Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Julia Kathleen Munley
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **A 2016 Scranton Times-Tribune article suggested that vacancies on the state court were only being advertised to select people. The article mentions you by name and said: "She won't say how she knew to apply." Please explain how you learned about the vacancy on the Court of Common Pleas and how you knew to apply. Please explain the application process.**

   Response: In December of 2015, it was public knowledge that there was a judicial vacancy on the Court of Common Pleas of Lackawanna County. I had always hoped to become a judge and follow in my father's footsteps in doing this public service. I thought at some point because of this vacancy that the Governor might make an appointment. From the time I learned of the vacancy in December of 2015 and onward I looked online and in legal publications for any announcement of the application process. In mid to late Spring of 2016, there was an online announcement from the Governor's office available to the public indicating that the Governor was seeking applications for judicial vacancies across the Commonwealth which included the vacancy in the 45th Judicial District of Lackawanna County Court of Common Pleas. When I saw this online I filled out the application that was included and available to anyone online. I then submitted my application as the online announcement directed. I was then contacted in May of 2016 for scheduling of a panel interview which occurred that month before a panel who interviewed applicants in Scranton, Pennsylvania for judicial vacancies in the Northeast region of the state.

2. **You are a member of the Pennsylvania Commission on Crime and Delinquency. While you were on the Victims' Services Advisory Committee, the committee decided "by consensus" to give preference for certain funding to "people of color," "LGBTQ," "immigrants" and other groups.**

   a. **Did you agree with this "consensus"?**

      Response: To clarify, I resigned my position with the Victims' Services Advisory Committee in March 2023 as my civil docket of cases became heavier and meetings of the Committee were scheduled during weeks I was not available to attend. I have no recollection of a "consensus" to give funding to specified groups over others. I am aware that the Committee allocates funding across the Commonwealth to providers who service victims of violence and abuse of all backgrounds. As a sitting judge and nominee for District Court, any views or opinions of mine have no place in judicial decision-making including my work on any boards or committees. I treat every party before me with dignity and respect

and uphold my Oath to decide cases on the law, fairly and impartially. That is my record for the past 7 years as a judge.

b. **Do you believe funding should be allocated on the basis of race or sexual identity?**

Response: Please see my response to Question 2a above.

3. **Over the course of your legal practice, how many criminal matters have you personally handled?**

Response: Over the course of my 31-year legal career, specifically during the past 7 years as a judge I have been assigned and handled criminal cases, including at least 50 Indirect Criminal Contempt hearings, at least 4 arraignments, 2 criminal jury trials, imposing at least 12 sentences which included one murder case. And prior to becoming a judge, during my 24 years as a lawyer I personally handled at least 10 criminal juvenile matters, at least 10 DUI cases, a murder case where I sat assisting as an associate attorney doing brief writing and at trial, at least one or two sexual assault cases assisting as an associate attorney, among other criminal matters in state court before district justices and in the court of common pleas. If confirmed, I am confident in my abilities to handle any matter that comes before me, including criminal matters, without reservation.

4. **As a sitting judge, how many criminal cases have you presided over?**

Response: Please see response to Question 3 above.

5. **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 am not familiar with this statement. However, I disagree with this statement. A judge is prohibited from allowing personal value judgments or beliefs to enter into judicial decision making. Over the past 7 years as a judge I have applied binding precedent to the facts before me impartially. If confirmed, I will continue to do just that, faithfully apply binding precedent of the Supreme Court and the Third Circuit to the facts presented fairly and impartially.

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

Response: I am not familiar with this statement. A judge is duty bound to apply binding precedent to the facts before him or her fairly and impartially. As a judge over the past 7 years, I have applied binding precedent to the facts before me fairly and impartially. If confirmed I will continue to uphold my oath and apply binding precedent of the Supreme Court and the Third Circuit to the facts presented fairly and impartially.

7. **Please define the term "living constitution."**

Response: Pursuant to Black's Law Dictionary the term "living constitution" is defined as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Black's Law Dictionary, (11th ed. 2019).

8. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I am not familiar with this statement. I believe the Constitution has an enduring fixed quality to it "…to be adapted to the various crises of human affairs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: Pursuant to Supreme Court precedent, facts are "basic" or "historical" matters that address "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Assoc. v. Village at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Stated another way, the Supreme Court has indicated that a "fact" is a "recital of external events[.]" *Thompson v. Keone*, 516 U.S. 99, 110 (1995). Similarly, the Third Circuit has indicated that facts are "a recital of external events[.]" *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007). The Supreme Court has not yet set forth a manner in which to "unerringly" determine whether something is a question of fact or a question of law. *Miller v. Fenton*, 474 U.S, 104, 113 (1985). However, in making such a determination the Court has considered whether "as a matter of sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Id.* at 114.

10. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: As a sitting judge, I am duty bound to apply precedent to the facts before me irrespective of the outcome including public outcry or criticism. One quality that is essential to the makeup of a judge is courage to follow and apply the law. If confirmed, I

would be duty bound to my oath to uphold the United States Constitution and faithfully apply precedent of the Supreme Court and the Third Circuit to the facts before me irrespective of an unpopular outcome.

11. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

    Response: If confirmed, as a United States District Court Judge I will consider, analyze and apply all the factors set forth in 18 U.S.C. 3553(a) in sentencing. No one factor is more important than another. It will be incumbent upon me to thoroughly analyze each factor according to the facts and circumstances of each case presented to me. I will also faithfully apply the appropriate binding precedent, rules of evidence in imposing sentence, consider all the information contained within the presentence reports and listen to arguments from counsel, the victim's statement(s) and the allocution of the defendant.

12. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

    Response: In reviewing Supreme Court decisions, I have not reviewed them to determine if they are similar to my judicial philosophy. As a sitting judge for the past 7 years, I approach every case essentially the same way and give that case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

13. **Please identify a Third Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

    Response: In reviewing Third Circuit decisions, I have not reviewed them to determine if they are similar to my judicial philosophy. As a sitting judge for the past 7 years, I approach every case essentially the same way and give that case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

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

    Response: 18 U.S.C. Section 1507 concerns picketing or parading and prohibits someone from acting with the intent to interfere with, obstruct or impede the administration of justice or with the intent to influence any judge, juror, witness, or court officer in the discharge of his duty, picketing or parading in or near a building housing a federal court, or in or near a building or residence occupied or used by such judge, juror, witness or court officer, or with the intent to use any sound and truck or similar device or resort to any demonstration in or near any such building or residence. Penalties are indicated within this section. If a case comes before me involving this statute, I will faithfully apply binding precedent of the Supreme Court and the Third Circuit to the facts.

15. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

    Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court held that a state statute modeled on 18 U.S.C. Section 1507 was constitutional.

16. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

    Response: In the Supreme Court case of *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942), the court held that insulting words or "fighting words" by their utterance would inflict injury or incite an immediate breach of the peace. If confirmed, and a case involving First Amendment issues and the "fighting words" doctrine came before me, I would faithfully apply binding Supreme Court and Third Circuit applicable precedent to the facts before me.

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

    Response: In the Supreme Court case of *Virginia v. Black*, 538 U.S. 343 (2003), "true threats" were defined as those statements where a speaker is communicating serious expressions of intent to commit acts of unlawful violence to a particular individual or group of individuals. If confirmed, and if a case comes before me concerning the "true threats" doctrine, I would faithfully apply the applicable binding precedent of the Supreme Court and the Third Circuit to the facts before me.

18. **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?**
    b. **Was *Loving v. Virginia* correctly decided?**

c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response 18 a-k: As a sitting judge and a nominee for the United States District Court, I am precluded by the Canons of the Code of Conduct for United States Judges from making comment as to whether I agree or disagree with judicial decisions including those of the Supreme Court. I can assure this committee that I will faithfully apply all binding precedent of the Supreme Court and of the Third Circuit. However, there are two decisions mentioned in the listing above that I can state were correctly decided as they are not likely to be relitigated. Those decisions include *Brown v. Board of Education* and *Loving v. Virginia*. Furthermore, two cases mentioned in the listing above, *Roe v. Wade* and *Planned Parenthood v. Casey* have been overruled by the *Dobbs v. Jackson Women's Health* decision. If confirmed, I will faithfully apply the precedent of *Dobbs* to any matter that came before me concerning the issue of abortion along with any other Supreme Court and Third Circuit precedent on any issues that come before me.

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

Response: The Supreme Court has set forth the legal standard to apply in evaluating whether or not a regulation or statutory provision infringes on the Second Amendment. That standard is whether the regulation or restriction at issue is "consistent with the nation's historical tradition of firearm regulation." If confirmed and if confronted with a Second Amendment case as a United States District Court judge, I would faithfully apply the binding precedent of *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008), along with any applicable binding precedent of the Third Circuit to the facts before me.

20. Please describe a law or regulation that you oppose as a matter of policy, but believe is constitutional under current Supreme Court and Third Circuit precedent.

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving a view or opinion about whether I oppose a law or regulation as a matter of policy as that matter could

come before me. If confirmed, I will faithfully and impartially apply all applicable federal law and Supreme Court and Third Circuit precedent to the facts before me.

21. **Please describe a law or regulation that you support as a matter of policy, but believe is unconstitutional under current Supreme Court and Third Circuit precedent.**

    Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving a view or opinion about whether I support a law or regulation as a matter of policy as that matter could come before me. If confirmed, I will faithfully and impartially apply all applicable federal law and Supreme Court and Third Circuit precedent to the facts before me.

22. **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 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, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       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, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       Response: No.

23. **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 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 and/or Daniel L. Goldberg?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

24. 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.

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

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

25. **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?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No.

26. **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, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

27. 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 2, 2021, I submitted an application for the judicial vacancy in the U.S. District Court for the Middle District of Pennsylvania to the bipartisan judicial nomination advisory panel established by the offices of Senator Robert Casey and Senator Patrick Toomey. On August 23, 2021, I interviewed with the Senators' advisory panel. On September 23, 2021, I interviewed with members of Senator Casey's staff. On October 8, 2021, I interviewed with Senator Casey. On March 22, 2022, I interviewed with members of Senator Toomey's staff. On April 12, 2022, I interviewed with Senator Toomey. On May 3, 2022, I interviewed with attorneys from the White House Counsel's Office. Since July 19, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and White House Counsel's Office. On April 12, 2023, I was contacted by Senator John Fetterman's office for an interview with Senator Fetterman, which occurred on April 14, 2023. On May 4, 2023, the President sent my nomination to the United States Senate. A hearing was held on my nomination by the United States Senate Judiciary Committee on June 7, 2023.

28. 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. I am not familiar with this organization or anyone associated with this organization.

29. 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. I am not familiar with this organization or anyone associated with this organization.

30. 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, or any other such Arabella dark-money fund that is still shrouded.

Response: No. I am not familiar with this organization or anyone associated with this organization.

31. **During 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. I am not familiar with this organization or anyone associated with this organization.

32. **During 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. I am not familiar with this organization or anyone associated with this organization.

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

    Response: On May 3, 2022, I interviewed with attorneys from the White House Counsel's Office. Since July 19, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and White House Counsel's Office.

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

    Response: I received the questions from the Office of Legal Policy. I then prepared draft responses. I then received feedback from the Office of Legal Policy. I finalized my answers and all responses and answers are my own to all questions submitted.

Senator Mike Lee
Questions for the Record
Julia Munley, Nominee to the United States District Court for the Middle District of Pennsylvania

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

   Response: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

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

   Response: First and foremost, look at the actual plain language of the statute. If it is clear and unambiguous, my inquiry would stop there and I would apply that provision strictly. If it is ambiguous, I would look for Supreme Court precedent, Third Circuit precedent and would be strictly guided by that precedent in the interpretation. If no precedent, then I would look to the Canons of Statutory Construction. I would only look to legislative history if that source was permitted by Supreme Court precedent and if so, follow the dictates of that precedent in using this source.

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

   Response: First and foremost, I would look to the plain language, the actual text of the Constitution. If it is clear and unambiguous, my inquiry would stop there and I would apply it strictly. If it is not clear and is ambiguous, then I would seek out Supreme Court precedent. I would follow that precedent strictly in the interpretation of the constitutional provision including utilizing the public meaning of the language in the provision at the time it was enacted, as directed by the Supreme Court.

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

   Response: The text and the original public meaning of the constitutional provision play an important role when interpreting the Constitution as the Supreme Court has held. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). See also *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). Please also see my response to Question 3 above.

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

Response: I would first look to the actual plain language of the statute. If the plain meaning of the language is clear and unambiguous, my inquiry stops there. If there is ambiguity, I would look for Supreme Court precedent and Third Circuit precedent interpreting the language of the statute. If there is none, then I would look for analogous Supreme Court cases and Third Circuit cases. If there is no precedent, I would also look to the Canons of Statutory Construction.

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: Pursuant to Supreme Court precedent, the "plain meaning" of a statute is the meaning at the time the statute was adopted. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: There are three requirements for standing in federal court: 1) that plaintiff has sustained a concrete harm or injury; 2) that the harm or injury be traceable to the conduct of the defendant; and 3) that the harm or injury be redressable by a favorable decision. *Massachusetts v. EPA*, 549 U.S. 497, 498 (2007).

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

Response: Pursuant to the Supreme Court case of *McCulloch v. Maryland*, 17 U.S. 316 (1819), Congress had implied powers under Article I, Section 8 of the Constitution "[t]o 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."

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

Response: Pursuant to Supreme Court precedent *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the determination of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise. In *McCulloch v. Maryland*, 17 U.S. 316, 323-24 (1819), the Supreme Court noted that "[i]f the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect." If confirmed and I was confronted with this issue, I would be guided by binding precedent of the Supreme Court and that of the Third Circuit in my

determination as to whether the law was constitutional and I would faithfully apply that precedent in making my decision.

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

Response: The Supreme Court has addressed this issue in a number of precedential decisions, stating that the Constitution protects certain rights that are fundamental if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720, 721 (1997). Some of the rights the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to parent, *Troxel v. Granville*, 530 U.S. 57 (2000).

10. What rights are protected under substantive due process?

Response: The Supreme Court has addressed substantive due process rights stating that the Constitution protects certain rights that are fundamental if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720, 721 (1997). Some of the rights the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to parent, *Troxel v. Granville*, 530 U.S. 57 (2000).

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: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from answering this question as it is an issue that may come before me. If confirmed, I will faithfully apply binding precedent of the Supreme Court and that of the Third Circuit on any cases concerning substantive due process. Over my 7 years as a judge, I have faithfully and impartially applied binding precedent and will continue to do so if I have the honor of being confirmed, including application of the binding precedent of *Washington v. Glucksberg*, *New York State Rifle & Pistol Ass'n v. Bruen*, and *District of Columbia v. Heller*. Substantive due process does not protect the right to an abortion. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Nor does it protect the economic rights implicated by *Lochner v. New York*, 198 U.S. 45 (1905). *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

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

Response: Congress has the authority to regulate 1) the use of the channels of interstate commerce; 2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and 3) those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed I will faithfully apply this binding precedent and any applicable binding precedent of the Supreme Court and Third Circuit if a case comes before me regarding these issues.

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

Response: The criteria that qualifies a particular group as a suspect class includes that: 1) the group has experienced historical discrimination; 2) they possess immutable traits; 3) they are powerless to protect themselves in the political process; and 4) the distinguishable trait of the group does not preclude it from contributing in meaningful way. See *Lyng v. Castillo*, 477 U.S. 635 (1986); *Graham v. Richardson*, 403 U.S. 365 (1971).

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

Response: The Framers established three co-equal branches of government through Articles I, II and III. The Framers made the branches with separate powers such that each would serve as a check and balance to the others so that no one branch would become too powerful. In *Morrison v. Olson,* 487 U.S. 654, 693 (1988), the Supreme Court noted that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." (internal quotation marks and citation omitted)

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

Response: If confirmed and confronted with such a case I would review all submissions from the parties, look closely at the record, examine the actual plain language of the text in the Constitution, seek out binding Supreme Court precedent, Third Circuit precedent, and apply that precedent and that law faithfully and impartially to the facts before me. For example, *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) discusses an analytical framework dividing the exercise of Presidential power into the following three categories: express or implied authorization of Congress; a "zone of twilight" where Congress' inertia, indifference or quiescence invites the exercise of executive power; and the President's own constitutional powers minus constitutional powers of Congress over the matter, as set forth in Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952). *Youngstown* also explained that "[t]he Constitution limits [the president's] functions in the lawmaking process to the recommending of laws he thinks wise and

the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of Article I says that 'All legislative Powers herein granted shall be vested in a Congress of the United States….'" *Id.* at 587-588. Further, *United States v. Nixon,* 418 U.S. 683 (1974) discussed the President's executive privilege and explained that a President is not immune from judicial process.

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

Response: Empathy should not play any role in judicial decision making. A judge takes an Oath to decide cases by applying the law to the facts impartially and fairly. Empathy, personal beliefs, values, preferences are not to be considered in judicial decision making. This is what I have done as a trial judge over the past 7 years. If confirmed, I will continue to do just that to uphold the rule of law pursuant to my Oath.

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

Response: Neither is appropriate and both are bad outcomes. As a judge and if confirmed I am and will be duty bound to apply the binding precedent of the Supreme Court and the Third Circuit and the applicable federal law, including the United States Constitution, to the facts of the case which I will do faithfully and impartially.

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: In my 31-year legal career, I have not analyzed these issues. If a case comes before me regarding such issues, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent to the facts of the case.

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

Response: Black's Law Dictionary defines judicial review as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Black's Law Dictionary (11th ed. 2019). The Supreme Court case of *Marbury v. Madison*, 5 U.S. 137 (1803) did establish the Supreme Court's power of judicial review of the constitutionality of the actions of the legislative and executive branches. Judicial supremacy is defined as the doctrine that the interpretations of the United States Constitution by the federal judiciary, especially the interpretation by the

Supreme Court is binding on the other branches of government, both federal and state. Black's Law Dictionary (11th ed. 2019).

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: Article VI, Section 3 of the United States Constitution provides that government officials, federal and state, shall be bound by an Oath to support the United States Constitution. Furthermore, pursuant to the Supreme Court case of *Cooper v. Aaron*, 358 U.S. 1 (1958) government officials are bound to follow Supreme Court precedent interpreting the Constitution.

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

    Response: A judge is constrained in decision-making to consider only the facts and the law. That is judgment. A judge's own beliefs, values, preferences hold no place in judicial decision making. To do otherwise would be considered judicial activism or utilizing will which is a violation of a judge's Oath of office. If I have the honor of being confirmed, I will continue to uphold my Oath of office and apply precedent of the Supreme Court and the Third Circuit faithfully and impartially to the facts before me.

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: If confirmed, I would be duty bound to apply Supreme Court precedent and Third Circuit precedent even if that precedent did not seem to be rooted in constitutional text, history or tradition and did not appear to speak directly to the issue at hand. It would be my role to follow precedent and apply it to the facts of the case before me under my Oath of office. I would do so faithfully and impartially.

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

Response: None.

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

Response: I am not familiar with this statement. When a case comes before me, I treat everyone the same, with dignity and respect no matter who they are or what their background. I ensure everyone before me has a full and fair opportunity to be heard. In my decision making I review the record thoroughly and apply binding precedent fairly and impartially to the facts before me. If confirmed, I will continue to do so and uphold the rule of law under my Oath of office.

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

Response: The definition of "equity" in Black's Law Dictionary indicates it is "fairness; impartiality; evenhanded dealing." "Equality" is defined as "[t]he quality, state or condition of being equal." Black's Law Dictionary (11th ed. 2019).

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

Response: The word "equity" does not appear in the Equal Protection Clause of the Fourteenth Amendment. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent in any case that comes before me concerning the guarantees in 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 the interconnected systems (such as political, economic and social systems)." Merriam-Webster's Dictionary (2022).

28. How do you define "critical race theory?"

Response: "Critical race theory" is defined by Black's Law Dictionary 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 (11th ed. 2019).

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

Response: Please see my answers to No. 27 and 28 above.

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

Questions for the Record for Julia Munley, nominated to be United States District Court for the Middle District of Pennsylvania

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Pursuant to Title VII of the Civil Rights Act of 1964, it is illegal to discriminate against a person upon the basis of race, religion, sex and national origin.

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: Pursuant to the Supreme Court case of *Washington v. Glucksberg*, 521 U.S. 702, 719-721 (1997), an unenumerated right must be "deeply rooted in the Nation's history and tradition" and "implicit in the concept of ordered liberty." If confirmed and confronted with this issue I would faithfully apply Supreme Court precedent to the facts before me, including the test set forth in *Glucksberg*. As to what I believe, a judge's personal beliefs or opinions cannot be part of judicial decision-making. Furthermore, as a sitting judge and nominee for District Court, I cannot comment or give opinion on a matter that may come before me under Canon 3A(6) of the Code of Conduct for United States Judges.

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: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. I do not identify with any particular Justice in terms of my philosophy. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

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

Response: Originalism is defined within Black's Law Dictionary as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary, (11th ed. 2019). I would not characterize myself by any particular label, however, I am aware that the Supreme Court has utilized originalism in the interpretation of the Constitution. If confirmed, I will faithfully apply that Supreme Court and Third Circuit precedent and faithfully follow the Court's directives and guidance in interpreting the Constitution, including utilizing originalism. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

   Response: "Living constitutionalism" has been defined within Black's Law Dictionary as a constitutional interpretive method that applies present day societal values and norms when interpreting the Constitution. Black's Law Dictionary, (11th ed. 2019). I would not characterize myself using any particular label, however, I am aware that the Supreme Court has utilized originalism in the interpretation of the Constitution. If confirmed, I will faithfully apply that United States Supreme Court precedent and faithfully follow the Court's directives and guidance in interpreting the Constitution, including utilizing originalism. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: My analysis always begins with the actual plain language of the text of the Constitution. If that plain language is clear and unambiguous, I would apply it as is, using Supreme Court precedent to support that interpretation. If confirmed, I would continue to follow the guidance and directives of the Supreme Court in interpreting the language of the Constitution including use of the public meaning of that language employed by the Framers at the time of enactment and apply that meaning. See e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: Pursuant to *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), it is the public meaning of the text at the time of enactment that is critical in the interpretation of the Constitution. If confirmed, I would faithfully apply this binding precedent as directed by the Supreme Court.

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

   Response: The Constitution has an enduring fixed quality as held by the Supreme Court. Any changes to the Constitution would only occur through the amendment process. The Supreme Court has held that the Constitution's meaning is "fixed according to the understandings of those who ratified it…." *New York State Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S. Ct. 2126, 2132 (2022). Although the Constitution's meaning does not change or evolve, its enduring principles "can and must apply to circumstances beyond those the Founders specifically anticipated." *Id.*

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

settled law?

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges to give comment or opinion on whether this case was correctly decided. However, if confirmed I will faithfully follow and apply the precedent of *Dobbs* if this issue comes before me.

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

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges to give comment or opinion on whether this case was correctly decided. However, if confirmed I will faithfully follow and apply the precedent of *Bruen* if this issue comes before me.

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

Response: Yes.

a. Was it correctly decided?

Response: As a sitting judge and nominee for District Court, I am generally precluded from making comment on whether cases were correctly decided under Canon 3A(6) of the Code of Conduct for United States Judges. However, because *Brown v. Board of Education* is unlikely to be relitigated, I believe I am permitted to state it was correctly decided.

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

Response: Pursuant to Title 18 U.S.C. Section 3142, a presumption in favor of pretrial detention applies where probable cause exists to believe that the defendant committed a crime listed in 18 U.S.C. Section 3142(e)(3)(A-E). These crimes include:

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

18 U.S.C. Section 3142(e)(3)(A-E).
A rebuttable presumption in favor of pretrial detention also arises where the person recently committed certain federal crimes, including a crime of violence, an offense where the maximum sentence is life imprisonment or death, drug offenses that carry a maximum sentence of 10 years or more, offenses that involve underage victims or use of a firearm, or analogous state offenses, while on pretrial release. See 18 U.S.C Section 3142(e)(2).

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

Response: It appears that the policy behind the presumption in favor of pretrial detention is reflected in 18 U.S.C. Section 3142(f) that a defendant charged with those crimes delineated may be a flight risk and a danger to any other person in the community.

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

Response: Yes. The Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) held that the Religious Freedom Restoration Act of 1993 (RFRA) prohibited the "government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability," unless the government can show "that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest." In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court found that there was hostility by the Commission towards religion in their treatment of the baker's case, which was inconsistent with the First Amendment guarantee that laws be applied neutrally and deciding that the Commission violated the bake shop owner's Free Exercise of Religion. In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court in interpreting the First and Fourteenth Amendments held that the government regulations burdened a sincere religious practice under a policy that was not "neutral" or "generally applicable," such that its actions should be subject to strict scrutiny constitutional analysis. The regulations were found to be violative of the Free Exercise Clause.

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

Response: It is not permissible for government organizations to discriminate against religious organizations or people and strict scrutiny applies to any state law or action that "discriminates based on religious status…." *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2256 (2020). The First Amendment imposes a duty on government "not to base laws or regulations on hostility to religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1721 (2018).

15. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Diocese made application for a preliminary injunction seeking relief from an executive order issued by the governor of the State of New York which imposed severe restrictions on attendance at religious services during the Covid pandemic. In analyzing the elements for an injunction, the Supreme Court held that the applicants met their burden and granted the injunction. Further, the Court found the restrictions to be violative of the Free Exercise Clause. In applying the strict scrutiny test, the Court found the law was not neutral and generally applicable. Once the burden shifted to the government, the restriction failed to survive the strict scrutiny analysis.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted injunctive relief against a regulation in the State of California that had the effect of restricting bible study groups in homes to three households. The Court noted the regulations were not neutral and generally applicable and as such, a strict scrutiny analysis was required under the Free Exercise Clause. The Court indicated that secular activities versus religious activities needed to be compared by the risk the activities pose, rather than the reasons behind the gatherings. The government failed to establish the religious activities posed a greater risk. The government was not able to meet their burden of satisfying the strict scrutiny analysis.

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

Response: Yes. The Supreme Court held exactly that in *Kennedy v. Bremerton*, 142 S. Ct. 2407 (2022).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Commission in finding that the baker had discriminated against a same-sex couple in refusing to bake a wedding cake because of the baker's sincerely held religious beliefs, did not employ neutrality in the application of their law or regulation with regard to religion and showed clear and impermissible hostility toward his religious beliefs through evidence that had been presented. As such, the Supreme Court invalidated the Commission's order.

19. 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: My understanding is that the Religious Freedom Restoration Act of 1993 broadly defines the exercise of religion and that it encompasses all aspects of observance and practices, whether or not central to or required by a particular faith. *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 695-696 (2014). In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)), a sincerely held religious belief does not need to be "'logical, consistent, or comprehensible to others in order to merit First Amendment protection.'"

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

Response: Pursuant to Supreme Court precedent, the function of the courts is narrow, that is to determine if the individual has an "honest conviction," and not to assess whether it is "reasonable." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724-725 (2014), quoting *Thomas v. Review Board of Indiana Employment Security Div*., 450 U.S. 707, 715 (1981).

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

Response: Please see my answers to Questions 19 and 19a above.

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

Response: It is my general understanding that the Catholic Church does not view abortion as acceptable.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) the Supreme Court held that the religious schools were protected under the First Amendment as religious institutions and had the authority under the Free Exercise Clause to dismiss both employees who had important religious functions and qualified for the ministerial exception. As such, the relevant discrimination laws would not apply to these employees.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the city denied a contract to a religiously affiliated foster care agency when the agency refused to include married same-sex couples as foster parents on religious grounds. The Supreme Court held that the refusal by the city violated the Free Exercise Clause of the First Amendment. The Court applied a strict scrutiny analysis and found that the contract's provision on non-discrimination was not neutral and generally applicable. The Court found that the city could not meet its burden under the strict scrutiny analysis and further held, that the city violated the agency's Free Exercise of Religion.

22. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the state of Maine through a private school voucher program, disallowed vouchers for religious-based private schools. The Court applied the strict scrutiny analysis but the state law did not survive the analysis in that the program in subjecting religious schools to unequal treatment, "effectively penalizes the Free Exercise" of Religion. *Id.* at 1997 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017)).

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

Response: The Supreme Court held in *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022) that a school football coach had a First Amendment free exercise of religion and free speech right to personal prayer during and after football games. The

Court applied strict scrutiny and reasoned that the school district did not establish that prohibiting the prayer was narrowly tailored to serve a compelling purpose.

24. 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: *Mast v. Fillmore County*, involved a septic system mandate imposed by Fillmore County, Minnesota. An Amish community sought an exception to the mandate based upon their sincerely held religious beliefs. The county denied the exception. The Amish community sued alleging that the County violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The lower courts found in favor of the county, but the Supreme Court vacated the judgment and remanded in light of its decision in *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch's concurrence addresses the application of the strict scrutiny analysis to the RLUIPA. The lower courts found the county's general interest in sanitation regulations to be a compelling interest without analyzing the application of those rules specifically to the Amish Community. The concurrence indicates that the strict scrutiny analysis requires a more precise analysis scrutinizing "the asserted harm of granting specific exemptions to particular religious claimants." *Mast v. Fillmore*, 141 S. Ct. 2430, 2432 (2021).

25. 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: As a sitting judge and a nominee for District Court, under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving an opinion on the interpretation of 18 U.S.C. Section 1507 in the context of protests in front of the homes of U.S. Supreme Court Justices following the *Dobbs* leak as a case on this issue may come before me. However, if I am confronted with such a case, I always look first to the actual plain language of the text of the statute and would apply binding Supreme Court and Third Circuit precedent, if I have the honor of being confirmed.

26. 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.

27. 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.

28. 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.

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

Response: As a sitting judge and a nominee for District Court, under the Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from giving views or opinions on the appropriateness or constitutionality of such considerations when making political appointments as such an issue may come before me. If confirmed and if confronted with these issues, I will faithfully apply binding precedent. Political appointments are committed to the Executive Branch, typically with the advice and consent of the Senate pursuant to Article II, Section 2 of the Constitution.

30. Is the criminal justice system systemically racist?

Response: Claims of systemic racism in the criminal justice system may come before the court for which I am nominated. As a sitting judge and nominee for District Court, under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving views or opinions on these issues. If confirmed I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me in any case involving these issues. Additionally, I will treat everyone who comes before me fairly and with dignity regardless of race.

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

Response: Whether to increase or decrease the number of justices on the U.S. Supreme Court is a policy decision for policy makers to decide. District Court judges are bound by the decisions of the Supreme Court regardless of whether Congress increases or decreases its size.

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

Response: No.

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

Response: Pursuant to its original public meaning, the Second Amendment "protect[s] an individual right to armed self-defense[.]" *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2128 (2022).

34. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: The kinds of restrictions on the Right to Bear Arms prohibited by the U.S. Supreme Court's decisions are those which are not consistent with this country's historical tradition of firearm regulation. *New York State Rifle & Pistol Associaion v. Bruen,* 142 S. Ct. 2111 (2022).

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S, 570 (2008).

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

Response: No. It is my understanding that the Supreme Court has never held that the right to own a firearm receives less protection than other individual rights specifically enumerated in the Constitution. Rather, the Court has explained that: "The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than other Bill of Rights guarantees." *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: No. To my knowledge, the Supreme Court has not held that the right to own a firearm receives less constitutional protection than the right to vote.

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

Response: As a sitting judge and nominee for District Court, I am precluded under the Canon 3A(6) of the Code of Conduct for United States Judges from answering this question as it is an issue that may come before me if confirmed. Generally, however, under the Constitution, the executive power is vested in the President who is required to "take care that the Laws be faithfully executed." If confronted with such an issue, I would apply the appropriate law and binding precedent to the facts of the case. Such precedent would include *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (holding that the federal Executive Branch's decision "not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.").

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

Response: It is my understanding that prosecutorial discretion generally refers to the authority of a prosecutor to decide whether or not to charge an individual and if they do charge, what criminal charges to file. I am unaware of its connection to a substantive administrative rule change, which would be subject to the Administrative Procedure Act.

40. Does the President have the authority to abolish the death penalty?

Response: No. The death penalty is authorized by an act of Congress, 18 U.S.C. Section 3591. The President is not empowered to abolish an act of Congress.

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

Response: The CDC, based on a particular statute, imposed a nationwide moratorium on eviction of tenants who resided in counties experiencing certain levels of COVID-19 transmission. Plaintiffs challenged the moratorium in federal district court. The district court vacated the moratorium on evictions as unlawful. The court, however, stayed the judgment pending appeal. The Supreme Court vacated the stay and made the judgment enforceable. In making its decision, the Court noted that the statute at issue did not provide the clear Congressional authority necessary to permit the agency "to exercise powers of 'vast economic and political significance.'" *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021).

42. 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: The answer to this question appears to call for an answer best left to

policymakers. Further, this issue could come before me if confirmed. Under Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from giving views or opinions on this issue. If confirmed and such an issue came before me, I would listen to the parties' arguments, examine the facts, and apply the relevant federal statutes, Supreme Court precedent and Third Circuit precedent to the facts before me.

43. In private practice, you participated in a series of online marketing videos for Munley Law on various legal topics, including multiple on the dangers of fracking. You discussed the "dangers of hydraulic fracturing" and accused energy companies of "decend[ing] upon Pennsylvania in search of deposits of Marcellus shale."

a. **Is it your position that energy companies should avoid coming to Pennsylvania?**

Response: No.

b. **Are you in favor of banning fracking?**

Response: The marketing pieces you refer to were put out by the law firm. I had no role in drafting them or approving them. As a trial lawyer and as a judge I have never handled a fracking case. If confirmed and if a case came before me involving these issues, I would keep an open mind and apply binding Supreme Court and Third Circuit precedent faithfully and impartially to the facts before me.

44. In 2008, you wrote a letter to the editor in The Sunday Times called "Subtle Sexism," in which you criticized the "blatant sexism" against Hillary Clinton during the 2008 presidential campaign, and by extension, all women in society.

a. **Do you think the Daily Beast article calling Casey DeSantis the "Walmart Melania" is sexist?**

Response: I am not familiar with the Daily Beast article calling Casey DeSantis the "Walmart Melania" and cannot give a view or an opinion on whether it was sexist.

45. In your Senate Judiciary Committee questionnaire you listed your criminal law experience at 5% of your practice.

a. **What experience do you have with criminal law that will allow you to be a successful judge?**

Response: Over the course of my 31-year legal career, specifically during the past 7 years as a judge I have been assigned and handled criminal cases, including at least 50 Indirect Criminal Contempt hearings, at least 4 arraignments, 2 criminal jury trials, imposing at least 12 sentences which included one murder case. And

prior to becoming a judge, during my 24 years as a lawyer I personally handled at least 10 criminal juvenile matters, at least 10 DUI cases, a murder case where I sat assisting as an associate attorney doing brief writing and at trial, at least one or two sexual assault cases assisting as an associate attorney, among other criminal matters in state court before district justices and in the court of common pleas. If confirmed, I am confident in my abilities to handle any matter that comes before me, including criminal matters, without reservation.

Senator John Kennedy
Questions for the Record

Julia Munley

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: I believe as stated by the United States Supreme Court that the Constitution has an enduring fixed quality to it to be applied to circumstances "beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. If the plain language of a statute is clear and unambiguous then my inquiry ceases. I would look for Supreme Court and Third Circuit precedent to include in my analysis to ensure my interpretation is correct. However, I would not look to consider the statute's purpose or the consequences of ruling a particular way. That is not an appropriate consideration for a judge. A judge should confine his or her analysis to the text for the plain meaning of that language and follow faithfully Supreme Court and Third Circuit precedent in the interpretation. If confirmed, this is how I would approach my analysis of the law's text. In *Bostock v. Clayton County,* 140 S. Ct. 1731, 1749 (2020), the Supreme Court held that, "[t]his Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: If confirmed I would follow Supreme Court precedent as to whether to utilize legislative history at all in my interpretation of a statute. If the Supreme Court in certain

instances directs use of legislative history, I would follow that guidance on what legislative history is an authoritative source that should be used and how to use it. Certainly, if the statute is clear and unambiguous I would apply that language as is and the inquiry would stop there. The Supreme Court has determined that some forms of legislative history are more probative of legislative intent than others. See *Garcia v. United States,* 469 U.S. 70, 76 (1984).

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

   Response: The Supreme Court held in *Lloyd, Ltd. v. Tanner*, 407 U.S. 551, 569 (1972) that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." However, in the case of *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Supreme Court upheld a California constitutional provision allowing individuals to exercise their right to free speech and petition at a privately owned shopping center but found it permissible that the shopping center owner may restrict that activity by time, place and manner limitations to minimize interference with business.

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

   Response: Under the Equal Protection Clause, the Supreme Court has held that the word "person" includes one who is here lawfully or unlawfully. *Plyler v. Doe*, 457 U.S. 202 (1982). Also in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that "due process" in the Fourteenth Amendment extends to all aliens within the United States. If confirmed, and if confronted with a case involving these issues I will faithfully and impartially apply Supreme Court and Third Circuit precedent to the facts before me. In *Mathews v. Diaz*, 426 U.S. 67, 77 (1976), the Supreme Court observed that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law. …Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection."

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: In the Supreme Court case of *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Court held that a non-resident alien who was transported to the United States border where United States Drug Enforcement Agency officers arrested him and searched him without a United States search warrant was not entitled to protection under the Fourth Amendment. If confirmed and confronted with such an issue, I would faithfully apply precedent of the Supreme Court and that of the Third Circuit.

8. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: The Supreme Court held in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) that there is no fundamental right to abortion and the issue of abortion is returned to the people and their representatives. The Supreme Court in *Dobbs* declined to state a "view about if and when prenatal life is entitled to any of the rights enjoyed after birth." *Id.* at 2261. As a sitting judge and a nominee for the United States District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from commenting publicly on such issues as a case may come before me. If confirmed, I will faithfully apply this precedent of the Supreme Court and that of the Court of Appeals for the Third Circuit, including the *Dobbs* precedent.

9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

a. Do you agree?

Response: I am not familiar with this comment or the context in which it was stated or written. If I have the honor of being confirmed and have a case with this issue come before me, I will faithfully and impartially apply Supreme Court and Third Circuit precedent to the facts before me, including the *Dobbs* precedent.

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Please see response to Question 9a. Furthermore, a judge is duty bound to apply controlling precedent to the facts of the case before him or her. I have done so over the past 7 years as a judge and would continue to abide by that if confirmed.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. It is never appropriate for a judge to ignore or circumvent precedent. To do so would be considered judicial activism and a violation of a judge's Oath of office he or she swore to uphold. I do not subscribe to that practice.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In the Supreme Court case of *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Supreme Court upheld a voter identification statute. If I am

confirmed, I will faithfully apply this precedent to the facts before me if I am confronted with this issue.

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: The Supreme Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) held that a firearm regulation must be "consistent with this Nation's historical tradition of firearm regulation." If confirmed, I will faithfully and impartially apply Supreme Court precedent including *Bruen*, *McDonald* and *Heller* to the facts in any case involving the Second Amendment that comes before me.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In order to overrule any precedent, the Supreme Court in *Janus v. American Federation of State, County and Municipal Employees*, 138 S. Ct. 2448, 2478-2479 (2018) has set forth five factors that the Court must analyze to overturn precedent. Those factors include: 1) the quality of the reasoning of that decision; 2) the workability of the rule it established; 3) its consistency with related decisions; 4) developments since the time of the decision; and 5) reliance on the decision. I am not aware that the Supreme Court has identified what number of the factors is necessary to overturn the precedent. In *Janus*, it is my understanding that the Court indicated they are all important in the determination.

b. Is one factor alone ever sufficient?

Response: Please see my response to Question 13a.

14. Please explain the difference between judicial review and judicial supremacy.

Response: Black's Law Dictionary defines judicial review as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Black's Law Dictionary (11th ed. 2019). The Supreme Court case of *Marbury v. Madison*, 5 U.S. 137 (1803) did establish the Supreme Court's power of judicial review of the constitutionality of the actions of the legislative and executive branches. Judicial supremacy is defined as the doctrine that the interpretations of the United States Constitution by the federal judiciary, especially the interpretation by the Supreme Court is binding on the other branches of government, both federal and state. Black's Law Dictionary (11th ed. 2019).

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: As is the case with the entirety of the United States Constitution, the Ninth Amendment has an enduring fixed quality to it to be applied to new circumstances "beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: In the Supreme Court case of *McDonald v. City of Chicago*, 561 U.S. 742, 851 n. 20 (2010), in a concurring opinion Justice Thomas stated that the Ninth Amendment was an "obvious example" of a Bill of Rights provision which does not purport to protect individual rights.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment states that those certain rights enumerated in the Constitution, "shall not be construed to deny or disparage others retained by the people." United States Constitution, Amendment IX. In short, the Ninth Amendment itself references rights enumerated in other constitutional provisions.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: In my 31-year legal career, I have not been confronted with this issue. If I have the honor of being confirmed, and have a case involving this issue I will closely review the record, faithfully and impartially apply binding precedent of the Supreme Court and Third Circuit to the facts before me in interpreting the Constitution. I will follow all the guidance and directives set forth by the Supreme Court including in the interpretation of the meaning of the actual text such as the public meaning of the language at the time it was enacted. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court has noted that Founding-era history is useful to understanding the original public meaning of constitutional amendments.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of '*the people*'?

Response: The Supreme Court in *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) stated that the term "the people" which is incorporated in portions of the Constitution means those groups of persons who are "part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." If I have the honor of being confirmed, I will faithfully apply the precedent of the Supreme Court and the Third Circuit to the facts before me in any case involving such an issue.

b. Is the term's meaning consistent in each amendment?

Response: As a sitting judge and a nominee for District Court, this issue may come before me and under Canon 3A(6) of the Code of Conduct for United States Judges I would be precluded from giving any comment or opinions on those issues. However, if confirmed I would faithfully apply precedent of the Supreme Court and Third Circuit to any facts that come before me with regard to such issues.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Please see my responses to Questions 6, 7 and 19a above. In *Plyler v. Doe*, 457 U.S. 202, 210 (1982), the Supreme Court held that "[a]liens, even aliens whose presence in this country is unlawful have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." Further, as a sitting judge and a nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from making a comment regarding a matter that could come before me as a judge. If confirmed, I will faithfully apply precedent of the Supreme Court and Third Circuit to the facts before me.

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: Pursuant to Supreme Court precedent, the Constitution has an enduring fixed quality which includes the Due Process Clause and which is applied to "circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). If I have the honor of being confirmed and have a case before me concerning these issues, I will faithfully apply precedent of the Supreme Court and the Third Circuit.

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: Pursuant to *McDonald v. City of Chicago*, 561 U.S. 742, 819-820, 832, 854 (2010), the Supreme Court did not rely on the privileges or immunities clause protection in the decision or indicate that there is any right beyond what is already enumerated in the Constitution. The Supreme Court in *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010) noted that the Fourteenth Amendment "protects only those rights which owe their existence to the Federal government, its National character, its constitution or its laws."

As a sitting judge and nominee for District Court, I am precluded from commenting on any such matters that could come before me under Canon 3A(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply precedent of the Supreme Court and Third Circuit to the facts before me.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my response to Question 22 above. Further, I am unaware of any precedent that holds that the right to terminate a pregnancy is among the "privileges or immunities of citizenship." If I am confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: Pursuant to *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), when a court is reviewing an agency's construction of one of its statutes, the court must look to the statute first.

"If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency must give effect to the unambiguously expressed intent of Congress…[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843.

In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022) where, however there are extraordinary cases that involve major questions such as of a significant political or economic nature, the agency must "point to clear congressional authorization for the power it claims." *Id.* at 2609.

If confirmed and I have a case involving these issues I will faithfully apply the applicable binding precedent to the facts that are before me.

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: Please see my response to Question 24. Furthermore, under the Administrative Procedure Act the judiciary has the authority to review agency action to determine if it is arbitrary and capricious or contrary to law. *FCC v. Fox Television Stations*, 566 U.S. 502 (2007). If I am confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: Congress' powers are specifically enumerated in the Constitution to those "herein granted." Article I, Section 1. In Section 8 and 9 of Article I, the specific powers of Congress are set forth including but not limited to the power to regulate interstate commerce. Furthermore, pursuant to *McCulloch v. Maryland*, 17 U.S. 316 (1819) the Supreme Court held that Congress has under Section 8 of Article I limited implied powers that are necessary and proper to carry out those powers that are expressly granted. The Constitution also limits Congress' power by granting enumerated powers to the Executive and Judicial Branches in Articles II and III. The Tenth Amendment reserves for the states powers that the Constitution neither delegates to the United States nor prohibits.

27. **Please describe the modern understanding and limits of the Commerce Clause.**

Response: Under the Commerce Clause contained in Article I, Section 8 of the Constitution, Congress has the power to regulate interstate commerce which includes the power to regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and those activities that substantially relate to interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

28. **Please provide an example of activity Congress cannot regulate under the Commerce Clause.**

Response: In the Supreme Court case of *United States v. Lopez*, 514 U.S. 549 (1995), the Court held that Congress exceeded its authority under the Commerce Clause when it enacted federal law making it unlawful to knowingly possess a firearm in a school zone.

29. **Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.**

Response: Pursuant to *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) the Supreme Court has held that the Due Process Clause in the Fourteenth and Fifth Amendments should be interpreted the same.

30. **In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?**

Response: As a sitting judge and a nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving opinions on matter that may come before me. If confirmed, I would keep an open mind, review the record and faithfully apply binding precedent to the facts before me.

31. **Please describe how courts determine whether an agency's action violated the Major Questions doctrine.**

Response: Please see my response to Questions 24 and 25 above.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The anti-commandeering doctrine is a Supreme Court doctrine that prohibits the federal government from compelling states to enforce or effectuate federal acts or federal regulatory programs. *Printz v. United States*, 521 U.S. 898 (1997), is an example of the limitations of the anti-commandeering doctrine in which the Supreme Court held a provision in the Brady Gun Bill was unconstitutional as the federal act was directing state and local law enforcement officers to participate in a federally enacted regulatory scheme.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: In a plurality opinion from the Supreme Court *Trop v. Dulles*, what is considered cruel and unusual punishment in violation of the Eighth Amendment is viewed as evolving with society's "sense of decency." In the Supreme Court case of *Atkins v. Virginia*, 536 U.S. 304 (2002) the Supreme Court found that punishments including death sentences for the intellectually disabled were unconstitutional. Under *Kennedy v. Louisiana*, 554 U.S. 407 (2008) the Supreme Court held the standard remains the same but how it is applied must change as the "mores of society" changes.

34. Do you believe the death penalty is constitutional?

Response: The death penalty has been held by the Supreme Court to be constitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed and if I have a case where the death penalty is sought, I will faithfully apply the appropriate federal laws, the statutory guidelines and the statutory factors set forth in 18 U.S.C. Section 3553, as well as applicable binding precedent to the facts before me in imposing sentence and in any decisions.

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: Pursuant to *United States v. Nixon*, 418 U.S. 683, 693 (1974), the Executive Branch has "the exclusive authority and absolute discretion to decide whether to prosecute a case…." As a sitting judge and nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving opinions on matters that may come before me at some point. If confirmed, I would keep an open mind, review the record, and apply binding precedent to the facts before me.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting judge and a nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from commenting or giving opinions on matters that may come before me. If confirmed, I will keep an open mind, review the record and faithfully apply binding precedent to the facts before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my response to Question 5.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a sitting judge and a nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving comment or opinions on matters that could come before me. If confirmed, I will faithfully apply precedent of the Supreme Court and the Third Circuit to the facts before me.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: In Article VI of the Constitution, the Supremacy Clause is set forth which indicates that the Constitution, the laws of the United States and all treaties made are the "supreme Law of the Land" and that "Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The adequate and independent state grounds doctrine is a doctrine of the Supreme Court that the Supreme Court will not review a case where there was a decision in state court that rests on state grounds independent of a federal question that is adequate to support the decision or judgment. *Coleman v. Thompson*, 501 U.S. 722 (1991).

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving comment or opinions on matters that could come before me. If confirmed, and if these issues come before me I will review the record, keep an open mind and faithfully apply precedent of the Supreme Court and Third Circuit to the facts presented to me.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: Other than the precedent of the Supreme Court I do not know of any textual sources for the different standards of review for determining whether state laws or regulations violate constitutional rights. In *Skinner v. Oklahoma*, 316 U.S. 535 (1942),

the Supreme Court applied strict scrutiny (is the law "narrowly tailored to achieve a compelling government interest") where the state passed a law allowing sterilization of a person convicted three or more times of a felony involving moral turpitude.

In *Craig v. Boren*, 429 U.S. 190 (1976), the Supreme Court applied intermediate scrutiny (does the law substantially further an important government interest).

And in the Supreme Court case of *Nebbia v. New York*, 291 U.S. 502 (1934), the Court applied the lowest level of scrutiny rational basis test (is the law rationally related to serve a legitimate government interest).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: The applicable federal rule of civil procedure that concerns issuance of injunctions is Rule 65. The Supreme Court has issued many decisions addressing the extreme and extraordinary nature of this remedy as well as in cases requesting nationwide or universal injunctions. This is true as such injunctions extend beyond the litigants who are before the Court to those who do not necessarily have standing to begin with. As the Supreme Court indicated in *Lewis v. Casey*, 518 U.S. 343, 357 (1996), such relief would be afforded far beyond "the inadequacy that produced the injury in fact that the plaintiff had established." If confirmed and confronted with this issue, I would take great care in consideration of any request for a nationwide injunction and be guided and directed by binding precedent of the Supreme Court and Third Circuit before issuing any such requested injunction.

43. Please answer the following questions regarding your experience in federal court. If the answer is no to any question below, please explain how you are prepared to serve on the federal bench.

a. Have you ever participated in federal litigation?

Response: Yes. Over my 24 years as a trial lawyer, I handled a number of complex litigation cases in federal court involving both pretrial practice and trial practice as a board certified trial attorney. This experience will serve me well if I have the honor of being confirmed.

b. Have you ever filed a motion or brief in federal court as a counsel of record?

Response: Yes.

c. Have you ever participated in oral argument in a federal court?

Response: Yes.

Questions from Senator Thom Tillis
for Julia Kathleen Munley
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **I understand you gave a lecture at the Scranton Chamber of Commerce, NEPA Women's Leadership Conference in Plains, Pennsylvania on "Projecting Sincerity in Communications" in 2017. During this lecture, one of your slides stated that "invoking religion" could be a sign of deception. What did you mean by that statement, and how should people of faith interpret your statement?**

   Response: This presentation addressed ways in which people in different professions can communicate in sincere ways for the purpose of understanding each other. As to the particular slide you refer to, I was quoting from a book Spy the Lie written by former CIA officers who developed skills to determine when people may not be truthful. They included certain expressions and mannerisms people say or do when they may not be telling the truth including the expression "I swear to God." This example of "I swear to God" refers to a figure of speech, not used in a religious context at all. It is where someone is swearing as to the truth of what they are saying when they are not being truthful at all, such as "as God is my witness…" or "I swear on my father's grave…."

   This slide and this reference has no correlation with someone's Free Exercise of Religion nor is it suggesting in any way that someone who is religious or prays is deceptive. Free Exercise of Religion is a fundamental right, protected in our Constitution and if confirmed, I will uphold that fundamental right and the United States Constitution and faithfully apply binding precedent to all matters that come before me while treating everyone before me with dignity and respect.

2. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

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

   Response: "Judicial activism" is defined in Black's Law Dictionary as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Black's Law Dictionary (11th ed. 2019). I have not and do not subscribe to judicial activism. It is never appropriate for a judge to allow personal views or beliefs to play a role in judicial decision making.

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

   Response: Impartiality is an expectation for a judge. Pursuant to the Oath of office under 28 U.S.C. Section 453, a judge swears and commits to administer justice without respect to persons who come before that judge and to do equal rights to the poor and the rich alike, to faithfully and impartially discharge the duties incumbent upon that judge in accordance with

the laws and the United States Constitution. Furthermore, under Canon 2 of the Code of Conduct for United States Judges, a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Impartiality is absolutely necessary in the role of a judge to uphold the public's confidence in our judiciary. Over the past 7 years as a trial judge, I have heard many cases and entered decisions in those cases fairly and impartially. If I have the honor of being confirmed, I will uphold my Oath of office and will apply binding precedent in all of my decisions both fairly and impartially.

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

   Response: No.

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

   Response: A judge is required to apply the binding precedent to the facts presented, regardless of the outcome. It would be improper for a judge to allow his or her personal feelings, beliefs or preferences on the law or the case to play a role in judicial decision making. Over the past 7 years, I have faithfully applied the applicable law and binding precedent fairly and impartially to the facts before me. If confirmed, I will continue to abide by my Oath of office and faithfully apply the binding precedent without regard to the outcome of the decision.

7. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. A judge should never interject his or her own politics or policy preferences when interpreting or applying the law. Doing that is judicial activism and a violation of a judge's Oath of office which is improper. I do not subscribe to that. If confirmed, I will continue to faithfully interpret and apply the law fairly and impartially, without consideration of any preferences, beliefs or feelings according to my Oath of office.

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

   Response: If I have the honor of being confirmed, I will faithfully apply binding precedent of the Supreme Court and Third Circuit in any case involving the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

9. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?**

Response: A case involving a Sheriff's policy of not processing handgun purchase permits appears to raise Second Amendment issues. To evaluate the case I would apply appropriate Supreme Court and Third Circuit precedent including *New York State & Rifle Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). Under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded as a sitting judge and a nominee for District Court from providing an opinion or view on the outcome of such a challenge as such a case may come before me.

10. **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 doctrine of qualified immunity applies where government officials such as law enforcement are acting within the scope of their employment and performing their duties within their discretion. Law enforcement personnel are shielded from liability in suits for damages when in the performance of their duties they do not violate a clearly established statutory or constitutional right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Once the defendant, the government official pleads qualified immunity, the burden then will shift to the plaintiff to establish that the official violated a statutory or constitutional right which is clearly established. *Martin v. City of Newark*, 2018 WL 6828424 (3d Cir. Dec. 28, 2018).

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

    Response: As a sitting judge and nominee for the United States District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving opinions or views on matters that could come before me. Any opinions or views I may have are irrelevant in judicial decision making. However, if I have a case involving these issues, I will faithfully and impartially apply all binding precedent of the Supreme Court and the Third Circuit.

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

    Response: Please see my responses to Questions 8 and 9 above.

13. **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?**

    Response: As a sitting judge and a nominee for the United States District Court, it is not my role to provide any opinions or views on the decisions of the Supreme Court. Further, under

Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving any views or opinions on matters that could come before me. However, if I have a case involving these issues, I would keep an open mind and would faithfully and impartially apply binding precedent of the Supreme Court, Third Circuit and Federal Circuit to the facts before me after reviewing all submissions and the record.

14. **Do you believe the current patent eligibility 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: Please see my response to Question 13 above.

15. **Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.**

    a. **What experience do you have with copyright law?**

       Response: Over the course of my 31-year legal career, 24 as a trial lawyer and 7 as a trial judge, to the best of my recollection, I have not handled a case involving copyright law. If I have the honor of being confirmed, I will carefully review all submissions and the record, keep an open mind, do the research to find the applicable binding precedent of the Supreme Court and Third Circuit and faithfully and impartially apply that precedent to the facts before me. I am fully confident that I will be able to handle any case involving copyright law which comes before me.

    b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

       Response: Please see response to Question 15a above.

    c. **What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

       Response: Please see response to Question 15a above.

    d. **What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?**

       Response: Please see response to Question 15a above.

16. **The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.**

    a. **In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?**

    Response: In a case where I am required to do statutory interpretation, I first look to the text, the plain language of that statute. If it is clear and unambiguous, I would apply it and my analysis would end there. I would also apply any binding precedent of the Supreme Court and Third Circuit regarding that specific text at issue. If there is ambiguity in the text, I would look to find binding precedent of the Supreme Court and Third Circuit in my research. If there is none, find analogous cases from the Supreme Court and Third Circuit. If none, then persuasive precedent from other circuits and consult the Canons of Statutory Construction. I would only utilize legislative history if I was directed to do so through Supreme Court precedent in interpreting the statute. If so, I would follow that guidance of the Supreme Court in how to utilize legislative history in the interpretation and what legislative history is permissible and not go beyond that. In *City of Chicago v. Envtl. Def. Fund*, 511 U.S. 328 (1994), the Supreme Court noted it is the statute that should be analyzed not the legislative history.

    b. **Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?**

    Response: If I have the honor of being confirmed, I would faithfully apply Supreme Court and Third Circuit precedent to the facts before me to determine whether any advice or analysis of an agency should have any role in any case before me. In looking at the statute, if the statute is clear and unambiguous then my inquiry ceases. I would seek out Supreme Court and Third Circuit cases on point which are binding to ensure my interpretation is correct. However, if the statute is ambiguous I would be guided by Supreme Court precedent as to what if any role the advice and analysis by federal agencies play in my decision making. *Chevron U.S.A, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587 (2022). The Supreme Court in *Christiansen v. Harris County*, 529 U.S. 576 (2000) held that interpretations in opinion letters, policy statements, agency manuals,

and enforcement guidelines "do not warrant *Chevron*-style deference" and are instead "'entitled to respect,' but only to the extent that they are persuasive." *Id.* at 587, citing *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). Deference does apply to an agency's interpretation contained in a regulation, but "only when the language of the regulation is ambiguous." *Id.* at 588, citing *Auer v. Robbins*, 519 U.S. 452 (1997). If under the applicable binding precedent in the case before me, the agency is required to point to "clear congressional authority," I would faithfully follow that binding precedent where the major questions doctrine is applicable.

c. **Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: As a sitting judge and nominee for the United States District Court it is not my role to comment or provide opinion on questions of policy. Further, this matter may come before me as a judge and under Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from commenting. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

17. **The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.**

a. **How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?**

Response: Please see my response to Question 16a above regarding my approach to statutory interpretation. If confirmed and I had a case involving the DMCA I would interpret that in the same manner as any federal statute. Furthermore, I would apply binding Supreme Court and Third Circuit precedent faithfully and impartially to the facts.

b. **How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?**

Response: Please see my response to Question 17a above.

18. **In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In**

some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

a. **Do you see "judge shopping" and "forum shopping" as a problem in litigation?**

   Response: I can say that as a judge on the court in which I sit, we as a court do not condone "judge shopping" nor do I subscribe to that practice. There is a system in place through court administration which ensures that this does not occur. I am confident that the United States District Court for the Middle District of Pennsylvania has an even more regulated system as I practiced before this court as a trial lawyer. If confirmed, it would be my practice to continue to discourage "judge shopping" as cases must be decided in a fair and impartial manner by an impartial judge. I will faithfully uphold my Oath of office under 28 U.S.C. Section 453 if confirmed. Moreover, I commit to this Committee that if confirmed that I will never engage in the practice of "forum selling" as I believe it is violative of my Oath of office as a United States District Court Judge.

b. **If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

   Response: Please see my response to Question 18a above.

c. **Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?**

   Response: Please see my response to Question 18a above.

d. **If so, please explain your reasoning. If not, do you commit not to engage in such conduct?**

   Response: Please see my response to Question 18a above.

19. **If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?**

    Response: Please see my response to Question 18 a-d above.

20. **To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?**

Response: Please see my response to Question 18 a-d above. If confirmed, I would abide by whatever local rules are in place for the United States District Court for the Middle District of Pennsylvania.