Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Gregory Williams
Nominee to be United States District Judge for the District of Delaware
May 18, 2022

1. **According to a 2019 annual report issued by then-Chief Judge Leonard Stark, the District of Delaware hears a very high volume of patent cases. As the report explains, between 2009 and 2018, "Delaware averaged 178 patent cases filed per authorized judgeship," and between 2011 and 2018, patent cases accounted for a full 50 percent of all civil filings in the District. Trademark and contract suits also make up large percentages of the District's civil docket. (*United States District Court, District of Delaware: Annual Report 2019*)**

   As you note in your Senate Judiciary Questionnaire, in your 26 years as a litigator, you have focused on many of the types of cases that arise most frequently in the District of Delaware, including contractual disputes, intellectual property litigation, and other business litigation.

   Given the nature of the District of Delaware's docket, how do you think your nearly three decades of practicing law has prepared you for the rigors and challenges of serving as a United States District Court Judge?

   Response: If I am confirmed, I would bring with me to the bench nearly three decades of experience as a trial attorney and litigator practicing in business, commercial, intellectual property and other litigation, including patent and trademark litigation, business torts, contractual disputes, corporate governance, director and shareholder disputes, restrictive covenants and other employment issues, condemnation, eminent domain and other real property disputes, products liability and other business matters. During my career, I estimate that I have drafted hundreds of pleadings, motions, briefs, interrogatories, document requests, requests for admissions and other written discovery, taken or defended hundreds of depositions of witnesses, argued numerous dispositive motions, motions for temporary restraining orders, preliminary injunctions and other injunctive relief, argued hundreds of discovery motions and other non-dispositive motions, and have handled every other aspect of litigating a case from intake through trial and appeal. I have tried to verdict four jury trials and two bench trials. I also have argued cases before the Delaware Supreme Court on two occasions. In addition, I have served as a Special Master in patent and other complex civil cases in the District of Delaware for more than two years. As a Special Master, I have managed discovery in the cases assigned to me by the presiding trial judges, including hearing motions, conducting hearings, and resolving and/or ruling on all disputes regarding discovery in those cases. I have issued approximately twenty Memorandum Orders in my role as Special Master. I also have experience managing and supervising other attorneys, paralegals and support staff having previously served as the managing partner of my firm's Delaware office.

   I believe that the breadth, diversity and volume of experience that I have acquired as a

practitioner and Special Master in the District of Delaware, as well as the experience that I have gained practicing in other federal and state courts during my career, has prepared me well for the rigors and challenges of serving as a United States District Judge.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Gregory Brian Williams
Judicial Nominee to the U.S. District Court for the District of Delaware

1. **You wrote an article *The Voting Rights Act of 1965: A Historical Perspective, A Look at Its Key Provisions, and the Practice Effect of the* Shelby County *Decision* in which you gave an overview of the Voting Rights Act and how the Supreme Court's invalidation of Section 4 in its *Shelby County* opinion changes the law. You close your article by saying, "We have come too far as a nation to go backwards on voting rights issues. Hopefully, Congress will get their act together soon and take some action to rectify the enforcement problems created by the *Shelby County* decision. We shall see."**

    a. **What did you mean by this?**

    Response: As a private citizen at the time that I wrote the article, I raised some questions for thought and desired for Congress to take action to rectify any issues created in enforcing Section 5 of the Voting Rights Act of 1965 that arose from the *Shelby County* holdings that Section 4 was unconstitutional and that the coverage formula that had been used for decades could no longer be used to establish the preclearance requirements of Section 5.

    b. **Are your views about voting laws shaped by having lived in Delaware, which has substantially more onerous voting laws than most of the country, including not allowing no-excuse absentee voting or early voting before 2022?**

    Response: I have not compared voting laws in Delaware with those of other states and, thus, have no personal views on whether they are "more onerous" than voting laws in other states. Moreover, as a judicial nominee, I am constrained from commenting on any matter that may come before me in the future. Code of Conduct for U.S. Judges (Jud. Conf. 2019). If confirmed, as a district judge, I would follow and apply all binding Supreme Court and Third Circuit precedent in a fair and impartial manner.

2. **During the hearing you said that lawyers can be "social engineers or parasites on society." In what ways have you "engineered" society and what contribution are you most proud of?**

Response: As I noted during my hearing, civil rights attorney Charles Hamilton Houston famously said that "a lawyer is a social engineer or a parasite on society." I interpret that to mean that lawyers should attempt to use their talents to improve society and promote the rule of law. During my career as an attorney, I have given of my time, talents, and resources to various social issues including, but not limited to, homelessness, legal

services to the poor, and mentoring youth. I am most pleased with the work that I have done assisting the homeless and mentoring youth.

3. **You said in your hearing that your legal practice has focused primarily on intellectual property. As a district court judge you would hear a wide variety of cases including administrative disputes and criminal cases. What do you plan to do to get up to speed on areas of the law with which you are not familiar?**

Response: If I am confirmed, I would bring with me to the bench nearly three decades of experience as a trial attorney and litigator practicing in business, commercial, intellectual property and other litigation, including patent and trademark litigation, business torts, contractual disputes, corporate governance, director and shareholder disputes, restrictive covenants and other employment issues, condemnation, eminent domain and other real property disputes, products liability and other business matters. During my career, I estimate that I have drafted hundreds of pleadings, motions, briefs, interrogatories, document requests, requests for admissions and other written discovery, taken or defended hundreds of depositions of witnesses, argued numerous dispositive motions, motions for temporary restraining orders, preliminary injunctions and other injunctive relief, argued hundreds of discovery motions and other non-dispositive motions, and have handled every other aspect of litigating a case from intake through trial and appeal. I have tried to verdict four jury trials and two bench trials. I also have argued cases before the Delaware Supreme Court on two occasions. In addition, I have served as a Special Master in patent and other complex civil cases in the District of Delaware for more than two years. As a Special Master, I have managed discovery in the cases assigned to me by the presiding trial judges, including hearing motions, conducting hearings, and resolving and/or ruling on all disputes regarding discovery in those cases. I have issued approximately twenty Memorandum Orders in my role as Special Master. I also have experience managing and supervising other attorneys, paralegals and support staff having previously served as the managing partner of my firm's Delaware office.

My law practice over the course of nearly three decades has required me on many occasions to learn new areas of the law. In getting up to speed in areas of the law in which I have no experience or familiarity, among other things, I would read any applicable statutes, Supreme Court and Third Circuit precedent, leading textbooks, treatises and other publications on the subject matters, attend continuing legal education courses and review any materials therefrom, and shadow and consult with other judges on the court with experience in those subject matters. I also would look to hire, when appropriate, law clerks and other staff with broad experience, including experience in areas of the law to which I have not been previously exposed. Given my track record of being able to aptly get up to speed in new areas of the law and with all of the aforementioned measures, I am confident in my ability to get up to speed quickly in any areas of the law that I have not previously practiced and will be diligent in my efforts.

4. **Which Third Circuit judge has an approach to the law that is the most similar to yours?**

   Response: I have not studied the approach of all of the current Third Circuit judges and, thus, cannot compare myself to them. If confirmed as a district judge, I would "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. I would approach each case with an open-mind, carefully consider the arguments presented by the parties, and apply binding precedent from the Supreme Court, the Third Circuit or the Federal Circuit, as appropriate depending upon the type of case, in a fair and impartial manner.

5. **Which Supreme Court opinion in the last fifty years—including dissents and concurrences in addition to majority opinions—most clearly demonstrates your approach to the law?**

   Response: I have not studied all of the Supreme Court opinions in the last fifty years; thus, I cannot opine on which opinion most clearly demonstrates my approach to the law. If confirmed as a district judge, I would follow all Supreme Court precedent.

6. **Is there a Supreme Court opinion in which you agree with the methodology but disagree with the outcome?**

   Response: As a judicial nominee, it would not be appropriate for me to comment on the correctness of any Supreme Court opinion. If confirmed as a district judge, I would follow all Supreme Court precedent.

7. **In your article "George Zimmerman Verdict: Right, Wrong, or Just Another Example of the Imperfect Nature of the Law" you state that you found yourself "internally conflicted and somewhat frustrated" after the verdict was delivered in the criminal trial of George Zimmerman. You explained that you wrote the article to share your "internal thought progression" and to share your understanding of your "research on Florida's 'stand your ground' law." You wrote "[a]s an attorney and a U.S. citizen, I have the highest respect for our judicial system and will abide by its rulings. However, as we move forward as a nation from this tragedy, I am also reminded again that racial profiling still exists and the law, in all of its wisdom, is imperfect. Sometimes things can be found to be legal or justified under the law, but just not feel like justice to some of us. As social engineers, we need to constantly push the law to be better."**

   a. **What did you mean by "better" when you said that we should "push the law to be better?"**

      Response: As a private citizen at the time that I wrote the article, I raised some questions for thought and challenged attorneys to think about ways that the law could be improved in the future to prevent the killing of another unarmed child going to the store to purchase candy.

b. **What is the role of a judge in "push[ing] the law to be better?"**

Response: A judge's role is to apply the applicable law to the specific facts of the case in front of him or her in a fair and impartial manner.

c. **What is an instance in which you have "push[ed] the law to be better?"**

Response: Along with colleagues, I represented a plaintiff prisoner in a civil rights action who was housed by the prison in isolation in a portion of State Correctional Institution - Graterford (located in Pennsylvania) that was closed at the time and not supposed to be used to house prisoners because it was unsafe and not fit for human habitation. On behalf of the client, we asserted Eighth Amendment claims against the prison and several correction officers. Ultimately, as part of the settlement, the prisoner was relocated to another area of the prison that did house other inmates and was suitable for human habitation.

8. **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?**

Response to all subparts: As a judicial nominee, I am constrained from commenting on any matter that may come before me in the future. Code of

Conduct for U.S. Judges (Jud. Conf. 2019). If confirmed, as a district judge, I would follow and apply in a fair and impartial manner all U.S. Supreme Court precedent. Moreover, I am aware that prior judicial nominees have identified *Brown v. Board of Education* and *Loving v. Virginia* as established precedents that are unlikely to be subject to future challenge. Thus, like prior judicial nominees, I can state that I believe *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

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

Response: I am not familiar with Judge Jackson's statement or the context in which it was made. The Constitution is an enduring document. It sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

10. **Should judicial decisions take into consideration principles of social "equity"?**

Response: Social equity is a term that can have different meanings. According to Black's Law Dictionary, "equity" is defined as "fairness; impartiality; evenhanded dealing" and "[t]he body of principles constituting what is fair and right." Black's Law Dictionary (11th ed. 2019). In rendering decisions, judges should apply binding precedent in a fair and impartial manner to the specific facts of the case before the court.

11. **Do parents have a constitutional right to direct the education of their children?**

Response: The Supreme Court has held that parents have the right to direct the education of their children. *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("[Plaintiff's] right thus to teach and the rights of parents to engage [Plaintiff] so to instruct their children, we think, are within the liberty of the [Fourteenth] amendment." S*ee also Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("[W]e have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right [] . . . to have children . . . [and] to direct the education and upbringing of one's children . . . .") (internal citations omitted).

12. **Is when a "fetus is viable" a scientific question?**

Response: In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 860 (1992), the Supreme Court noted that "advances in neonatal care have advanced viability to a point earlier" than in 1973. The Court also noted that viability occurred at approximately 28 weeks at the time of *Roe*, occurred at approximately 23 to 24 weeks at the time of *Casey*, and may occur "at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future." *Id.* The Supreme Court appears to have viewed it as a scientific question.

13. **Is when a human life begins a scientific question?**

Response: Some consider this a scientific question. Others see the question as having religious, moral, political or philosophical dimensions. If confirmed and a case came before me presenting this issue, I would be duty bound to apply any binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

14. **Is threatening Supreme Court justices right or wrong?**

Response: Black's Law Dictionary defines a "threat" as "a declaration of one's purpose or intent to work injury to the person, property, or rights of another." Black's Law Dictionary (11th ed. 2019). Based on that definition, threatening a Supreme Court justice is wrong.

15. **Do you believe that we should defund or decrease funding for police departments and law enforcement? Please explain.**

Response: This a policy question for the legislative and/or executive branch to decide and not for the judiciary. As a judicial nominee, it would be inappropriate for me to express a personal opinion or weigh into a public policy debate.

16. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

Response: Please see my response to Question 15.

17. **Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."**

    a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

    Response: The courts decide whether there is a burden on the exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014).

    b. **How is a burden deemed to be "substantial[]" under current caselaw?**

    Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720-26 (2014), the Supreme Court applied a two-factor analysis. First, courts must determine whether non-compliance with the challenged law would impose "severe" economic costs. *Id.* at 720. Second, courts must determine whether compliance with the challenged law would force the objecting parties to violate their sincere religious beliefs. *Id.* at 720-26. The Court warned that the job of a court is "narrow" on the second factor – only '"to determine" whether the line drawn reflects 'an honest conviction.'" *Id.* at 725.

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

Response: The Supreme Court has defined "fighting words" as words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinksky v. New Hampshire*, 315 U.S. 568, 572 (1942). Fighting words include "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971). Symbolic speech does not constitute fighting words unless it is likely to be seen as "a direct personal insult or an invitation to exchange fisticuffs." *Texas v. Johnson*, 491 U.S. 397, 409 (1989).

19. **Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: The history and characteristics of the defendant is one of the factors that 18 U.S.C. § 3553 requires courts to consider in imposing a sentence. Specifically, 18 U.S.C. § 3553(a) states that courts should consider in imposing a sentence sufficient, but not greater than necessary, to comply with the purposes of the punishment, among other things, "(1) the nature and circumstances of the offense and the history and characteristics of the defendant . . . ."

20. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

Response: Courts generally apply a four-part test in determining whether injunctive relief should be granted. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (setting forth standards for preliminary injunctive relief as (1) likelihood of success on the merits; (2) irreparable harm; (3) balance of equities in favor of movant; and (4) granting preliminary injunctive relief would be in the public interest); *eBay v. MerExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (To obtain a permanent injunction, a "plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction."). The Supreme Court has noted that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 165 (2010). Also, "injunctive relief should be no more burdensome to defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). While the Supreme Court has upheld nationwide injunctions when they are necessary to grant relief to parties, *see*, *e.g.*, *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-89 (2017) (upholding portion of preliminary injunction with respect to parties and similarly situated nonparties), the authority for a district judge to enter a nationwide injunction is uncertain and subject to debate. Currently, no federal statute explicitly authorizes the courts to issue nationwide injunctions, nor does any statute expressly limit the courts'

ability to do so. Although several sitting Supreme Court justices have expressed views regarding nationwide injunctions in non-binding separate opinions, *see, e.g., Dep's of Homeland Sec. v. New York*, 140 S. Ct. 599, 599-600 (2020) (Gorsuch, J., concurring); *Trump v. Hawaii*, 138 S. Ct. 2392, 2428-29 (2018) (Thomas, J., concurring), to date, no majority of the Supreme Court has expressly ruled on the legality of nationwide injunctions.

21. **If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

    Response: As a judicial nominee, it would be inappropriate for me to opine on a hypothetical. If such a case were to come before me, I would review the written and oral arguments of counsel, research and review Supreme Court and Third Circuit precedent, and apply the binding precent to the specific facts of the case before me in a fair and impartial manner.

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

Response: No.

b. **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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

c. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, 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. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary, which purports to "combat[] damaging right-wing**

court capture to restore progressive federal courts" and to "counter illegitimate right-wing dominated courts."

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

Response: No.

b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

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

Response: On November 17, 2021, I submitted application materials to the local selection committee. I interviewed with the local selection committee on or around December 10, 2021. I was chosen by the selection committee to proceed to the next round to interview with Senators Tom Carper and Chris Coons. On December 20, 2021, I interviewed with Senators Carper and Coons and members of their staff. On December 21, 2021, I was informed that Senators Carper and Coons would be recommending me to the White House for nomination. On December 22, 2021, I interviewed with attorneys from the White House Counsel's Office. On February 17, 2022, the White House Counsel's Office informed me the Office of Legal Policy at the Department of Justice would begin the vetting process. On April 25, 2022, my nomination was submitted to the Senate.

29. **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.

30. **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.

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

    Response: No.

32. **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.

33. **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.

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

    Response: No.

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

    Response: Please see my response to Question 28. In addition, following my nomination on April 25, 2022, I communicated regularly with the Office of Legal Policy regarding submitting my Senate Judiciary Questionnaire, completing my Financial Disclosure Report, preparing for my hearing before the Senate Judiciary Committee, and responding to Questions for the Record. I also was in regular contact with the White House Counsel's Office regarding preparing for my hearing before the Senate Judiciary Committee.

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

Response: I received the questions from the Office of Legal Policy on May 18, 2022. I reviewed each question, conducted research, and drafted responses. On May 19, 2022, I submitted draft responses to the Office of Legal Policy. The Office of Legal Policy provided input on my draft responses, which I considered. I finalized and submitted my responses on May 23, 2022.

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

Questions for the Record for Gregory Williams, Nominee for the District of Delaware

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: Racial discrimination is generally illegal. For example, Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on race, religion, sex and national origin.

2. How should federal district courts consider Supreme Court precedent when deciding cases?

Response: District courts should follow all binding Supreme Court precedent when deciding cases.

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: If confirmed, I will honor my oath to "faithfully and impartially discharge all duties incumbent upon me . . . under the Constitution and laws of the United States." I will approach each case with an open mind, thoroughly review and consider the parties' respective submissions and oral arguments, apply Supreme Court and Third Circuit precedent, and exercise judicial restraint in deciding only the issues properly before me in a fair and impartial manner. I am not able to identify any specific U.S. Supreme Court Justice whose philosophy is most analogous with mine.

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

Response: Black's Law Dictionary defines "originalism" as "[t]he 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). If confirmed, I will apply Supreme Court and Third Circuit precedent concerning how to interpret any Constitutional provision or statute, including the provision's original public meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying the original public meaning to interpret the Second Amendment). I would not apply any label to my judicial philosophy if confirmed.

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

Response: Black's Law Dictionary defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. (11th ed. 2019). I would not apply any label to my judicial philosophy if confirmed.

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: If confirmed and faced with a constitutional issue of first impression, I will apply Supreme Court and Third Circuit precedent concerning how to interpret any Constitutional provision or statute, including the provision's original public meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying the original public meaning in interpreting the Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (applying the original public meaning in interpreting the Confrontation Clause of the Sixth Amendment).

7. **In an interview with your alma mater, Villanova, you described that you learned about role models like Charles Houston, the founder of the NAACP's legal division, and former Supreme Court Justice Thurgood Marshall. You described that you learned that "lawyers could be social engineers, a belief that seeded [your] interest in law." In an article that you wrote, you said, "Sometimes things can be found to be legal or justified under the law, but just not feel like justice to some of us. As social engineers, we need to constantly push the law to be better." Mr. Williams, what does it mean for a lawyer to be a "social engineer," as you have previously described?**

Response: I participated in the interview and wrote the article as a private citizen at the time and not as a judicial nominee. As I noted during my hearing before the Senate Judiciary Committee, civil rights attorney Charles Hamilton Houston famously said that "a lawyer is a social engineer or a parasite on society." I interpret that to mean that lawyers should attempt to use their talents to improve society and promote the rule of law. A judge, of course, promotes the rule of law by following precedent, ensuring litigants are heard, receive a fair and impartial hearing, and respected in his or her courtroom, that his or her opinions are clear and well-reasoned, and that he or she exercises judicial restraint by only hearing the cases and controversies that are before him or her and not exceeding the authority provided to him or her as a judge.

a. **One of your examples was Justice Thurgood Marshall. Should judges also act as a social engineer?**

Response: I understand the difference between the role of an advocate and the role of a judge. A judge's duty is to apply the applicable law to the specific facts of the case in front of him or her in a fair and impartial manner. If confirmed as a district judge, I will apply the applicable law to the specific facts of the case before me in a fair and impartial manner.

8. **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: If confirmed, I will follow Supreme Court and Third Circuit precedent in interpreting the Constitution or federal statute. The Supreme Court has considered

contemporary community standards in assessing some constitutional questions. *See, e.g., Miller v. California*, 413 U.S. 15, 24 (1973) (considering contemporary community standards in analyzing free speech defense in obscenity case). Typically, the Court "interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

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

Response: The Constitution is an enduring document. It sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

10. 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: As to a First Amendment claim, the Supreme Court has held that " a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Instead, the law need only be rationally related to a legitimate governmental interest. *See Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 876-82 (1990). In the absence of these elements, however, the law is subject to strict scrutiny and must be narrowly tailored to serve a compelling governmental interest. *See Church of the Lukumi*, 508 U.S. at 531-32. The Supreme Court has held that "government regulations are not neutral and generally applicable . . . whenever they treat any comparable secular activity more favorable than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Also, a law is not generally applicable if it authorizes the government to grant unrestricted discretionary exemptions. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). Further, a government defending the application of a neutral law of general applicability may not base its defenses on hostility to a religion or religious viewpoint. *See Masterpiece Cakeshop, Lt. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018).

In the context of actions taken by the federal government, the federal government is subject to The Religious Freedom Restoration Act (RFRA). Under RFRA, the federal government is prohibited from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability, except that the government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. RFRA applies to all federal law, but "permits Congress to exclude statutes from RFRA's protections." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2382 (2020).

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

Response: No.

12. 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, 69 (2020), the Supreme Court granted plaintiffs' preliminary injunction enjoining the enforcement of a New York executive order which restricted capacity at certain worship services. Given statements "viewed as targeting" religion, and that the challenged restrictions "single[d] out houses of worship for especially harsh treatment," the Court found that the religious organizations had "made a strong showing that the challenged restrictions violate[d] 'the minimum requirement of neutrality' to religion." *Id.* at 66. Also, a "law is not generally applicable if it invites government to consider particular reasons for a person's conduct by providing a mechanism for individual exemptions" or "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." Finding strict scrutiny applied, the Court also concluded that it was "hard to see how the challenged regulations [could] be regarded as 'narrowly tailored.'" *Id.* at 66-67. The Court also found that "[t]he loss of First Amendment freedoms" had caused irreparable harm to plaintiffs, and it was not "shown that granting the applications [would] harm the public." *Id.* at 66-68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted a preliminary injunction enjoining California's restrictions on at-home religious gatherings. Under strict scrutiny review, the restrictions were found violative because they were not neutral, generally applicable, or narrowly tailored. By permitting gatherings at "hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants," the restrictions treated some "comparable secular activity more favorably than religious exercise," even though those secular gatherings presented similar risk of spreading COVID-19. *Id. at 1296-97.* The Court noted that, in situations "[w]here the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Id.*

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

Response: Yes.

15. 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's cease and desist order against a shop owner who refused to sell a wedding cake to a same-sex couple did not comport with "the religious neutrality that the [Free Exercise Clause of the] Constitution requires." *Id.* at 1724. The shop owner refused to sell the wedding cake to the same sex couple because of his religious objections to same sex marriage. The Court found that the "neutral and respectful consideration to which [the shop owner] was entitled was compromised . . . . The Civil Rights Commission's treatment of his case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection." *Id.* at 1729. Religious objections to same sex marriage are protected views and, in some instances, protected forms of expression under the First Amendment.

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

Response: Yes. An individual's sincere religious beliefs are protected regardless of whether the beliefs "respond[] to the commands of a particular religious organization" or despite "disagreement among sect members." *Frazee v. Illinois Department of Emp. Sec.*, 489 U.S. 829, 833-34 (1989).

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

Response: The Supreme Court has held that "only beliefs rooted in religion – not "[p]urely secular views" – are protected. Significantly, sincere religious beliefs need not be "acceptable, logical, consistent or comprehensible" in order to be protected. A Court may only assess, based on a subjective test, the extent to which a religious belief is sincerely held. *See Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

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

Response: Please see response to Questions 16 and 16(a) above.

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

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

17. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the

adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: The First Amendment protects the rights of religious institutions to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine. In *Our Lady of Guadalupe School v. Morrisey-Beru*, 140 S. Ct. 2049 (2020), the Supreme Court applied the "ministerial exception" to bar the court from entertaining the employment discrimination claims of two Catholic school teachers against their Catholic school employer. The Court noted that the touchstone of the analysis is "what an employee does," and not his or her formal title. *Id.* at 2064. An employee who performs "vital religious duties," including "[e]ducating and forming students in the Catholic faith," is subject to the ministerial exception. *Id.* at 2066.

18. **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 Supreme Court determined that the City's refusal to grant Catholic Social Services ("CSS") an exemption from the non-discrimination provision in the City's standard foster care contract prohibiting a provider from rejecting foster parents based on their sexual orientation did not meet strict scrutiny review and, thus, violated the Free Exercise Clause of the First Amendment. The Court found that the contract was not neutral and generally applicable due to "the inclusion of a formal system of entirely discretionary exceptions" that could be applied in favor of other foster services providers. *Id.* at 1878. Also, the City had "no compelling reason why it ha[d] a particular interest in denying an exception to CSS while making them available to others." *Id.* at 1878-82.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated the judgment below and remanded to the Court of Appeals of Minnesota for further consideration in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In the case, members of the Amish community in Minnesota claimed that complying with a county ordinance that required installation of a modern septic system would infringe their sincerely held religious beliefs and, thus, violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

Justice Gorsuch, in his concurrence, noted that the county and state court's application of the RLUIPA were erroneous for several reasons. First, they failed, as required by *Fulton*, from considering whether the county had a compelling interest in denying the Amish community an exemption from the ordinance. Rather, "the County and courts below . . . treat[ed] the County's *general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Mast*, 141 S. Ct. at

2432 (Gorsuch, J., concurring) (emphasis in original). Second, the court "fail[ed] to give due weight to exemptions other groups enjoy," such as those who "'hand-carry' their gray water" and "are allowed to discharge it onto the land directly." Third, the County and the courts below "failed to give sufficient weight to rules in other jurisdictions." *Id.* at 2433. Fourth, the County and courts below rejected the petitioners' proposed alternative (a mulch-basin method that is permitted in other states) "based on certain assumptions." *Id.* The County, under strict scrutiny review, was required to "prove with evidence that is rules [were] narrowly tailored to advance a compelling state interest with respect to the specific persons it [sought] to regulate," including "that much basins [would] not work on these particular farms with these particular claimants." *Id.*

20. 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;**

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

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

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

Response to all subparts: No.

21. 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: I am not aware of the content of any training provided by the District of Delaware, or what role, if any, I would have in determining the content of training by the court if confirmed. All training provided by federal courts should be consistent with binding precedent.

22. 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: Please see response to Question 21 above.

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

Response: Under the Appointments Clause of the Constitution, the President is delegated the authority, with the advice and consent of the Senate, to make appointments to political positions. U.S. Constitution, Art. II, § 2, cl. 2. As a judicial nominee, I am constrained

from commenting on what it is appropriate or constitutional for the President and Senate to consider in making political appointments. If confirmed and the issue were presented in a case before me, I would apply binding precedent to the specific facts of the case before me in a fair and impartial manner.

24. In a 2007 interview with The Legal Intelligence for the article "Frustration Over Lack of Results in Diversity Panels," you stated the "onus is on corporate clients to request minority attorneys for matters and make sure they are doing meaningful work on those matters. To most effectively and quickly improve diversity in law firms, firms and corporations need to work together."

a. **Is it appropriate to consider skin color or sex when making a hiring determination? Is it constitutional?**

Response: As a judicial nominee, I am constrained from commenting on whether it is ever appropriate to consider skin color or sex when making a hiring determination. If confirmed and the issue were presented in a case before me, I would apply binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

25. Is the United States' criminal justice system systemically racist?

Response: I understand the term "systemic racism" to refer to discriminatory and racial disparities in policies and practices designed to, or having the effect of, creating and maintaining racial inequalities. As a judicial nominee, I am constrained by the Code of Judicial Conduct from commenting on issues that may appear in cases before me. If confirmed, I will honor the oath to "administer justice without respect to persons" and to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . ." 28 U.S.C. §453. If a case alleging racial discrimination comes before me, like in any other case, I will apply binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

26. You were quoted in a 2015 article about the impacts of the Delaware criminal justice system on African Americans. After hearing stories about young black men who were incarcerated, you are quoted as saying, "Becoming a felon is more devastating today than what existed during Jim Crow." During Jim Crow, black people were intentionally discriminated against through the legal system and treated as inferior by design. It was a horrific, immoral, and unjust system. Thanks to the work of generations of efforts of iconic leaders like Martin Luther King, Jr., the civil rights movement helped to change the laws in our country to treat people of all races equally, and to judge people based on the content of their character, not on the color of their skin. Those are laudable, important goals. So I am surprised and taken aback by your statement that being a felon today is more devastating to black Americans than what happened during Jim Crow. What did you mean by this statement?

Response: At the time that I wrote the article, I was writing as a private citizen. Some have used the term "new Jim Crow" to describe the conditions that can come along with

being a convicted felon in some states during contemporary times, including the loss of the right to vote, loss of driver's license, and the reduced probability of getting a job.

However, I understand the difference between the roles of an advocate and the role of a judge. A judge should apply binding precedent to the specific facts of the case before him or her in a fair and impartial manner. If confirmed, I will honor the oath to "administer justice without respect to persons" and to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . ." 28 U.S.C. §453. If a case alleging racial discrimination comes before me, like in any other case, I will apply binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

27. Do you believe that Jim Crow is still alive and well in the United States?

Response: Please see my Response to Question 26 above.

28. Does America suffer from "systemic sexism"?

Response: As a judicial nominee, I am constrained by the Code of Judicial Conduct from commenting on issues that may appear in cases before me. If confirmed, I will honor the oath to "administer justice without respect to persons" and to "faithfully and impartially discharge and perform all the duties incumbent upon me . . . ." 28 U.S.C. §453. If a case alleging sex discrimination comes before me, like in any other case, I will apply binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

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

Response: This is a policy question for Congress to decide.

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

Response: Yes. The Second Amendment provides "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

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

Response: I am not aware of any Supreme Court or Third Circuit holdings that the Second Amendment right to keep and bear arms should receive less protection than other individual rights specifically enumerated in the Constitution.

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

Response: See response to Question 31 above.

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

Response: Pursuant to Article II of the Constitution, the President "shall take Care that the Laws be faithfully executed. With respect to criminal cases, the Supreme Court has recognized that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon*, 418 U.S. 683, 693 (1974).

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

Response: I am not aware of any Supreme Court or Third Circuit precedent that answers this question. As a judicial nominee, I am constrained from commenting on issues that may come before me if confirmed. If the issue were presented in a case before me, I would carefully review and consider the parties' respective submissions and oral argument, research and apply applicable Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

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

Response: The federal death penalty is codified in 18 U.S.C. §3591. Abolishing the death penalty would require legislation passed by Congress and signed into law by the President. However, Article II of the Constitution grants the President the "Power to grant Reprieves and Pardons for Offenses against the United States" in individual cases.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court vacated a stay of a district court's stay pending appeal of the district court's grant of summary judgment in favor of the Alabama Association of Realtors (the "AAR"). The district court had agreed with the AAR in finding that the Center for Disease Control and Prevention (the "CDC") lacked statutory authority to impose a nationwide eviction moratorium during the COVID-19 pandemic. The Supreme Court found that the applicants were likely to succeed on the merits of their claim that the CDC exceeded its authority in imposing the moratorium and the applicants were at risk of irreparable harm by deprivation of rent payments with no guarantee of eventual recovery. *Id.* at 2486-89.

Senator Josh Hawley
Questions for the Record

Gregory Williams
Nominee, District of Delaware

1. **You stated in an interview with the *Villanova Law Magazine* that your parents taught you that "lawyers could be social engineers." You said that this belief spurred your interest in law. You also referred to lawyers in an article about the George Zimmerman trial as "social engineers." You said, "As social engineers, we need to constantly push the law to be better."**

    a. **What do you mean when you say that lawyers are "social engineers"?**

    Response: As I noted during my hearing, civil rights attorney Charles Hamilton Houston famously said that "a lawyer is a social engineer or a parasite on society." I interpret that to mean that lawyers should attempt to use their talents to improve society and promote the rule of law. A judge, of course, promotes the rule of law by following precedent, ensuring litigants are heard, receive a fair and impartial hearing, and respected in his or her courtroom, that his or her opinions are clear and well-reasoned, and that he or she exercises judicial restraint by only hearing the cases and controversies that are before him or her and not exceeding the authority provided to him or her as a judge.

    b. **As judges are lawyers, do you also believe that judges are "social engineers"?**

    Response: As I noted during my hearing, civil rights attorney Charles Hamilton Houston famously said that "a lawyer is a social engineer or a parasite on society." I interpret that to mean that lawyers should attempt to use their talents to improve society and promote the rule of law. I understand the difference between the role of an advocate and the role of a judge. A judge, of course, promotes the rule of law by following precedent, ensuring litigants are heard, receive a fair and impartial hearing, and respected in his or her courtroom, that his or her opinions are clear and well-reasoned, and that he or she exercises judicial restraint by only hearing the cases and controversies that are before him or her and not exceeding the authority provided to him or her as a judge.

2. **In a 2007 interview with *The Legal Intelligencer*, you said that corporations, when hiring outside counsel, should give projects to attorneys on the basis of race and sex. You said corporations should "request minority attorneys for matters and make sure they are doing meaningful work on those matters." Do you recognize that the Civil Rights Act of 1964 expressly prohibits companies from assigning work based on race or sex?**

   Response: The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex or national origin.

3. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

      Response: I am not familiar with this quotation or the context in which it was made. If confirmed, I would start with an open mind, review and consider the parties' respective arguments, and apply binding precedent to the specific facts of the case before me in a fair and impartial manner.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

      Response: Please see my response to Question 3(a).

4. **What is the standard for each kind of abstention in the court to which you have been nominated?**

   Response: Abstention is a doctrine where courts may, or in some cases must, refrain from adjudicating a case if doing so would potentially intrude upon the power of another court. *See Voda v. Cordis Corp.*, 576 F.3d 887, 905 (Fed. Cir. 2007) ("Abstention doctrines embody the general notion that federal courts may decline to exercise their jurisdiction, in otherwise exceptional circumstances, where denying a federal forum would clearly serve an important countervailing interest, for example where abstention is warranted by considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration."). There are several grounds for abstention that are recognized in the Third Circuit and the District of Delaware.

   The *Younger* abstention doctrine provides that federal courts should abstain from hearing cases involving federal issues being litigated in state courts where (1) there is an ongoing state proceeding; (2) the state proceeding implicates an important state

interest; and (3) the state proceedings provide an adequate opportunity to raise the federal claims. *See Younger v. Harris*, 401 U.S. 37 (1971).

The *Pullman* abstention doctrine provides that federal courts should abstain from adjudicating the constitutionality of an ambiguous state statute until the state courts have had a reasonable opportunity to consider it. The doctrine applies where: (1) the case presents both state and federal constitutional grounds for relief; (2) the proper resolution of the state ground is not clear; and (3) the disposition of the state ground could obviate the adjudication of the federal constitutional ground. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941).

The *Thibodaux* abstention doctrine may occur when a federal court sitting in diversity jurisdiction chooses to allow a state to decide issues of state law that are of great importance to the state, to the extent that a federal determination would infringe on state sovereignty. *See Louisiana Power & Light Co.v. City of Thibodaux*, 360 U.S. 25 (1959).

The *Colorado River* abstention doctrine deals with the issue of whether a federal court should exercise its jurisdiction where there is a parallel litigation in both federal and state courts. *See Colorado River Conservation Dist. v. United States*, 424 U.S. 800, 817-20 (1976); *Nationwide Mutual Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009).

The *Rooker-Feldman* abstention doctrine provides that federal courts should abstain from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The *Brillhart/Wilton* abstention doctrine applies where a plaintiff seeks "purely declaratory relief" and there is a pending, parallel state-court action. *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942).

5. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

Response: Not applicable.

6. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

Response: If confirmed as a district judge, I would follow precedent of the Supreme Court and the Third Circuit. The Supreme Court has looked to the original public meaning in interpreting certain constitutional provisions such as the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). Where the Supreme Court or the Third Circuit requires that I apply the original public meaning, I will do so.

7. **Do you consider legislative history when interpreting legal texts?**

Response: If confirmed as a district judge, I will follow Supreme Court and Third Circuit precedent setting forth the methods of constitutional and statutory interpretation. I will begin my analysis by reviewing the text of the relevant provision and construe the text according to its plain or ordinary meaning. If there is ambiguity in the text, I will next look to binding precedent of the Supreme Court and Third Circuit and follow the precedent. If there is no binding precedent of the Supreme Court or Third Circuit, I will consider opinions of other Courts of Appeal (as persuasive authority) and also decisions of other district courts. I also will apply canons of statutory construction and, as a last resort, will consider legislative history. The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

   a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

   Response: The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

   Response: Never.

8. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

Response: The standard for determining whether an execution protocol violates the Eighth Amendment is set forth in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019). Under the test, a claimant must demonstrate the existence of an alternative method of execution that would significantly reduce a substantial risk of severe pain that the state has refused to adopt without a legitimate reason.

9. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Yes. Please see my response to Question 8.

10. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

    Response: In *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), the Supreme Court held that a habeas corpus petitioner does not have a substantive due process right to DNA analysis of evidence to prove innocence. The Third Circuit applied the standard in *Bonner v. Montgomery County*, 458 Fed. Appx. 135 (3d Cir. 2012).

11. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

    Response: No.

12. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

    Response: As to a First Amendment claim, the Supreme Court has held that " a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Instead, the law need only be rationally related to a legitimate governmental interest. *See Employment Div., Dep't of Human*

Resources of Oregon v. Smith, 494 U.S. 872, 876-82 (1990). In the absence of these elements, however, the law is subject to strict scrutiny and must be narrowly tailored to serve a compelling governmental interest. *See Church of the Lukumi*, 508 U.S. at 531-32. The Supreme Court has held that "government regulations are not neutral and generally applicable . . . whenever they treat any comparable secular activity more favorable than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Also, a law is not generally applicable if it authorizes the government to grant unrestricted discretionary exemptions. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). Further, a government defending the application of a neutral law of general applicability may not base its defenses on hostility to a religion or religious viewpoint. *See Masterpiece Cakeshop, Lt. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018).

13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see response to Question 12 above.

14. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: In *Sutton v. Rasheed*, 323 F.3d 236 (3d Cir. 2003), the Third Circuit held that plaintiffs' sincerely held views were sufficiently rooted in religion to merit First Amendment protection because they were not so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause. The Third Circuit relied on prior Supreme Court precedent in *Thomas v. Review Board of Ind. Employment Sec.*, 450 U.S. 707 (1981), which held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection."

15. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: The Second Amendment guarantees an individual the right to keep and bear arms, including for self-defense within the home. In *District of*

Columbia v. Heller, 554 U.S. 570, 595 (2008), the Supreme court held that the Second Amendment confers "an individual right to keep and bear arms."

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

16. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: In *Lochner v. New York*, the Supreme Court held that New York's limitation on bakers' working hours were unconstitutional. 198 U.S. 45, 53-64 (1905). In subsequent cases, the Supreme Court abrogated *Lochner* and now applies a lesser standard of review when evaluating restrictions on economic activity. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391-400 (1937); *Williamson v. Lee Optimal of Oklahoma, Inc.*, 348 U.S. 483, 487-91 (1955).

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: In subsequent cases, the Supreme Court abrogated *Lochner* and now applies a lesser standard of review when evaluating restrictions on economic activity. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391-400 (1937); *Williamson v. Lee Optimal of Oklahoma, Inc.*, 348 U.S. 483, 487-91 (1955). I would not apply *Lochner*.

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response to all subparts: I am not aware of a Supreme Court opinion that has not been formally overruled by the Supreme Court that is no longer good law. If confirmed, I would apply all binding Supreme Court precedent.

18. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: In *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 481 (1992), the Supreme Court held that evidence of greater than 80% of market share was "sufficient to survive summary judgment" under the standard for a finding of monopoly power. As a judicial nominee, it is inappropriate for me to offer an opinion on the correctness of a particular court decision, including those made by Judge Learned Hand. If confirmed, I would apply binding Supreme Court and Third Circuit precedent to the specific facts of the case before me in a fair and impartial manner.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see response to Question 18(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Please see response to Question 18(a).

19. Please describe your understanding of the "federal common law."

Response: The Supreme Court explained, in *Rodriquez v. Federal Deposit Insurance Corp.*, 140 S. Ct. 713, 717 (2020), that "federal common law plays a necessarily modest role," comprised of "only limited areas . . . in which federal judges may appropriately craft the rule of decision," such as "admiralty disputes and certain controversies between States."

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: Generally, the interpretation of a state constitutional provision is a matter of state law. Federal courts must defer to the decisions of the highest court in the state whose constitution the federal court is interpreting. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.").

a. Do you believe that identical texts should be interpreted identically?

Response: Generally, yes. However, please see my response to Question 20.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Generally, yes. The Supremacy Clause, U.S. Const. Art. VI cl. 2, provides that the U.S. Constitution is "the Supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a judicial nominee, I am constrained by the Code of Conduct for United States Judges from commenting on any case that may come before me in the future. However, I am aware that prior judicial nominees have identified *Brown v. Board of Education* as a case where they have made an exception because the issue of *de jure* segregation in public schools is unlikely to come before the courts in the future. Thus, like prior judicial nominees, I believe it is appropriate for me to state my opinion that *Brown v. Board of Education* was decided correctly.

22. Do federal courts have the legal authority to issue nationwide injunctions?

a. If so, what is the source of that authority?

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response to all subparts: Courts generally apply a four-part test in determining whether injunctive relief should be granted. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (setting forth standards for preliminary injunctive relief as (1) likelihood of success on the merits; (2) irreparable harm; (3) balance of equities in favor of movant; and

(4) granting preliminary injunctive relief would be in the public interest); *eBay v. MerExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (To obtain a permanent injunction, a "plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction."). The Supreme Court has noted that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 165 (2010). Also, "injunctive relief should be no more burdensome to defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). While the Supreme Court has upheld nationwide injunctions when they are necessary to grant relief to parties, *see*, *e.g.*, *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-89 (2017) (upholding portion of preliminary injunction with respect to parties and similarly situated nonparties), the authority for a district judge to enter a nationwide injunction is uncertain and subject to debate. Currently, no federal statute explicitly authorizes the courts to issue nationwide injunctions, nor does any statute expressly limit the courts' ability to do so. Although several sitting Supreme Court justices have expressed views regarding nationwide injunctions in non-binding separate opinions, *see, e.g., Dep's of Homeland Sec. v. New York*, 140 S. Ct. 599, 599-600 (2020) (Gorsuch, J., concurring); *Trump v. Hawaii*, 138 S. Ct. 2392, 2428-29 (2018) (Thomas, J., concurring), to date, no majority of the Supreme Court has expressly ruled on the legality of nationwide injunctions.

23. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 22.

24. What is your understanding of the role of federalism in our constitutional system?

Response: "Federalism" is defined as "the legal relationship and distribution of power between the national and regional governments within a federal system of government, and in the United States particularly, between the federal government and the state government." Black's Law Dictionary (11th ed. 2019). In *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), the Supreme Court noted that "a healthy balance

of power between the States and the Federal Government . . . reduce[s] the risk of tyranny and abuse from either front."

25. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 4.

26. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The Supreme Court has stated that injunctive relief is most appropriate when there is "irreparable injury and inadequacy of legal remedies." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). Injunctive relief should not be granted where any harm to the injured party is fully compensable by money damages. If confirmed and if a case comes before me that requires assessment of the issue, I will apply binding Supreme Court and Third Circuit precedent to the facts of the specific case before me in a fair and impartial manner.

27. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Fifth and Fourteenth Amendments protect those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and are implicit in the concept of ordered liberty. These rights and liberties include, among others: (1) the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); (2) to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S 535 (1942); (3) to direct the upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); (4) to marital privacy and use of contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); (5) to terminate a pregnancy under certain circumstances, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992); (6) to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999). The Supreme Court has stated that the Due Process Clause guarantees more than fair process, and the liberty it protects includes more than the absence of physical restraint. It also provides heightened protection against government interference with certain fundamental rights and liberty interest. 521 U.S. 702, 719-20.

28. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: It is well established that the First Amendment's Free Exercise Clause is a fundamental right. Please also see my Response to Question 12.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The Free Exercise Clause protects both the freedom of worship, which includes the right to choose one's religion and attend those services, and the right to free exercise of religion, which includes the right to practice one's religion. *See Lee v. Weisman*, 505 U.S. 577, 591 (1992).

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question 12. A government action substantially burdens the free exercise of religion when it requires one to "engage in conduct that seriously violates religious beliefs." I would also note that, to the extent the question asks about "state governmental action" and this question could state or federal government action, the federal government is subject to The Religious Freedom Restoration Act (RFRA) which means that the government is prohibited from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability, except that the government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see response to Question 14 above.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act (RFRA) applies to all federal law, but "permits Congress to exclude statutes from RFRA's

protections." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2382 (2020).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

29. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I am not familiar with the statement or the context in which it was made. If confirmed, I would apply all binding precedent to the specific facts of the case before me in a fair and impartial manner.

30. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

a. If yes, please provide appropriate citations.

Response: In my nearly three decades of practice, I have worked on numerous matters. To the best of my recollection, I do not believe that I have taken a position in litigation or a publication that a federal or state statute was unconstitutional.

31. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

32. Do you believe America is a systemically racist country?

Response: I understand the term "systematic racism" to refer to discriminatory and racial disparities in policies and practices designed to, or having the effect of, creating and maintaining racial inequalities. If confirmed as a district judge, my role would be to decide individual cases and controversies before me in a fair and impartial manner.

33. Have you ever taken a position in litigation that conflicted with your personal views?

Response: As an attorney, I have diligently and zealously advocated on behalf of my clients in making good faith arguments based on the law without personal views.

34. How did you handle the situation?

Response: If I was unable to diligently and zealously advocate my client's interests in a matter because of personal views, I would either not accept the representation or would withdraw from the representation.

35. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

36. Which of the Federalist Papers has most shaped your views of the law?

Response: There is no one Federalist Paper that has shaped my view of the law.

37. Do you believe that an unborn child is a human being?

Response: As a judicial nominee, the Code of Conduct for United States Judges constrains me from expressing my personal opinion on this question which is an issue that may come before me in the future. If confirmed, I will follow all binding Supreme Court and Third Circuit precedent.

38. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: No. Not that I can recall.

39. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

40. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response to all subparts: No.

41. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: To the best of my recollection, no.

42. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

43. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: I understand that I have a responsibility to answer all questions truthfully and honestly. I have to do so to the best of my ability.

Questions for the Record for Gregory Brian Williams
From Senator Mazie K. Hirono

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

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Gregory Williams, nominee to the United States District Court for the District of Delaware

1. How would you describe your judicial philosophy?

Response: If confirmed, I would start with an open mind and thoroughly review and analyze the parties' written submissions and/or oral arguments to understand the parties' positions. I would conduct my own research and apply binding precedent to the specific facts of the case before me in fair and impartial manner. In all cases, I would ensure that litigants are heard and respected in my courtroom, that my opinions are clear and well- reasoned, and that I exercise judicial restraint only hearing the cases and controversies that are before me and not exceeding the authority provided to me as a judge.

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

Response: If confirmed as a district judge, I would follow Supreme Court and Third Circuit precedent setting forth the methods of statutory interpretation. I would begin my analysis by looking to binding precedent of the Supreme Court or Third Circuit interpreting the subject statutory provision. If there is no binding precedent of the Supreme Court or Third Circuit, I will consider opinions of other Courts of Appeal (as persuasive authority) and decisions of other district courts. I also will apply canons of statutory construction and, as a last resort, will consider legislative history. The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: If confirmed as a district judge, I would follow Supreme Court and Third Circuit precedent setting forth the methods of statutory interpretation. I would begin my analysis by looking to binding precedent of the Supreme Court or Third Circuit interpreting the subject statutory provision. If there is no binding precedent of the Supreme Court or Third Circuit, I will consider opinions of other Courts of Appeal (as persuasive authority) and decisions of other district courts. I also will apply canons of statutory construction and, as a last resort, will consider legislative history. The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: Please see my response to Question 3. Where the Supreme Court or the Third Circuit has examined the original meaning of a constitutional provision, I would employ that approach. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570,

625 (2008) (We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment."); *Crawford v. Washington*, 541 U.S. 36, 42-43 (2004) (applying original public meaning in interpreting the Sixth Amendment).

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

Response: Please see my response to Question 2.

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

Response: I generally understand the term "plain meaning" to refer to the public understanding of the statute or constitutional provision at the time of enactment.

6. What are the constitutional requirements for standing?

Response: The constitutional requirements for standing are: (1) injury in fact; (2) causation ("fairly traceable" to the challenged conduct); and (3) redressability ("likely" to be "redressed by a favorable decision."). *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: Yes. The Supreme Court, in *McCulloch v. State of Maryland*, 17 U.S. 316 (1819), recognized the authority of Congress under Article I, Section 8 to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." The Court stated: Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.* at 421. In *McCulloch*, because Congress had the express power to "coin Money", it was found that Congress also had the implied power to set up a national bank.

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

Response: I would review Supreme Court and Third Circuit precedent. Central to the analysis is whether the law falls within one of the enumerated powers of Congress. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012).

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

Response: Yes. In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Fifth and Fourteenth Amendments protect those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and are implicit in the concept of ordered liberty. These rights and liberties include, among others: (1) the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); (2) to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S 535 (1942); (3) to direct the upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); (4) to marital privacy and use of contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); (5) to terminate a pregnancy under certain circumstances, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992); (6) to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999).

10. What rights are protected under substantive due process?

Response: Please see response to Question 9.

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

Response: In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court abrogated much of its decision in *Lochner.* The Court later explained in *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) that the "doctrine that prevailed in *Lochner* . . . ha[d] long since been discarded." In contrast, the Supreme Court's holdings in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), are still binding precedent.

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

Response: Congress, under the Commerce Clause, has the power to regulate "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and activities that "substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). The Commerce Clause does not allow Congress to regulate inactivity. *See National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

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

Response: A "suspect" class is one that has an "immutable characteristic determined solely by the accident of birth," or is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of

political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Race, national origin, religion, and alienage have been identified by the Supreme Court as suspect classifications requiring the application of strict scrutiny review. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: Checks and balances are important protections within our system of divided government. Checks and balances are provided in the structure of the Constitution by expressly separating power among the legislative, executive and judicial branches. The Supreme Court recognized the checks and balances inherent in our system of divided government represents "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988).

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: I would begin by reviewing and analyzing the text of the relevant Constitutional provision, followed by review of Supreme Court and Third Circuit precedent analyzing the relevant Constitutional provision to determine whether the subject branch assumed authority not granted to it in the Constitution.

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

Response: None. A judge should faithfully apply the law to the facts of the case before him or her in a fair and impartial manner.

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

Response: Both are undesirable outcomes that judges should try to avoid.

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

Response: I have not studied this issue and therefore do not have a belief about the reason for what you describe as "this change." In general, the aggressive exercise of judicial review could encroach on legislative authority and judicial passivity could result in reduction of constitutional rights and safeguards.

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; esp., the court's power to invalidate legislative and executive actions as being unconstitutional." (11th ed. 2019). Black's Law Dictionary defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: Under Article VI, all legislators "both of the United States and of the several States" take an oath to uphold the Constitution. Legislators also must abide by the decisions of the Supreme Court. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (holding that the Supreme Court's holding in *Brown v. Board of Education* was binding on the Governor and legislators of Arkansas).

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: Federalist 78 reminds judges of the proper role of the judiciary. The notion that courts "have neither force nor will, but only judgment" is a reminder that judges neither make nor enforce the law. Instead, judges interpret the law.

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 will apply binding Supreme Court and Third Circuit precedent without regard to its "constitutional underpinnings." To the extent that precedent does not address the issue before the court, then the court should explain

why the precedent is distinguishable and try to identify analogous authority that may be instructive on the issue. Judges also should be careful to exercise judicial restraint to address only the issues that are properly before the court.

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: Under 18 U.S.C. §3553(a), a federal judge must determine the appropriate sentence for each defendant individually. Section 3553(a) instructs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

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

Response: I am not familiar with the statement or the context in which it was made. Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines "equality" as "[t]he quality, state, or condition of being equal." *Id.*

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

Response: As a judicial nominee, I am constrained from commenting on any matter that may come before me in the future. Code of Conduct for U.S. Judges (Jud. Conf. 2019). If confirmed, as a district judge, I would follow and apply in a fair and impartial manner all binding Supreme Court and Third Court precedent.

27. How do you define "systemic racism?"

Response: I understand the term "systemic racism" to refer to discriminatory and racial disparities in policies and practices designed to, or having the effect of, creating and maintaining racial inequalities.

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

Response: I do not have a personal definition of "critical race theory." Black's Law Dictionary defines "critical race theory" as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: See responses to Questions 27 and 28.

30. In an interview with *The Legal Intelligence* you said, "to most effectively and quickly improve diversity in law firms, firms and corporations need to work together" and that "corporations should call female or minority attorneys and pass work through them." Please explain what you meant by this statement.

Response: At the time of the interview, I made the statement as a private citizen and not as a judicial nominee. I was referring to one possible solution that may assist in increasing diversity in law firms is to increase the revenue generated by female and minority attorneys at those firms.

I understand the difference between the role of an advocate and the role of a judge. A judge's duty is to apply the applicable law to the specific facts of the case in front of him or her in a fair and impartial manner. If confirmed as a district judge, in each case, I will apply the applicable law to the specific facts of the case before me in a fair and impartial manner.

31. Is it appropriate for judges to take into account the race of the attorneys who come before them?

Response: A judge's duty is to apply the applicable law to the specific facts of the case in front of him or her in a fair and impartial manner and to treat every litigant fairly and without bias. If confirmed as a district judge, I will apply the applicable law to the specific facts of the case before me in a fair and impartial manner.

32. In a 2015 interview with Delaware Online you stated: "Becoming a felon is more devastating today than when existed during Jim Crow." What did you mean by this statement? Do you stand by it?

Response: At the time that I wrote the article, I was writing as a private citizen and not as a judicial nominee. Some have used the term "new Jim Crow" to describe the conditions that can come along with being a convicted felon in some states during contemporary times, including the loss of the right to vote, loss of driver's license, and the reduced probability of getting a job.

I understand the difference between the roles of an advocate and the role of a judge. A judge should apply binding precedent to the specific facts of the case before him or her in a fair and impartial manner. If confirmed, I would honor the oath to be taken in assuming the judicial position.

Senator Ben Sasse
Questions for the Record for Gregory Brian Williams
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
May 11, 2022

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

   Response: No.

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

   Response: If confirmed, I would start with an open mind and thoroughly review and analyze the parties' written submissions and/or oral arguments to understand the parties' positions. I would conduct my own research and apply binding precedent to the specific facts of the case before me in fair and impartial manner. In all cases, I would ensure that litigants are heard and respected in my courtroom, that my opinions are clear and well-reasoned, and that I exercise judicial restraint only hearing the cases and controversies that are before me and not exceeding the authority provided to me as a judge.

3. **Would you describe yourself as an originalist?**

   Response: Black's Law Dictionary defines "originalism" as "[t]he 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). If confirmed, I will apply Supreme Court and Third Circuit precedent concerning how to interpret any Constitutional provision or statute, including the provision's original public meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying the original public meaning to interpret the Second Amendment). I would not apply any label to my judicial philosophy if confirmed.

4. **Would you describe yourself as a textualist?**

   Response: Black's Law Dictionary defines "textualism" as "[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." Black's Law Dictionary (11th ed. 2019). If confirmed, I will apply Supreme Court and Third Circuit precedent concerning how to interpret any Constitutional provision or statute. I would not apply any label to my judicial philosophy if confirmed. I note that, in a case of first impression involving statutory interpretation, I would start with the text of the statute.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

Response: The Constitution is an enduring document. It sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

6. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: I have not studied the approach of all of the Supreme Court Justices appointed since January 20, 1953 and, thus, cannot compare myself to them. If confirmed, I would "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. I would approach each case with an open-mind, carefully consider the arguments presented by the parties, and apply binding precedent from the Supreme Court, the Third Circuit or the Federal Circuit, as appropriate depending upon the type of case, in a fair and impartial manner.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

Response: The appellate court will follow its own precedent unless a Supreme Court decision or an *en banc* holding of the appellate court implicitly or explicitly overrules the prior decision. Federal Rule of Appellate Procedure 35(a) provides that, in determining when to grant *en banc* review, the court must decide whether: "(1) *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." Fed. R. App. 35(a)(1)-(2).

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

Response: Please see response to Question 7 above.

9. **What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?**

Response: If confirmed as a district judge, I would follow Supreme Court and Third Circuit precedent setting forth the methods of statutory interpretation. I would begin my analysis by looking to binding precedent of the Supreme Court or Third Circuit interpreting the subject statutory provision. If there is no binding precedent of the Supreme Court or Third Circuit, I will consider opinions of other Courts of Appeal (as persuasive authority) and decisions of other district courts. I also will apply canons of statutory construction and, as a last resort, will consider legislative history. The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: Under 18 U.S.C. §3553(a), a federal court judge must determine the appropriate sentence for each defendant individually. If confirmed, I would be guided by the factors enumerated in 18 U.S.C. §3553(a). Section 3553(a) instructs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

Questions from Senator Thom Tillis

for Gregory Williams
Nominee to be United States District Judge for the District of Delaware

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

   Response: Yes.

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

   Response: Black's Law Dictionary (11 ed. 2019) defines judicial activism as "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not consider judicial activism appropriate.

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

   Response: An expectation. Judges are expected to apply binding precedent to the specific facts of the case before them in a fair and impartial manner.

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

   Response: No. Judges should apply binding precedent to the specific facts of the case before them in a fair and impartial manner.

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

   Response: Faithfully applying the law may sometimes result in a judge having to issue a decision which the judge may find undesirable; however, the ultimate result of having faithfully applied the law is always a desirable outcome. Judges are required to apply binding precedent to the specific facts of the case before them in a fair and impartial manner.

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

   Response: No.

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

Response: If confirmed, in every case that comes before me, including cases involving the Second Amendment, I will consider the parties' arguments, determine the applicable law, and apply binding precedent to the specific facts of the case before me in a fair and impartial manner. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: If confirmed and these questions come before me, I will faithfully apply Supreme Court and Third Circuit precedent, as well as any other relevant constitutional and statutory provisions.

9. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: The Supreme Court has held that law enforcement officers and other governmental officials are entitled to qualified immunity unless they violated a clearly established constitutional right, meaning that "at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *District of Columbia v. Westby*, 138 S. Ct. 577, 589 (2018). *See also Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021); *City of Tahlequah v. Bond*, 142 S. Ct. 9 (2021).

10. **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 judicial nominee, it is not appropriate for me to opine on the sufficiency of protection provided by any line of cases. If confirmed, I will apply binding precedent of the Supreme Court and Third Circuit on the issue of qualified immunity.

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

Response: Please see my response to Question 10 above.

12. **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: Although I am familiar with the issue of subject matter eligibility for patents

under 35 U.S.C. § 101 and the standards set forth in the Supreme Court's opinions in the *Alice* and *Mayo* cases, as a judicial nominee, I am constrained by the Code of Judicial Conduct from expressing any personal opinion on the current state of eligibility jurisprudence as patent eligibility issues often come before district judges in the District of Delaware.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. ***ABC Pharmaceutical Company*** **develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: Although I am familiar with the issue of subject matter eligibility for patents under 35 U.S.C. § 101 and the standards set forth in the Supreme Court's opinions in the *Alice* and *Mayo* cases, as a judicial nominee, I am constrained by the code of judicial conduct from commenting on the outcome of a hypothetical case as patent eligibility issues often come before district judges in the District of Delaware and I would not want to be viewed as having pre-judged an issue if confirmed.

b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Please see my response to Question 13(a) above.

c. ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please see my response to Question 13(a) above.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone?**

What about when it explicitly claims charging hardware?

Response: Please see my response to Question 13(a) above.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13(a) above.

f. **A business methods company,** ***FinancialServices Troll,*** **specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13(a) above.

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should** ***BioTechCo*** **be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if** ***BioTech Co*** **invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see my response to Question 13(a) above.

h. **Assuming** ***BioTechCo's*** **diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question 13(a) above.

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new**

chemical entity be patent eligible?

Response: Please see my response to Question 13(a) above.

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13(a) above.

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Please see my response to Questions 12 and 13(a) 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: I have had minimal experience with copyright law during my career.

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

Response: To date, I have not had any experience with the Digital Millennium Copyright Act.

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

Response: To date, I have not had any experience addressing intermediary liability for online service providers that host unlawful content posted by users.

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: To date, I have minimal experience with First Amendment and free speech issues. I have substantial experience with intellectual property issues, including patents and trademarks, limited copyright experience, and minimal experience with First Amendment and free speech issues. If confirmed, I would consider the parties' respective arguments, research and determine the applicable binding precedent, and apply the binding precedent to the facts of the specific case before me in a fair and impartial manner.

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 recently reported 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: If confirmed as a district judge, I would follow Supreme Court and Third Circuit precedent setting forth the methods of statutory interpretation. I would begin my analysis by looking to binding precedent of the Supreme Court or Third Circuit interpreting the subject statutory provision. If there is no binding precedent of the Supreme Court or Third Circuit, I will consider opinions of other Courts of Appeal (as persuasive authority) and decisions of other district courts. I also will apply canons of statutory construction and, as a last resort, will consider legislative history. The Supreme Court has stated that committee reports are the most reliable source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

    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: Supreme Court and Third Circuit precedent govern the deference a court should give, if any, to a federal agency's analysis. If confirmed, I will apply binding precedent when and if faced with an issue of the deference to be afforded to a federal agency.

    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 judicial nominee, I am constrained by the Code of Judicial Conduct from commenting on the outcome of a hypothetical with issues that may come before me if I am confirmed.

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: A judge role is to apply the statute in a fair and impartial manner to the specific facts of the case before him or her. A judge's role is not to modify the statute to accommodate new technology. That is the role of Congress.

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 17(a).

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 the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

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

Response: I am aware that, in some districts, litigants may be able to, in effect, choose a judge by choosing which division, vicinage or courthouse to file their case. In the District of Delaware, all cases are randomly assigned to one of four District Judges. I do not believe there is any ability for litigants to choose a particular judge in the District of Delaware. If confirmed, I would look forward to being a fair and impartial judge in all cases.

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 18(a).

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: I do not believe it is appropriate for judges to take any steps with the intention of attracting a particular type of case or litigant.

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

Response: Yes.

19. **In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.**

a. **What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?**

Response: As a judicial nominee, I do not believe it is appropriate to comment on the conduct of other judges.

b. **Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?**

Response: As a judicial nominee, I do not believe it is appropriate to comment on the conduct of other judges.

20. **When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?**

a. **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?**

b. **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 to all subparts: In accordance with the Code of Conduct for United States Judges, federal judges have an ethical obligation to follow the law. Judges should

not take actions that undermine the perception of fairness and the judiciary's administration of justice.

I do not have a full context for the factual scenario set forth above. Thus, I am unable to provide a reasoned and informed opinion on whether the concentration of a particular type of litigation in a few judicial districts undermines the perception of fairness. As I stated earlier, it is not appropriate for judges to take any steps to attract particular cases or litigants and I would not engage in such conduct if confirmed.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. **If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?**

Response: Please see my responses to Questions 18(a) and 19(a).

b. **Would five mandamus reversals be sufficient? Ten? Twenty?**

Response: Please see my responses to Questions 18(a) and 19(a).