

**Senator Lindsey Graham, Ranking Member**  
**Questions for the Record**  
**Ms. Catherine Henry**

**Nominee to be United States District Judge for the Eastern District of Pennsylvania**

1. **You represented the defendant in *U.S. v. Glasser*, Case No. 5:14 CR 384, ECF No. 33 (E.D. Pa Oct. 9, 2015), a child sex abuse material case. In that case:**
  - a. **You argued that the two-level enhancement in the U.S. Sentencing Guidelines shouldn't apply to your client, a man who had a stash of 50,000+ images and videos of child sexual abuse material, because when the guidelines were first created, use of a computer was an "aberration." Should defendants who use a computer to download child sexual abuse material receive a sentencing enhancement for that action?**

Response: Yes. Pursuant to U.S.S.G. § 2G2.2(b)(6), if the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material, a two-level increase in the offense level is appropriate. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have handled during my nearly thirty years as a public defender, including the case referenced in your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

- b. **You also argued that the five-level enhancement for number of images shouldn't apply because "there is no data connected with the number of pictures and a justifiable reason to increase the defendant's penalty." Should someone who spent years accumulating, downloading and sharing 50,000+ images and videos of child sexual abuse material be treated differently than a person with fewer than 600 images (the threshold for that enhancement at the time)?**

Response: No. Pursuant to U.S.S.G. § 2G2.2(b)(7), if the offense involved the possession of 600 or more images the offense level should be increased by five levels. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal

defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have handled during my nearly thirty years as a public defender, including the case referenced in your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

- c. You argued that the four-level enhancement for sadistic or masochistic conduct or violent depictions should be discarded because “[t]here is no evidence that Mr. Glasser specifically searched for those types of pictures.” Should any defendant who searches for child sexual abuse material depicting sadistic or masochistic conduct receive a sentencing enhancement for that action?**

Response: Yes. Pursuant to U.S.S.G. § 2G2.2(b)(4) if the offense involved sadistic or masochistic conduct or other depictions of violence the offense level should be increased by four. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have handled during my nearly thirty years as a public defender, including the case referenced in your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

- 2. Please summarize your civil legal experience. Specifically, what percentage of your work involved civil matters?**

Response: I have been employed as a fulltime public defender since 1996. My employer does not permit staff attorneys to handle any matters outside our assigned criminal cases.

- 3. How many civil matters have you worked on during your career?**

Response: Please see my answer to Question 2.

- 4. Please describe your role in drafting the amicus brief in *Schenck v. Pro-Choice Network of Western New York*.**

Response: As a junior lawyer in my first year out of law school I was assigned by my employer to the team that worked on this amicus brief. My role in the amicus brief was to review the drafts prepared by the other counsel on the case, along with the rest of the team.

- 5. An article in your submitted attachments describe sentencing documentaries that you enlisted your brother to help you produce. Please describe the content and nature of these documentaries.**

Response: On a few occasions I prepared videos to submit to the Court as part of my sentencing submissions. My brother is a film editor and helped consolidate video clips of family members who wished to address the Court but were unable to appear at the sentencing hearing.

- 6. Are you a citizen of the United States?**

Response: Yes.

- 7. Are you currently, or have you ever been, a citizen of another country?**

Response: No.

- a. If yes, list all countries of citizenship and dates of citizenship.**
- b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
  - i. If not, please explain why.**

- 8. 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.

- 9. 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.

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

Response: Generally speaking, it is not appropriate to rely on foreign law to interpret the Constitution. In the past, the Supreme Court has considered foreign law and history on a very limited basis in certain matters. For example, in *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court examined foreign laws in evaluating what constitutes cruel and unusual punishment in light of evolving community standards of decency.

- 11. 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. The role of the judge is to apply precedent to the facts in a fair and impartial manner and without regard to their personal opinions and values.

- 12. 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.

- 13. Please define the term “prosecutorial discretion.”**

Response: Prosecutorial discretion includes the decisions by a prosecutor to initiate or decline criminal prosecutions, decisions regarding which charges to pursue, and decisions regarding plea bargaining and sentencing recommendations.

- 14. 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. This is not an appropriate approach for a federal judge to take. A federal judge must apply all relevant precedent and decide cases within the parameters of established law.

- 15. 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.

- 16. 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.

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

Response: A sentenced prisoner may seek relief by filing a direct appeal, a collateral attack pursuant to 28 U.S.C. § 2255, a writ of habeas corpus, a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) or a motion under Federal Rule of Criminal Procedure 35(b).

- 18. 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: Students for Fair Admissions (SFFA) is a non-profit organization that filed lawsuits against Harvard University and the University of North Carolina arguing that the universities’ admissions programs violated their constitutional rights. The Supreme Court held that the race-based college admissions policies of both schools violate the Equal Protection Clause of the 14<sup>th</sup> Amendment.

- 19. 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: During my tenure at the Federal Community Defender Office, I have occasionally participated in panel interviews of prospective attorney hires.

- 20. 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.

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

Response: No.

**22. 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.**

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

Response: Yes. Classifications on the basis of race are subject to strict scrutiny. *See Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that requiring a wedding website designer to create expressive designs for a same-sex marriage in violation of her sincerely held religious beliefs was unconstitutional. The Court found that the First Amendment's free speech clause prohibited compelling such speech.

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

**Is this a correct statement of the law?**

Response: Yes. The Supreme Court recently noted that precise excerpt in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

**26. 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: To determine whether a law that regulates speech is content-based or content-neutral, the purpose and context of the law must be considered. *Bartnicki v. Vopper*, 532 U.S. 514, 526 (2001). The Supreme Court has held that content-based restrictions are subject to strict scrutiny, but content-neutral restrictions must be evaluated to determine whether the regulation is content-based as applied. *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464 (2022).

**27. 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 established that in order to sustain a conviction, the government must prove that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. The Court created a subjective test in place of the objective test that previously applied to the true threats analysis.

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

Response: The Supreme Court has acknowledged that determining the fact/law distinction can be murky at times. In some circumstances, deference is given to the trial court on how mixed questions of law and fact are to be treated because the decision “has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide an issue in question.” *Miller v. Fenton*, 474 U.S. 104, 114 (1985). The Third Circuit agrees on this approach. The Court stated that deference to the district court may be appropriate “when the matter under review was decided by someone who is thought to have a better vantage point than we on the Court of Appeals to assess the matter.” *United States v. Mitchell*, 365 F.3d 215, 234 (3d Cir. 2004).

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

Response: According to 18 U.S.C. § 3553(a), all four goals of sentencing must be considered equally and in concert with each other.

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

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

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

Response: As a judicial nominee, I am precluded from commenting as to whether a particular Third Circuit decision was well-reasoned.

**32. Please explain your understanding of 18 U.S.C. § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 prohibits a person from “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, picket[ing] or parad[ing] in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent us[ing] any sound-truck or similar device or resort[ing] to any other demonstration in or near any such building or residence.” This statute does not preclude a court of the United States from exercising its power to punish contempt.

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

Response: As a judicial nominee, I am precluded from commenting as to whether a particular Supreme Court decision is constitutional. I would note that the Supreme Court upheld a similar state statute in *Cox v. Louisiana*, 379 U.S. 559 (1965). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent.

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

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the issue of *de jure* racial segregation in schools is unlikely to come before me, I can state that *Brown v. Board of Education* was correctly decided.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the issue of prohibitions on interracial marriage is unlikely to come before me, I can state that *Loving v. Virginia* was correctly decided.

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



Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *Griswold v. Connecticut*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *Roe v. Wade* was overturned by *Dobbs v. Jackson Women's Health Organization*. If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *Dobbs*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *Planned Parenthood v. Casey* was overturned by *Dobbs v. Jackson Women's Health Organization*. If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *Dobbs*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *Gonzales v. Carhart*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *District of Columbia v. Heller*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially

apply binding Supreme Court and Third Circuit precedent, including *McDonald v. City of Chicago*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *Hosanna-Taylor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, 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 judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, 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 judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent, including *303 Creative*

*LLC v. Elenis.*

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

Response: For a firearm regulation to withstand a Second Amendment challenge, the government must establish that the provision is “consistent with this Nation’s historical tradition of firearms regulation.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

**36. 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: Yes. In 2021 I attended a webinar that was hosted by Christopher Kang from Demand Justice. The program was an information session for attorneys interested in applying for the judicial vacancies that existed at that time. They provided information regarding the judicial nomination process and examples of questions asked by the screening committees.

**37. 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.

**38. 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.**

- 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.**

- 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.**

**39. 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.

**40. 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. 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.

**41. 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.

**42. 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? 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.

**43. 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.

- 44. 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 November 14, 2023, I submitted an application to the Eastern District of Pennsylvania Judicial Advisory Committee. On January 24, 2024, I interviewed by the screening committee. On March 27, 2024, I interviewed with staff from Senator John Fetterman's office. On March 28, 2024, I interviewed with staff members from Senator Robert Casey's office. On April 16, 2024, I met with Senator Casey and his staff. On April 19, 2024, I met with Senator Fetterman and his staff and was informed that he had recommended me as a potential candidate for nomination. On April 19, 2024, I interviewed with the White House Counsel's Office, which informed me that I would be moving forward in the selection process. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 23, 2024, the President announced his intent to nominate me.

- 45. 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.

- 46. 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.

- 47. 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.

- 48. 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.

- 49. 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.

**50. 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.

**51. 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.

**52. 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: No.

- 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?

**53. 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 19, 2024, I interviewed with staff 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 23, 2024, the President announced his intention to nominate me.

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

Response: I received written questions for the record on June 27, 2024. I reviewed the questions and prepared my responses. I submitted a draft of my answers to attorneys with the Office of Legal Policy at the Department of Justice who provided limited feedback for my consideration. I then finalized and submitted my answers for submission to the Committee.

**Senator Hirono Questions for the Record for the June 20, 2024, Hearing in the Senate Judiciary Committee entitled “Nominations.”**

**QUESTIONS FOR CATHERINE HENRY**

***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**  
**Questions for the Record**  
**Catherine Henry, Nominee to the U.S. District Judge for the Eastern**  
**District of Pennsylvania**

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

Response: My judicial philosophy is centered on my goal of maintaining impartiality and providing equal justice under the law. I will diligently prepare for all proceedings and fairly consider the arguments presented. I will thoroughly research and study the applicable law and apply that law to the facts of the case. If confirmed, I would be fair to all parties and maintain fidelity to the law.

**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 turned on the interpretation of a federal statute, I would begin with the text of the statute and any binding Supreme Court and Third Circuit precedent. If such precedent exists, I would apply it faithfully to the matter before me. If no such precedent exists, I would look to the text of the statute. If the meaning of the statute was plain from that inquiry, that would be the end of the analysis. If it was still unclear, I would next consider the canons of construction, any persuasive authority from other courts, and lastly (and only to the extent authorized by the Supreme Court and Third Circuit) legislative history.

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

Response: When deciding a case that turned on the interpretation of a constitutional provision, I would begin with the text of the provision and any binding Supreme Court and Third Circuit precedent. If such precedent exists, I would apply it faithfully to the matter before me. If no such precedent exists, I would look to the text of the constitutional provision focusing on plain meaning of the words at issue. If the provision was still unclear, I would next consider the canons of construction and any persuasive authority from other courts.

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

Response: When interpreting the Constitution, the inquiry should begin with the text and the original meaning of the constitutional provision. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

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

Response: Please see my response to Question 2.

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

Response: The Supreme Court held in *Bostock v. Clayton County*, 590 U.S. 644 (2020) that a statute’s terms should be interpreted in accordance with its ordinary public meaning at the time it was enacted.

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

Response: Standing under Article III requires that a plaintiff has “(1) suffered an injury in fact, (2) that it is fairly traceable to the challenged conduct of the defendant, and (3) that it is likely to be redressed by a favorable judicial decision.” *Spokeo v. Robins*, 578 U.S. 330, 338 (2016).

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

Response: The Supreme Court has recognized that Congress has implied powers beyond those enumerated in the Constitution. The Court found that Congress could create a national bank by relying on the Necessary and Proper Clause of Article I, § 8 to execute its vested powers. *McCulloch v. Maryland*, 17 U.S. 316 (1819).

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

Response: When evaluating the constitutionality of Congressional action, I would apply all Supreme Court and Third Circuit precedent. The Supreme Court has held that Congress’s authority to act “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, 570 (2012).

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

Response: Yes. The Supreme Court has recognized several unenumerated rights that are protected by the Constitution, including the right to marry (*Loving v. Virginia* 388 U.S. 1 (1967)), the right to same-sex marriage (*Obergefell v. Hodges*, 576 U.S. 644 (2015)), and the right to contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)).

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

Response: The Supreme Court has recognized certain fundamental rights that are protected from government interference under substantive due process, including the

right to marry (*Loving v. Virginia* 388 U.S. 1 (1967)), the right to same-sex marriage (*Obergefell v. Hodges*, 576 U.S. 644 (2015)), and the right to contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)).

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

Response: The Supreme Court has held that the economic right at issue in *Lochner* is not a fundamental right. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (overruling *Lochner*). However, several unenumerated fundamental rights are protected from government interference under substantive due process. The Supreme Court has found the Due Process Clause protects fundamental rights that are “deeply rooted in this Nation’s history and tradition...and implicit in the concept of ordered liberty.” *Washington v. Glucksburg*, 521 U.S. 702, 721 (1997).

- 12. What are the limits on Congress’s power under the Commerce Clause?**

Response: Congress’s power under the Commerce Clause is limited to regulation of channels of interstate commerce, instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *Taylor v. United States*, 579 U.S. 301 (2016).

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

Response: The Supreme Court has found that race, religion, national origin, and alienage are suspect classes and subject to a strict scrutiny analysis. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). The Court explained that “traditional indicia of suspectness” include whether a class is “saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Id.* at 28.

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

Response: The role of separation of powers and the concept of checks and balances “established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (citation omitted).

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

Response: In evaluating whether a branch of government exceeded the authority granted to it by the Constitution, I would follow Supreme Court and Third Circuit precedent in deciding the constitutional validity of the action. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Printz v. United States*, 521 U.S. 898 (1997).

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

Response: A judge should decide all cases impartially and treat the parties with respect and dignity.

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

Response: Both scenarios are equally improper and to be avoided.

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

Response: I am not familiar with the changes in frequency described in the question, so I cannot speculate on the reasons for it. If confirmed, I would faithfully apply all relevant Supreme Court and Third Circuit precedent to all matters before me.

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

Response: Judicial review is the power of the courts to determine whether laws or policies enacted by the government are constitutional. *Marbury v. Madison*, 5 U.S. 137 (1803). Judicial supremacy is the recognition that the Supreme Court is the final authority on the interpretation of the Constitution. *Miller v. Alabama*, 567 U.S. 460 (2012).

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

Response: As a judicial nominee it is improper for me to give my opinion on how elected officials should balance their obligations. If confirmed, I would apply all relevant Supreme Court and Third Circuit precedent to such an issue. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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

Response: It is important for judges to remember their limited role in applying the law only to the cases and controversies before them.

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

Response: A district court judge must apply Supreme Court precedent regardless of any personal opinions about the rationale or reasoning behind the decision.

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

Response: None.

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

Response: Black’s Law Dictionary (11<sup>th</sup> ed. 2019) defines the term equity as fairness, impartiality, evenhanded dealing.

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

Response: Equity could be described as fairness and equality as the state of being equal.

**26. Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The Equal Protection Clause of the Fourteenth Amendment guarantees equal protection of the laws to all people within its jurisdiction. If presented with the question above, I would faithfully apply all relevant Supreme Court and Third Circuit precedent.

**27. How do you define “systemic racism?”**

Response: I am not aware of any uniform definition of systemic racism. Merriam-Webster defines systemic racism as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).”

**28. How do you define “critical race theory?”**

Response: I do not have a working definition of critical race theory.

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

Response: Please see my responses to Questions 27 and 28.

**30. We have seen a disturbing trend among the Biden judicial nominees towards protecting, tolerating, and advocating a leniency for defendants convicted of possession of child sexual abuse material. It appears that you also advocate for an unsettling interpretation of sentencing enhancement for those convicted of using a computer because—as the argument goes—when the guidelines were promulgated 40 years ago, using a computer was an “aberration”. Should a change in the availability of technology change how a judge interprets and applies the CSAM sentencing guidelines?**

Response: No. Pursuant to U.S.S.G. § 2G2.2(b)(6) if the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, or for accessing with intent to view the material, a two-level increase in the offense level is appropriate. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have handled during my nearly thirty years as a public defender, including the case referenced in



your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

31. **You also advocated to remove an enhancement for sadistic or masochistic conduct or violent depictions because “[t]here is no evidence that [the man convicted of possessing such sadistic and masochistic CSAM] specifically searched for these types of pictures.”<sup>1</sup> Is there a particular *mens rea* required for this enhancement, or is the enhancement merely required when the abuse material possessed is sadistic or masochistic?**

Response: Pursuant to USSG § 2G2.2(b)(4) if the offense involved sadistic or masochistic conduct or other depictions of violence the offense level should be increased by four. There is no particular *mens rea* required for the enhancement. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have handled during my nearly thirty years as a public defender, including the case referenced in your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

32. **You also advocated against the five-level enhancement for number of images (600+) because “there [was] no data connected with the number of pictures and a justifiable reason to increase a defendant’s penalty.”<sup>2</sup> Can you please further explain your argument here? Are you advocating that the number of CSAM images shouldn’t matter when sentencing a CSAM defendant?**

Response: No. Pursuant to USSG § 2G2.2(b)(7) if the offense involved the possession of 600 or more images the offense level should be increased by five levels. As court-appointed defense counsel, I have a duty under the rules of professional responsibility to zealously represent my clients within the bounds of the law, because effective assistance of counsel is a right guaranteed to criminal defendants under the Sixth Amendment. I have taken this duty seriously in every criminal case I have

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<sup>1</sup> *U.S. v. Glasser*, Case. No. 5:14 CR 384, ECF No. 33, at \*11 (E.D. Pa. Oct. 9, 2015).

<sup>2</sup> *Id.* at \*12.

handled during my nearly thirty years as a public defender, including the case referenced in your question. If I am fortunate enough to be confirmed to the federal bench my role would be very different. Rather than advocating for a particular client who has been assigned to us by the Court, I would impartially apply the law to the facts before me including all applicable federal criminal laws and sentencing guideline provisions. If confirmed, I would consider the applicable sentencing guideline range as required by 18 U.S.C. § 3553.

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

**Questions for the Record for Catherine Henry, nominated to be United States District Judge for the Eastern District of Pennsylvania**

**I. Directions**

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

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

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

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

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

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

## **II. Questions**

### **1. Is racial discrimination wrong?**

Response: Yes. Racial discrimination is prohibited under federal and state law.

### **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: In *Washington v. Glucksburg*, the Supreme Court recognized that there are some rights that were not explicitly recognized in the Constitution. These rights must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty” to be recognized by courts. 521 U.S. 702, 721 (1997). If confirmed, I would apply the Supreme Court’s precedent including this test.

### **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 is centered on my goal of maintaining impartiality and providing equal justice under the law. I will diligently prepare for all proceedings and fairly consider the arguments presented. I will thoroughly research and study the applicable law and apply that law to the facts of the case. I am not well-versed in the details of philosophies attributed to specific Justices, so I cannot determine which is most analogous to mine. If confirmed, I would be fair to all parties and maintain fidelity to the law.

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

Response: Black’s Law Dictionary defines originalism as the “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” The Supreme Court has endorsed this method of interpretation in several cases. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I do not use any specific label to describe my method of constitutional interpretation, but instead rely on binding precedent. If confirmed, I will apply binding Supreme Court and Third Circuit precedent.

### **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 defines living constitutionalism as the “doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” To my knowledge, the Supreme Court has not endorsed this mode of interpretation. I do not use any specific

label to describe my method of constitutional interpretation, but instead rely on binding precedent. If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent.

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. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (explain that in interpreting the Second Amendment courts are “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning” (alterations and citation omitted)).

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 held in *Bostock v. Clayton County*, 590 U.S. 644 (2020) that a statute’s terms should be interpreted in accord with its ordinary public meaning at the time it was enacted.

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

Response: No. The Constitution only changes through the amendment process established in Article V. The Supreme Court has held that the Constitution “can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).

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

Response: Yes. This is settled law. If confirmed, I will faithfully apply binding Supreme Court and Third Circuit precedent, including *Dobbs v. Jackson Women’s Health Organization*.

- a. **Was it correctly decided?**

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

10. **Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen***

**settled law?**

Response: Yes. This is settled law. If confirmed, I will faithfully apply binding Supreme Court and Third Circuit precedent, including *New York Rifle & Pistol Association v. Bruen*.

**a. Was it correctly decided?**

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Yes. This is settled law. If confirmed, I will faithfully apply binding Supreme Court and Third Circuit precedent, including *Brown v. Board of Education*.

**a. Was it correctly decided?**

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the constitutionality of *de jure* segregation in public schools is unlikely to come before me should I be confirmed, I can say *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. This is settled law. If confirmed, I will faithfully apply binding Supreme Court and Third Circuit precedent, including *Students for Fair Admissions v. Harvard*.

**a. Was it correctly decided?**

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: Yes. This is settled law. If confirmed, I will faithfully apply binding Supreme Court and Third Circuit precedent, including *Gibbons v. Ogden*.

**a. Was it correctly decided?**

Response: As a judicial nominee it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Bail Reform Act of 1984 creates a rebuttable presumption of pretrial detention in certain cases. If a defendant is charged with drug offenses with a statutory maximum of ten years or more, crimes of violence with a statutory maximum of ten years or more, certain human trafficking offenses and offenses involving minors, he or she may be subject to that presumption. A defendant may face a rebuttable presumption of pretrial detention if he committed an offense while already on pretrial release. *See* 18 U.S.C. § 3142(e)(2)(3).

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

Response: Pretrial detention is appropriate when “no condition or combination of conditions will reasonably assure the safety of any other person and the community.” *See* 18 U.S.C. § 3142(e)(2). The Supreme Court discussed the policy rationales and found that a presumption of pretrial detention in certain cases ensures the safety of the community and defendant’s appearance in court. *See United States v. Salerno*, 481 U.S. 739 (1987).

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

Response: Yes. There are limits on what the government may impose or require of private institutions. Substantial interference with the free exercise of religion must be justified by strict scrutiny. *Holt v. Hobbs*, 574 U.S. 352 (2015). To satisfy that standard, the challenged law must be the “least restrictive means of furthering a compelling government interest.” *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 726 (2014). The Religious Freedom Restoration Act of 1993 also addresses this issue and requires the same analysis. In addition, anti-discrimination laws cannot 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: Government regulations that discriminate against religious organizations or religious people must survive a strict scrutiny analysis. *Carson v. Makin*, 596 U.S. 767, 780 (2022). For the regulation to be upheld, the government must “demonstrate that the compelling interest test is satisfied through application of the challenged law [to] the

particular claimant whose sincere exercise of religion is being substantially burdened.” *Holt v. Hobbs*, 574 U.S. 352, 363 (2015).

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: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), the Supreme Court found that the religious entity-applicants were entitled to a preliminary injunction because the executive order likely violated the Free Exercise Clause of the First Amendment. The Court found that the order was not neutral on the issue of religion and applied strict scrutiny. The Court also found that the order was not narrowly tailored, the order would cause irreparable harm, and that it was not demonstrated that the public would be harmed by the preliminary injunction.

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

Response: In *Tandon v. Newsom*, the Supreme Court struck down Covid-19 restrictions in California which barred the meeting of families to worship in a private home. The Court found the restrictions triggered strict scrutiny under the Free Exercise Clause and 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 v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), the Supreme Court found that an order from Colorado’s Civil Rights Commission violated the First Amendment’s Free Exercise Clause. The Commission’s order found that the bakery owner had violated anti-discrimination laws by refusing to bake a wedding cake for a couple because of his religious opposition to same-sex marriages. The Court determined that the baker was denied his right to a neutral and respectful consideration of his claims and that the Commission demonstrated hostility toward his sincere religious beliefs, which motivated his objection. *Id.* at 634.

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 *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 725 (2014), the Supreme Court explained that “it is not for [courts] to say their religious beliefs are mistaken or insubstantial.”

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

Response: In *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 725 (2014), the Supreme Court held that the role of federal courts is to determine whether the religious belief reflects “an honest conviction.”

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

Response: In *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 725 (2014), the Supreme Court held that the role of federal courts is to determine whether the religious belief reflects “an honest conviction.”

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

Response: I am unfamiliar with the official position of the Catholic Church on the issue of 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: The Court held that the ministerial exception under the Free Exercise Clause prevented the adjudication of employment discrimination claims by employees. The Court reasoned that because faith and religion were the central purpose of the school, the ministerial exception applied to all teachers and the suits were barred. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (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*, 593 U.S. 522 (2021), the Supreme Court

held that Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agreed to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment. Requiring a religious provider of foster care services to allow same-sex couples to be foster parents unduly burdened the free exercise of religion, which triggered strict scrutiny review. The Court found that policy was not narrowly tailored to achieve the government's asserted interest.

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*, 596 U.S. 767 (2022), the Supreme Court held that religious schools cannot be precluded from receiving a subsidy otherwise available to secular schools simply because they have a religious mission. Maine's tuition assistance program failed under the strict scrutiny analysis used by the Court.

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*, a football coach was fired for praying on the field after games. The Supreme Court found that the coach's conduct was protected by the First Amendment. The Court held that the Free Exercise and Free Speech clauses prohibit the disciplinary actions taken by the school district. The Court reasoned that the coach had not engaged in public speech, but rather private speech, which is protected under the First Amendment. Prohibiting the coach's prayer also violated his free exercise of religion and failed under the strict scrutiny test.

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*, 141 S. Ct. 2430 (2021), members of an Amish community in Minnesota challenged a requirement that they install a septic system. The case was remanded for further proceedings in light of the Court's finding that the septic system mandate violates the Religious Land Use and Institutionalized Persons Act, which requires the application of strict scrutiny. Justice Gorsuch in his concurrence advised that courts should not just look at the county's general interest in promoting sanitation but should also examine what the harm would be in denying an exemption to the Amish community and why the same flexibility extended to others, such as campers and hunters, was not extended to the Amish.

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 makes it a federal crime to picket or parade near a federal courthouse or the residence of a judge, juror, witness, or court officer if committed “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer.” The Supreme Court upheld a similar state statute in *Cox v. Louisiana*, 379 U.S. 536 (1965). As a federal judicial nominee, I am precluded from commenting on the merits of a matter that may come before me. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed I would faithfully apply all Supreme Court and Third Circuit precedent.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Pursuant to Article II of the Constitution, the President is empowered to make political appointments with the advice and consent of the Senate. As a judicial nominee it is improper for me to give my opinion on how the Senate and the President should exercise their authority to make appointments.

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

Response: Disparate outcome alone is insufficient to establish racial discrimination. *See Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977).

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

Response: The decision to increase or decrease the number of justices on the U.S. Supreme Court is a policy decision that Congress is empowered to make. As a judicial nominee it is improper for me to give my opinion on how Congress should exercise their policy making authority.

**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: An individual's right to keep and bear arms, both in the home and in public is protected under the Second Amendment.

**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: According to the Supreme Court, restrictions on the Right to Bear Arms must be "consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022).

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

Response: Yes. *See District of Columbia v. Heller*, 500 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 right to bear arms does not receive less protection than the other enumerated rights. In *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court stated that the right to bear arms in public for self-defense is not a second-class right.

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

Response: No. The right to bear arms does not receive less protection than the right to vote under the Constitution. In *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held the right to bear arms in public for self-defense is not a second-class right.

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

Response: Pursuant to Article II, § 3 of the Constitution, the President “shall take Care that the Laws be faithfully executed.” As a judicial nominee it is improper for me to give my opinion on whether it is appropriate for the President to refuse to enforce a law.

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

Response: Prosecutorial discretion includes the decision to initiate or decline a criminal prosecution. A substantive administrative rule change refers to an agency’s promulgation of rules using the process described in 5 U.S.C. § 553.

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

Response: No.

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

Response: In *Alabama Association of Realtors v. HHS*, 594 U.S. 758 (2021), the Supreme Court found that a nationwide moratorium on evictions imposed by the Centers for Disease Control and Prevention (CDC) during the COVID-19 pandemic was unlawful. The Court found that the CDC was unlikely to prevail on the argument that its actions were authorized under the Public Health Services Act.

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: It is my experience, as a public defender for nearly thirty years, that prosecutors generally announce prosecutions after an investigation.

**45. What is the Feminist Majority Foundation?**

Response: A nonprofit organization centered on equality for women.

**46. Did you draft the amicus brief for this organization in *Schenk v. Pro-Choice Network of Western New York*?**

Response: As a junior lawyer in my first year out of law school I was assigned to be part of the team that worked on the amicus brief but was not the person who drafted it. I did review drafts of the brief.

**a. Why did you volunteer your time and efforts for this brief?**

Response: I did not volunteer to work on the brief. I was assigned the task by my employer.

**b. Did you sign the brief?**

Response: I do not recall.

**c. Do individuals have the right to peacefully protest in front of abortion clinics?**

Response: Yes.

**47. In percentage terms, how much civil litigation has your career encompassed?**

Response: I have been employed as a fulltime public defender since 1996. My employer does not permit staff attorneys to handle any matters outside our assigned criminal cases.