Senator Chuck Grassley, Ranking Member
Questions for the Record
The Hon. Julien Neals
Nominee to be United States District Judge for the District of New Jersey

1. **You have substantial courtroom experience. You served as a law clerk for Judge Seymour Marguiles; you have tried about 35 matters to verdict, judgment, or final decision; and you have also served as the chief judge for the Newark Municipal Court. I am interested in your approach to constitutional issues. Please share what has prepared you to handle cases that arise under the U.S. Constitution. And if you face a constitutional issue, what is the general procedure you will follow for determining what the law requires?**

   Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

2. **What is the standard approach to statutory interpretation in New Jersey? How, if at all, do you think this would differ on the federal district court?**

   Response: The standard approach to statutory interpretation in New Jersey state courts is substantially similar to that provided for in federal law. In general, statutory interpretation cases in New Jersey state court begin with the statutory text and if the statute is clear the inquiry ends there. Many of the cases that I have handled in my career involved federal questions and I have extensive experience in applying statutory interpretation in the federal context.

3. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: "Super precedent" is not a term used or defined by the Supreme Court. If confirmed, my role as a district court judge would be to strictly adhere to all precedents set forth by the Supreme Court and the Third Circuit.

4. **What is more important for a district judge: reaching what he thinks is the correct conclusion, or reaching a conclusion that he knows will not be overturned on appeal?**

   Response: A district judge should always decide cases based on a thorough review of the record and application of settled law including Supreme Court and Third Circuit precedents to the facts.

5. **Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: Shouting fire in a crowded theatre is a frequent paraphrasing of Justice Oliver Wendell Holmes, Jr., who stated in dicta "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a fire and causing a panic." *Schenck v. Price*, 249 US 47, 52 (1919). The Supreme Court in *Brandenburg v. Ohio*, 395 (US) 444 (1969), provided that speech could only be banned if the speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id*. at 447.

6. **One of the federal district court's important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**

   a. **How would you determine whether statutory or regulatory text was ambiguous?**

      Response: As to statutory text, I would first examine the text of the statute or regulation to determine its meaning. If clear and unambiguous, my inquiry would end. If there is ambiguity then I would look to binding precedent in the Supreme Court and Third Circuit, and also consider canons of interpretation that those courts have approved. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. If there were no binding precedent on the issue I would also consider persuasive authority from other courts.

   b. **Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

      Response: Please see my response to 6.a.

   c. **When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

      Response: Please see my response to 6.a.

   d. **When interpreting ambiguous text, how would you handled two competing and contradictory canons of statutory interpretation?**

      Response: The starting point in construing a statute is the language of the statute itself. The Supreme Court often recites the "plain meaning rule," that, if the language of the statute is plain and unambiguous, it must be applied according to its terms. "[C]anons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says

there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has provided guidance through various cases on the appropriate application of the canons of statutory construction. Words that are not terms of art and that are not statutorily defined are customarily given their ordinary meanings, frequently derived from the dictionary. *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). If the word or phrase is defined in the statute or elsewhere in the United States Code, then that definition governs if applicable in the context used. *Colautti v. Franklin*, 439 U.S. 379, 392 (1979). If confirmed, I would follow Supreme Court and Third Circuit Court precedent on the application of canons of statutory construction.

7. **Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: *Bostock v. Clayton County*, 590 U.S. ___ (2020) is binding Supreme Court precedent. The First Amendment states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Supreme Court has interpreted the First Amendment Free Exercise and Establishment clauses in a number of cases. If confirmed I would be bound by the Supreme Court and would follow that binding precedent.

8. **As a county administrator, what is your view of the *Mount Laurel* decisions and their resulting doctrine?**

Response: As a judicial nominee, in general it would not be appropriate to provide an opinion concerning decisions of the Supreme Court or opine on matters that could possibly come before the courts. The *Mount Laurel* decisions are binding New Jersey Supreme Court precedent.

9. **The New Jersey Supreme Court is famously activist having handed down expansive progressive decisions like *NAACP v. Mount Laurel*, *Abbott v. Burke*, *Lewis v. Harris*, and *State v. Shack*. How are the powers of the New Jersey Supreme Court different from those of the U.S. District Court for the District of New Jersey?**

Response: The New Jersey Supreme Court is the state's highest appellate court. It is composed of a chief justice and six associate justices. As the highest appellate court, the New Jersey Supreme Court reviews cases from the lower courts. In very limited circumstances, such as where a judge in the Appellate Division files a dissenting opinion,

a party may appeal as of right to the New Jersey Supreme Court. In deciding the cases that come before it, the New Jersey Supreme Court interprets the New Jersey and the United States Constitution, New Jersey statutes, administrative regulations of the state's governmental agencies, as well as the body of common law. The Chief Justice of the New Jersey Supreme Court also serves as the administrative head for the court system, overseeing the management of the state's courts.

10. Do all Blaine Amendments violate the Constitution under the Supreme Court's decision in *Espinoza v. Montana*, 91 U.S. ___ (2020)? Please explain why or why not.

Response: In *Espinoza v. Montana*, 91 U.S. ___ (2020), the Supreme Court ruled that "A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.* As a judicial nominee, in general it would not be appropriate to opine on matters that could possibly come before the court. If confirmed, I would be bound by the relevant Supreme Court precedents regarding whether a statutory prohibition concerning the provision of funds to religious institutions violates the Constitution.

11. When you served on the Newark Municipal Court, you officiated Newark's first civil union.[1] You also said that, "If you can't recognize people for what they are, then we have no hope."[2] If a civil defendant was sued for her inability to endorse or facilitate a same-sex union—and if she was unable to do so based on her sincerely held religious beliefs—what legal standard or standards would you apply as a federal district judge?

Response: In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. As a district judge I would apply binding Supreme Court precedent and set personal views aside.

12. Do you agree with the following statements? If you would word something differently, please indicate how you would prefer to word the statement.

a. We live in a pluralistic society with people of diverse faith traditions. Religious freedom for all is part of our country's bedrock, from our Constitution's ratification to the establishment of more-recent statutes that protect against religious discrimination.

Response: Yes.

[1] Paul Milo, *Newark Raises the Flag to Honor Gay Pride*, Patch (July 20, 2012), http://patch.com/new-jersey/newarknj/newark-raises-the-flag-to-honor-gay-pride (SJQ Attachments at 381).
[2] *Id.*

b. Title VII requires that employers not discriminate against applicants or employees because of their religious beliefs, observances, or practices. It also requires employers to accommodate religious beliefs, observances, and practices, absent undue hardship to the employers.

Response: Title VII of the Civil Rights Act of 1964 prohibits employers from undertaking certain employee practices "because of [an] individual's race, color, religion, sex or national origin." 42 U.S.C. 2000e-2. Per Title VII, prohibited practices include the failure or refusal to hire an individual, or the discharge of an individual on the basis of these protected characteristics, as well as "discriminat[ion] against any [such] individual with respect to his compensation, [or the] terms conditions or privileges of employment." See 42 U.S.C. § 2000e-2(a). The definitions provisions of Title VII define "religion" to include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or perspective employee's religious observance or practice without undue hardship on the conduct of the employers business." *Id*. at sec 2000e (j).

c. The law protects government employees' requests (1) for time off for religious observances, (2) for religious exemptions from grooming or dress codes, and (3) to decline participation in hot-button practices like abortion or LGBTQ celebrations.

Response: I am not familiar with all of the specific laws that might apply to these factual situations and thus do not believe that I can answer this question in the affirmative without additional information. My role as a district judge, if confirmed, would be to consider any legal claims brought concerning religious discrimination or the other activities described in the question above and to apply binding Supreme Court and Third Circuit precedent.

d. The law does not permit the government to engage in religion-based discrimination.

Response: Yes.

13. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. How would you describe the legal standard on Second Amendment rights today?

Response: The Second Amendment was reviewed by the United States Supreme Court in the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia's opinion for the Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*. at 626. In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government.

14. Please explain, with detail, the process by which you became a district-court nominee.

Response: On September 26, 2014, I sent my resume and a completed judicial questionnaire to the Chair of Senator Cory A. Booker's Advisory Group, for consideration for the position of United States District Judge. On September 30, 2014, I interviewed with the Advisory Group at Senator Booker's Newark office. On or about October 3, 2014, I interviewed with the Senator's staff at the Newark office. On November 7, 2014, Senator Booker advised me that he would be referring my name to President Barack H. Obama for consideration.

On November 21, 2014, I was first contacted by officials from the Office of Legal Policy at the Department of Justice. On January 13, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 27, 2015, the President submitted my nomination to the Senate.

On September 30, 2015, I received a hearing before the United States Senate Committee on the Judiciary. On November 5, 2015, the nomination was reported out of committee. The nomination expired on January 3, 2017, with the end of the 114th Congress.

I am advised that Senator Booker referred my name to former President Donald J. Trump. On May 4, 2017, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C.

On February 18, 2021, I was contacted by attorneys from the White House Counsel's Office. On Friday, February 19, 2021, I interviewed via videoconference with attorneys from the White House Counsel's Office. Since February 20, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President submitted my nomination to the Senate.

15. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

16. **Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No.

17. **Please explain with particularity the process by which you answered these questions.**

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made subsequent revisions before submitting my answers to the Committee.

18. **Do these answers reflect your true and personal views?**

Response: Yes.

Nomination of Julien Xavier Neals
to be United States District Judge for the District of New Jersey
Questions for the Record
Submitted May 5, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing ahate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Please describe with particularity the process by which you answered these questions andthe written questions of the other members of the Committee.**

   Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made subsequent revisions before submitting my answers to the Committee.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. Ifgovernment officials assisted with writing or drafting your answers, please also identifythe department or agency with which those officials are employed.**

   Response: No.

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

Questions for the Record for Julien Xavier Neals, Nominee for the District of New Jersey

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. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.

Response: My judicial philosophy is that a judge must in all matters do the following: (1) make an impartial and unbiased commitment to review, comprehend and apply the appropriate rule of law and binding precedent; (2) provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings; and (3) act diligently and efficiently in all proceedings to ensure that all matters are disposed of in a timely manner. I am without sufficient knowledge of the judicial philosophies of justices on the Warren, Burger or Rehnquist courts to comment as to whether their philosophies are analogous to mine.

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

Response: If confirmed as a District Court Judge, I would be required to look to the interpretation of the Constitution as set forth by the Supreme Court and the Third Circuit.

3. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: In my capacity as a district court nominee, it would not be appropriate for me to express my personal opinion about policy choices committed to the executive and legislative branches.

4. Do you personally own any firearms? If so, please list them.

Response: No.

5. Have you ever personally owned any firearms?

Response: No.

6. Have you ever used a firearm? If so, when and under what circumstances?

Response: No.

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

Response: Yes. It is a right guaranteed and protected by the Second Amendment to the U.S. Constitution. The Supreme Court has addressed the right in *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). If confirmed, I would uphold all Supreme Court precedent.

8. Is the criminal justice system systemically racist?

Response: I am aware that there are studies on various aspects of the criminal justice system, however, if confirmed, it would be my duty to approach all matters before me as outlined in my response to Question 1., and without regard to any personal views or particular policy goals or aims.

Questions for the Record for Julien Xavier Neals
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. **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.

   b. **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
Julien Xavier Neals, District of N.J.

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

   Response: My judicial philosophy is that a judge must in all matters do the following: (1) make an impartial and unbiased commitment to review, comprehend and apply the appropriate rule of law; (2) provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings; and (3) act diligently and efficiently in all proceedings to ensure that all matters are disposed of in a timely manner.

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

   Response: If the statute at issue had previously been interpreted by the Supreme Court or Third Circuit, I would follow that precedent. If no precedent exists then I would first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeals outside the Third Circuit and of other district courts, for persuasive but non-binding authority.

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

   Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

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

   Response: If confirmed as a District Court Judge, I would look to the Supreme Court's holdings in relevant cases that interpret the constitutional provision. If confirmed, my approach to constitutional interpretation will be the same as my approach to judicial review generally –and faithfully apply all controlling precedent of the Supreme Court and the Third Circuit.

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

   Response: To satisfy constitutional standing, which is required by Article III's limit on federal-court jurisdiction to cases or controversies, plaintiffs must demonstrate (1) that they have suffered an injury in fact; (2) that the injury is fairly traceable to the defendant's

conduct; and (3) that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

6. Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: In addition to the constitutional standing requirements set out in response to Question 5, federal courts have adhered to "a set of prudential principles that bear on the question of standing." *Lujan at 563*. Prudential limits are concerned with the proper role of courts in a democratic society. *Id*. Unlike constitutional standing, Congress can override courts' prudential standing decisions with legislation. *Id*. As might be expected, no single rule governs every issue of prudential standing. See *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 400 n.16 (1987). Two considerations that are typically invoked: (1) litigants may not assert the rights of third parties; (2) courts should refrain from adjudicating matters of wide public significance which amount to generalized grievances. *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118 (2014).

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of administrative exhaustion, also commonly referred to as the exhaustion of administrative remedies doctrine, prevents a litigant from seeking relief in the courts without first pursuing other established available remedies. The doctrine generally requires that a litigant must initiate and pursue as fully as possible all procedures established by a statute, law, rule, regulation, contractual provision or other authority that specifies the manner in which an aggrieved party may seek redress for claims before seeking a remedy in a new court or jurisdiction.

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

Response: The United States Supreme Court has recognized Congress' implied powers beyond those enumerated in the Constitution. In the landmark case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the U.S. Supreme Court defined the scope of Article I, Section 8 of the United States Constitution, which provides that:

> The Congress shall have 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.

In its ruling, the Supreme Court established that the "Necessary and Proper" Clause, also known as the "Elastic Clause" of the U.S. Constitution gives the federal government certain implied powers that are not explicitly enumerated in the Constitution but assumed

to exist due to their being necessary to implement the expressed powers that are named in Article I, and that the federal government is supreme over the states, and so states' ability to interfere with the federal government is limited.

An implied power is for example the establishment by Congress of a national bank. See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

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

Response: The Supreme Court has stated that Acts of Congress are due a "strong presumption" of constitutionality, *see United States v. Watson*, 423 U.S. 411, 416 (1976). Accordingly, a court should declare a statute enacted by Congress unconstitutional in only limited circumstances. Such limited circumstances might include when a statute clearly violates a constitutional provision or when Congress has exceeded its authority granted under Article I of the Constitution. A district court judge should also declare a statute unconstitutional only when that result is compelled by binding Supreme Court and Circuit Court precedent.

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

Response: as one example, in *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court found that the marital privacy right was implied by the specific provisions of the Bill of Rights, such as those in the First, Third, Fourth, and Fifth Amendments. It referenced earlier cases where the Court had found personal liberties that were constitutionally protected despite not being specifically enumerated in the Constitution, such as the constitutional right to parental control over childrearing. If confirmed as a district judge I would apply binding Supreme Court and Third Circuit precedents.

11. What rights are protected under substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right is fundamental for purposes of the substantive due process clause when it is "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." Id. at 720. The Supreme Court has interpreted the Constitution to include certain fundamental rights even though the rights are not literally expressed in the text. Relying on the Due Process Clause, the United States Supreme Court has made clear that the "Due Process Clause specially 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.'" *Id*. If confirmed, I would apply the *Glucksberg* case along with any other relevant binding precedent from the Supreme Court and Third Circuit.

12. 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: My views of substantive due process will be guided by relevant Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) "activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce." *United States v. Lopez.*

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

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995), the Supreme Court held that suspect classifications that are those that are "so seldom relevant to the achievement of any legitimate state interest" such as classifications based upon race, alienage, national origin, gender, or illegitimacy would be subject to heightened scrutiny under the Equal Protection Clause. If confirmed I will be bound by Supreme Court and Third Circuit precedent on suspect classifications and will strictly adhere to that binding precedent.

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

Response: Checks and balances are designed to maintain the system of separation of powers thereby keeping each branch within its constitutional limits. The idea is that it is not enough to separate the powers and guarantee their independence but the branches need to have the constitutional means to defend their own legitimate powers from the encroachments of the other branches. Checks and balances guarantee that the branches are co-equal, that is, are balanced, so that they can limit each other, avoiding the abuse of power.

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

Response: A branch of government cannot act without authorization from the Constitution. If a branch were to act outside of constitutional authority that action would be unconstitutional. If confirmed and presented with such a case I would evaluate the facts presented and apply all relevant Supreme Court and Third Circuit precedent.

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

Response: In consideration of a case I would be guided by my judicial philosophy as set out in response to Question 1 and empathy would play no role.

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

Response: Both situations are would be an undesired result and I would strive to avoid either as a district judge.

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

Response: I am not aware of what may have accounted for the increase. Additionally, under the doctrine of constitutional avoidance, a federal court is supposed to decide a case without reaching a constitutional question if there are other grounds upon which to base a decision. However, if no such ground exists, a federal court is required to declare a statute unconstitutional if considered in light of applicable precedent, it is clear that Congress exceeded its constitutional authority in enacting the statute or if the statute clearly violates the Constitution.

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

Response: Judicial review is a process under which executive or legislative actions are subject to review by the judiciary. Judicial review is one of the checks and balances in the separation of powers: the power of the judiciary to supervise the legislative and executive branches. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and that its decisions are binding on the other branches of government unless a constitutional amendment or Supreme Court decision overrules them.

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

Response: Under the United States Constitution each branch of government has a duty to follow the Constitution, which is the fundamental law of the United States.

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

Response: Under the United States Constitution the Legislative, Executive, and Judicial branches of the United States government are separate and distinct in order to prevent abuse of power. This separation of powers is associated with a system of checks and balances. Article III judges are judges of limited power, and it is the judges' responsibility to decide only the issue presented before them in the most evenhanded way possible under the precedents and the text of the law and statutes. Judges do not enforce the law or decide cases with the intent to achieve a particular policy or personal goal. This would be an impermissible exercise of their power under the Constitution.

23. How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: If the statute at issue had previously been interpreted by the Supreme Court or Third Circuit, I would follow that precedent. If no precedent exists then I would first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeals outside the Third Circuit and of other district courts, for persuasive but non-binding authority.

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

Response: A lower court judge must apply the applicable precedent without reservation. If precedent does not speak to the issue at hand then the case would be considered one of first impression. In look to the text of the constitutional and analogous provisions.

25. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

Response: No. A court's exercise of power is dependent upon satisfaction of jurisdictional predicates.

26. 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: The factors to be considered in sentencing are set forth in 18 U.S.C. 3553(a). The race, gender, nationality, sexual orientation or gender identity of an individual are not enumerated factors.

27. Last year, you were a panelist for the New Jersey State Bar Association's symposium on Race and the Law. Reportedly, the role of the courts in creating inequality among different racial groups was a popular topic of conversation. In your view, would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities?

Response: No. 18 U.S.C. §3553 provides that when sentencing defendants in criminal cases, the court, in determining the particular sentence to be imposed, shall consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id*. at (a) (6). When applying the guidelines, "[i]n the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders…." *Id.* at (b) (1). If confirmed, I would be duty bound to follow the Supreme Court and Third Circuit precedent and controlling law as to sentencing.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   Response: No.

3. **Was Marbury v. Madison correctly decided?**

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

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

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

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

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

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

   Response: *Roe v. Wade* is settled law and I would faithfully follow this precedent and all Supreme Court precedent as a district judge.

7. **Was United States v. Virginia correctly decided?**

   Response: Please see my response to Question 6

8. Was District of Columbia v. Heller correctly decided?

Response: Please see my response to Question 6

9. Was Boumediene v. Bush correctly decided?

Response: Please see my response to Question 6.

10. Was Citizens United v. FEC correctly decided?

Response: Please see my response to Question 6.

11. Was Obergefell v. Hodges correctly decided?

Response: Please see my response to Question 6.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Federal Rules of Appellate Procedure, Rule 35 controls when hearing or rehearing *en banc* may be ordered. The determination of when it is appropriate for an *en banc* court to consider its own precedent is not something upon which I would rule as a district judge.

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my prior response to Question 12.

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: No. 18 U.S.C. §3553 provides that when sentencing defendants in criminal cases, the court, in determining the particular sentence to be imposed, shall consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id*. at (a) (6). When applying the guidelines, "[i]n the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders…." *Id.* at (b) (1).

Questions for the Record for
Senator Thom Tillis for
Judge Julien Xavier Neals

1. Judge Neals, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?

Response: Yes. Accordingly, if confirmed I will faithfully follow precedent of the United States Supreme Court and of the Third Circuit without consideration of any personal views.

2. What is judicial activism? Do you consider judicial activism appropriate?

Response: *Black's Law Dictionary* defines "judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." It is a judge's responsibility to decide only the contested issues properly before the court and to base said decision on text and precedent, without regard to personal beliefs. Accordingly, if confirmed I will faithfully follow precedent of the United States Supreme Court and of the Third Circuit without consideration of any personal views.

3. Judge Neals, do you believe impartiality is an aspiration or an expectation for a judge?

Response: I believe that impartiality is an expectation, and if confirmed, however, for me personally will be a requirement.

4. Judge Neals, 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: A judge should always decide cases based on a thorough review of the record and application of settled law to the facts without regard to a particular desired outcome.

6. Judge Neals, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

Response: No.

7. Throughout the past decade, 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 abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current

jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: If confirmed as a district judge, it would be my duty to faithfully apply Supreme Court and Third Circuit precedents including precedent regarding patent eligibility. I would look to cases including *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014); *Bilski v. Kappos*, 561 U.S. 593 (2010); and *Diamond v. Chakrabarty*, 447 U.S. 303 (1980).

8. Judge Neals, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: The Establishment Clause and the Free Exercise Clause of the First Amendment together state that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." If confirmed I would follow the rule of law in order to safeguard all rights and liberties protected by the United States Constitution.

9. Judge Neals, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: The First Amendment protects the Free of speech, including the freedom to peacefully protest. The Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id*. at 447-448. If confirmed, I would have to carefully review the facts of the particular case and apply relevant Supreme Court and Third Circuit precedent to those facts to determine whether any particular activity falls within the protections of the First Amendment.

10. Judge Neals, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: The Second Amendment was reviewed by the United States Supreme Court in the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia's opinion for the Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*. at 626. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed and I were presented with a case

involving the Second Amendment, I would apply Supreme Court and Third Circuit precedent to the facts of the case.

11. Judge Neals, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), Justice Scalia's opinion for the Court held that the Second Amendment "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." *Id*. at 595. In *McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well as the federal government." If confirmed, I will faithfully apply Supreme Court and Third Circuit Court precedent when reviewing Second Amendment issues and in all other cases.

12. 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: The Supreme Court established the standard to be applied when confronted with cases involving qualified immunity and found that qualified immunity does not protect officials who violate "clearly established statutory or constitutional rights of which reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). This is an objective standard, meaning that the standard does not

depend on the subjective state of mind of the official but rather on whether a reasonable person would determine that the relevant conduct violated clearly-established law. Whether the law is "clearly established" depends on whether the case law has addressed the disputed issue or has established the "contours of the right" such that it is clear that official's conduct is illegal. *Id.* at 815.

13. 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 Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), held that the qualified immunity protections extend to "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 815.

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

Response: The Supreme Court established the scope of qualified immunity that must be applied, which is binding precedent.

15. Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?

Response: The Supreme Court holding in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984), is binding precedent and must be followed when reviewing federal government agency actions.

16. How have your views on agency deference developed during your time as a district judge?

Response: I do not currently serve as a district judge but if confirmed would faithfully apply Supreme Court and Third Circuit precedent in this area of law.