

Senator Lindsey Graham, Ranking Member
Questions for the Record
Sarah Davenport
Nominee to be United States District Judge for the District of New Mexico

1. Are you a citizen of the United States?

Response: Yes.

2. Are you currently, or have you ever been, a citizen of another country?

- a. If yes, 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.**

Response to Question 2 and all subparts: I have never been a citizen of another country.

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

Response: No.

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

Response: No.

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

Response: It would only be appropriate for a district court judge to consider foreign law in constitutional interpretation when the Supreme Court or Tenth Circuit has so indicated. For example, the Supreme Court considered English common law while exploring the historical tradition of firearm regulation in *District of Columbia v. Heller*, 554 U.S. 570, 598-600 (2008); *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 39-44 (2022); and *United States v. Rahimi*, 144 S. Ct. 1889, 1901 (2024). If confirmed, I would not consider foreign law in constitutional interpretation unless the Supreme Court or Tenth Circuit has instructed courts to do so.

6. **Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I do not agree with this statement. If I am confirmed, I will faithfully and impartially apply all binding Supreme Court and Tenth Circuit precedent, regardless of any personal views or opinions I may have.

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

Response: Yes.

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

Response: The decision to prosecute falls under the “exclusive authority and absolute discretion” of the Executive branch. *United States v. Nixon*, 418 U.S. 683, 693 (1974). It is well-established that “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

9. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s response was: “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: No. This is not an appropriate approach for a judge to take. A federal judge must faithfully apply all binding Supreme Court and relevant Circuit Court of Appeals precedent, regardless of any personal views or opinions the judge may have.

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

Response: Yes.

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

Response: Yes.

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

Response: A federally sentenced prisoner in federal custody may seek relief by direct appeal to the Court of Appeals, or through 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). Additionally, if a prisoner has provided substantial assistance following the imposition of sentence, an attorney for the government may file a motion for a reduction in sentence pursuant to Federal Rule of Criminal Procedure 35.

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

Response: *In Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) a nonprofit organization challenged raced-based admissions programs at Harvard University and the University of North Carolina, arguing that the universities’ admissions programs were unconstitutional. The Supreme Court, applying strict scrutiny, held that the admissions programs violated equal protection because the programs lacked sufficiently focused and measurable objectives warranting the use of race, employed race in a negative manner, involved racial stereotyping, and lacked meaningful endpoints.

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

Response: Yes.

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

Response: Since July 2022, as a Supervisory AUSA, I have participated in interviewing and making hiring decision recommendations in the United States Attorney's Office in the District of New Mexico for the Las Cruces Branch Office.

- 15. Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, sex, sexuality, or gender identity?**

Response: No.

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

Response: No.

- 17. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, sex, sexuality, or gender identity?**

Response: 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.

Response: Not applicable.

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

Response: Yes, race is a suspect class and government classifications based on race are subject to strict scrutiny under the Equal Protection Clause. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023).

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

Response: A website designer in Colorado sought injunctive relief from Colorado's anti-discrimination law to prevent the state from forcing her to create websites for same-sex weddings which violated her sincerely held belief that marriage should be between one

man and one woman. The Supreme Court held that while public accommodations laws are not *per se* unconstitutional, those laws “can sweep too broadly when deployed to compel speech.” *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

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

Is this a correct statement of the law?

Response: Yes. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023).

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

Response: “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). Relevant considerations to determine whether regulations are content-based, and thus subject to strict scrutiny, include whether the law at issue explicitly regulates particular subject matter, whether it regulates speech by its function or purpose, or whether, although facially neutral, the law “cannot be ‘justified without reference to the content of the regulated speech,’ or that were adopted by the government ‘because of disagreement with the message [the speech] conveys.’” *Id.* at 163-64 (citations omitted). If I am confirmed, I will faithfully adhere to Supreme Court and Tenth Circuit precedent when analyzing whether regulated speech is content-based.

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

Response: “True threats of violence are outside the bounds of First Amendment protection and punishable as crimes.” *Counterman v. Colorado*, 600 U.S. 66, 69 (2023). To determine whether speech falls under the prohibition against “true threats,” the Court employs a recklessness standard, that is, the “speaker is aware that others could regard his statements as threatening violence and delivers them anyway.” *Id.* at 79.

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

Response: Facts are “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*, 583 U.S. 387, 394 (2018) (citing *Thompson v. Keohane*, 516 U.S. 99, 111 (1995)) (internal quotations marks omitted). In contrast, “a pure issue of law is one that could be settled once and for all and thereafter would govern numerous [cases] without any fact-bound and situation-specific aspects.” *Valdez v. Macdonald*, 66 F.4th 796, 815 (10th Cir. 2023) (citing *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 701 (2006) (internal quotation marks omitted)).

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

Response: At sentencing, a judge is required to consider each of the four factors listed above pursuant to 18 U.S.C. § 3553(a)(2). There is no indication of weight or ranking that should be applied to these factors within the statute nor am I aware of any Supreme Court or Tenth Circuit precedent that indicates any preferential ranking of these factors. If I am confirmed, I will faithfully and impartially apply all the § 3553 factors in each individual case, consistent with Supreme Court and Tenth Circuit precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Tenth Circuit’s reasoning, or whether a case before the circuit court was correctly decided.

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

Response: This section of the federal criminal code punishes anyone who “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...uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence” 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.” 18 U.S.C § 1507.

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

Response: Although the Supreme Court upheld a similar Louisiana statute that was modeled after 18 U.S.C § 1507 in *Cox v. State of La.*, 379 U.S. 559, 561 (1965), I am not aware of any Supreme Court or Tenth Circuit precedent specifically addressing the constitutionality of 18 U.S.C § 1507 itself.

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

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am ordinarily precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. However, there are certain Supreme Court decisions that are considered to be so foundational that their validity is highly unlikely to ever be challenged. Accordingly, following the precedent set by other nominees, I am able to respond that yes, *Brown v. Board of Education* was correctly decided.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am ordinarily precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. However, there are certain Supreme Court decisions that are considered to be so foundational that their validity is highly unlikely to ever be challenged. Accordingly, following the precedent set by other nominees, I am able to respond that yes, *Loving v. Virginia* was correctly decided.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. I note, however, that this case has been overturned by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), and therefore is no longer good law.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. I note, however, that this case has been overturned by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), and therefore is no longer good law.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. I note, however, that much of the reasoning of this case has been rendered obsolete by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United

States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: In *Heller*, *McDonald*, *Bruen*, and *Rahimi*, the Supreme Court has made clear that the Second Amendment guarantees an individual, law-abiding citizen the right to keep and bear arms that is separate and apart from a militia. In order to restrict this right, the government bears the burden of demonstrating that the restriction is consistent with

the Nation’s historical tradition of firearm regulations. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022).

31. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

- a. Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

32. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”

- a. Has anyone associated with Alliance for Justice, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

33. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”

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

Response: No.

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

Response: Not applicable.

- 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: Not applicable.

- 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: Not applicable.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

35. Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”

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

Response: No.

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

Response: No.

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

Response: No.

36. The Raben Group is a lobbying group that “champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work.” The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

37. The Committee for a Fair Judiciary “fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts” and is staffed by founder Robert Raben.

- a. Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

38. The American Constitution Society is “the nation’s foremost progressive legal organization” that seeks to “support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities.”

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

Response: No.

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

Response: No.

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

Response: No.

- 39. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On July 13, 2024, I submitted an initial application to Senator Martin Heinrich regarding a position on the United States District Court for the District of New Mexico. On July 15, 2024, Senator Heinrich's office contacted me and provided a secondary application form which I completed and submitted to the Senator's office on July 18, 2024. On July 29, 2024, I interviewed with Senator Heinrich's Chief of Staff and Chief Counsel, as well as Chief of Staff and Chief Counsel for Senator Ben Ray Lujan. On August 1, 2024, I interviewed with attorneys from the White House Counsel's Office. Since August 5, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 28, 2024, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

- 42. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- 43. During or leading up to your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

44. During or leading up to your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

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

Response: No.

46. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No.

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

- 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 to Question 47 and all its subparts: No one associated with the Biden Administration or Senate Democrats gave me advice about which cases to list on my committee questionnaire.

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

Response: On August 1, 2024, I interviewed with attorneys from the White House Counsel's Office. Since August 5, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 28, 2024, the President announced his intent to nominate me, and since that time I have also been in contact with attorneys from the White House Counsel's Office.

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

Response: I received these questions from the Office of Legal Policy on the afternoon of October 2, 2024. I completed a draft of answers on my own, conducting legal research and consulting my personal records as necessary. I provided the draft to an attorney from the Office of Legal Policy and had one conversation about my responses. I submitted my final answers to the Office of Legal Policy for transmission to the Senate Judiciary Committee.

**Senate Judiciary Committee
Nominations Hearing
September 25, 2024
Questions for the Record
Senator Amy Klobuchar**

Question for Sarah Morgan Davenport, to be a U.S. District Judge for the District of New Mexico

Since 2006, you have served in the U.S. Attorney's Office for the District of New Mexico. You currently serve as a Supervisory Assistant U.S. Attorney where you manage the prosecution of a wider range of federal criminal offenses including firearms, drug trafficking, white collar, and violent crime cases.

- **What motivated you to become a federal prosecutor and what cases are you most proud of?**

Response: I started law school after having served as a volunteer Court Appointed Special Advocate for children in foster care and with the expectation that I would continue that kind of work as a state prosecutor. I took advantage of an interesting summer opportunity to volunteer as a law student for the United States Attorney's Office (USAO) after my 1L year which led to other job opportunities with the office. Throughout my early experiences with the USAO, I was drawn to the level of excellence and integrity I saw Assistant United States Attorneys (AUSAs) expect of themselves and of the agents with whom they worked. The federal prosecutors I worked with were diligent, thoughtful, and their work had meaningful impact on the safety of our community. I wanted to be a part of that kind of work for my community and my country and took every offered opportunity until I realized that goal.

I am very proud of all my work on behalf of the United States for more than 16 years. As I look at my body of work, rather than specific cases that stand out, what I am most proud of is the impact on safety for communities, families, and defendants that the agents I have worked with and I have been able to achieve, as sampled in the cases in my Senate Judiciary Questionnaire, but in myriad other cases and moments, as well. I have been privileged to argue for sentences that would meaningfully reflect the harm that has been done to specific victims and because of specific crimes. I have participated in cases that dismantled a violent gang and returned safety to neighborhood streets in southern New Mexico. I have helped agents disrupt the operations of drug smuggling organizations pouring methamphetamine, heroin, cocaine, and fentanyl into our communities. There are many other collateral results often not in the public record. I have witnessed countless defendants explain at sentencing how they would be dead but for being prosecuted, or how they finally felt like themselves again because they took the opportunity to get clean when they were arrested. Others repaired relationships with their children and families and began working in earnest to prepare for a law-abiding life following their prison sentences. As a supervisor, I have trained, mentored, and supported other AUSAs to do the same. In these and many other ways, I am honored to know that the work I have done every day made measurable impact for good in the lives of people in my community.

Senator Mike Lee
Questions for the Record
Sarah Morgan Davenport to be United States District Judge for the District of New Mexico

1. How would you describe your judicial philosophy?

Response: If I am confirmed, I will diligently research the applicable law, give the parties a full opportunity to be heard, consider their arguments with an open mind, and then faithfully apply the law to the facts consistent with Supreme Court and Tenth Circuit precedent.

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

Response: Statutory interpretation begins with the text and if it is clear, that is also where the inquiry ends. “When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020). If the statute is unclear, I would look to Supreme Court and Tenth Circuit precedent interpreting the statute, and if none, to precedent interpreting as closely analogous statutes as is available. If that still does not answer the question, I would turn to the canons of construction. Finally, if there were still a question, I would look to legislative history to the extent Supreme Court and Tenth Circuit precedent permits.

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

Response: Interpretation of constitutional provisions begins with the text. As the Supreme Court has said, “we are guided by the principle that [t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (citation and internal quotation marks omitted). If the text is unclear, I would look to Supreme Court and Tenth Circuit precedent interpreting the provision, and if none, to precedent interpreting as closely analogous provisions as is available. If that still does not answer the question, I would turn to the canons of construction.

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

Response: The public understanding at the time of enactment is “a critical tool of constitutional interpretation.” *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (citing *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008)). “Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller* at 634-635. The “Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its

enactment.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020). An exception to this rule is analysis of the Eighth Amendment. Whether punishment violates the Constitution is “judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the ‘Bloody Assizes’ or when the Bill of Rights was adopted, but rather by those that currently prevail.” *Atkins v. Virginia*, 536 U.S. 304, 311 (2002).

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: Statutory interpretation begins with the text and if it is clear, that is also where the inquiry ends. “When the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest. Only the written word is the law, and all persons are entitled to its benefit.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020). If I am reading a statute, I will begin with the plain meaning of the text. If it is clear and unambiguous, that will end my inquiry.

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: Please see my answer in Question 4 above.

6. What are the constitutional requirements for standing?

Response: Article III’s standing requirements are well-established. A plaintiff must show injury in fact, that the injury was caused by the defendant, and that the injury is likely to be remedied by the relief sought in the legal action. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

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

Response: “The Constitution creates a Federal Government of enumerated powers.” *United States v. Lopez*, 514 U.S. 549, 552 (1995). Beyond Congress’ specifically enumerated powers in Article I of the Constitution, Congress is granted the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” U.S. Const. art. I, § 8, cl. 18. However, in exercising its authority under the Necessary and Proper clause of Article I, Congress’ power must be “reasonably adapted and narrowly tailored means of pursuing the Government’s legitimate interest.” *United States v. Comstock*, 560 U.S. 126, 148 (2010).

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: Although the Necessary and Proper Clause of Article I of the Constitution grants Congress the authority to enact a broad range of laws, when determining a particular law's constitutionality, courts evaluate whether the statute "is rationally related to the implementation of a constitutionally enumerated power." *United States v. Comstock*, 560 U.S. 126, 134 (2010). In analyzing the constitutionality of a statute, I would follow Supreme Court and Tenth Circuit precedent, looking to see whether Congress' exercise of this power is "reasonably adapted and narrowly tailored means of pursuing the Government's legitimate interest." *Id.* at 148.

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

Response: The Constitution provides substantive due process for fundamental rights enumerated in the Bill of Rights and certain unenumerated rights that are "deeply rooted in the Nation's history and traditions...and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citation omitted). These include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and to travel, *Saenz v. Roe*, 526 U.S. 489 (1999). In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on any other potential unenumerated rights that may be litigated in the future. If I am confirmed and consider a claim that an unenumerated right exists that has not been already recognized by the Supreme Court, I will apply the factors outlined in *Glucksberg* and any other relevant Supreme Court and Tenth Circuit precedent.

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: The Supreme Court overruled *Roe v. Wade* and made clear that substantive due process does not extend to the right to abortion in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Similarly, the reasoning of *Lochner v. New York* has also been overruled. *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963).

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

Response: The Supreme Court has upheld Congress' power to regulate the channels of interstate commerce, regulate and protect instrumentalities of interstate commerce, and regulate activity that substantially affects interstate commerce. *United States v.*

Lopez, 514 U.S. 549 (1995). However, the Court has “reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” *United States v. Morrison*, 529 U.S. 598, 617 (2000).

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 identified four suspect classifications: race, religion, national origin, and alienage. *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). In assessing whether a class is defined by “the traditional indicia of suspectness[,]” courts look to whether the class is “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973).

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

Response: The separation of powers embodied by the creation of our Constitution is fundamental. Congress makes the laws. Courts determine what the law is as it applies to actual cases in controversy. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Executive branch enforces the laws. This framework of co-equal branches of government ensures that no single branch becomes all powerful, but rather that all provide for balance with the others.

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 a case involving a claim that one branch of government overstepped its Constitutional authority, I would begin with the relevant text of the Constitution, I would diligently research any Supreme Court or Tenth Circuit precedent addressing the authority at issue, and I would apply the law to the facts consistent with any binding precedent.

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

Response: A judge should treat everyone with dignity and respect. However, cases must be decided based on the application of the law without fear or favor and regardless of any personal opinions or beliefs the judge may have.

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

Response: Neither of these scenarios is legally permissible.

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

Response: I am not familiar with these statistics nor with the history or potential reasons for any increase in the invalidation of federal statutes. As a district court judge, when making decisions in the cases that come before me, I will diligently research the law, consider the facts with an open mind, and faithfully apply Supreme Court and Tenth Circuit precedent.

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

Response: Judicial review is the constitutional authority of the federal courts to review the laws and policies of the legislative and executive branches of our government. *Marbury v. Madison*, 5 U.S. 137 (1803). Black's Law Dictionary defines "judicial supremacy" as "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. 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 Constitution requires that "The Senators and Representatives before mentioned...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution[.]" U.S. Const. art. VI. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: 'If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery.'" *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (citation omitted).

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: In Federalist 78, Hamilton expounded on the importance of the independence of the judiciary and a tenure “during good behavior” as vitally important to securing that independence. The Framers of the Constitution created it so that judges would “construe the law with clear heads ... and honest hearts, not with an eye to policy preferences that had not made it into the statute.” *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2268 (2024) (internal quotation and citation omitted). The essential point is that so long as the judiciary remains wholly distinct from the executive and legislative branches, it will serve to hold their power in check and to protect the Constitution and the rights of individual citizens. And that the judiciary, having no power to direct the “sword or the purse” will pose no threat to either the integrity of the Constitution or the rights of the citizenry. The Federalist, No. 78.

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: Lower courts must follow Supreme Court precedent that directly applies to a case, “leaving to [the Supreme] Court the prerogative of overruling its own decisions. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation omitted). As a district court judge, if I am lucky enough to be confirmed, I will be obligated to follow Supreme Court and Tenth Circuit precedent regardless of any perspective I may have that would question that precedent.

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: These group identities have no place in a judge’s sentencing analysis. In determining what sentence is justified, “[a] district court should begin by correctly calculating the applicable Guidelines range...[then] the judge should consider all of 18 U.S.C. § 3553(a)’s factors” in fashioning an individualized sentence. *Gall v. United States*, 552 U.S. 38, 39 (2007).

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 or the context in which this definition was stated. Black’s Law Dictionary defines equity as “Fairness; impartiality; evenhanded dealing.” Black’s Law Dictionary (12th ed. 2024). If I am confirmed, I will seek to apply the law to the facts of each case, consistent with Supreme Court and Tenth Circuit precedent.

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

Response: Black’s Law Dictionary defines equity as “Fairness; impartiality; evenhanded dealing” and equality as “The quality, state, or condition of being equal; esp., likeness in power or political status.” Black’s Law Dictionary (12th ed. 2024).

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

Response: The Constitution, through the 14th Amendment prevents the State from denying “any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. The Amendment does not include any reference to equity. If I am confirmed, I will faithfully apply Supreme Court and Tenth Circuit precedent when analyzing the Equal Protection Clause.

27. How do you define “systemic racism?”

Response: 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).” I do not have a personal definition of “systemic racism.” It is not a term that I use or a concept with which I am familiar.

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

Response: 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). I do not have a personal definition of “critical race theory.” It is not a term that I use or a concept with which I am familiar.

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

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

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

Questions for the Record for Sarah Morgan Davenport nominated to serve as U.S. District Judge for the District of New Mexico

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: The Supreme Court has upheld Constitutional protection for rights, beyond the fundamental rights enumerated in the Bill of Rights, that are “deeply rooted in the Nation’s history and tradition...and implicit in the concept of ordered liberty.”

Washington v. Glucksberg, 521 U.S. 702, 721 (1997) (citation and internal quotations marks omitted). These include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and to travel, *Saenz v. Roe*, 526 U.S. 489 (1999). In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on any other potential unenumerated rights that may be litigated in the future. If I am confirmed and consider a claim that an unenumerated right exists that has not been already recognized by the Supreme Court, I will apply the factors outlined in *Glucksberg* and any other relevant Supreme Court and Tenth 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: If I am confirmed, I will diligently research the applicable law, give the parties a full opportunity to be heard, consider their arguments with an open mind, and then faithfully apply the law to the facts consistent with Supreme Court and Tenth Circuit precedent.

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

Response: The Supreme Court has considered original meaning to interpret the Constitution. For example, in determining the correct way to interpret the Second Amendment, the Supreme Court held that to determine whether a firearms regulation is constitutional, the proper “test [is] rooted in the Second Amendment’s text, as informed by history,” and proof the regulation “is part of the historical tradition” surrounding the right. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022). This is consistent with the Supreme Court’s prior approach to firearms regulations in *District of Columbia v. Heller*, 554 U.S. 570 (2008), as well as its consideration of the Confrontation clause in *Crawford v. Washington*, 541 U.S. 36 (2004). When deciding

issues of constitutional interpretation, I will follow applicable Supreme Court and Tenth Circuit precedent to determine and apply the proper framework.

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

Response: I understand a “living constitutionalist” to be someone who believes the Constitution evolves and changes over time. However, I am unaware of any Supreme Court or Tenth Circuit precedent which applies this theory to constitutional interpretation. When deciding issues of constitutional interpretation, I will follow applicable Supreme Court and Tenth Circuit precedent.

6. If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: Yes. “Constitutional analysis must begin with the language of the instrument.” *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 235 (2022) (citation and internal quotation marks omitted). If I am deciding the interpretation of a constitutional provision for which there is no Supreme Court or Tenth Circuit precedent, I will begin with the plain meaning of the text. If it is clear and unambiguous, that will end my inquiry.

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 public understanding at the time of enactment is “a critical tool of constitutional interpretation.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (citing *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008)). “Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller* at 634-635. The “Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020). An exception to this rule is analysis of the Eighth Amendment. Whether punishment violates the Constitution is “judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the ‘Bloody Assizes’ or when the Bill of Rights was adopted, but rather by those that currently prevail.” *Atkins v. Virginia*, 536 U.S. 304, 311 (2002).

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

Response: The Constitution was created to endure and its meaning, though “fixed according to the understanding of those who ratified it,” is also meant to apply beyond the circumstances they anticipated. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*,

597 U.S. 1, 28 (2022). The Constitution itself can only be changed through the Article V amendment process.

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: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: Yes.

a. Was it correctly decided?

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court’s reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: Yes.

a. Was it correctly decided?

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am ordinarily precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. However, there are certain Supreme Court decisions that are considered to be so foundational that their validity is highly unlikely to ever be challenged. Accordingly, following the precedent set by other nominees, I am able to respond that yes, *Brown v. Board of Education* 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: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

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

Response: Yes.

a. Was it correctly decided?

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If I am confirmed, I will faithfully apply this binding Supreme Court precedent.

15. Is the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* settled law?

Response: Yes.

a. Was it correctly decided?

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on the quality of the Supreme Court's reasoning, or whether a case before the United States Supreme Court was correctly decided. If

I am confirmed, I will faithfully apply this binding Supreme Court precedent.

16. Is it appropriate for courts to defer to an agency interpretation of a law when a statute is ambiguous?

Response: No. The Administrative Procedure Act requires courts to exercise their independent judgment, rather than defer to an agency interpretation, when determining whether the agency has acted within its authority when a statute is ambiguous. *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). Thus, *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and the resulting doctrine set forth in this question, is overruled.

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

Response: Pursuant to 18 U.S.C. § 3142(e)(3), Congress has set forth a rebuttable presumption that no condition or combination of conditions can assure the presence of a defendant at trial nor the safety of the community when a defendant is charged with certain offenses. This presumption applies to drug trafficking offenses with a maximum prison sentence of 10 years or more, certain firearms offenses related to drug trafficking or crimes of violence, offenses involving kidnapping or child exploitation, international kidnapping or murder conspiracy, terrorism offenses, and offenses related to peonage, slavery, or sex trafficking.

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

Response: This rebuttable presumption is based on ensuring the safety of the community and the defendant's return to court for future proceedings as required.

18. 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. A law that interferes with the free exercise of religion, and is not neutral towards religion, must withstand strict scrutiny – it must be justified by a compelling government interest and narrowly tailored to address that interest. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 531 (1993). The Religious Freedom Restoration Act protects against a substantial burden upon the exercise of religion. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020). Small businesses operated by observant owners, and closely held for-profit corporations are also protected. See *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

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

Response: The government “cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 638 (2018).

20. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Tandon v. Newsom*.

Response: In *Tandon v. Newsom*, the Supreme Court granted emergency injunctive relief from California’s restrictions on at-home religious gatherings, finding that the restrictions were not neutral and generally applicable, and violated the Free Exercise clause, because they treated comparable secular activities more favorably than religious activities. *Tandon v. Newsom*, 593 U.S. 61, 64 (2021).

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

Response: Yes. The Free Exercise and Free Speech clauses of the First Amendment protect an individual engaging in a personal religious observance from government interference or reprisal. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022).

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

Response: The Colorado Civil Rights Commission found that a baker who objected to making a wedding cake for a same-sex marriage ceremony violated the state’s anti-discrimination law. Upon review, the Supreme Court found evidence of “a clear and impermissible hostility toward the sincere religious beliefs” of the baker. *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 634 (2018). By failing to act in a manner neutral towards religion, the Colorado Civil Rights Commission violated the First Amendment. While “the baker, in his capacity as the owner of a business serving the public, might have his right to the free exercise of religion limited by generally applicable laws...” such a limitation that includes religious hostility as a factor on the part of the State violates the Free Exercise clause. *Id.* at 625.

23. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *303 Creative LLC v. Elenis*.

Response: A website designer in Colorado sought injunctive relief from Colorado’s anti-discrimination law to prevent the state from forcing her to create websites for same-sex weddings which violated her sincerely held belief that marriage should be between one man and one woman. The Supreme Court held that while public accommodations laws are not *per se* unconstitutional, those laws “can sweep too broadly when deployed to compel speech.” *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

24. Under existing doctrine, are an individual’s religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes. The First Amendment protects beliefs that are rooted in religion. “Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protections.” *Thomas v. Review Board of the Indiana Emp’t Security Division*, 450 U.S. 707, 714 (1981). And an individual need not “be responding to the commands of a particular religious organization.” *Frazee v. Ill. Dep’t of Emp’t Sec.*, 489 U.S. 829, 834 (1989). The question is whether an individual’s beliefs are sincerely held. *Id.* Under Tenth Circuit precedent, “[t]he inquiry into the sincerity of a free-exercise plaintiff’s religious beliefs is almost exclusively a credibility assessment” and can rarely be resolved through a dispositive motion. *Kay v. Bemis*, 500 F.3d 1214, 1219 (10th Cir. 2007).

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

Response: As the Supreme Court stated in *Thomas*, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). However, the Court has recognized that there may be claimed beliefs that are “so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause[.]” *Id.* at 715.

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

Response: As stated more fully in my response to Question 24, above, the question is whether the individual’s beliefs are sincerely held.

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

Response: I am not Catholic and am unaware of the official position of the Catholic Church.

25. 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 U.S. Supreme Court’s holding and reasoning in the case.

Response: In considering the discrimination claims of two teachers who were discharged from a Catholic school, the Supreme Court held that the Ninth Circuit erred in not applying the “ministerial exception” that it previously articulated in *Hosana-*

Tabor-Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171 (2012). Although the two teachers in this case were not give the title “minister,” the Court said, “The religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 738 (2020). Judicial review of those decisions undermines the independence of religious institutions. *Id.* As a result, the Court found that the teachers were precluded from bringing discrimination claims.

- 26. 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 your understanding of the U.S. Supreme Court’s holding and reasoning in the case.**

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court found that the City of Philadelphia’s refusal to renew its contract with Catholic Social Services (CSS) to provide foster parents due to CSS’s religious beliefs about marriage violated the Free Exercise Clause of the First Amendment. The Court found the City’s plan was not neutral and was not generally applicable because it provided for a system of individual exemptions. *Id.* at 534. Applying strict scrutiny, the Supreme Court found that the City’s interests in maximizing the number of available foster parents and ensuring equal treatment were insufficient to justify denying an accommodation that would allow CSS to continue serving foster children consistent with its religious beliefs.

- 27. 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 U.S. Supreme Court’s holding and reasoning in the case.**

Response: In *Carson v. Makin*, 596 U.S. 767 (2022), the Supreme Court found that Maine’s “non-sectarian” requirements for the otherwise generally available tuition assistance payments violated the Free Exercise Clause. Maine was not required to subsidize private education, but once it decided to do so, “it cannot disqualify some private schools solely because they are religious.” *Id.* at 779-80.

- 28. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022) a high school football coach was fired after he knelt midfield to pray privately following games. The Supreme Court reviewed the coach’s claim that his First Amendment rights were violated. The Supreme Court held that the coach’s prayers were private speech and that the school district’s punishment of him “for engaging in a brief, quiet, personal

religious observance” violated the Free Exercise and Free Speech Clauses of the First Amendment and was based solely on “a mistaken view that it had a duty to ferret out and suppress religious observances.” *Id.* at 543.

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

Response: In a brief memorandum in *Mast v. Fillmore Cnty., Minnesota*, 141 S. Ct. 2430 (2021), the Supreme Court granted certiorari, vacated the judgment, and remanded for reconsideration in light of *Fulton v. Philadelphia*, 593 U.S. 522 (2021). Justice Gorsuch wrote a concurring opinion “to highlight a few issues the lower courts and administrative authorities may wish to consider on remand.” *Id.* Particularly, the Religious Land Use and Institutionalized Persons Act requires the application of “strict scrutiny” but the lower courts “erred by treating the County’s *general* interest in sanitation regulations as “compelling” without reference to the *specific* application of those rules to *this* community. *Mast* at 2432 (emphasis in original).

30. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person’s First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: In my current role as a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on issues that are pending or that might come before the court. If I am confirmed, I will faithfully apply Supreme Court and Tenth Circuit precedent.

31. 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.

32. 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.

33. 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.

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

Response: The Appointments Clause of the Constitution gives the President the authority to make political appointments with the advice and Consent of the Senate. U.S. Const. art. II, § 2, cl. 2. As a nominee to the United States District Court for the District of New Mexico, I am precluded by the Code of Conduct for United States Judges from commenting on issues that are pending or that might come before the court. If I am confirmed, I will faithfully apply Supreme Court and Tenth Circuit precedent.

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

Response: A racially disparate outcome alone is not sufficient to hold a program or policy unconstitutional. "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

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

Response: The composition of the Supreme Court is a determination for Congress. As a nominee to the United States District Court for the District of New Mexico, it would be inappropriate for me to comment on the number of justices on the Supreme Court. If confirmed, I will apply the precedent of the Supreme Court regardless of the number of justices who sit on the Court.

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

Response: No.

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

Response: The Supreme Court analyzed the original public understanding of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court concluded “on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595.

39. Explain your understanding of Justice Thomas’s dissent in the U.S. Supreme Court’s decision in *United States v. Rahimi*.

Response: In *United States v. Rahimi*, the Supreme Court considered 18 U.S.C. § 922(g)(8)’s prohibition of gun possession by anyone subject to a civil restraining order and concluded that there was sufficient historical evidence that “the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others.” *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). In his dissent, Justice Thomas disagrees that surety and affray laws sufficiently support the conclusion that that “§ 922(g)(8) is consistent with the Second Amendment’s text and historical understanding.” *Id.* at 1947 (Thomas, J., dissenting). Justice Thomas objects to the disarmament of someone based on potential violence rather than conviction for a crime and points out that while there is Due Process in the issuance of the restraining order, there is no specific Due Process associated with the prohibition on possession firearms in response to the restraining order.

40. 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*, *New York State Rifle & Pistol Association v. Bruen*, and *United States v. Rahimi*?

Response: This line of cases, *Heller*, *McDonald*, *Bruen*, and *Rahimi*, make clear that the Second Amendment guarantees an individual, law-abiding citizen the right to keep and bear arms that is separate and apart from a militia. To restrict this right, the government bears the burden of demonstrating that the restriction is consistent with the Nation’s historical tradition of firearm regulations. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022).

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

Response: Yes. In *District of Columbia v. Heller*, the Supreme Court held the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” 554 U.S. 570, 592 (2008).

42. Does the right to own a firearm receive less protection than the other individual

rights specifically enumerated in the Constitution?

Response: No.

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

Response: No.

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

Response: The decision to prosecute falls under the “exclusive authority and absolute discretion” of the Executive branch. *United States v. Nixon*, 418 U.S. 683, 693 (1974). As a nominee to the United States District Court for the District of New Mexico, it would be inappropriate for me to opine on this discretionary authority.

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

Response: My understanding of substantive administrative rule changes is that they are to be initiated by executive agencies and must be accomplished in a manner consistent with the Administrative Procedure Act and other controlling legal directives. In contrast, it is well established that “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

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

Response: No.

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

Response: In *Alabama Association of Realtors v. HHS*, 594 U.S. 758 (2021), the Supreme Court granted an application to vacate a nationwide moratorium on evictions imposed by the Director of the Centers for Disease Control and Prevention (CDC). The Court held that the CDC had likely exceeded its authority and that the connection between the moratorium and the spread of COVID-19 was too attenuated to support it. *Id.* at 763-64.

- 48. 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. Generally, it is neither appropriate nor advisable for the prosecution to announce its intention to charge someone prior to the completion of an investigation.

49. Explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Trump v. United States*.

Response: In *Trump v. United States*, the Supreme Court considered if and when a former President may be prosecuted for actions taken during his Presidency. *Trump v. United States*, 144 S. Ct. 2312, 2318 (2024). In so doing, the Court set out three categories of a President’s actions: 1) those actions that are clearly within the exclusive constitutional power granted to the President through Article II of the Constitution, in which the President has absolute immunity; 2) those actions that fall within the “outer perimeter” of constitutional Presidential authority that enjoy at least a presumption of immunity; and 3) actions outside constitutional Presidential authority for which there is no immunity. *Id.* at 2727-32. The Court remanded to the District Court for additional fact finding as to into which categories the charged conduct in this case falls.