 479, 499 (1985)) (internal quotations omitted).

33. What are the limiting principles of the commerce clause?

Response: Please see my response to Question 13.

34. What are the limiting principles of the dormant commerce clause?

Response: The dormant commerce clause prohibits states from using laws that purposefully discriminate against out-of-state economic interests or interstate commerce. *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023).

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

Questions for the Record for Meredith Vacca, nominated to be United States District Judge for the Western District of New York

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. Additionally, racial discrimination is unlawful under the U.S. Constitution, state constitutions, and many federal and state statutes.

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

Response: As a state court judge and federal judicial nominee, I am precluded from opining about unenumerated rights that have not yet been articulated by the Supreme Court. In the event I am presented with a case that asserts an unenumerated right, I would apply *Washington v. Glucksberg*, 521 U.S. 702 (1997) and any applicable Supreme Court and Second Circuit 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: My judicial philosophy centers around being fair and respectful to all parties before the court and ensuring a fair, thoughtful, and impartial process when deciding various issues. I thoroughly prepare by reviewing the filings and binding legal precedent on the controversies that are presented. I maintain an open mind while considering the facts and legal arguments presented by the parties. I faithfully and impartially apply the appropriate legal precedent to the facts, and issue decisions that clearly articulate the factual basis and legal authority for all of my decisions. I have not studied in depth the philosophies of any prior Supreme Court justices to indicate who I am most analogous to. If confirmed, I will continue adherence to my judicial philosophy in order to make fair and impartial decisions on all matters that come before me.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I do not ascribe to any particular interpretive label. If confirmed, I will faithfully and impartially apply all relevant binding Supreme Court and Second Circuit legal precedent when interpreting the Constitution and other laws. For example, in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court took an "originalist" approach in the context of the Second Amendment stating that "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*. at 8.

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 "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 do not ascribe to any particular interpretive label. If confirmed, I will faithfully and impartially apply all relevant binding Supreme Court and Second Circuit legal precedent when interpreting the Constitution and other laws. I am not aware of any Supreme Court or Second Circuit precedent that applies a "living constitutionalism" interpretive method.

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: Yes. If confirmed, I would utilize the interpretive method set forth by the Supreme Court and Second Circuit precedent. *See New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 20 (2022).

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 considers current understanding in certain circumstances. Evaluating the Eighth Amendment's ban on cruel and unusual punishment calls for consideration of "evolving standards of decency." *Roper v. Simmons*, 543 U.S. 551, 560-561 (2005). Additionally, "contemporary standards" are relevant when considering what constitutes obscenity, which is outside the scope of First Amendment protections. *Miller v. California*, 413 U.S. 15, 24 (1973). Generally, however, the Constitution and federal statutes are interpreted as they would have been understood at the time of the text in question's adoption. *See New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 20 (2022). If confirmed, I would faithfully and impartially apply binding Supreme Court and Second Circuit precedent.

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

Response: No, though I refer you to my answer to Question 7 for circumstances in which the Supreme Court has considered current understanding in addressing certain Constitutional questions.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a prior Supreme Court decision was correctly decided. *Dobbs* is binding precedent, and if confirmed, I would faithfully apply the decision.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a prior Supreme Court decision was correctly decided. *Bruen* is binding precedent, and if confirmed, I would faithfully apply the decision.

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

Response: Yes.

a. **Was it correctly decided?**

Response: Yes. As a state court judge and federal judicial nominee, I am normally precluded from commenting on whether a case was correctly decided in order to maintain the appearance of impartiality. However, since the issue of *de jure* racial segregation in public schools will likely never come before me, and consistent with other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a prior Supreme Court decision was correctly decided. *Students for Fair Admissions v. Harvard* is binding precedent, and if confirmed, I would faithfully apply the decision.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a state court judge and federal judicial nominee, I am precluded from commenting on whether a prior Supreme Court decision was correctly decided. *Gibbons v. Ogden* is binding precedent, and if confirmed, I would faithfully apply the decision.

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

Response: 18 U.S.C. § 3142(e)(3) provides a rebuttable presumption of pretrial detention in cases where there is probable cause to believe the defendant has committed specific drug offenses for which the maximum term of imprisonment is greater than 10 years; certain offenses involving firearms, conspiracy, or international terrorism; certain terrorism offenses for which the maximum term of imprisonment is greater than 10 years; certain human trafficking offenses; and certain offenses where minors are the victim. Additionally, 18 U.S.C. § 3142(e)(2) provides a rebuttable presumption of pretrial detention when the defendant committed certain offenses while on pretrial release.

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

Response: In *United States v. Salerno*, 481 U.S. 739 (1987), the Supreme Court discussed the policy rationales underlying the Bail Reform Act of 1984 in general stating: "[t]he legislative history of the Bail Reform Act clearly indicates that Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals. Congress instead perceived pretrial detention as a potential solution to a pressing societal problem. There is no doubt that preventing danger to the community is a legitimate regulatory goal." *Id*. at 747 (internal citations omitted).

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. Any imposition that the government requires of businesses operated by observant owners or of religious organizations must survive strict scrutiny. *See Little Sisters of the Poor Saints Peter; see also Paul Home v. Pennsylvania* 591 U.S. 657 (2020). Governments cannot interfere with a religious institution's decisions regarding ministerial employees (*Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020)) nor can they compel expressive speech (*303 Creative v. Elenis*, 600 U.S. 570 (2023)).

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

Response: The Free Exercise Clause is violated by a law that is not neutral or generally applicable, absent the law surviving strict scrutiny. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). A law is not neutral if it exempts comparable non-religious activity or is enforced in a manner that demonstrates hostility to religion. *See id.*; *see also Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018).

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 found that the applicant was entitled to injunctive relief against occupancy limits at houses of worship during the COVID-19 pandemic. The Court found that the applicant demonstrated a likelihood of success on the merits, that denial of relief would lead to irreparable injury, and a furtherance of public interest. Success on the merits was likely because the occupancy limits were not neutral, specifically, because comparable non-religious activities were exempted. Additionally, the occupancy limits in houses of worship were not narrowly tailored to the compelling interest of preventing the spread of COVID-19. The result was irreparable harm: a loss of First Amendment freedoms. The Court concluded injunctive relief would not be contrary to public interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020).

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

Response: *Tandon v. Newsom* relied on *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) in enjoining California's COVID-19 restrictions on at-home religious gatherings, similarly finding a likelihood of success on the merits, irreparable injury, and furtherance of public interest were demonstrated by those seeking the injunction. Like *Roman Catholic Diocese of Brooklyn*, the California restrictions were not neutral because non-religious activity was treated more favorably, and the restrictions were not narrowly tailored.

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

Response: Yes. *See Kennedy v Bremerton School District*, 597 U.S. 507 (2022).

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

Response: In *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*, the Supreme Court found the Colorado Civil Rights Commission violated the First Amendment's Free Exercise Clause, and set aside the Commission's order determining that a bakery owner had violated an anti-discrimination law by refusing to bake a wedding cake for a same-sex couple. The administrative record of the hearing demonstrated a hostility to the baker's sincere religious beliefs, which denied the baker's right to a neutral adjudication.

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. In *Thomas v. Review Bd., Ind. Empl. Sec. Div*., 450 U.S. 707 (1981), the Supreme Court stated that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection" nor must they be "consistent with the beliefs shared by all members." *Id*. at 713-715. Although the religious beliefs need not be correct within the particular religious framework, they must be sincerely held and rooted in religion, not secular views. *See Frazee v. Illinois Department of Employment Security*, 489 U.S. 829 (1989).

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

Response: Yes. As long as the individual's religious view are sincerely held, there is no limit to what kind of religion or church doctrine that can be legally recognized by the courts. Please see my response to Question 17.

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

Response: Please see my responses to Questions 17 and 17(a). If I were presented with a case where an individual's religious beliefs were allegedly violated, I would apply all relevant and binding legal precedent from the Supreme Court and the Second Circuit.

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

Response: It is my understanding that the Catholic Church opposes abortion.

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

reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, the Supreme Court held that employment discrimination laws did not apply to religious schools with regard to the hiring and firing of teachers. In so holding, the Court recognized the "ministerial exception" as stated in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) and found that such exception applied here. The Court stated: "[a]lthough these teachers were not given the title of 'minister' […] [t]he religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020).

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 v. City of Philadelphia*, the Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services unless it agreed to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment. In so holding, the Court stated that the law was not neutral and generally applicable since the Commissioner could allow for exceptions to the anti-discrimination requirement in its discretion. Applying strict scrutiny analysis, the Court stated that the government did not have a compelling interest in denying an exception to Catholic Social Services.

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 v. Makin*, the Supreme Court held that Maine's tuition assistance program violated the Free Exercise Clause of the First Amendment because the program was not neutral in its application. That is, the program allowed the government to provide tuition assistance to some private schools, but not others, on the basis of religion. The Court applied the same principles articulated in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 528 U.S. __ (2017) and *Espinoza v. Montana Department of Revenue*, 591 U.S. __ (2020), both cases involving the discriminatory use of government funds on the basis of religious character and found to be 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 v. Bremerton School District*, petitioner was a high school football coach who would pray with some students after school games. The school district asked that petitioner discontinue this conduct, to no avail, and eventually suspended petitioner. The Supreme Court held that petitioner's personal religious observances were protected under the First Amendment's Free Speech and Free Exercise Clauses. In so holding, the Court reasoned that the petitioner's praying was brief, privately conducted and did not compel any students to participate.

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: In *Mast v. Fillmore County*, Justice Gorsuch's concurrence agreed in the grant of certiorari and vacatur of the Minnesota court's decision, and elaborated that Minnesota, in denying an exemption for members of an Amish community from a wastewater treatment ordinance under the Religious Land Use and Institutionalized Persons Act, did not survive strict scrutiny. Strict scrutiny required Minnesota to account for exceptions provided to non-religious groups and a demonstration of narrow tailoring. In his concurrence, Justice Gorsuch referenced the long-standing dispute with the Amish community and what he characterized as attacks on the Amish's faith.

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: 18 U.S.C. § 1507 prohibits conduct such as picketing or parading in or near courthouse or residence of a judge, juror, witness, or court officer, with the intent to interfere with the administration of justice or influence such individual in the discharge of their duty. As a state court judge and federal judicial nominee, I am precluded from opining how I would interpret a statute on a matter that might come before me. If confronted with a similar legal issue, I would faithfully apply relevant and binding legal 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: The President may appoint federal officers with the advice and consent of the Senate. U.S. Constitution, Article II. As a state court judge and federal judicial nominee, it would be inappropriate for me to opine on how the President or the Senate should carry out their duties in this respect.

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

Response: A finding of discriminatory intent cannot be determined by impact alone, but such impact may be evidence of discriminatory intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977).

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

Response: This question involves policy matters appropriately left to the discretion of the legislative branch. As a state court judge and federal judicial nominee, I am precluded from commenting on this policy issue.

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

Response: No.

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

Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) found that the Second Amendment "guarantee(s) the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment." Further, the Supreme Court in *New York State Rifle & Pistol Association v. Bruen,* 597 U.S. 1 (2022) held that the right to carry a firearm in public for self-defense is deeply rooted in our nation's history.

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: Prohibited restrictions are those that the government cannot demonstrate are "consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Association v Bruen*, 597 U.S. 1, 17 (2022).

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

Response: Yes. *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: No, the Second Amendment is not "a second class-right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald v. Chicago*, 561 U.S. 742, 780 (2010).

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

Response: No, please see my response to Question 38.

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

Response: The President "shall take Care that the Laws be faithfully executed." U.S. Constitution, Article II. Together with the Supreme Court's holding (the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case") in *United States v. Nixon*, 418 U.S. 683, 693 (1974), the Executive Branch has significant discretionary authority. As a state court judge and federal judicial nominee, I

am precluded from opining on the Executive Branch's use of such discretion.

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

Response: Prosecutorial discretion is a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court" (Black's Law Dictionary 11th ed. 2019) while substantive administrative rule change at the federal level is governed by the Administrative Procedures Act, 5 U.S.C. §§ 551-559. As far as courts are concerned, exercises of prosecutorial discretion are generally immune from judicial review (*Heckler v Chaney*, 470 U.S. 821, 831 (1985)), while agency action such as substantive administrative rule change is subject to judicial review if such change is in violation of the rule making process. 5 U.S.C. § 706.

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

Response: No. The federal death penalty is codified at 18 U.S.C. § 3591, the result of an act of Congress. The President does not have the ability to unilaterally abolish an act of Congress, nor can the President abolish death penalty statutes of the states.

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

Response: The Supreme Court vacated the stay of the judgment from the U.S. District Court for the District of Columbia, which itself vacated the Centers for Disease Control's (CDC) nationwide moratorium on evictions of tenants in counties experiencing substantial or high levels of COVID-19 transmission. In so ruling, the Supreme Court found that the CDC lacked the authority for the moratorium and as such, opponents of the moratorium had shown a likelihood of success on the merits and that the equities were in their favor. *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758 (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: No.

45. **In your speech titled "*A Dialogue on Race & Sensitivity*," you said "If the only people sitting on the bench all look the same – then how are the public – the people that come into our courtrooms everyday – going to truly believe that our judicial system is fair? I think a lack of diversity on our bench and amongst our attorneys – erodes trust in our institution and impacts the public's belief as to whether our system is truly fair or just."**

a. **Do you make judgements regarding a judge's fairness based on their immutable characteristics?**

Response: No.

b. **Do you believe the American people trust the fairness of a judge based on the external physical appearance of the judge? Similarly, do you believe the American people trust a judge's fairness based on the judge's immutable characteristics?**

Response: No as to both questions. But to some Americans, the absence of diversity on the bench gives the mistaken impression that certain people are excluded from positions of power, which can erode trust in the courts.

c. **Should race be considered when choosing a judge?**

Response: No.

d. **Does DEI have any role in judicial decision-making?**

Response: No.

e. **Should a judge consider the litigants' immutable characteristics in their decision-making?**

Response: No.

46. **In your SJQ, you submitted the following remark: "often times we don't want to recognize the reality of biases and stereotypes against Asian Americans – including myself sometimes – so should judges reflect on these things when dealing with AAPI attorneys in their courtroom? Absolutely."**

a. **Do you believe in implicit bias?**

Response: Yes.

b. **Did you mean that judges should be cognizant of the attorneys' racial identity and tailor treatment based on race?**

Response: No.

c. **Can you give me an example of how a judge should apply your statement?**

Response: A judge should be aware of any implicit biases so that he or she does not allow bias in the courtroom.

d. **Does application of your statement open the door to biases and stereotypes?**

Response: No. It calls for judges to be aware of stereotypes or implicit biases in order to have a courtroom that is free of bias.

Questions from Senator Thom Tillis
For Meredith A. Vacca, nominated to serve as U.S. District Judge for the Western District of New York

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

   Response: A judge's personal views are irrelevant to the interpretation and application of the law. A judge should faithfully and impartially apply the appropriate legal precedent to the facts of each case regardless of personal views.

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

   Response**:** Impartiality is an expectation for a judge.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines judicial activism as "as a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism is never appropriate.

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

   Response: A judge should not second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome. A judge should impartially apply the appropriate legal precedent to all cases and leave policy decisions to the other branches of government.

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

   Response: A judge should faithfully and impartially interpret the law based on binding legal precedent regardless of the desirability or undesirability of the outcome.

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

   Response: As a judge, and if confirmed as a federal district court judge, I will apply all binding legal precedent involving an individual's Second Amendment rights, including but not limited to *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

   Response: In considering qualified immunity cases, I will faithfully and impartially apply all legal precedent from the Supreme Court and Second Circuit. In both *Rivas-Villegas v. Cortesluna*, 595 U.S. __ (2021) and *City of Tahlequah v. Bond*, 595 U.S. __ (2021), the Supreme Court held that the petitioner was entitled to qualified immunity because he did not violate clearly established law. Therefore, the police officers were both shielded by qualified immunity. As stated by the Second Circuit in *Rupp v. City of Buffalo*, 91 F.4th 623 (2d Cir. 2024), "[q]ualified immunity shields officials performing discretionary functions 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Id*. at 42 (*citing Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

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

   Response: As a judge and federal judicial nominee, it is not my role to opine as to whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers. If confirmed, I will faithfully and impartially apply all binding legal precedent to any qualified immunity case that comes before me.

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

   Response: As a judge and federal judicial nominee, it is not my role to opine as to the proper scope of qualified immunity protections for law enforcement. If confirmed, I will faithfully and impartially apply all binding legal precedent to any qualified immunity case that comes before me.

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

    Response: Intellectual property rights are derived from the Constitution. Article 1, Section 8, Clause 8 of the Constitution grants Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This clause gives Congress the authority to enact legislation regarding patents and copyrights. If confirmed, I will apply all binding legal precedent to every intellectual property case that comes before me.

11. **In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"**

    Response: In my fifteen years of legal practice and almost four years as a state court judge, I have not dealt with patent litigation cases. I am unfamiliar with the particular workings of the district for which I am nominated with respect to whether plaintiffs can request their case to be heard within a particular division. If confirmed, I will apply all rules, laws and relevant legal precedent in determining whether issues such as jurisdiction and venue are proper when dealing with patent litigation.

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

    Response: As a judge and federal judicial nominee, I am precluded from publicly commenting on the validity of Supreme Court jurisprudence in the area of patent eligibility, or any area of law. If confirmed, I will faithfully and impartially apply all binding Supreme Court and Second Circuit precedent to all patent matters that come before me.