

**Senator Lindsey Graham, Ranking Member**

**Questions for the Record**

**Hon. Gail A. Weilheimer**

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

- 1. When you ran to serve on the Montgomery County Court of Common Pleas, you ran as a Democrat. You received an endorsement from the Pennsylvania State Educators Association, an organization that bills itself as a group of “members who promote, protect, and advocate for our schools, students and professionals.” The PSEA has issued a number of press releases highlighting its liberal advocacy, including a release that criticizes two state bills requiring parental approval for a child to check out books or textbooks containing “sexually explicit content.” Do you stand by this endorsement? Does this endorsement reflect your worldview?**

Response: I, my husband and children are the products of a public school education. I am also the daughter and sister of two proud public school educators and when I was in private practice I represented public school districts. Because of my many connections to public education, I appreciated the endorsement of the public school teachers in Pennsylvania. I am not familiar with the referenced press releases or policy statements of the PSEA.

- 2. Do you stand by the endorsement from then-Commissioner (and now-Governor) Josh Shapiro?**

Response: Yes. Josh is a friend and a neighbor.

- 3. Do you stand by the endorsement from Equality PA? Do the views of Equality PA reflect your worldview?**

Response: Yes, I appreciated the endorsement from Equality PA, at the time I was running for election in 2013. While I am not familiar with any of current statements of Equality PA, at the time of my election in 2013, my recollection is that Equality PA was focused on anti-discrimination efforts for the LGBTQ community and the legality of marriage equality. Their focus at that time was subsequently endorsed by the United States Supreme Court in their decisions in *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020) and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2018).

- 4. Please provide more detail regarding your summer studying at the Leningrad Polytechnic Institute, specifically:**

- a. Your activities while studying at the Leningrad Polytechnic Institute.**

Response: I chose to study at the Leningrad Polytechnic Institute in the summer of 1990 because at that time Russia was an emerging democracy. I attended classes and experienced the city with the other students in my program.

- b. **The courses you enrolled in while studying at the Leningrad Polytechnic Institute.**

Response: I attended two classes daily. One was Russian language and I do not recall the subject of the other class.

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

Response: Yes.

6. **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.**

7. **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. It is not 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.

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 additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No. It is not 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.

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

Response: The Constitution is a domestic document and therefore foreign law has no applicability to its interpretation. If confirmed, and I were to have a case in which I needed to interpret a provision of the Constitution, I would start with the plain meaning

of the text, as well as Supreme Court and Third Circuit precedent and then, if necessary, the original intent.

10. **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. A judge is obligated to have fidelity to the law. I am bound by the law and the precedent established and I am required to apply the law fairly, equally and impartially. My values and personal views have no place in my application of the law.

11. **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. It is the responsibility of Congress to transform an international-law norm into domestic law. *See Medellin v. Texas*, 128 S. Ct. 1346, 1369 (2008).

12. **Please define the term “prosecutorial discretion.”**

Response: Prosecutorial discretion is defined as “[a] prosecutor’s power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” *Black’s Law Dictionary* (12th ed. 2024).

13. **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. Judges are obligated to have fidelity to the law and to comply with the established precedent. This is the approach I have employed as a state court judge and if I am confirmed, I will faithfully apply the precedent established by the Supreme Court and the Third Circuit when addressing cases before me as a district court judge.

14. **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.

15. **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.

16. **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 in federal custody may seek relief by direct appeal to the Court of Appeals under 28 U.S.C. §1291; a motion to vacate, set aside, or correct the sentence under 28 U.S.C. §2255; a petition for a writ of habeas corpus under 28 U.S.C. §2241; or a motion for compassionate release under 18 U.S.C. §3582(c).

17. **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: These cases were consolidated as both raised the question of whether higher education institutions could use race as an admission standard. In these cases Students for Fair Admissions, Inc. sued Harvard College and University of North Carolina claiming the institutions admissions standards were discriminatory against Asian-American applicants in favor of white applicants in violation of Title VI of the Civil Rights Act of 1964. Using a strict scrutiny analysis the Supreme Court held that the admissions programs of these institutions violated the Equal Protection Clause of the Fourteenth Amendment as the universities could not demonstrate their compelling interest in a measurable way and that these admissions practices were not narrowly tailored as there was no logical end point when race based admissions would cease. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* and *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 143 S. Ct. 2141 (2023).

18. **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: Since becoming a judge in 2014 I have been responsible for hiring my staff which includes a judicial assistant, court criers, law clerks, and interns. For a couple of years at the Philadelphia District Attorney's Office, I was on the hiring committee where I was part of the panel interview process.

19. **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.

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

Response: No.

21. **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, not to my knowledge.

**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.**

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

Response: Yes. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

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

Response: A website designer challenged Colorado's Anti-discrimination Act and sought an injunction to prevent Colorado from requiring her to create wedding websites for same-sex couples as this violates her belief that a marriage is between a man and a woman. The Supreme Court held that plaintiff's creative speech used in creating these websites was protected by the First Amendment and she could not be compelled to create expressive speech or designs that violated her religious beliefs. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023).

24. 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. This case has not been overturned and in fact was referenced in *303 Creative LLC v. Elenis* in support of the point that the government cannot compel speech which would contravene one’s own beliefs. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2311 (2023) (quoting *W. Virginia State Bd. of Educ. v. Barnette*, 63 S. Ct. 1178, 1187 (1943)).

25. **How would you determine whether a law that regulates speech is “content-based” or “content-neutral”? What are some of the key questions that would inform your analysis?**

Response: The initial question that would inform my analysis is whether the law in question is trying to regulate the substance of the speech or whether the law applies to the speech regardless of the substance. The Supreme Court distinguished between content-based and content-neutral speech in *City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022). The level of scrutiny analysis depends on whether the speech is content-based or content-neutral. If the law addresses content-based speech then it must satisfy a strict scrutiny analysis. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). Content neutral laws are subject to intermediate scrutiny. *Ward v. Rock Against Racism*, 109 S. Ct. 2746 (1989) citing *Clark v. Community for Creative Non-Violence* 104 S. Ct. 3065 (1984).

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

Response: “Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals” is considered a true threat and not protected by the First Amendment. *Virginia v. Black*, 123 S. Ct. 1536, 1548 (2003) (quoting *Watts v. United States*, 89 S. Ct. 1399 (1969)). The Court in *Virginia* further elaborated that a true threat occurs “where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 1539. The Supreme Court recently elaborated on this in *Counterman v. Colorado*, holding that in order to convict a person of making true threats, the government must prove that the speaker had a subjective understanding that the person to whom his words were directed would perceive them as threatening. *Counterman v. Colorado*, 143 S. Ct. 2106 (2023).

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

Response: In *Pullman-Standard v. Swint*, the Supreme Court recognized the “vexing nature of the distinction between questions of fact and questions of law.” *Pullman-Standard v. Swint*, 102 S. Ct. 1781, 1789 (1982). Generally, the Court found a “question of fact” to involve a “basic or historical fact—addressing questions of who did what, when or where, how or why.” *U.S. Bank Nat. Ass’n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Where “questions of law” refers to the application of a legal standard to settled facts. *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1072 (2020).

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

Response: The factors listed in this question are four of the seven sentencing factors addressed 18 U.S.C. §3553(a). If confirmed, I will be required to consider all of the sentencing factors and cannot give greater weight to any of the considerations identified in this statute.

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

Response: As a federal judicial nominee, the Canons in the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent. If confirmed, I will faithfully apply all binding precedent from the Supreme Court to the matters before me.

- 30. 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 federal judicial nominee, the Canons in the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent. If confirmed, I will faithfully apply all binding precedent from the Third Circuit to the matters before me.

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

Response: 18 U.S.C. §1507 states “[w]hoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such

intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.”

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

Response: I am unaware of any Supreme Court or Third Circuit decision holding that 18 U.S.C. §1507 is unconstitutional. The Supreme Court did uphold a Louisiana statute which was modeled after 18 U.S.C. §1507. *Cox v. Louisiana*, 85 S. Ct. 476 (1965). I am precluded, further, by the Canons in the Code of Conduct for United States Judges from commenting on whether a statute is unconstitutional.

**33. 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, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. However, consistent with the practice of prior judicial nominees, because the question of *de jure* segregation is unlikely to ever be relitigated, I believe I may state my opinion that it was correctly decided.

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. However, consistent with the practice of prior judicial nominees, because the constitutionality of interracial marriage is unlikely to ever be relitigated, I believe I may state my opinion that it was correctly decided.

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

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

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. I can state that in 2022, the Supreme Court overturned *Roe v. Wade* with its decision in *Dobbs v. Jackson*



*Women's Health Organization*, and *Dobbs* is binding precedent. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If confirmed, I will faithfully follow and apply *Dobbs v. Jackson Women's Health Organization*.

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. I can state that in 2022, the Supreme Court overturned *Planned Parenthood v. Casey* with its decision in *Dobbs v. Jackson Women's Health Organization*, and *Dobbs* is binding precedent. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If confirmed, I will faithfully follow and apply *Dobbs v. Jackson Women's Health Organization*.

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

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

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

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

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *McDonald v. City of Chicago*.

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

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

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *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, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *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, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *303 Creative LLC v. Elenis*.

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

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court reaffirmed that the right to keep and bear arms is a fundamental right provided by the Second Amendment. I would apply the precedent established by the Supreme Court when evaluating whether or not a regulation or statutory provision infringes on a Second Amendment right and apply a strict scrutiny analysis. *New York State Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

35. **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.

36. **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.

**37. 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.

**38. 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.

**39. 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.

40. **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.

41. **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.

42. **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.

- 43. 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: I submitted an application for a vacancy on the Eastern District of Pennsylvania in November 2023. I interviewed with Senator Casey and Fetterman's joint Judicial Commission on January 26, 2024. On May 20, 2024, I was contacted by Senator Casey's office asking me to interview with his staff. I interviewed with Senator Casey's staff the next day. On May 23, 2024, I interviewed with Senator Casey. On May 28, 2024, I was told my application was being sent to Senator Fetterman for his consideration. I was notified by Senator Casey on June 5, 2024, that he and Senator Fetterman were jointly recommending me to the White House. I interviewed with attorneys from the White House Counsel's office on June 7, 2024. Since that date, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On July 3, 2024, the President announced his intent to nominate me.

- 44. 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.

- 45. 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.

- 46. 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.

- 47. 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.



**48. 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.

**49. 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.

**50. 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.

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

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

Response: No. I made the decision regarding which cases to include in my questionnaire.

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

Response: Please see the answer to question #43.

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

Response: On August 7, 2024, I received these questions from the Office of Legal Policy (“OLP”). Upon receipt of these questions, I drafted my responses and sent them to OLP.

**Senate Judiciary Committee  
Nominations Hearing  
July 31, 2024  
Questions for the Record  
Senator Amy Klobuchar**

Gail Weilheimer, nominee to be U.S. District Judge for the Eastern District of Pennsylvania

Since 2014, you have served as a Judge on the Montgomery County Court of Common Pleas. In this capacity you have been assigned to every adult division including the criminal court, civil division, and the family court. You have presided over more than 500 trials that have gone to verdict and issued nearly 200 written orders since you joined the bench.

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

Response: Being a state trial court judge has taught me how to manage a courtroom, to efficiently address a voluminous caseload, be well prepared for cases involving any legal issue that may come before me and to articulate my rulings in a way that instills confidence in the system. For each case that I preside over, I am focused on the fact that for the individual litigants and jurors, while their case is one of thousands for me, for them, this case is of the utmost importance to their lives and is likely to be their only contact with the judicial system. My courtroom management works to ensure that the participants leave the courtroom feeling that all voices were heard and that justice was served.

The skills which I have mastered over the past ten years are translatable to being a federal district court judge. The additional benefit to being a federal district court judge is the comparatively reduced caseload. I currently have close to 6000 civil cases assigned to me in addition to my competency court docket. As the volume in federal court is significantly less than that of my state court docket, I will have the opportunity to dive deeper into each of my assigned cases and ensure that each one is efficiently marshalled through the system.

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

Response: There are winners and losers in court, but it is my goal that, regardless of the outcome, people do not feel intimidated by the process. I treat every person who appears before me with respect. I ensure that all voices are heard. I am well prepared for every case. Each case is addressed efficiently and my decisions and the underlying reasoning for my decisions are transparent. What I have found over the past decade of presiding over every type of state court case is that adhering to this process has consistently instilled confidence in the system among the litigants and their lawyers.

**Senator Hirono Questions for the Record for the July 31, 2024, Hearing in the Senate Judiciary Committee entitled “Nominations.”**

**QUESTIONS FOR GAIL ALLISON WEILHEIMER**

***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**  
**Gail A. Weilheimer to be United States District Judge for the Eastern District of**  
**Pennsylvania**

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

Response: My judicial philosophy is that while there are winners and losers in court, it is my goal that, regardless of the outcome, people do not feel intimidated by the process. I treat every person who appears before me with respect. I ensure that all voices are heard. I am well prepared for every case. Each case is addressed efficiently and my decisions and the underlying reasoning for my decisions are transparent.

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

Response: I would start with the plain meaning of the statute itself, as well as any Supreme Court and Third Circuit precedent. If the language of the statute is unambiguous, the inquiry ends with its plain meaning at the time of enactment. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020). If there were ambiguous terms in the statute for which there is no precedent, I would consider the canons of construction as authorized by the Supreme Court and Third Circuit, as well as legislative history within the bounds established by the Supreme Court and the Third Circuit.

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

Response: I would start with the plain meaning of the constitutional provision, as well as any Supreme Court and Third Circuit precedent. If it is necessary to consider the original intent of the Founders, I would be guided by the Supreme Court's analysis in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and *Crawford v. Washington*, 124 S. Ct. 1354 (2004). ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning.")

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

Response: Please see response to Question 3.

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: I give significant weight to the plain meaning of the text of a statute. Courts are required to "presume that [the] legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 112 S.

Ct. 1146, 1149 (1992). In interpreting a statute, the court’s purpose is to give effect to Congress’s intent. *B&G Const. Co., Inc. v. Director, Office of Workers’ Compensation Programs*, 662 F.3d 233 (3rd Cir. 2011). Courts can presume that Congress expressed its intent through the plain language of the statute and where statutory language is plain and unambiguous courts rarely need to inquire into the meaning of a statute beyond examining its wording. *Id.*

**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 Constitution and federal statutes are generally interpreted according to how they would have been understood at the time of ratification or enactment. See *New York State Rifle & Pistol Ass’n v. Bruen*, 143 S. Ct. 2111, 2127 (2022); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) (“A statute [should be read] in accord with the ordinary public meaning of its terms at the time of its enactment.”) “Although the text of the constitution is fixed the Constitution can and must apply to circumstances beyond those that the Founders anticipated.” *NY Rifle Ass’n*. at 2132. For example, in *Kyllo v. United States* the Supreme Court was faced with determining whether the government’s use of thermal imaging to measure heat emanating from a home was a search. Our Founding Fathers could not have contemplated the existence of this technology. In conducting their analysis, the Supreme Court applied the plain language and original intent of the Fourth Amendment to this modern technology in finding its use an unconstitutional search. *Kyllo v. United States*, 121 S. Ct. 2038 (2001).

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

Response: To establish standing in accordance with Article III, §2, cl. 1, a plaintiff must demonstrate he/she has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); See also *Township of Lyndhurst, New Jersey v. Priceline.com Inc.*, 657 F.3d 148, 154 (3rd Cir. 2011).

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

Response: Yes. The Necessary and Proper Clause of the Constitution empowers Congress to “make all Laws which shall be necessary and proper for carrying into Execution” the powers “vested by” the Constitution. U.S. Const., Art. 1, §1, cl. 18. In *McCullough v. Maryland*, in finding that Congress had the authority to create a national bank, the Supreme Court held that Congress has implied powers beyond those specifically enumerated. 17 U.S. 316 (1819).

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

Response: The Supreme Court held that “[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2598 (2012). If confirmed, and tasked with determining whether Congress has appropriately exercised its enumerated or implied power, I will apply binding precedent from the Supreme Court and the Third Circuit.

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

Response: The Ninth Amendment providing that “[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people” provides that the Constitution does not establish a comprehensive list of rights. U.S. Const. amend. IX. The Supreme Court has “regularly observed that the Due Process Clause specifically protects those 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*, 117 S. Ct. 2258, 2268 (1997). In this case, the Court listed their prior rulings in which they protected specific freedoms beyond those established the Bill of Rights. Those include the right to marry, the right to have children, the right to direct the education and upbringing of one’s children, the right to marital privacy and the right to use contraception. *Id.* at 2270.

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

Response: Please see my response to Question 9.

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

Response: *Lochner v. New York*, 25 S. Ct. 539 (1905) was overturned by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937) and is no longer established precedent; therefore, I would not apply *Lochner* when rendering a decision. Regarding the right to an abortion, the Supreme Court has held that the Constitution does not confer a right to abortion. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). *Dobbs* is the established law and, if confirmed, I will faithfully apply all Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has identified three broad categories of activities that Congress may regulate under the Commerce Clause as provided by Article I, §8, cl. 3: (1) Congress may regulate the use of the channels of interstate commerce; (2) Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce. *United States v. Morrison*, 120 S. Ct. 1740 (2000). “Due respect for the decisions for a coordinate branch of Government demands that [the court] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.” *Id.* citing *United States v. Lopez*, 115 S. Ct. 1624 (1995).

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 recognized race, religion, national origin, and alienage as suspect classifications that would trigger strict scrutiny. *See City of Cleburne, Tex. v. Cleburne Living Center*, 105 S. Ct. 3249 (1985); *See also City of New Orleans v. Dukes*, 96 S. Ct. 2513 (1976).

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

Response: The Framers clearly delineated the responsibility of the legislature, executive and judiciary in separate branches of government. U.S. Const. Art. I, II, III. *Marbury v. Madison* established the principal of judicial review which enabled the courts to determine if the act of another branch of government is constitutional. *Marbury v. Madison*, 5 U.S. 137 (1803). The Court has continued its judicial review as established by *Marbury v. Madison*, *see, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863 (1952), *Trump v. United States*, 144 S. Ct. 2312 (2024).

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: If confirmed and presented with a case addressing whether a branch of government exceeded its constitutional authority, I would begin by analyzing facts presented with the text of the Constitution and apply all Supreme Court and Third Circuit precedent. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863 (1952), *Trump v. United States*, 144 S. Ct. 2312 (2024).

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

Response: In the same way I instruct my jurors not to allow bias, prejudice or sympathy to affect their decision in a case, judges likewise cannot allow those factors or empathy to impact legal decision making.

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

Response: Both are improper.

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 have not studied these trends or the justification for the trajectory of the court’s decisions. If confirmed and confronted with a case addressing the validity of a federal statute, I will consider the plain meaning of the text and faithfully apply all Supreme Court and Third Circuit precedent.

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

Response: Judicial review is defined as “a court’s power to review the actions of other branches or levels of government, especially the courts’ power to invalidate legislative and executive actions as being unconstitutional.” *Black’s Law Dictionary* (12th ed. 2024). Judicial supremacy is defined 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.” *Black’s Law Dictionary* (12th ed. 2024).

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: The principle of judicial review was established in *Marbury v. Madison*, 5 U.S. 137 (1803). This continuing principle was emphatically endorsed more than 150 years later when the Supreme Court held “[i]t is emphatically the province and duty of the judicial department to say what the law is. . . . [T]he federal judiciary is supreme



in the exposition of the law of the Constitution.” *Cooper v. Aaron*, 78 S. Ct. 1401, 1409 (1958). The elected members of our government, executives and legislators are bound by an oath to support the Constitution. See Const. art. II, §1, cl. 9 (President) and Const. art. VI, cl. 3 (Congress). As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on how elected officials should comply with their oaths of office.

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: A judge is limited to applying the law to the facts that are presented. While it is important to always remember that the instant case is of the utmost importance to the parties involved, a judge’s reach is limited by the boundaries of the case presented.

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: As a district court judge, I would be obligated to follow the precedent established by the Supreme Court and Third Circuit.

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. At sentencing I would be obligated to consider the factors of 18 U.S.C. §3553(a).

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

Response: I am not familiar with the Biden Administration’s definition of equity. Black’s Law Dictionary defines equity as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right.” *Black’s Law Dictionary* (12th ed. 2024).

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

Response: Yes. Equity as defined in question 24, is fairness, impartiality and evenhanded dealing. *Black’s Law Dictionary* (12th ed. 2024). Equality is defined as the “condition of being equal.” *Id.*

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 Fourteenth Amendment requires equal protection of the law for every person. I am unaware of any Supreme Court or Third Circuit case that has addressed the Biden Administration’s definition of equity. If confirmed and presented with the question of the “guarantee of equity,” I would apply the Supreme Court and Third Circuit precedent to the facts of the case presented.

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

Response: In my more than ten years as a state court judge, I have never had the topic of systemic racism addressed in a matter before me. The Merriam-Webster dictionary 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).” *Merriam-Webster Dictionary* (11th ed. 2020).

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

Response: In my more than ten years as a state court judge, I have never had the topic of critical race theory addressed in a matter before me. Black’s Law Dictionary defines critical race theory as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.” *Black’s Law Dictionary* (12th ed. 2024).

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

Response: Please see my answers to questions 27 and 28.

**SENATOR TED CRUZ**

**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Gail Allison Weilheimer (née Zuckerman) nominated to serve as U.S. 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.

### **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. Glucksberg*, the Supreme Court articulated the test for determining whether an unenumerated right should be constitutionally protected in stating that the “right must be deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” such that “neither liberty or justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997). As a judicial nominee, the Canons of the Code of Conduct for United States Judges, precludes me from commenting further on any right that could be identified by the Supreme Court in the future. If confirmed I will faithfully follow and apply Supreme Court and Third 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: It is my judicial philosophy that people may not always agree with my decisions, but I do not want them to feel intimidated by the process. To achieve this, I treat every person who appears before me with respect. I ensure that all voices are heard. I am well prepared for every case. Each case is addressed efficiently and my decisions and the underlying reasoning for my decisions is transparent. What I have found, over the past decade of presiding over every type of state court case, is that adhering to this process has consistently instilled confidence in the system among the litigants and their lawyers.

I have not studied the judicial philosophies of the justices of the Warren, Burger, Rehnquist, or Roberts Courts, and therefore, I have not determined which philosophy is most like mine. It is my expectation that, if confirmed, I will continue to adhere to the judicial philosophy stated above.

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

Response: Originalism is the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted. *Black’s Law Dictionary* (12th ed. 2024). The Supreme Court considered the original intent of the Constitution in its rulings in *N.Y. State Rifle & Pistol Association, Inc. v. Bruen* and *Crawford v. Washington*. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022)

and *Crawford v. Washington*, 124 S. Ct. 1354 (2004). While I do not personally subscribe to a particular interpretive theory, it is my practice to always begin with the plain meaning of the text at issue. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to all questions of constitutional and statutory interpretation.

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

Response: Living constitutionalism is defined as the “doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” *Black’s Law Dictionary* (12th ed. 2024). I do not personally subscribe to a particular interpretive theory. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to all questions of constitutional and statutory interpretation including, when applicable, the Supreme Court’s ruling in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) which provides a roadmap for analyzing the original intent of a constitutional provision.

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.

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

Response: The Supreme Court has instructed that when interpreting the Constitution, the courts are to use the “normal meaning” of the text known and understood by the public at the time of ratification and to apply the ordinary usage of those words. *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). The Supreme Court endorsed this same analysis when it interprets a statute, when it stated that it “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment.” *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

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

Response: No. The meaning of the Constitution does not change absent an amendment through the process established in Article V, but the applicability may extend beyond that which the Framers could have contemplated. For example in *Kyllo v. United States* the Supreme Court was faced with determining whether the government’s use of thermal imaging to measure heat emanating from a home was a search. *Kyllo v. United States*, 121 S. Ct. 2038 (2001). Our Founding Fathers could not have contemplated the existence

of this technology. In conducting their analysis the Supreme Court applied the plain language and original intent of the Fourth Amendment to this modern technology in finding its use an unconstitutional search. *Id.* “Although [the Constitution’s] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

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 judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *Dobbs v. Jackson Women’s Health Organization*.

10. **Is the Supreme Court’s ruling in *Cooper v. Aaron* settled law?**

Response: Yes.

a. **Was it correctly decided?**

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

11. **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 judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *New York Rifle & Pistol Association v. Bruen*.

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

Response: Yes.

**a. Was it correctly decided?**

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. However, consistent with the practice of prior judicial nominees, because the question of *de jure* segregation is unlikely to ever be relitigated, I believe I may state my opinion that it was correctly decided.

**13. 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 judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case was correctly decided. If confirmed, I will faithfully follow and apply *Students for Fair Admissions v. Harvard*.

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

Response: Yes.

**a. Was it correctly decided?**

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

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

Response: There is a rebuttable presumption of pretrial detention in cases where the defendant has previously been convicted of particular offenses which include certain crimes of violence, crimes for which the maximum term of imprisonment is 10 years or more as prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, the Maritime Drug Law Enforcement Act, crimes for which the maximum sentence is life imprisonment or death, drug offenses for which the maximum sentence is 10 years or more, certain offenses involving minor victims, certain offenses involving human trafficking, certain criminal conspiracies to harm people or property abroad, and certain acts of terrorism. A defendant may also face a rebuttable presumption of pretrial detention if he committed an offense while already on pretrial release. 18 U.S.C. §3142(e)(2)(3).

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

Response: Pursuant to 18 U.S.C. § 3142(e)(1), pretrial detention is appropriate to assure the appearance of the defendant as required and to protect the public.

16. **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. The Religious Freedom Restoration Act has been held to protect the free exercise rights of religious organizations and businesses. See *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). Additionally, the Supreme Court has held that a cake shop owner could not be compelled to create a wedding cake for the wedding of a same-sex couple in violation of the owner’s sincerely held religious beliefs, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018) nor could a website designer be compelled to create expressive designs or creative speech that were in violation of her religious beliefs. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023).

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

Response: Government regulations that discriminate on the basis of religion must satisfy strict scrutiny. *Tandon v. Newsom*, 141 S. Ct. 1295 (2021); *Epinoza vs. Montana Dept. of Revenue*, 140 S. Ct. 2246 (2020). A law that restricts religious organizations or individuals must be narrowly tailored in pursuit of the government’s interests. *Tandon* at 1296.

18. **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: During the height of the COVID-19 pandemic, attendance at religious services within the “red zone,” the area of greatest transmissibility, were restricted to a greater degree than secular activities. The Roman Catholic Diocese and two Orthodox synagogues filed for a preliminary injunction to bar these restrictions claiming the restrictions were in violation of their First Amendment rights. The Supreme Court held that these applicants were entitled to a preliminary injunction as they had met the prerequisites of showing (1) likelihood of success on their First Amendment claims as the restrictions violated a “minimum requirement of neutrality”; (2) denial of relief



would lead to irreparable injury as the “loss of First Amendment freedoms for even minimal amounts of time, unquestionably constitutes irreparable injury”; and (3) granting relief would not harm the public interest as there was no claim that these religious gatherings resulted in the spread of the disease. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66-67 (2020).

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

Response: In *Tandon v. Newsom*, claiming a violation of their First and Fourteenth Amendment rights, the plaintiffs sought injunctive relief from a California regulation that placed greater restrictions on indoor religious services than on indoor secular activities during the COVID-19 pandemic. *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021). The Supreme Court granted plaintiffs’ request for injunctive relief holding that government regulations “trigger strict scrutiny under the Free Exercise Clause whenever they treat any comparable secular activity more favorably than religious exercise” and found that the California regulation “treats some comparable secular activities more favorably than at-home religious exercise[.]” *Id.* at 1297.

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

Response: Yes. The Supreme Court has held that the Free Exercise Clause of the First Amendment to the Constitution protects religious exercise activities outside the walls of houses of worship and their homes. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022).

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

Response: A baker from the Masterpiece Cakeshop in Colorado refused to create a wedding cake for a same-sex couple claiming it violated his religious beliefs. The baker challenged a public accommodations law which would have compelled the baker to create a cake for a same-sex wedding celebration. The Supreme Court held that this violated the Free Exercise Clause of the First Amendment because the Commission demonstrated hostility to a religious belief or religious viewpoint. *Masterpiece Cakeshop v. Colorado C.R. Comm’n*, 138 S. Ct. 1719 (2018).

**22. 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. “It is not for [the Court] to say that their religious beliefs are mistaken or insubstantial.” *Burwell v. Hobby Lobby Store, Inc.*, 134 S. Ct. 2751 (2014). It is not within the judicial function and judicial competence to inquire whether the petitioner correctly perceived the commands of his faith. *Thomas v. Review Bd. of Indiana Employment Security Div.*, 101 S. Ct. 1425, 1431 (1981).

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

Response: As articulated by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, the federal courts' "narrow function" is to "determine whether [a plaintiff's asserted religious belief] reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2757 (2014). The Constitution "commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 113 S. Ct. 2217, 2234 (1993).

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

Response: "It is not for the Court to say that the religious beliefs of the plaintiffs are mistaken or unreasonable." *Burwell v. Hobby Lobby Stores, Inc.*, 134, S. Ct. 2751, 2757 (2014). The Constitution "commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018) citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 113 S. Ct. 2217, 2234 (1993).

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

Response: I am not familiar with the official positions of the Catholic Church.

23. **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 this matter, Catholic elementary school teachers brought actions against their former employers for employment discrimination. Finding that the employees were responsible for educating young people in their faith, which is at the very core of a private religious school's mission, the Supreme Court held that the ministerial exception, grounded in the First Amendment's religion clauses, barred the teachers' employment discrimination claims. The foundation for this ruling is that courts are bound to stay out of matters of church government, including employment disputes,

involving those who hold certain important positions with churches and other religious institutions. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

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

Response: The Supreme Court held that Philadelphia’s policy of refusing to contract with Catholic Social Services to provide foster care unless it agreed to allow same-sex couples to serve as foster parents failed strict scrutiny and violated the Free Exercise Clause of the First Amendment. *Fulton v. City of Philadelphia, Pennsylvania* 141 S. Ct. 1868 (2021).

25. **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: The Supreme Court held that Maine’s non-sectarian requirement for private school tuition assistance violated the Free Exercise Clause of the First Amendment. It specifically reasoned that a state need not subsidize private education, but once it does, it cannot preclude some schools solely because they are religious. *Carson as next friend of O. C. v. Makin*, 142 S. Ct. 1987 (2022).

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

Response: A public school’s suspension of a high school football coach for engaging in private prayer during and after football games on school property was unconstitutional as the coach’s private prayer is protected by the Free Exercise and Free Speech Clauses of the First Amendment. These protections were found to outweigh the school district’s concerns that prayer on school property violated the Establishment Clause as the coach had engaged in private speech, not government speech that was attributable to the school district. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022).

27. **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: Officials in Fillmore County, Minnesota required the Swartzentruber Amish community to install septic systems in compliance with a local ordinance. The Swartzentruber Amish community objected as this is in violation of their religious observance and therefore violated their First Amendment rights. In his concurrence, Justice Gorsuch explained that the County and courts “misapprehended RLUIPA’s

demands” and endorsed the requirement of a strict scrutiny analysis. Citing *Fulton*, he reinforced that under a strict scrutiny analysis “the government bears the burden of proving both that its regulations serve a ‘compelling’ government interest--and that its regulations are ‘narrowly tailored.’” *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430, 2432 (2021) (quoting *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1881 (2021)). It was not sufficient for the government to point to its interest in sanitation generally. The government’s interest must be stated with specificity, and in this matter the relevant question was whether government has an interest in denying an exception from the septic system requirement to the Swartzentruber Amish specifically. *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430 (2021).

28. **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: Should I be faced with interpreting this statute, I will begin with the plain meaning of the text and also consider the established Supreme Court and Third Circuit precedent. I am unaware of any Supreme Court or Third Circuit decision holding that 18 U.S.C. §1507 is unconstitutional. The Supreme Court did uphold a Louisiana statute, modeled after 18 U.S.C. §1507. *Cox v. Louisiana*, 85 S. Ct. 476 (1965). If confirmed, I will faithfully follow and apply any existing Supreme Court or Third Circuit precedent. As a judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from commenting on whether a statute is unconstitutional.

29. **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.

30. **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.

31. **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.

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

Response: The Constitution authorizes the President to make political appointments with the advice and consent of the Senate. U.S. Const. art. II, § 2. As a judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from commenting on whether the considerations of the President or the Senate are constitutional. If a matter of constitutional interpretation should come before me, I will faithfully apply Supreme Court and Third Circuit precedent.

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

Response: The racially disparate outcome of a program or policy alone is insufficient to prove purposeful racial discrimination. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 97 S. Ct. 555 (1977). “Although disparate impact may be relevant evidence of discrimination, such evidence alone is insufficient [to prove a constitutional violation] even where the Fourteenth Amendment subjects state action to strict scrutiny.” *Coleman v. Ct. of Appeals of Maryland*, 132 S. Ct. 1327, 1337 (2012). Proof of racially discriminatory intent or purpose is needed to show a violation of the Equal Protection Clause. *City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 123 S. Ct. 1389 (2003) and *Vill. of Arlington Heights*, 97 S. Ct. at 563.

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

Response: The number of justices of the Supreme Court is a matter for Congress to decide. U.S. Const. art. III § 1. If confirmed, I will faithfully apply the precedent of the Supreme Court regardless of the number of justices.

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

Response: No.

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

Response: The original public meaning of the Second Amendment permits individuals to bear arms in the home and outside the home for the purpose self-defense. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010); and *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

**37. 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: The Second Amendment prohibits firearms restrictions that are not consistent with the Nation's historical tradition of firearm regulation.

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

Response: Yes. See *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010); and *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

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

Response: No. The constitutional right to bear arms receives equal treatment to any other individual right specifically enumerated in the Constitution. See *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010).

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

Response: No. The constitutional right to bear arms receives equal treatment to any other individual right specifically enumerated in the Constitution. See *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010).

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

Response: The President of the United States swears to faithfully execute the duties of the office and to protect and defend the Constitution of the United States. US Const. art II, §2. As a judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from commenting on the merits of any matter that may come before the court. If confirmed and a case addressing the bounds of executive authority

would come before me, I will faithfully apply Supreme Court and Third Circuit precedent.

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

Response: Prosecutorial discretion is defined as “[a] prosecutor’s power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” *Black’s Law Dictionary* (12th ed. 2024). If an administrative agency wanted to make a substantive rule change it would need to adhere to the Administrative Procedure Act, 5 U.S.C. §§551-559 and specifically 5 U.S.C. §553 which addresses the rulemaking process.

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

Response: No.

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

Response: In this case, three days after the Congressionally approved nationwide eviction moratorium had expired, the Centers for Disease Control and Prevention (CDC) reimposed the moratorium. The CDC’s authority was challenged by the Alabama Association of Realtors which was seeking to have the moratorium vacated. The District Court vacated the moratorium, but stayed its ruling pending appeal. The Supreme Court vacated the stay and rendered the judgment enforceable finding that the applicants were “virtually certain to prevail on the merits of their argument that the CDC has exceeded its authority.” *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2486 (2021).

45. **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.

**Questions from Senator Thom Tillis**  
**For Gail A. Weilheimer nominated to serve as U.S. District Judge for the Eastern District of Pennsylvania**

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 interpreting and applying the law. A judge’s fidelity must be to the law.

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

Response: Impartiality is always the expectation for a judge.

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

Response: Judicial activism is a “philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, [usually] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents.” *Black’s Law Dictionary* (12th ed. 2024). Judicial activism is not appropriate and I do not adhere to this type of decision making.

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

Response: No.

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

Response: Yes, sometimes faithfully interpreting the law results in an undesirable outcome, but judges cannot pick and choose which laws to apply based on which outcome they hope to achieve. A judge must faithfully apply the law in accordance with the text and established precedent and may not allow personal feelings to impact the result.

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

Response: If confirmed and a case addressing Second Amendment rights comes before me, I will apply the established Supreme Court precedent, e.g. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), and any Third Circuit precedent.



**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 *Mullenix v. Luna*, the Supreme Court, citing its prior rulings, described the doctrine of qualified immunity as “shield[ing] officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009)). “A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Mullenix* at 308 (quoting *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012)). “Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Id.* citing *Malley v. Briggs*, 106 S. Ct. 1092, 1093 (1986). The facts of a qualified immunity inquiry must be undertaken in light of the facts of the specific context of the case. *Mullenix* at 308. The Third Circuit employs the two prong test articulated by the Supreme Court when considering whether qualified immunity shields a government official from civil liability: first, whether the facts a plaintiff has alleged make out a violation of a constitutional right; and second, whether the right was clearly established at the time of the defendant’s alleged misconduct. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074 (2011); *Kedra v. Schroeter*, 876 F.3d 424 (3d Cir. 2017); and *Mack v. Yost*, 63 F.4th 211 (3d Cir. 2023). If confirmed, I will faithfully apply all Supreme Court and Third Circuit precedent when considering the applicability of qualified immunity.

**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: The scope of qualified immunity is determined by the legislature. As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), I am precluded from commenting on whether the established law regarding qualified immunity provides sufficient protection for law enforcement officers. If confirmed, I will faithfully apply the qualified immunity laws as enacted by Congress and apply Supreme Court and Third Circuit precedent.

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

Response: The scope of qualified immunity is determined by the legislature. As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), I am precluded from providing my beliefs as to the proper scope of qualified immunity protections for law enforcement officers. If confirmed, I will faithfully apply the qualified

immunity laws as enacted by Congress and apply Supreme Court and Third Circuit precedent.

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

Response: As a judge, it is my obligation to enforce the law. Article I, §8 of the Constitution empowers Congress 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.” U.S. Const. art. I, § 8. It is this provision of the Constitution that enables Congress to grant both copyrights and patents. *Allen v. Cooper*, 140 S. Ct. 994, 1001 (2020). If confirmed, I will faithfully follow and apply all applicable statutory law as well as Supreme Court and Third Circuit precedent regarding intellectual property rights.

**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: I have been nominated to serve on the Eastern District of Pennsylvania. It is my understanding that this district uses a case management system in which cases are assigned randomly and equitably among the members of the bench. Therefore, the practice of forum shopping is unlikely to occur in this jurisdiction.

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

Response: As a judicial nominee, in accordance with the Code of Conduct for United States Judges, Canon 3(A)(6), it is improper for me to give my opinion on whether a Supreme Court case, or series of cases, are correctly decided. If confirmed, I will faithfully follow and apply Supreme Court and Third Circuit precedent.