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S. HRG. 118–29, Part 6

CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 7, 2023

Serial No. J–118–2

PART 6

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, JUNE 7, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Blumenthal, Hirono, Ossoff, Graham, Lee, Hawley, Kennedy, Tillis, and Blackburn.

Also present: Senators Stabenow, Peters, Casey, and Murphy.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. Today, we'll hear from four nominees: Judge Loren AliKhan, nominated to the U.S. District Court for the District of Columbia; Susan DeClercq, nominated to the U.S. District Court for the Eastern District of Michigan; Judge Julia Munley, nominated to the U.S. District Court for the Eastern District of Pennsylvania; and Judge Vernon Oliver, nominated to the U.S. District Court for the District of Connecticut. Congratulations to all the nominees, and their families.

There are several Members joining us today for introductions. First, I'm going to turn to the Ranking Member, Senator Graham from South Carolina, for any opening remarks he would like to make.

Senator GRAHAM. Thank you, Mr. Chairman. I look forward to the testimony. And, let's get on.

Chair DURBIN. Thank you, Senator. We'll hear introductions for our nominees and start with Senator Stabenow, who is here to introduce Ms. DeClercq.

STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN, INTRODUCING SUSAN K. DECLERCQ, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Senator STABENOW. Well, thank you so much, Mr. Chairman, and Ranking Member, and all the Members of the Committee. I am really honored and excited today to introduce Susan DeClercq, who President Biden nominated to serve as the U.S. district judge for the Eastern District of Michigan. She's here today with her husband, Greg Kerr, and their three children, Zoe, Colin, and Tabitha.

She also has wonderful supporters and friends here: Monica Bilger and Mick Tousley, and Federal District Judge Judy Levy. So, we are so pleased that they are all here. And, it's fitting that Ms. DeClercq has a wonderful group of supporters here today, because she certainly has a lot of supporters in Michigan.

One of the things that people consistently say about Ms. DeClercq is how warm and personable she is. She is, in a word, kind. But, don't let that fool you. She can go toe to toe with anyone in the courtroom. Ms. DeClercq is a proud graduate of the University of Michigan and Wayne State University School of Law.

Her first job out of college was serving as a clerk to U.S. District Judge Avern L. Cohn. Judge Cohn was a force of nature who spent 40 years on the Federal bench, retiring at age 95. He was a bit gruff, but he had an open mind and an open heart, two attributes Ms. DeClercq has carried throughout a career that spanned the public and private sector.

Currently, she is director and counsel of special investigations at Ford Motor Company. And before that, she spent 18 years in the U.S. Attorney's Office for the Eastern District of Michigan, in a variety of leadership roles, including chief of the Civil Division.

She's fought to protect people's civil rights, including, for example, a Michigan family that was kicked out of a restaurant because their children suffered from a genetic skin condition. And, she successfully represented an auxiliary firefighter and a U.S. Army reservist who were denied a promotion, extended to coworkers with less experience, after he returned from active duty in Afghanistan.

In all of her cases, she's won the respect of everyone in the courtroom. As one Michigan lawyer said, "If I had to lose to anybody in litigation, I'm glad it was Ms. DeClercq." It's worth noting that if confirmed, Susan DeClercq would be Michigan's first Federal judge of East Asian descent. Susan DeClercq is an outstanding nominee, and I wholeheartedly support her nomination.

I see my partner and colleague, Senator Peters, here, as well. We are very enthusiastic and urge the Committee to support her. Thank you.

Chair DURBIN. Thank you very much, Senator Stabenow. And now, from the University of Michigan side, Senator Peters.

[Laughter.]

Senator PETERS. Well, Michigan State, as well.

[Laughter.]

Chair DURBIN. Well, we have two Michigan Staters.

STATEMENT OF HON. GARY C. PETERS, A U.S. SENATOR FROM THE STATE OF MICHIGAN, INTRODUCING SUSAN K. DECLERCQ, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Senator PETERS. Absolutely. Well, thank you, Chairman Durbin and Ranking Member Graham. I'm pleased to introduce Susan DeClercq, an exemplary Michigander nominated to serve on the United States District Court for the Eastern District of Michigan.

I want to take a moment to acknowledge Susan's family, and I'm sure my colleague has already done that, but it's worth doing again, because they are incredible support for Susan, are her husband, Gregory Kerr, and their children, Zoe, Colin, and Tabitha.

Susan is also joined by three friends: Monica Bilger, Mike Tousley, and the Honorable Judge Levy, who currently serves on the U.S. District Court for the Eastern District of Michigan. And, I want to join my colleague in thanking them to be here on Susan's behalf.

Susan is a graduate of two public institutions in Michigan: the University of Michigan and the Wayne State University School of Law, where I attended, and has over two decades of experience that will serve her well on the Federal bench.

In the U.S. Attorney's Office for the Eastern District of Michigan, she defended the United States against a broad range of litigation and argued civil rights cases on behalf of the U.S. Government.

This civil rights experience was paramount. Susan spent 12 years bringing cases involving the Fair Housing Act, the Equal Credit Opportunity Act, and much more. At one point, she conducted a lengthy investigation into one of the largest childcare providers in the country, and she helped uncover violations of the Americans with Disabilities Act leading to policy changes that ensured that diabetic children at hundreds of childhood or childcare centers across the country could receive the care that they needed.

Susan's extensive work for our Nation's servicemembers and veterans is also deeply admirable. Her work for the U.S. Attorney's Office allowed her to represent servicemembers personally, bringing numerous cases to protect and enforce the rights of members of the military under laws such as the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act.

And finally, the breadth of Susan DeClercq's work illustrates her commitment to balance and fairness. From her extensive civil rights work to representing businesses in high stakes investigations, to defending the U.S. Government against litigation brought against it. She has a range of experiences that will be key to effectively serve on the Federal bench.

Susan DeClercq is an accomplished legal professional with the experience, the qualifications, and temperament necessary for this role, and I have every confidence that she will be confirmed by the Senate. On the Federal bench, she would not only be an exemplary model for our State, she would also be Michigan's first Federal judge of East Asian descent. And, I'm proud to support her nomination to serve on the United States District Court for the Eastern District of Michigan. Thank you.

Chair DURBIN. Thanks, Senator Peters. Of course, we understand you and Senator Stabenow, and your colleagues, have a pretty busy schedule. So, if you would like to move on at this point, you're certainly welcome to. Thank you for joining us.

And now, to continue "Scranton Day" in the Senate Judiciary Committee, Senator Robert Casey.

STATEMENT OF HON. ROBERT P. CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, INTRODUCING HON. JULIA K. MUNLEY, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Senator CASEY. Chairman Durbin, thank you very much. And, I want to thank you, and Ranking Member Graham, for this oppor-

tunity, and Members of the Committee, for being here today, and for the work you do to advance judicial nominations.

I'm proud to introduce Judge Julia K. Munley to the Committee, someone who has served our county of Lackawanna, my home county, as well as people well beyond that county in the region for so many years. I'm especially grateful that she's willing to serve as a judge on the United States District Court for the Middle District of Pennsylvania.

I want to thank, in particular, her family, who's with her today. I won't mention every member of the family, but her husband, Pat, is right over my left shoulder. Next to him are both Marion Munley, her cousin, and her husband, United States Representative Matt Cartwright. We're always grateful when a Member of the House gets to come over here and say hello to us. We don't get over there enough. So, Matt, welcome.

I want to thank, as well, Senator Fetterman for his partnership and his support of Judge Munley. And, I look forward to continuing to work with Senator Fetterman to advance judges throughout our three Federal judicial districts.

Judge Munley is a graduate of Marywood University, one of the great institutions of higher education in northeastern Pennsylvania. Too many members of my family have graduated from that institution to mention here today, but I'll mention two: my daughter and my mother. So, I'm putting in a little commercial there. She's also, of course, a graduate of the Dickinson School of Law, one of the great law schools in our State.

She's been a lawyer and an advocate, when you cover the time as a lawyer and as a judge, for the last 30 years. As an advocate for workers, for seniors, for people who sometimes don't have a voice, for victims of sexual assault and harassment. So many members of our community came to her for legal representation, and she represented them with honor, and distinction, and professionalism.

She became a member of the judiciary in 2016, appointed by Governor Wolf to the Court of Common Pleas in Lackawanna County, the county bench in the 45th Judicial District. In those 7 years, of course, she's had to deal with all kinds of matters, civil and criminal, and so many difficult matters that come before a judge.

That experience, combined with her life experience, her experience as a lawyer and advocate, prepare her well to take on the duties to be a United States District Court judge. I have no doubt, no doubt at all, that she has the integrity, the ability, the vast experience, as well as a commitment to the rule of law and equal justice under the law, to serve the people of the Middle District with distinction.

And finally, let me make one final note about her family. Her family has a long tradition of public service, several generations serving in the General Assembly of Pennsylvania. I want to mention, in particular, her father, Judge James M. Munley, whom we lost in 2020.

Like Julia Munley, Judge Munley, he served as a member of the Court of Common Pleas in Lackawanna County as well as a United States District Court judge. I'm honored that she's willing to follow

in that tradition of quality public service infused with the integrity that we should expect of every public officials, especially our judges. So, Mr. Chairman, Mr. Ranking Member, we're honored to introduce Judge Munley.

Chair DURBIN. Thank you, Senator Casey. Judge Oliver from Connecticut has two people here to introduce him. On the panel, of course, is our colleague, Richard. You are from Connecticut, are you not?

Senator BLUMENTHAL. Yes.

Chair DURBIN. Richard Blumenthal, and Honorable Chris Murphy. We'll start with Senator Blumenthal.

STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT, INTRODUCING HON. VERNON D. OLIVER, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Senator BLUMENTHAL. Thank you very much, Mr. Chairman. Thank you for affording us this opportunity to be here today with some really exceptionally qualified nominees. Thanks to President Biden. And, I'm pleased to be here with my great friend, and colleague, Senator Murphy. The two of us strongly support Judge Vernon Oliver for this position. It's a point of particular personal pride, and joy, for me, because I have known Judge Oliver for close to 20 years.

He was born in Bridgeport, Connecticut. After receiving his B.A. and his J.D. from the University of Connecticut, he worked briefly in private practice, and as a temporary assistant clerk for the Hartford Judicial District.

He then was a prosecutor in the criminal division of criminal justice, and then was hired to serve as an assistant attorney general in the Connecticut Attorney General's office. I happened to be attorney general at the time. I served with Judge Oliver for 5 years, and I came to know him personally as a vigorous, skilled, and aggressive advocate, but also as a person of extraordinary compassion and insight.

He served as a senior member of our Division on Child Abuse and Neglect. These cases are challenging beyond words. They involve the fate of children who may be abused or neglected, often the need to terminate parental rights. He handled those cases with adroitness and insight and vindicated the interests of those children, along with the interests of the State of Connecticut.

He was appointed in 2009 by Republican Governor Jodi Rell to serve on the Connecticut Superior Court. And, throughout his 15 years on the bench, he presided over numerous civil and criminal trials. In fact, 300 bench trials and about 20 jury trials—thousands of hearings—made maybe tens of thousands of rulings.

So, he is extraordinarily experienced and impressive in his judicial career already, and he's been supported by Connecticut attorneys as well as Republican Members of the House, State House of Representatives, and other organizations involved in our profession. So, I'm very pleased and proud to support Judge Oliver, and I look forward to a speedy confirmation.

Chair DURBIN. Thanks, Senator Blumenthal. Senator Murphy.

STATEMENT OF HON. CHRISTOPHER MURPHY, A U.S. SENATOR FROM THE STATE OF CONNECTICUT, INTRODUCING HON. VERNON D. OLIVER, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Senator MURPHY. Thank you very much, Mr. Chairman, Ranking Member Graham, Members of the Committee. Thank you for allowing us the opportunity to introduce Judge Oliver to you. I won't repeat his, I think, very impressive résumé, except to say that it's hard to be more committed to the State of Connecticut than Judge Oliver has been.

Having gone to Bridgeport Public Schools, attending the University of Connecticut as an undergraduate and as a law school student, and then dedicating, as you heard, his entire career to protecting the people of Connecticut, and protecting the rule of law in Connecticut.

I will just bring your attention to the ways in which Judge Oliver has done some of the most difficult, and some of the most important, work in our judicial system.

Senator Blumenthal has already mentioned the work that he did as an assistant attorney general in the Child Protection Bureau, maybe the hardest work that you can do in an attorney general's office. And, Judge Oliver did it enthusiastically and adeptly.

But, I want to mention a couple of things that Judge Oliver has done during his time on the bench. Yes, he has presided over 300 cases. He was nominated by a Republican Governor to that post, getting broad bipartisan support. But, at a moment when we are trying to explain to the American public the relevance and the independence of our judiciary, Judge Oliver has taken on a couple tasks that I think are really important you should know about.

First, he actually spends a lot of time outside of the courtroom talking to student groups, high schools, and middle school students, about his work and why they should believe in Connecticut's judicial system. He also spends time talking about his journey from Bridgeport, from the Bridgeport Public Schools to one of the highest positions in State government, encouraging more students to pursue a career in law.

Second, Judge Oliver serves as the chair of the Connecticut Committee on Judicial Ethics. Now, we know it's often hard to find Senators to serve on the Ethics Committee here. It's not a job you normally sign up for. But, Judge Oliver is not just on that committee. He's the chair of it. He's taken on a really tough job to lead the efforts to make sure that we are applying the rule of law, not just to those who appear before the court, but to the judges themselves.

And so, I just make those two notes for you to show you that this is a pattern in Judge Oliver's career, doing some of the most difficult and most important work to maintain the integrity of our judicial system. So, I'm very proud to join Senator Blumenthal in introducing Judge Oliver to the Committee. I'm confident that you will find him to be as impressive as we have, and I look forward to working with you to bring his nomination to the Senate floor. Thank you very much, Mr. Chairman.

Chair DURBIN. Thanks, Senator Murphy. Of course, I understand you have a busy schedule, too. We're grateful that you could be here today for this hearing. Thanks to all the visiting introducers.

It's my honor to personally introduce Judge AliKhan, who's been nominated to the U.S. District Court for the District of Columbia. Judge AliKhan is a graduate of Bard College at St. Simon's Rock, and the prestigious Georgetown University Law Center.

After law school, she served on the U.S. District Court for the Eastern District of Pennsylvania and on the Third Circuit Court of Appeals. Judge AliKhan then served as a Bristow Fellow at the Department of Justice, spent 3 years in private practice working at O'Melveny & Myers here in DC.

In 2013, Judge AliKhan joined the office of attorney general for the District of Columbia as deputy solicitor general. After serving as the acting solicitor general, Judge AliKhan became the District's solicitor general in 2018.

During her career as a practicing attorney, Judge AliKhan argued in the Supreme Court of the United States, and in the U.S. Court of Appeals, 12 times, Federal district courts, 6 different times.

In February of 2022, the Senate confirmed Judge AliKhan to the District of Columbia Court of Appeals on a bipartisan basis. She's shown an even-handed approach from the bench. At the request of Congresswoman Eleanor Holmes Norton, I'd like to enter the statement by the Congresswoman in support of Judge AliKhan, without objection.

[The prepared statement of Hon. Eleanor Holmes Norton appears as a submission for the record.]

I welcome Judge AliKhan, and her family, and look forward to her testimony today. We're now ready for the nominees' opening statements. If the four nominees would approach the witness table and raise their right hands, once they're in place.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that, thank goodness, all four answered in the affirmative. Judge AliKhan, you're first.

STATEMENT OF HON. LOREN L. ALIKHAN, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Judge ALIKHAN. Good morning, Chair Durbin, Ranking Member Graham, and Members of the Committee. I am grateful, and humbled, to appear before you today as you consider my nomination. I thank President Biden for the honor of this nomination, Congresswoman Eleanor Holmes Norton and members of her Federal Law Enforcement Nominating Commission for recommending me to the President, Chair Durbin for the warm introduction, and the hardworking Committee staff for making this hearing possible.

I would like to take a moment to introduce a few important people in my life. First, my husband, Justin Noble, whose patience, encouragement, and support of all of my personal and professional endeavors has been unparalleled. Next, my parents, Dr. Mahmood and Linda AliKhan, and my sister, Leah.

My father was born in British India, and after independence and partition, he made his way to Pakistan before coming to the United States and settling in Baltimore, Maryland. Without my family's sacrifices, and without the opportunity that only this great country can provide, I would not be sitting here today, one generation re-

moved from colonial rule, and my father would not be sitting here behind me.

I had the incredible good fortune to begin my legal career as a law clerk to Judge Louis Pollak, on the district court in Philadelphia, and Judge Thomas Ambro, on the Third Circuit. I can imagine no better judicial role models for a young lawyer. And, I have carried the lessons I learned from both throughout my career and onto the bench on the DC court of appeals.

Judge Ambro is here today, and I know Judge Pollak is here, in spirit. In fact, my husband is wearing a tie that belonged to Judge Pollak that his wife, Kathy, had made for him several years ago.

I am also joined by friends and colleagues spanning my time at the Justice Department, in private practice, and at the office of the attorney general for the District of Columbia. These are lawyers who embody hard work, integrity, and kindness, and from whom I have learned so much.

Finally, I am joined by members of my court family, including Chief Judge Blackburne-Rigsby. I am so grateful to my incredible colleagues on the DC court of appeals, to the hardworking staff that keep the wheels of justice turning, and to the law clerks and interns who have made our chambers a vibrant second home. Thank you again for the opportunity to appear before you today, and I look forward to your questions.

Chair DURBIN. Thanks, Judge AliKhan. Ms. DeClercq.

STATEMENT OF SUSAN K. DECLERCQ, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Ms. DECLERCQ. Thank you and good morning, Chair Durbin, Ranking Member Graham, and all Members of this Committee, and their staff. It is a privilege to be here today. I want to extend my sincere thanks to President Biden for the great honor of this nomination. And, I am particularly grateful to my home State Senators, Debbie Stabenow and Gary Peters, for their recommendation and faith in me, as well as their warm introductions today.

I am joined here today by my wonderful family. My husband, Greg, who I want to thank for always supporting me, and for running our household and keeping us fed throughout this whole process. And, our three children: our oldest daughter, Zoe, who just finished her first year at Michigan State University; our son Colin, who will be a senior in high school next year; and our youngest, Tabby, who is missing out on her last middle-school track meet to be here with me today. I love you all more than life itself.

Also here with me are my childhood best friend and my dear friend, Mick Tousley. And, I am also thrilled to have my mentor, my role model, and my dear friend, Judge Judy Levy. She has been an inspiration to me, and I look forward to being judicial colleagues, if I am fortunate enough to be confirmed as a district judge.

My mother, Marcia DeClercq, and my stepfather, Krishnan Iyer, could not be here with me today due to health issues, but they are here with me in spirit, and I know that they are watching me with pride today. I also want to mention my wonderful in-laws, Judy

and Mike, who are also joining us remotely, as well as many other family members, friends, and neighbors.

I'd like to thank my wonderful colleagues at Ford Motor Company, who have been gracious and supportive, especially my amazing team of investigators, and assistant, Carolyn, who are a joy to work with every day.

And last, my longtime friends and colleagues at the U.S. Attorney's Office in Detroit. You all know who you are, and I could not have done this without you. And, I'm so proud to represent the amazing lawyers in the often-overlooked Civil Division.

Sitting here today, I am both awed and humbled at the journey that my life has taken, from being left on the steps of a hospital in Seoul, South Korea—a place that my birth mother knew that I would be found—to being adopted by my mom in the United States, who raised me as a single parent for most of my life. I am acutely aware that I could not have the life or opportunities that I have had without both of these remarkable women.

I have spent most of my career in public service as a way to give back to the people and the country that has given me so much. And, I welcome the opportunity to possibly serve again, this time as a United States district judge. Senators, thank you for considering my nomination and I look forward to answering your questions.

Chair DURBIN. Thank you, Ms. DeClercq. Judge Munley.

STATEMENT OF HON. JULIA K. MUNLEY, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Judge MUNLEY. Thank you, Mr. Chairman, Ranking Member, and Committee Members. Today is the greatest honor of my life, to be before this esteemed Committee. I want to personally say thank you to Senator Casey for your kind words. And, thank you, Senator Casey and Senator Fetterman, for your confidence in me. To President Biden, I am so honored by your nomination.

I want to recognize those who are here with me today, who've supported me along the way. First and foremost, my husband, Patrick, without whose enduring support and encouragement every day, right from the beginning, I would not be here without you. Thank you, and I love you. To my sister, Gwen, and my niece, Neave, I love you. Thank you for always being supportive and making me laugh. You are great.

To my cousin, Marion, who is like a sister to me, I love you, and, Matt, thank you, both. To the two persons who I really would not be here without, who taught me about the importance of integrity, hard work, and family, my mother, Dr. Kathleen Munley, who is watching from home. Keep saying prayers, mom. I love you. And, to the one who would have absolutely loved to have been here today before you, Senators, my dear father, United States District Court Judge James Munley. He is with me today, watching and rooting from above.

To all my relatives, my loved ones, my cousins, the Munleys, my Aunt Bernadine, the Rogans, my in-laws, can't mention them all, they're too many. To Alice, who helped me so much, from day one. Lewis, who's always been there. My beloved friends from home, Ar-

chibald, Scranton, Northeastern Pennsylvania, my colleagues on the Court of Common Pleas, the members of the Lackawanna Bar Association, my staff members, and all who have submitted letters on my behalf. I thank each one of you for your words of support and your encouragement throughout this process. And, to those who have gone before me and paved the way, I owe you so much.

Senators, I truly appreciate this Committee's consideration of my nomination and look forward to answering your questions today.

Chair DURBIN. Thank you, Judge Munley. Judge Oliver.

STATEMENT OF HON. VERNON D. OLIVER, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Judge OLIVER. Thank you, Chair Durbin, Ranking Member Graham, and Members of this Committee, for scheduling and holding this hearing. Thank you to Senators Blumenthal and Murphy for the generous and kind words, continued support, and encouragement, not only this morning, but over the years. Thank you, both also, for recommending my nomination. Thank you to President Biden for this nomination. It is truly the honor of a lifetime.

I'd also like to thank the people of the State of Connecticut for the privilege of allowing me to serve them these past 14 plus years as a Superior Court judge and prior to that, at the offices of the attorney general, and with the division of criminal justice.

I wish to introduce my family. First, Ann, my wife of 19 years. You are my foundation and most trusted confidant. My 17-year-old daughter, who will be entering college in the fall, and my 16-year-old son, who's a high school junior. You are both my inspiration and make me proud to be your father every single day.

I would like to thank my family and friends watching from Connecticut and all across the country, as well as my many mentors and colleagues, both past and present, for their guidance throughout the years. Hello to the Middlesex Courthouse staff back home, continuing to do the people's business while I'm here before this Committee.

Finally, I wish to honor the memory of my late parents, Thelma Ree Gadson and Willie Oliver, who came north from South Carolina and Alabama, respectively, found each other in Connecticut, and made a large, loving, blended family. I'm honored to come before this Committee and ask, humbly, for your support so that I might continue to serve the public as a district court judge. I'm happy to answer any questions you may have.

Chair DURBIN. Thanks, Judge Oliver. We'll have 5-minute rounds for each Senator, and I'll start.

It's interesting. I can't tell you how many times I've heard nominees come before us and tell their stories. And, there are some recurring themes that always strike me, not the least of which is a salute to talent and hard work that each of these nominees, and so many others, bring to this room as they pursue their judicial careers.

Also, salute to families. Over and over again, we hear from nominees how one family member especially, or perhaps two, stood behind them at a critical moment in their lives and made the difference in their decisions on going forward.

And, I can't help but note, at least with two of our nominees today, also a salute to immigration. Immigration is what made America. My mother was an immigrant to this country, and I serve as Chairman of the Senate Judiciary Committee. I hear, on the stories of Judge AliKhan, what your parents, and others, and your family, went through coming to the United States. I'm sure a treacherous journey in many ways, but the determination to come here and succeed and the pride that they take in seeing the next generation become leaders in our Nation.

Ms. DeClercq, what an amazing story to be abandoned as a child and then to be part of a family of adoption that made the difference in your life and brought you to this moment in history. There's a lot of things said about immigration by politicians these days, but I hope that we'll have some honest reflection by all of us the fact that immigration has made America what it is today, as far as I'm concerned.

Judge Munley, I listened to Bob Casey, who's a dear friend, and John Fetterman, who supports you as well, and I heard the story of your family. I was particularly struck by one incident in your life I'd like you to comment on. In private practice, you represented an emergency responder exposed to toxins and debris while working at Ground Zero in the disaster site at the World Trade Center after 9/11.

You ultimately helped him recover an award from the 9/11 Victim Compensation Fund to compensate him for the health issues that he faced. Could you tell us a little bit about that experience and what it meant to you?

Ms. MUNLEY. Thank you, Senator, for that question. It was an honor to represent that individual and to do that pro bono work. That gentleman left Luzerne County a day or two after 9/11 and threw caution to the wind. Without a care for his own well-being, got in a car and drove to New Jersey and made his way over to Ground Zero to help persons in any way he possibly could.

And, I had the honor of representing him, right from the beginning through the process. Gathering witness statements, interviewing individuals, getting all of his medical records to support the serious pulmonary injuries he sustained at Ground Zero. He gave everything during those days. It brought me back to the whole reason why I went to law school, to give back public service.

If I have the honor of being confirmed, this would be a continuation of my life's commitment to public service and upholding the rule of law.

Chair DURBIN. Thank you. Judge AliKhan, as I look at your background as deputy solicitor general and solicitor general, you have had litigation experience which few nominees bring to this table. I noticed that there's somewhat of a fraternity, or sorority, of solicitors general across the country, and many of them have written in support of your nomination, even those of the opposite political party. What is it that you believe guided you in that pursuit?

Judge ALIKHAN. Thank you, Senator. I was so fortunate to work with an incredible group of public servants, across the country, and I think we all served different attorneys general. We knew that what united us was greater than what divided us, and that when

we could come together and speak with one voice, it'd be a very powerful voice.

Obviously, we oftentimes were on opposite sides of the litigation because we served different attorneys general with different priorities. But, when we did that, we were on opposite sides of the V.—we litigated with good faith and good humor. I think that public service is so important, and having the opportunity to work, not just with dedicated public servants in the District of Columbia, but across the country, has been just absolutely the opportunity of a lifetime.

Chair DURBIN. And, in all candor, you've been drawn into some political issues in your capacity. Have you not?

Judge ALIKHAN. Yes, Senator.

Chair DURBIN. And, it's interesting to note that the solicitors general who support you are both political parties.

Judge ALIKHAN. Yes, Senator. We have a wonderful fraternity or sorority, as you said. I think one of the last briefs I filed before joining the bench had 39 State signatories, and I'm very grateful to have the bipartisan support that I do from that community.

Chair DURBIN. Judge Oliver, many of my friends who are practicing attorneys long for the day, and just have vague memories, of an actual trial experience. It seems to be a hard thing to come by these days. I read here you've presided over approximately 320 cases that have gone to verdict or judgment. So, you've seen your fair share of trials. Could you comment on that experience?

Judge OLIVER. Thank you for the opportunity, Senator. I think the right to a jury trial, whether civil or criminal, is really at the foundation of our justice system. One of the things I would look forward to, were I so fortunate to be confirmed, is continuing to try jury cases, civil or criminal. In Connecticut, it's a bit of a lengthier process. In the Federal district, it's a quicker process.

Regardless, I think it's important that individuals, frankly, who have better things to do with their time, nonetheless, come in and dedicate themselves to the task of judging facts of complete strangers, taking the law from someone they haven't met before, judging credibility from individuals they haven't met before, deliberating to a common purpose in light of their experience, reason and common sense, and attempting to reach a unanimous verdict on issues of guilt, or not guilt, or liability.

I think it's so important and I was fortunate to be able, in my time of public service, to take part as a prosecutor in about two dozen criminal jury trials, and as a judge in about 300 bench trials, and then as a judge, about two dozen more criminal and civil jury trials. It's something I'm proud of. I think it's something that's important and necessary, and I look forward to the opportunity to continuing to do so on the Federal level.

Chair DURBIN. Thanks, Judge. Senator Graham.

Senator GRAHAM. Thank you very much. Judge—Ms. Khan, AliKhan, you were the solicitor for the DC. Is that right? Solicitor General for DC?

Judge ALIKHAN. Yes.

Senator GRAHAM. One of the issues you got involved in was *Safehouse v. DOJ*. Do you remember that?

Judge ALIKHAN. Yes, Senator.

Senator GRAHAM. And, I think, you took a position advocating for safe injection sites for drug users?

Judge ALIKHAN. The position that we took in that brief that was joined by, I believe, 15 or 16 States, was that the opioid crisis affects different jurisdictions differently, and we're all trying, and should be looking to novel solutions. And, Philadelphia thought that for the nature of its opioid problem, that a safe injection site might be one of those novel solutions. And so, as States that are all facing the terrible ravages of fentanyl and heroin, we wanted to give them that latitude and support their ability to experiment in ways of curbing this crisis.

Senator GRAHAM. Do you think there's a safe way to take fentanyl?

Judge ALIKHAN. Senator, our brief was not to recommend any particular type of safe injection site. It was to say, that if Philadelphia thought that that was one way of assisting their community with the opioid crisis, that they should have the latitude.

Senator GRAHAM. Would you be okay with a State basically allowing people to take fentanyl under State supervision?

Judge ALIKHAN. Senator, until we are able to get the opioid crisis under control, I think we need to give users the resources they need.

Senator GRAHAM. Do you think that's getting it under control, allowing State-supervised use of one of the most deadly drugs known to man?

Judge ALIKHAN. The site that Philadelphia had proposed had treatment services, it had an overdose prevention.

Senator GRAHAM. How do you view fentanyl?

Judge ALIKHAN. I think fentanyl is a nationwide crisis, Senator.

Senator GRAHAM. I mean, in terms of the danger fentanyl presents to an individual, those surrounding the individual.

Judge ALIKHAN. I think it's quite dangerous.

Senator GRAHAM. Okay. All right. I'm sure Senator Hawley will ask you about the Evangelical Lutheran Church, so I won't take any of his time.

Ms. Munley—Judge Munley, we have some common friends. Don McGahn is a family friend. Is that correct?

Judge MUNLEY. My nephew.

Senator GRAHAM. Okay. Well, that's—I guess you can still be friends and have a nephew.

Judge MUNLEY. He's a friend.

Senator GRAHAM. Okay. Bottom line, you have very little criminal practice. Is that true?

Judge MUNLEY. Senator, over the course of my 20 years as a trial lawyer, I handled criminal cases, I handled DUI cases, I sat third or fourth chair in a bench murder trial, and did all the brief writing for that, including the appellate brief writing, as well as handing criminal juvenile cases.

Senator GRAHAM. So, you feel like you're conversant in criminal law?

Judge MUNLEY. I am completely confident, Senator. If I have the honor of being confirmed in handling any criminal case that comes before me as a trial judge, I've handled criminal cases to verdict,

so, would be completely confident in handling any criminal case assigned to me.

Senator GRAHAM. Thank you very much.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. I want to just begin by echoing the Chairman's remarks about the extraordinary impressiveness of this panel and, frankly, of many of the nominees who have come before our Committee, who have been nominated by the President, to both the district court and appellate court.

Your story is not only of talent and hard work, as the Chairman said, but also of overcoming obstacles. And, the diversity that you represent has been part of your life story in a way that is very, very profoundly important to the work that you will do because you are the face and voice of justice in America.

Very few litigants go beyond the district court. Having litigated often in our Federal courts, I know how difficult it is to go beyond the district court, in cost, and time, and representation. And, you will be the last source of justice for many Americans, countless Americans, the face and voice of justice. And so, I just want to say how proud I am that you look like America, and that you will no doubt think like America, in your common sense and judgment.

I want to ask you, Judge Oliver, you have served with extraordinary distinction in our State justice system and on our State bench. How does that State court experience prepare you to be a Federal judge?

Judge OLIVER. Thank you very much for the question, Senator. Mechanically, both as a prosecutor dealing with criminal trials, in every trial, there's an issue of Federal law, whether it's the Fourth Amendment with *Mapp v. Ohio* and the exclusionary rules apply through the States. And, there's *Brady v. Maryland*, obviously, that continuing obligation and duty of the prosecutor to disclose exculpatory information down to *Giglio*, with the impeachment requirement.

And then, on the State court bench in my four plus years, litigating habeas petitions. Again, the Sixth Amendment right to effective assistance of counsel. Again, with those petitions, the Eighth Amendment, a prohibition against cruel and unusual punishment. I've dealt with constitutional issues at the State court level continuously for the past 14 plus years.

Procedurally, I am committed to doing what I've done the past 14 plus years as a State court judge. Giving the litigants a fair hearing on the merits, being impartial, and neutral arbiter, researching the law, finding facts, restraining myself only to the task before me.

Senator BLUMENTHAL. You mentioned one of the differences between our Connecticut system and the Federal system, which is in jury selection. There's a very elaborate voir dire process in our State courts involving individual questioning of juries. In the Federal system, it is much more pro forma, much more streamlined.

You know, I attend a lot of immigration and naturalization hearings where we talk about new citizens, and the privileges of citizenship, the right to vote and the right to serve on juries. And, I think you would agree with me, that people should feel privileged to serve on juries. Would you agree?

Judge OLIVER. I absolutely would, Senator. Thank you. I tell the jury, the larger jury panels, when I address them in the morning before jury selection, that it is both a burden and a privilege of citizenship. Connecticut is recently, in its attempt to expand the diversity of jury pools, including those who are of lawful permanent residence, to those who are eligible for jury service.

And so, I have selected, as a prosecutor, many juries, as a judge, many juries, whether they ultimately went to a verdict. And, I've not yet found a jury, despite the difficulty of the underlying charge, whether it's murder or sexual assault. I've not found a jury that has not come out better, in their own words, better for having gone through the process, and developed an appreciation for the importance of a jury of one's peers.

Senator BLUMENTHAL. Thank you. Judge AliKhan, Senator Graham asked you about a particular case, and a position, that your office took in that case. The office of attorney general for the District of Columbia is the equivalent of the State attorney general. Correct?

Judge ALIKHAN. Yes, Senator, it is.

Senator GRAHAM. And, the positions taken by your office in any litigation, with all due respect to assistant attorneys general or even the solicitor general, are determined primarily by the attorney general. Correct?

Judge ALIKHAN. Senator, that is quite correct. The attorney general sets the litigation priorities for the District, including multi-State and amicus briefs.

Senator BLUMENTHAL. Thank you. Thanks, Mr. Chairman.

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman, and congratulations, to all of you. Ms. DeClercq, do you believe in stare decisis?

Ms. DECLERCQ. Absolutely.

Senator KENNEDY. Tell me what that is.

Ms. DECLERCQ. Is to follow precedent.

Senator KENNEDY. Okay. If you're confirmed, will you follow all higher court precedent?

Ms. DECLERCQ. Yes. I pledge to this Committee that, if I am confirmed, I would follow all Supreme Court, Sixth Circuit precedent.

Senator KENNEDY. Okay. Would you have followed the *Dred Scott* case?

Ms. DECLERCQ. There are some foundational cases where there——

Senator KENNEDY. Yes, but, let's just start out with the basics——

Ms. DECLERCQ. Sure.

Senator KENNEDY [continuing]. If we could. Would you have followed the *Dred Scott* case?

Ms. DECLERCQ. As a Federal lower court judge, I would have been obligated to follow that case as precedent.

Senator KENNEDY. So, you would have? You would have?

Ms. DECLERCQ. If I had been a lower Federal court judge, I would have been obligated to do so. Unless the——

Senator KENNEDY. That's a yes? There are only two doors here. Yes or no.

Ms. DECLERCQ. Yes. If I had been a judge at that time, I would have been obligated to do so, yes.

Senator KENNEDY. Okay. Would you have followed *Plessy v. Ferguson*?

Ms. DECLERCQ. Again, Senator, as a lower court Federal judge, if I were to be confirmed as a district court judge, I would be obligated to follow all Supreme Court precedent. If the Supreme Court determined that there was a precedent, that it found that it should overrule, they have that opportunity to do so. But, as a lower court judge, I would be obligated to follow it.

Senator KENNEDY. That's a yes?

Ms. DECLERCQ. Correct. Correct.

Senator KENNEDY. Okay. Judge AliKhan. Am I saying that right?

Judge ALIKHAN. Yes, Senator.

Senator KENNEDY. Okay. Will you allow your personal or political beliefs to affect your decisions?

Judge ALIKHAN. No, Senator. My personal beliefs have never played a role in the positions I took as an advocate, nor do they play a role in the positions I take as a judge when I'm neutrally deciding a case.

Senator KENNEDY. Okay. I'm glad we got that off the table. Let me ask you a few questions about how you view the world. Do you believe that minorities need special help to succeed?

Judge ALIKHAN. Senator, that issue is currently pending before the U.S. Supreme Court——

Senator KENNEDY. Yes, ma'am. We just established that you're not going to let your personal opinions affect your decisions. You're going to follow precedent.

Judge ALIKHAN. Absolutely——

Senator KENNEDY. Okay.

Judge ALIKHAN [continuing]. I will follow whatever precedent comes from the Supreme Court.

Senator KENNEDY. Let's talk about your personal opinions, which will be irrelevant to your position on the court. Do you believe that minorities need special help to succeed?

Judge ALIKHAN. Senator, again, I don't have a personal position. And, sitting here as a current sitting judge and as a nominee——

Senator KENNEDY. Have you thought about that? Have you thought about that?

Judge ALIKHAN. I am aware that we have given preferential treatment. It's been subject to a lot of different court cases. The issue——

Senator KENNEDY. Do you agree with that or disagree with it?

Judge ALIKHAN. It's not a question, Senator, of whether I agree or disagree——

Senator KENNEDY. Sure, it is.

Judge ALIKHAN [continuing]. I apply the law as it comes before me.

Senator KENNEDY. You're being confirmed to the Federal bench. And, presumably, you're a critically thinking person. I'm just asking you what you believe. Do you—may I ask you another—one more time. Do you believe that minorities in America need special help to succeed? It's a very simple question.

Judge ALIKHAN. Senator, to the extent policymakers have enacted laws that provide protection——

Senator KENNEDY. Do you agree with those policymakers?

Judge ALIKHAN. I am not a policymaker. And, as a sitting judge——

Senator KENNEDY. You don't have an opinion or you're just not going to answer? I don't want to waste more time if you're not going to answer.

Judge ALIKHAN. Senator, as a sitting judge, it is inappropriate for me——

Senator KENNEDY. No, it's not.

Judge ALIKHAN [continuing]. To comment on my personal views——

Senator KENNEDY. No, it's not. We've already established that you're not going to let your personal beliefs interfere with your decisions. So, I think you ought to tell us what your personal beliefs are. Is—do you believe that the—do you believe in systemic racism?

Judge ALIKHAN. Senator, again, that's a question for sociologists and academics. I take any case——

Senator KENNEDY. You don't have an opinion and you never thought about it?

Judge ALIKHAN. I take each case as it comes before me on the individual facts.

Senator KENNEDY. What is systemic racism?

Judge ALIKHAN. My understanding is that it's a sociological theory that racism plays a systemic role. But, beyond that, I'm not an academic. I'm not a sociologist. I am a judge and I apply the facts and the law to the cases that come before me.

Senator KENNEDY. Right, but you don't have an opinion?

Judge ALIKHAN. No, Senator. I do not.

Senator KENNEDY. Do you have an opinion on anything you'd like to share with us?

Judge ALIKHAN. Senator, as a sitting judge, it's inappropriate for me to comment on any personal views——

Senator KENNEDY. No, it's not.

Judge ALIKHAN [continuing]. I might hold, because I would——

Senator KENNEDY. We've just established—the first question I asked you was, your view of the world does matter. If you've never thought about the world, if you've never thought about these issues, you're not qualified to be a Federal judge. And, I think you ought to come here and answer—I think all of you should come here and answer them forthrightly.

If I ask you—may I ask you one last question? And, I will, quickly, Mr. Chairman. Do you believe—you sit on the District of Columbia Court of Appeals. Is the District of Columbia Court of Appeals systemically racist?

Judge ALIKHAN. Senator, as a sitting judge, I think it would be inappropriate for me to comment. I can say all of my colleagues take the cases open-mindedly and on the facts——

Senator KENNEDY. But, do you think it's systemically racist?

Judge ALIKHAN. I don't think that it is, Senator——

Senator KENNEDY. Okay.

Judge ALIKHAN [continuing]. But, I also don't know if I'm qualified to give that type of assessment.

Senator KENNEDY. Well, you sit on the court. Right?

Judge ALIKHAN. I think all of my colleagues take their cases with an open mind, without any prejudice, and faithfully apply the law to the facts.

Senator KENNEDY. Well, I'm disappointed you won't answer my questions, but I thank the Chairman for giving me the extra time.

Chair DURBIN. Thank you, Senator Kennedy. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. I want to acknowledge the fact that President Biden has nominated some of the most diverse nominees, highly qualified nominees to all of our courts, and diversity and inclusion is really critical. And, I see, at least, in two of our nominees this morning, that they are not far from the immigrant experience, which I think is a very critical part of inclusion and diversity on our courts.

And again, as the only immigrant serving in the U.S. Senate, I think I have many life experiences that are common to our two nominees. And, to all of our nominees, thank you very much for your willingness to continue public service.

I'd say that when we ask questions such as the import of *Plessy*, *Dred Scott*, *Korematsu*, these are decisions that are—that are fine examples of how the Supreme Court gets it really, really wrong. And, I would say some of the Court's decisions now will fit into that category, and it may not take that long for history to make that judgment.

I ask the following two initial questions, to ascertain the fitness to serve, of every nominee who comes before any of my Committees that I sit on. So, I will ask each of you those two questions. And, we'll start with Judge AliKhan.

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?

Judge ALIKHAN. No, Senator.

Ms. DECLERCQ. No, Senator.

Judge MUNLEY. No, Senator.

Judge OLIVER. No, Senator.

Senator HIRONO. Have you ever faced discipline or entered into a settlement relating to this kind of conduct?

Judge ALIKHAN. No, Senator.

Ms. DECLERCQ. No, Senator.

Judge MUNLEY. No, Senator.

Judge OLIVER. No, Senator.

Senator HIRONO. Judge Oliver, I really appreciate the fact that you talk with students about citizenship. I think that that is something that we—all of us should be focusing on, especially—and talking about, especially as I believe that the ability for people to vote, which is a basic and fundamental right of citizenship and responsibility, I believe there are too many States that are really limiting our right to vote.

So, thank you very much for taking the time to talk to our young people, encourage them to be aware of public service. So, in your responsibility, Committee on Judicial Ethics, why are judicial ethics and judicial integrity important to our justice system?

Judge OLIVER. Thank you for the question, Senator. I think the short answer is when the people are aware that the judges whom

they come before are governed by a rule of ethics, they have more faith that the judges police themselves. And, that when there's a situation where a judge's impartiality might reasonably be questioned, that judge would step aside. So, it restores and continues—bless you, Senator—restores and continues faith in the criminal justice system by the litigants who come before us.

Senator HIRONO. Thank you. I completely agree with you. Judge AliKhan, you have spent thousands of hours on pro bono work. Can you just tell us why the pro bono work has been so important to you?

Judge ALIKHAN. Thank you, Senator. There are so many litigants in this country that don't have the benefit of representation. Obviously, we have enshrined a right to counsel in criminal cases, but there are many civil cases, collateral proceedings where there's not a constitutional or statutory right to counsel. And, I think, as lawyers, we owe an ethical duty to our legal community to represent those that cannot afford representation, both because it, I think, helps advance the interests of those individual litigants, but it also serves the court.

I have been fortunate to be appointed, by both the Third Circuit and the Sixth Circuit, to handle cases where they felt that the use of counsel would be helpful.

Senator HIRONO. Thank you. Judge DeClercq, the fact that you have a very unique background, to say the least. Has being an immigrant been one of the reasons that you wanted to become a lawyer? And, does it inform the, you know, how you approach decision-making as a judge?

Ms. DECLERCQ. Yes, I'm very proud of being an immigrant. It is a more unusual immigrant experience in that I was brought to the United States as an infant and adopted by my family. But, I have always been very aware of how different my life would have been had that not happened, and the incredible opportunities that this country has given to me. And so, I've spent most of my professional career in public service.

I deeply appreciate, not only the country, but the Government, which was why I joined the Department of Justice. And, for me, it's always been about equality and justice. And, I think that that is part of the immigrant experience.

Senator HIRONO. Yes. I think you are another example of immigrants coming to this country to create a better life, but the appreciation we have for a country that afforded us opportunities we never would have otherwise had. I just want to mention, Mr. Chairman, for Judge Munley, it must be an incredibly meaningful experience for you to be sitting here, to be on the court that your father served.

Judge MUNLEY. Thank you, Senator. It truly is an honor. He taught me about what it is to be a good judge. He served as such an example to me of what it means about judicial temperament. And, I consider that one of the most important attributes for a judge.

Senator HIRONO. Thank you. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. And now, Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. And, congratulations to each of you on your nomination.

Judge AliKhan, I want to come to you. Some remarks you made, when you were solicitor general in DC, to the American Constitution Society event. And, you said, and I'm going to quote you through this, that in your job, you "try to carry out and live some of the values of ACS." And, here's a portion of the mission statement for ACS. And, this is off of their website. It states that, "ACS mission includes redressing the founding failures of our Constitution and enduring inequities in our laws in pursuit of realized equality."

So, in your role, as both an advocate and, now, as a judge, do you subscribe to that part of the mission statement? And, what do you see as the enduring inequities in the laws that need to be redressed?

Judge ALIKHAN. Senator, when I said, as solicitor general, that I carry out the values of ACS, it was the values of mentorship and discussion, and vibrant discussion and debate——

Senator BLACKBURN. So then, you don't agree with what is on their website?

Judge ALIKHAN. I——

Senator BLACKBURN. So, here's another part for you. It also notes, on their website, that its goal is, "to promote laws and policies that advance realized equality." So, what laws and policy are you trying to promote? And then, is this part of what you're trying to carry out? Is it activism, as a judge, that you're seeking? So, as a Federal judge, what would that look like if you're trying to live this out, if you're trying to carry it out, if you're trying to change those laws?

Judge ALIKHAN. Senator, as a judge, it is not the role to change laws. It is to interpret and apply the laws that this body passes.

Senator BLACKBURN. Okay. Well, in your comments, that's what you said. I'm quoting you back to you. So, how would you advance realized equality from the bench?

Judge ALIKHAN. Senator, in my current role, I take the law and I apply it to the facts and cases before me. That is what I would do if I were fortunate enough to be confirmed.

Senator BLACKBURN. Okay. So, how would you fulfill your duty to neutrally apply the law of people that are coming before you? So, describe to me your method of statutory or constitutional interpretation. How would you carry that out?

Judge ALIKHAN. Absolutely, Senator. When I am confronted with a statutory or a constitutional interpretation case, I take my cues from the Supreme Court. The Supreme Court has instructed in statutory interpretation cases, you first must look at the text. And, if the text is on——

Senator BLACKBURN. Okay. So, what is your understanding of "original public meaning"?

Judge ALIKHAN. My understanding of original public meaning is that it is a tool of constitutional interpretation that the Supreme Court has used in interpreting the Second Amendment and the Confrontation Clause. And, I would faithfully apply the Supreme Court's mechanisms

Senator BLACKBURN. Okay.

Judge ALIKHAN [continuing]. For interpreting——

Senator BLACKBURN. Original public meaning seeks an understanding of the statute as it would have been understood by the general public at the time of passage. Okay. Let me move on with you for something else.

I—your previous nominations process, you answered several questions for the record indicating your views on when nationwide injunctions are appropriate.

So, can you point to any provision of the Constitution or Federal law that expressly permits a single district judge to grant relief that is binding on the entire nation? Give me one.

Judge ALIKHAN. The All Writs Act and Rule 65 and judicial precedents do not foreclose a district judge from entering relief that is beyond the geographical boundaries, but it should be as an all injunctive relief, sparingly used because it's a drastic remedy.

Senator BLACKBURN. But, it is appropriate that neither the Constitution nor any Federal statute explicitly authorizes district judges to issue nationwide injunctions. Isn't that correct?

Judge ALIKHAN. It is an equitable remedy that has not been foreclosed.

Senator BLACKBURN. Isn't that correct? Yes or no?

Judge ALIKHAN. It is correct, that there is no law——

Senator BLACKBURN. That is accurate.

Judge ALIKHAN [continuing]. One way or another.

Senator BLACKBURN. That is correct. Thank you. I appreciate the time.

Chair DURBIN. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Congratulations to all of the nominees.

Judge AliKhan, I think last time you and I visited, it was before the Homeland Security Committee. And, I asked you a number of questions there. You—including some for the record, you answered those, which I appreciated. One question that I asked you, and I ask every nominee, actually, on that Committee and this one, is whether or not the nominee has ever litigated against a religious liberty claim. Usually the answer to that's, no. In your case, you answered, yes. And, you listed one, two, three, four, five different cases over a period of years, actually, in which you have litigated against individuals' or churches' religious liberty claims.

So, let's just talk about a few of those, if we could. Let's start with some of your work during COVID. Case you list here, *Capitol Hill Baptist Church v. Bowser*. Do you remember that case?

Judge ALIKHAN. Yes, Senator.

Senator HAWLEY. You remember working on that case?

Judge ALIKHAN. Yes, Senator.

Senator HAWLEY. This was a case involving the District's lockdown policies that shut down churches in the District. Is that correct?

Judge ALIKHAN. It concerned litigation over provision of the lockdown policies. The policies restricted all types of activity in the District.

Senator HAWLEY. All types of activity in the District?

Judge ALIKHAN. Yes, Senator.

Senator HAWLEY. Did it restrict mass protests in the District?

Judge ALIKHAN. Well, it restricted activities that one normally expected, including work, going to stores. It also did include these provisions that were challenged, concerning churches.

Senator HAWLEY. So, it exempted unusual or unlikely activities that's in the statute that's in the ordinance?

Judge ALIKHAN. When the mayor was enacting these orders at the outset of the pandemic, I think she was trying to be as comprehensive as she could. And, the order did restrict a number of daily activities of District residents.

Senator HAWLEY. But, it exempted mass protests?

Judge ALIKHAN. I don't believe it said anything, one way or another.

Senator HAWLEY. Can you point me to the text where it exempted mass protest?

Judge ALIKHAN. I don't believe it said anything one way or another.

Senator HAWLEY. Of course it didn't, because it didn't exempt mass protests. Right? You know that.

Judge ALIKHAN. I think it was silent on the issue because I don't believe it was contemplated by the mayor's office.

Senator HAWLEY. Ahh, so, you think that mass protests should be in a different category than religious observances? Is that your position?

Judge ALIKHAN. I think if there were protests on the book, then the mayor might have thought about that when she was enacting the COVID–19 restrictions. But, I think she was trying to protect public health.

Senator HAWLEY. So, you think it's fine to say to religious people that they are prohibited from gathering outside, wearing a mask, socially distanced? They can't do it. But, if you want to come and protest, defund the police, if you want to support that, that's fine. You can gather en masse, person to person, close up, thousands of people, that's okay. That discrimination is okay. That is your position?

Judge ALIKHAN. Senator, that is not my position. I do not——

Senator HAWLEY. It was your position. It's what you argued.

Judge ALIKHAN. I did not write these orders. What I said——

Senator HAWLEY. You defended it in court.

Judge ALIKHAN. My——

Senator HAWLEY. And, you just articulated to me what I take to be your position.

Judge ALIKHAN. What I was doing, in *Capitol Hill Baptist Church*, was defending the mayor, my client, against a constitutional challenge to one aspect of the COVID–19 restrictions. We understood that strict scrutiny applies——

Senator HAWLEY. How did that case go for you?

Judge ALIKHAN. We lost that case.

Senator HAWLEY. Why?

Judge ALIKHAN. It was found that the restrictions did not meet the standard of strict scrutiny.

Senator HAWLEY. Meaning they were unconstitutional?

Judge ALIKHAN. Meaning that they did not survive strict scrutiny. And, it's a matter of public record that the District of Columbia did not appeal that decision.

Senator HAWLEY. Why? Why were they struck down?

Judge ALIKHAN. Excuse me, Senator?

Senator HAWLEY. Why were the restrictions that you defended struck down as discriminatory? Why were they?

Judge ALIKHAN. Because they did not satisfy——

Senator HAWLEY. Why didn't they?

Judge ALIKHAN. The court concluded that there were restrictions that were not neutral of general applicability——

Senator HAWLEY. Yes. Yes. Yes. Yes—that's legalese. Why didn't they? Why didn't they, on the facts? You know the facts. You're a good lawyer. Why did you lose?

Judge ALIKHAN. We lost because applying the strict scrutiny test, the court concluded that the restrictions were not narrowly tailored——

Senator HAWLEY. Because?

Judge ALIKHAN [continuing]. Of a compelling governmental interest——

Senator HAWLEY. Because?

Judge ALIKHAN [continuing]. Senator——

Senator HAWLEY. Oh, come on, Judge, don't make me do this. Do you want me to go through it for you? You lost because Mayor Bowser was going to mass protests, herself, personally, with thousands of people celebrating them—by the way, which is fine. We have a First Amendment in the United States. I want to be clear. That is totally fine. You want to protest, go for it. I think that's totally fine. That wasn't the problem here.

At the same time she was doing that, she was prohibiting churches, religious people from gathering, socially distanced, outside wearing masks. And, the district court said, "You can't do that."

That's discrimination. You can't separate people out based on their ideological beliefs or their positions. You can't do that. Right? Isn't that what the district court said?

Judge ALIKHAN. The district court said that——

Senator HAWLEY. Do you agree with it?

Judge ALIKHAN [continuing]. It did not—could not survive strict scrutiny.

Senator HAWLEY. For those reasons. Right?

Judge ALIKHAN. That——

Senator HAWLEY. Why are you fighting me on this? I can't figure this out.

Judge ALIKHAN. I am not fighting you, Senator. I——

Senator HAWLEY. So, yes, you agree, that's what the district court said?

Judge ALIKHAN. That was what the district court concluded.

Senator HAWLEY. Do you think they got it right—the district court got it right?

Judge ALIKHAN. The district court—we did not appeal that decision. I think that district court decision is consistent with rulings that we got from the Supreme Court clarifying the application of the Religious Test to COVID–19 restrictions, in *Tandon*, and, the *Brooklyn Archdiocese*——

Senator HAWLEY. I think that my time's almost expired, and I know other Senators want to ask questions. So, let me just very

quickly, here—do you think it's wrong to discriminate on the basis of religious faith?

Judge ALIKHAN. Absolutely, Senator.

Senator HAWLEY. Why did you argue that religious services, religious people pose a greater risk of infection than people gathered to argue for defunding the police?

Judge ALIKHAN. I was representing my client, the mayor, and consulting epidemiologists had issued orders that she thought were going to protect public health. It was my role to defend those as a——

Senator HAWLEY. Why'd you make that argument? This seems like a strange argument to me that religious people are somehow, what, more infectious than folks who have other ideological positions? I don't get it.

Judge ALIKHAN. My understanding was the nature of singing and other things epidemiologists thought could transmit COVID at a higher rate——

Senator HAWLEY. You didn't put any scientific evidence in the record for it.

Judge ALIKHAN. Senator, those were fast-moving cases and they weren't going to full briefing and full summary judgment with a record——

Senator HAWLEY. That's not what the district court said. The district court said, that you engaged in—your client engaged in, and you defended, discrimination on the basis of religious belief, that you offered no scientific evidence for it, that you pressed these arguments over, and over, and over, without any foundation.

Frankly, I'm disappointed that you made those arguments. You can choose what arguments to make. I'm disappointed you made those arguments. I'm disappointed you persisted in defending them, here today. And, for that reason, among others, I will not support your nomination. Thank you, Mr. Chairman.

Chair DURBIN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Congratulations to all of you, on your nomination. I'm sure you, and your families, are proud.

Judge Munley, I have just a quick question for you. Something that came up in a read, in the background. I think you gave a lecture on communications, and you had a slide that referred to, "invoking religion could be a sign of deception." Can you just—it was—I could try and find the date, but, it had something—you looked with a furrowed brow. So, you don't know what I'm talking about?

Judge MUNLEY. I do not recall that.

Senator TILLIS. I'll submit it as a question for the record, then, so that you can have proper time to look at it in the context. But, it really, the question——

Judge MUNLEY. Absolutely.

Senator TILLIS [continuing]. When we submit it for the record, it's really what was meant by the statement. I'm sure, like me, you make a lot of public comments, but I'm particularly interested in how people of faith should interpret the statement. So, we'll submit that for the record. I'd appreciate you getting back.

Judge MUNLEY. Absolutely.

Senator TILLIS. Ms. AliKhan, have you written any legal briefs in support of sanctuary city policies?

Judge ALIKHAN. Yes, Senator. I believe, in my time as solicitor general, the attorney general joined, or authored, several of those briefs, and I would have been supporting that.

Senator TILLIS. And, what was your thesis put forward?

Judge ALIKHAN. I believe the cases, that the District was a drafter on, concerned restrictions on Byrne Act funding.

Senator TILLIS. The—I, for one, think it's odd that—I mean, we're talking about you moving up to a position on the bench, and yet we're arguing this. I just can't—I'm not an attorney, so I'm not going to spar with you. I'll leave that to the attorneys on the Committee. But, it just seems odd to me that we'd ever be in a position to where we're advocating for a policy that's fundamentally counter to Federal law. So, help me understand. Just help me understand.

Judge ALIKHAN. Senator, I want to make clear this was not a decision I made to author these briefs, or to join these briefs. The office of the attorney general is led by an elected official, the attorney general, and he sets the litigation priorities for the office.

Senator TILLIS. Okay. So, I won't ask your personal view. I know Senator Kennedy did. But, what I would like to do, Mr. Chair, if possible, so that we could possibly prevent a second round, is to yield the remainder of my time to Senator Kennedy.

Chair DURBIN. Without objection.

Senator KENNEDY. That's nice of Thom. Thank you, Thom. I'm going to send you a fruit basket. Give me that sheet back. Judge Oliver, how flexible must an employer be when a worker asks for a religious accommodation? What's Federal law on that?

Judge OLIVER. Senator, in my 14 years as a State court judge and 11 years as a litigator, I haven't had that issue presented to me. I can commit to this Committee that if presented with this issue, I'll research it well and be prepared to address it in advance of the proceedings.

Senator KENNEDY. So, you're not familiar with the Supreme Court precedent on religious accommodation by an employer?

Judge OLIVER. I'm not sufficiently versed on it to be able to answer it appropriately, Senator.

Senator KENNEDY. Okay. Tell me about the political question doctrine.

Judge OLIVER. Yes, Senator. Thank you for the opportunity. The political question doctrine is the one means by which the United States Supreme Court can decline to act. It indicates that when an issue is before the Court that is so inherently political, and it's in the process of being considered, that the Supreme Court can decline to act, and leave it to the appropriate body.

Senator KENNEDY. Okay. Give me an example, if you would, please, Judge.

Judge OLIVER. An example of a political question.

Senator KENNEDY. Let me ask you, in preparing for the day, today, you met with White House Counsel?

Judge OLIVER. Yes, Senator.

Senator KENNEDY. And, their team? They got a good team, don't they?

Judge OLIVER. Yes, Senator.

Senator KENNEDY. Did they give you a list of questions to be prepared for?

Judge OLIVER. A list of some questions, Senator, yes.

Senator KENNEDY. How many questions were on there?

Judge OLIVER. How many questions? A few dozen, I would suggest. I would estimate.

Senator KENNEDY. Just a few dozen?

Judge OLIVER. Yes, Senator. I think that's accurate.

Senator KENNEDY. Okay. And, where did they get these questions?

Judge OLIVER. Some were taken from prior public hearings before this body.

Senator KENNEDY. My questions?

Judge OLIVER. Yours are on that list, Senator. Yes.

Senator KENNEDY. Okay. Thank you, Mr. Chairman.

Chair DURBIN. Kennedy bar exam lives on. Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman. Thanks to all of you for being here.

Judge AliKhan, I'd like to start with you. Tell me in one sentence what a judicial philosophy is. What do you think that means?

Judge ALIKHAN. It's the set of principles that a judge brings with them when they join the bench.

Senator LEE. How would you describe yours?

Judge ALIKHAN. My judicial philosophy has three components, Senator.

First, the humility to understand that the judicial role is quite limited. Legislatures enact laws, executives enforce them. But, the only role of a judge is to apply the law to the facts of the case before them.

Second, to make sure that all parties leave my courtroom feeling like they have been heard, knowing they have been respected, understanding that I have been well prepared, and asked good questions.

And finally, that I issue opinions that are prompt yet thorough, and that are written in such a way that both litigants and pro se parties can understand.

Senator LEE. What role should the text play when you're interpreting a provision of the U.S. Constitution or Federal law?

Judge ALIKHAN. The text is primary. You look at the text first. If it is unambiguous, that answers the question, that is well-settled, Supreme Court precedent.

Senator LEE. Where there's ambiguity, what do you look to, to resolve the ambiguity?

Judge ALIKHAN. So, when there is ambiguity, for example, in a statute, you would look to not just the text, but the context, if there were, depending on when the statute was passed, looking at relevant dictionaries from the time, to understand the public meaning of the words that were used. Also, looking at the way those words are used in analogous statutes from the time. Ultimately, once you've exhausted text, context, history, dictionaries, you can look at canons of construction——

Senator LEE. But, the effort should involve trying to ascertain the meaning of those words at the time of enactment, if a statute, or at the time of ratification, if a part of the Constitution.

Judge ALIKHAN. Yes, Senator. That's why you look to contemporaneous dictionary definitions.

Senator LEE. Thank you. In 2021, you spoke on a panel at an event, I believe, honoring the 20th anniversary of the founding of the American Constitution Society. And, in your remarks, you said, quote, "I've been able to think through my job to carry out and live some of the values of ACS." Tell me, Judge, how did you carry out, and live, some of the values of ACS as solicitor general, and now, as a judge on the DC court of appeals?

Judge ALIKHAN. The values of ACS, as I understood them, were education and mentorship. And, I try to carry those out, both in my role as an advocate, and now, as a judge, to make sure that I'm speaking to the next generation of lawyers, to make sure that I keep an open mind, stay current on interesting debates, stay current on the current state of the Supreme Court cases, so that I can apply them faithfully to the cases that come before me.

Senator LEE. And, what other values might you refer to, to ACS? Are there others, other than the ones you've just described?

Judge ALIKHAN. I understand from Senator Blackburn, there's a long mission statement for ACS. My involvement with ACS has always been on these types of panels where we're discussing legal issues on mentorship events, when I'm speaking to the next generation of lawyers, particularly about opportunities in public service.

And then, oftentimes, ACS and the Federalist Society will pair up at law schools to have different issues sort of aired and debated. I loved doing, and going to, those events when I was in law school, and I love speaking at those joint events because I think you're really getting a way of understanding the diverse perspectives of the law. I think that makes us all better, better students of the law.

Obviously, as a judge, my role is just to look at the law and the facts and the cases that come before me. But, for those that are still in law school, those that are exploring careers in academia and policy, I think these are interesting debates to be having.

Senator LEE. Judge Munley, what can you tell me in one sentence about removal? Removal, in the Federal jurisdictional sense, of a case filed in State court.

Judge MUNLEY. That if a case is filed in State court, at some time, Senators, that one party will file a motion to remove the case for venue purposes to Federal court, particularly with diversity cases. I mean, that was more so my experience with cases that I handled as a trial lawyer in State court, that sometimes litigant lawyers on the other side would file a motion to remove the case to Federal court for venue purposes, and then the case would proceed in Federal court with diversity jurisdiction.

Senator LEE. Right. Judge Oliver, what can you tell me about the Dormant Commerce Clause? What it means? What it stands for?

Judge OLIVER. Thank you for the question, Senator. The Dormant Commerce Clause is considered the opposite side of the coin from the Commerce Clause. It prevents States—one State—it prevents one State for attempting to gain a political economic advantage over another State by burdening that other State in a way that the home State's not burdened.

Senator LEE. If it does so intentionally, that's one thing. What if it does so incidentally?

Judge OLIVER. I think if it's incidentally, you might look at the text of the statute and determine it that way. It is part of Congress'——

Senator LEE. The text of the underlying State statute?

Judge OLIVER. Yes, Senator.

Senator LEE. So, if it's written in facially neutral terms relative to whether it discriminates against interstate commerce, then is there anything left of the Dormant Commerce Clause at that point?

Judge OLIVER. No. I think there's the important factor of intentionality, as we're talking about competing economic interests.

Senator LEE. Okay. Thank you very much. I see my time's expired.

Chair DURBIN. Thank you, Senator Lee. I want to thank the panelists, and all of their family and friends, who came in support today. It is interesting, when you've experienced many of these hearings, the nature of the questions that are asked. Some of the questions challenge the individuals on the panel because they ask them for personal views on issues and many are instructed by the canons not to share personal views but to try to stick with the law and not to prejudice any pending case or any future case.

And so, it puts many of the nominees in a tough position. We all have opinions on things, but, judges do their best to suppress those, and follow the law and facts in the case which they're asked to do. So, it creates a challenge in that regard.

Senator KENNEDY. Mr. Chairman, may I be heard on that?

Chair DURBIN. When I finish, please.

Senator KENNEDY. Sure.

Chair DURBIN. And, I also want to say that many people have jobs to do, that are created by statute, by law, for instance, to represent certain clients. Solicitor general would be representing, in some cases, the views of a mayor that are expressed through policy, and through ordinances, and laws, and the like. They may not be views that you personally share, but, as a litigant, you have a responsibility to be loyal to your client, not to allow them to lie, or have anything they say that is misleading, be part of the record, but to honor them and defend their position.

One Member of this panel said, and, I think, properly, "As a litigator, you do not necessarily share the views of the people you represent. In fact, very often, having been a litigator myself, I would say that you may disagree quite strongly with the views of the people or the litigating positions, even of the people you represent, but it's your job to represent them effectively and fairly."

That was the Senator from Missouri, and I think he was right in the citation that I've just read to you. I could go through the panel and say that depending on the nominee, each of us has said something like that. You do your best for your client, even though you may not agree with their fundamental policy views, you have a responsibility to represent them effectively and professionally.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I agree. I concur in part, and dissent in part, with our esteemed Chairman. I think he's right. We're all attorneys. We've all had clients we didn't agree

with. Hell, we've had clients we didn't like much. But, you do your job as long as it's ethical. And, I can't recall a time that I have really pressed a nominee on a position that that nominee took, on behalf of a client, if I thought it was in good faith.

I disagree, with our Chairman, that your personal beliefs don't matter. Those of you who are questioned today, I specifically asked you if you'd allow your personal beliefs to influence your decisions. And, you said no, and that's as it should be. But, if you don't have personal beliefs, then you're not qualified to serve on the Federal bench. You're just not.

If you're not—if you don't have personal beliefs, you're not a critical thinker. If you don't have personal beliefs, you haven't examined the world. You've just been robotic doing what somebody told you. I think your personal beliefs do matter, and I think you ought to be able to discuss with us things like race in society, things like, when does life begin? These are things that we all grapple with, as Americans, as human beings.

We need to talk about, when does equal protection of the law attach to a person? Does it attach in the womb? Should it attach in the womb? We need to talk about racial progress in America. What we've gotten right. What we've gotten wrong. America caught the disease of slavery, but we beat it back. We should be able to talk about that.

I've never asked your opinions, or a nominee's opinions, about a case that was pending before them, or that might be pending before them. But, when you come before this body, at least, this is one person's opinion—when you come before this body and you refuse to answer a question about your personal beliefs, people are going to assume what they want. And, sometimes they're going to assume correctly, and sometimes they're going to assume incorrectly. But, they're going to assume and they're going to attribute that belief as your belief. So, I think you're making a huge mistake.

I understand. I've served only with two Presidents. White House Counsel officers do their job. They get you prepared. They give you the questions that have been asked in the past. I get all that. Okay? But, I just have to dissent from my Chairman that your personal beliefs don't matter, because they do. They do, a lot. And, they tell us a lot about you. Thank you, Mr. Chairman.

Chair DURBIN. Senator Kennedy, I respect you much, and I count you as a friend. But, you, and I, both know the experiences we've been through in this Committee. Nominees, potential nominees, even for the highest court in the land, would not take a somewhat neutral position, saying, "As a judge, my personal views don't count." They instead give us obfuscation. We've seen it happen on both sides of the table.

You would think an issue as fundamental and basic and as well-known as the issue of abortion would be one that you could express yourself on where you stand, what you feel. But, many, including nominees for the Supreme Court, would tell us, "Oh, you're talking about established law and established precedent." Then along comes the *Dobbs* decision, and you say, what is this all about? You know, this isn't what you promised was going to happen. It didn't come out that way.

So, I understand nominees are in a difficult position. They're trying to follow the canons as they understand them, as nominees, and as sitting judges. And, they're also—they don't want to prejudice future cases or pending cases that they might sit on. So, that's just part of this process that both sides will use to their advantage when possible. And, I respect you. I think you're a person of value and principle, but we disagree on this.

Senator KENNEDY. Well, Mr. Chairman, if I could just respond though to that. And, Dick, I appreciate that point of view. I think Supreme Court nominees are in somewhat of a different position because they're going to be making the ultimate law of the land. I think lower court nominees are not in the same position. And, I just don't see what we gain by not being able to talk about what people believe.

I mean, I would like to hear what thinking people believe about, for example, is sex a biological fact or a social construct? I mean, I assume all of you have thought about that, and have an opinion. I would also point out, Mr. Chairman, this isn't criticism, you're following past precedent. But, each one of these individuals, if they're confirmed, are unelected. They're there for life. For life. And, we're not allowed to talk about what they believe? And, we're only given—again, this isn't criticism—5 minutes? Come on.

Chair DURBIN. Well, by that logic, if you apply it to the highest court in the land, how many of them have been in elective office?

Senator KENNEDY. Some. Some haven't.

Chair DURBIN. Most haven't.

Senator KENNEDY. But, that's why we also have what Earl Warren was. But, that's why we also——

Chair DURBIN. You have to go back in history.

Senator KENNEDY. That's why we also devote days to a Supreme Court hearing.

Chair DURBIN. Yes. Instead of 5 minutes, we take 15.

Senator KENNEDY. As we should.

Chair DURBIN. Yes.

Senator KENNEDY. With second and third rounds.

Chair DURBIN. Well.

Senator KENNEDY. But, anyway, Mr. Lee, my good friend, wants to say something.

Chair DURBIN. I have to be at a place right now, so, please——

Senator LEE. I will be brief. I just wanted to respond to the point about *Dobbs*. I've heard some colleagues say this, sometimes in the context of this Committee's work, sometimes in other contexts, that there's this suggestion made, because nominees came forward and acknowledged that *Roe v. Wade* was established precedent, that somehow locked them in, and that they had, under oath, somehow betrayed their obligation to testify truthfully under oath.

For every hearing that I've been a part of—and I've been here for four Supreme Court confirmation proceedings—not one of those Justices, who has complained about—who's been complained about, in the wake of the *Dobbs* decision, said that *Roe*, or any other case, was unassailable on any grounds ever, or was somehow protected under the doctrine of stare decisis from the possibility that future courts could conclude, as the Court did conclude in *Dobbs*, that *Roe v. Wade* was without textual foundation in the Constitution.

That it was without the kind of foundation that could make it a part of the constitutional analysis not rooted in our Nation's history, tradition, and so forth, as a matter of due process.

I take issue with the suggestion that any one of these nominees misrepresented, in any way, shape, or form, their views on the *Dobbs* case. They could not answer further questions about whether it was assailable under a challenge, and they made no representations as to how it might fare under the doctrine of stare decisis. Such questions, when asked, are questions that they're understandably not allowed to answer under the canons of judicial ethics. Thank you.

Chair DURBIN. So, as Chairman, I'm going to take the last word. The people who were appointed to the Supreme Court by the Trump administration were precleared for one purpose: to overrule *Roe v. Wade*. The Federalist Society, which was the secret handshake for every nominee who came before us from the Trump administration, was established for that purpose. We know that. Regardless of the questions answered here in the Judiciary Committee, we knew what they were aiming for, and they finally reached that goal with the enactment of the *Dobbs* decision.

But, if you listen to their testimony before this Committee, they carefully misled us or obfuscated the situation. You may disagree with me, but that's my opinion. I look at it, and I thought to myself, "I know where this nominee stands," and I'm not going to name names, based on their life experience and where I've seen them rule, or speak, in the past. That's just the nature of this process.

As I said, I get the last word because I'm Chairman. So, thank you. We'll carry on this discussion, I'm sure, beyond today. Thanks, again, to the nominees, their family, and friends.

Senator KENNEDY. Well, Mr. Chairman, with a bold statement like that, I think you ought to let Mike respond. I don't think that's fair. That's a pretty——

Senator LEE. It's just not accurate.

Senator KENNEDY. That's a pretty false——

Senator LEE. In no respect—you have defamed them——

Chair DURBIN. Oh——

Senator LEE [continuing]. You have accused them of committing a crime here. That it is a crime to testify falsely under oath. They did not do that. I challenge you to find one statement, one statement that you could defend as knowingly false made by them, as perjurious. That's what you've done. That's not appropriate.

Chair DURBIN. I said they selectively misled. I didn't say, whatever you just said, feloniously——

Senator LEE. From an ethical standpoint, that has the same effect, and they did not do that.

Chair DURBIN [continuing]. Without describing one another as defamatory. This meeting stands adjourned.

[Whereupon, at 11:33 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List
Hearing before the
Senate Committee on the Judiciary

"Nominations"

Wednesday, June 7, 2023
Dirksen Senate Office Building, Room 226
10:00 a.m.

Loren L. AliKhan, to be United States District Judge for the District of Columbia

Susan K. DeClercq, to be United States District Judge for the Eastern District of Michigan

Julia K. Munley, to be United States District Judge for the Middle District of Pennsylvania

Vernon D. Oliver, to be United States District Judge for the District of Connecticut

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Loren Linn AliKhan

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Columbia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   District of Columbia Court of Appeals
   Historic Courthouse, 430 E Street, Northwest, Suite 308
   Washington, DC 20001

4. **Birthplace**: State year and place of birth.

   1983; Baltimore County, Maryland

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   2003 – 2006, Georgetown University Law Center; J.D., *magna cum laude*, 2006

   1999 – 2003, Bard College at Simon's Rock; B.A., *summa cum laude*, 2003; A.A., with distinction, 2001

   2002, London School of Economics, no degree received (summer abroad)

   2001, University of Massachusetts, Amherst, no degree received (summer classes)

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2022 – present
District of Columbia Court of Appeals
Historic Courthouse, 430 E Street, Northwest, Suite 308
Washington, DC 20001
Associate Judge

2013 – 2022
Office of the Attorney General for the District of Columbia
Office of the Solicitor General
400 6th Street, Northwest, Suite 8100
Washington, DC 20001
Solicitor General (2018 – 2022)
Acting Solicitor General (2017 – 2018)
Deputy Solicitor General (2013 – 2017)

2010 – 2013
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, DC 20006
Counsel (2012 – 2013)
Associate (2010 – 2012)

2009
American Inns of Court Foundation
Temple Bar Scholarship
225 Reinekers Lane, Suite 770
Alexandria, Virginia 22314
Temple Bar Scholar

2008 – 2009
U.S. Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
Bristow Fellow

2007 – 2008
U.S. Court of Appeals for the Third Circuit
844 North King Street, Suite 5300
Wilmington, Delaware 19801
Law Clerk to the Honorable Thomas L. Ambro

2006 – 2007
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne Federal Courthouse
601 Market Street, Suite 16613

Philadelphia, Pennsylvania 19106
Law Clerk to the Honorable Louis H. Pollak

Summer 2006
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, Northwest
Washington, DC 20001
Summer Associate

2005 – 2006
Gebhardt & Associates (dissolved)
Law Clerk

Summer 2005
Williams & Connolly LLP
680 Maine Avenue, Southwest
Washington, DC 20024
Summer Associate

2004 – 2006
Georgetown University Law Center
600 New Jersey Avenue, Northwest
Washington, DC 20001
Research Assistant to Professor Charles R. Lawrence III

2004
People's Law Resource Center (dissolved)
Law Clerk

2002 – 2003
Baba Louie's
42/44 Railroad Street
Great Barrington, Massachusetts 01230
Waitress

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

National Association of Attorneys General
Senior Staff of the Year Award (2020)
Best Brief Award, *District of Columbia v. Wesby* (2016 Term)

Office of the Attorney General for the District of Columbia
Natalie O. Ludaway Award (2020)
Tamar A. Meekins Head of Division Award (2018)
Distinguished Service Award (2016)

South Asian Bar Association of Washington, D.C., Public Sector Trailblazer Award (2019)

Bisnow, "Top 40 Under 40 Attorneys" (2015)

National Law Journal, "40 Under 40: Washington's Rising Stars" (2014)

Super Lawyers, "Rising Star" for Appellate Litigation (2013)

Forbes Magazine, "30 Under 30" List for Law and Policy (2012)

American Inns of Court Foundation, Temple Bar Scholarship (2009)

Georgetown University Law Center
J.D. conferred *magna cum laude* (2006)
Georgetown Law Journal (2004 – 2006)
Order of the Coif (2006)
ALI/ABA Scholarship and Leadership Award (2006)
Dean's Certificate (2006)

Bard College at Simon's Rock
B.A. conferred *summa cum laude* (2003)
Social Studies Divisional Prize (2003 and 2001)
Thomas H. Blodgett Scholarship (2002)
Robert M. Hutchins B.A. Scholarship (2001)
A.A. conferred with distinction (2001)
Faculty Merit Award (2000)
Acceleration to Excellence Scholarship (1999)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Inns of Court Foundation (2009; 2015 – present)
Member, Board of Trustees (2020 – present)
Member, Temple Bar Scholarship Selection Committee (2015 – present)
Temple Bar Scholar (2009)

American Law Institute (2016 – present)

The Appellate Project (2020 – present)
Mentee Selection Committee (2021)

Edward Coke Appellate Inn of Court (2010 – present)

Georgetown Supreme Court Institute (2010 – 2022)

Lawyers' Club of Washington (2016 – present)
Member, Board of Governors (2019 – present)

National Association of Criminal Defense Lawyers (2010 – 2013)
Administrative Coordinator, Amicus Curiae Committee (2010 – 2013)

South Asian Bar Association of Washington, D.C. (2009 – 2010; 2013 – present)
Mentor (2019 – present)

U.S. Court of Appeals for the D.C. Circuit, Committee on Procedures (2017 – 2022)

Washington Bar Association (2021 – 2022)

Women's Bar Association of the District of Columbia (2017 – 2019; 2021 – present)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Virginia, 2006
District of Columbia, 2010

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2011
United States Court of Appeals for the Third Circuit, 2008
United States Court of Appeals for the Fourth Circuit, 2018
United States Court of Appeals for the Sixth Circuit, 2011
United States Court of Appeals for the Seventh Circuit, 2011
United States Court of Appeals for the Ninth Circuit, 2010
United States Court of Appeals for the Tenth Circuit, 2012

United States Court of Appeals for the Eleventh Circuit, 2010
United States Court of Appeals for the D.C. Circuit, 2009
United States Court of Appeals for the Federal Circuit, 2010
United States District Court for the District of Columbia, 2017

My membership in the U.S. Court of Appeals for the Eleventh Circuit lapsed in 2015 because the court assesses a fee for maintaining membership and I had no cases there that necessitated renewal. There have been no other lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Achilles International, Washington D.C. Chapter (2018 – present)

Arlington Road Runners Club (2013 – 2020)
Mentor (2018 – 2019)

Bard College at Simon's Rock Board of Overseers (2006 – present)

Montgomery County Road Runners Club (2022 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including

material published only on the Internet. Supply four (4) copies of all published material to the Committee.

To my recollection and through searches of my own records and publicly available databases, I have found the following works that I authored or co-authored:

"Symposium: A false choice between state sovereignty and multi-racial democracy," SCOTUSblog.com (February 2021) (with Harrison M. Stark). Copy supplied.

"Symposium: A trio of cases, a lot at stake," SCOTUSblog.com (September 2019). Copy supplied.

"Early Ever After: Alumni Reflect on Life After Simon's Rock," in *Educating Outside the Lines: Bard College at Simon's Rock on a "New Pedagogy" for the Twenty-First Century* (Nancy Yanoshak, ed. 2011) (with Dr. Michael A. Lawrence). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On December 2, 2021, I testified before the Senate Homeland Security and Government Affairs Committee in connection with my nomination to be an Associate Judge of the District of Columbia Court of Appeals. Opening statement and responses to questions for the record supplied and video available at https://www.hsgac.senate.gov/hearings/nominations-of-loren-l-alikhan-and-john-p-howard-iii-to-be-associate-judges-district-of-columbia-court-of-appeals-and-adrienne-jennings-noti-to-be-an-associate-judge-superior-court-of-the-district-of.

On February 18, 2021, I testified on behalf of the Office of the Attorney General for the District of Columbia before the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet at its hearing, "The Supreme Court's Shadow Docket." Video available at https://www.c-span.org/video/?509098-1/house-hearing-supreme-court-docket-case-load.

On June 1, 2020, I signed a letter to the Senate Judiciary Committee supporting the nomination of then-Kansas Solicitor General Toby Crouse to the United States District Court for the District of Kansas. Copy supplied.

On February 25, 2020, I testified on behalf of the Office of the Attorney General for the District of Columbia before the Senate Judiciary Committee at its hearing, "Rule by District Judge: The Challenges of Universal Injunctions." Testimony and responses to questions for the record supplied.

On March 22, 2018, I testified on behalf of the Office of the Attorney General for the District of Columbia before the D.C. Council Committee on the Judiciary and Public Safety at its hearing on three proposed bills concerning "red flag" legislation. Recording supplied.

On February 6, 2018, I testified on behalf of the Office of the Attorney General for the District of Columbia before the D.C. Council concerning the "Todd S. Kim Recognition Resolution of 2018." Notes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I am frequently asked to speak to law students and bar associations, judge moot courts, and conduct trainings and continuing legal education courses. I have not kept a comprehensive list of these events. The following is my best effort to recreate a list of speaking engagements based on my own records and Internet sources. It is possible that I have inadvertently omitted speeches or presentations for which I did not retain records.

April 24, 2023: Panelist, D.C. Bar: A Conversation with D.C. Court of Appeals Judges Howard, AliKhan, and Shanker, D.C. Court of Appeals, Washington, DC. I have no notes, transcript, or recording. The address of the D.C. Court of Appeals is 430 E Street, Northwest, Washington, DC 20001.

April 18, 2023: Panelist, Discussion about D.C. Appellate Courts with the 2023 U.K. Supreme Court clerks, American Inns of Court Foundation, Washington, DC. I used the same outline that was provided for the April 23, 2019, presentation.

March 24, 2023: Guest Lecturer, Law Reform and Impact Litigation Seminar, University of Virginia School of Law, Virtual Event. I spoke about defending the District of Columbia in impact litigation. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

March 21, 2023: Speaker, Judicial Brown Bag Lunch, The Appellate Project, Virtual Event. I spoke about my career path and answered questions about applying for judicial clerkships and working in public service. I have no notes, transcript, or recording. The address of the Appellate Project is 1835 7th Street, Northwest, #194, Washington, DC 20001.

February 27, 2023: Panelist, State Court Clerkships, Penn Carey Law School, Virtual Event. I spoke about judicial clerkships on the D.C. Court of Appeals. I have no notes, transcript, or recording. The address of the Penn Carey Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

February 24, 2023: Moot Court Judge, 2023 D.C. Cup Moot Court Competition, D.C. Bar, Washington, DC. I served as the presiding judge for a moot court about a Fourth Amendment issue. I have no notes, transcript, or recording, but press coverage is supplied. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

February 23, 2023: Speaker, Brown Bag Lunch, American University Washington College of Law Appellate Advocacy Class, D.C. Court of Appeals, Washington, DC. I spoke to law students who visited the D.C. Court of Appeals as part of their appellate advocacy class. I have no notes, transcript, or recording. The address of the D.C. Court of Appeals is 430 E Street, Northwest, Washington, DC 20001.

February 4, 2023: Panelist, Appellate Courts, Robert E. Wone Annual Judicial Clerkship and Internship Conference, Asian Pacific American Bar Association of the District of Columbia, Washington, DC. I spoke about judicial clerkships on the D.C. Court of Appeals and my own experience clerking in federal court. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, DC 20038.

January 19, 2023: Panelist, Overview of the D.C. Courts, Office of the Attorney General for the District of Columbia Ruff Fellow Training, Washington, DC. I spoke about practicing in the D.C. Court of Appeals. I have no notes, transcript, or recording. The address of the Office of the Attorney General for the District of Columbia is 400 6th Street, Northwest, Washington, DC 20001.

January 17, 2023: Panelist, Appellate Advocacy, Vanderbilt Law School Chapter of the American Constitution Society, Virtual Event. I spoke about my career in

public service. I have no notes, transcript, or recording. The address of the Vanderbilt Law School is 131 21st Avenue South, Nashville, Tennessee 37203.

December 22, 2022: Speaker, South Asian Bar Association of Washington, D.C., Washington, DC. I issued the oath of office to incoming SABA-DC board members and thanked them for their time and efforts. I have no notes, transcript, or recording. The address of the South Asian Bar Association of Washington, D.C. is P.O. Box 65349, Washington, DC 20035.

November 15, 2022: Moderator, Practicing in the D.C. Court of Appeals, Edward Coke Appellate Inn of Court, Washington, DC. Notes supplied.

November 6, 2022: Moot Court Judge, 2022 Burton D. Wechsler National First Amendment Moot Court Competition, American University Washington College of Law, Washington, DC. I served as the presiding judge for a moot court. I have no notes, transcript, or recording. The address of the American University Washington College of Law is 4300 Nebraska Avenue, Northwest, Washington, DC 20016.

November 2, 2022: Presenter, Brown Bag Lunch, Yale Law School Chapter of the American Constitution Society, Virtual Event. I spoke about my career in public service and transition to the bench. I have no notes, transcript, or recording. The address of the Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

August 2, 2022: Presenter, High School Advisory Council, Office of the Attorney General for the District of Columbia, Washington, DC. I spoke with a group of high school students about the D.C. Court of Appeals. I have no notes, transcript, or recording. The address of the Office of the Attorney General for the District of Columbia is 400 6th Street, Northwest, Washington, DC 20001.

July 20, 2022: Panelist, Career Opportunities in State Solicitor General Offices, American Constitution Society, Virtual Event. I spoke about working in the D.C. Office of the Solicitor General. I have no notes, transcript, or recording. The address of the American Constitution Society is 601 13th Street, Northwest, Suite 610, Washington, DC 20005.

July 13, 2022: Presenter, Brown Bag Lunch with the Hispanic Bar Association of the District of Columbia Judicial Council Intern Program, Virtual Event. I spoke about my career in public service and transition to the bench. I have no notes, transcript, or recording. The address of the Hispanic Bar Association of the District of Columbia is P.O. Box 1011, Washington, DC 20013.

July 6, 2022: Remarks at the D.C. Bar Swearing-In Ceremony, Virtual Event. Video available at https://www.youtube.com/live/aaNS__81r0g?.

June 14, 2022: Remarks at the American Constitution Society's Virtual Graduation Ceremony, Virtual Event. Video available at https://www.youtube.com/watch?v=GGwZ-nszZpk.

May 25, 2022: Panelist, 2022 APA Heritage Month Celebration: Judicial Panel Discussion, United States Attorney's Office for the District of Columbia, Virtual Event. I spoke about my career in public service and transition to the bench. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Columbia is 601 D Street, Northwest, Washington, DC 20001.

March 30, 2022: Moot Court Judge, Beaudry Moot Court Competition, Georgetown University Law Center, Washington, DC. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

February 25, 2022: Moot Court Judge, 2022 D.C. Cup Moot Court Competition, D.C. Bar, Virtual Event. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

July 26, 2021: Presenter, Supreme Court Update for Municipal Lawyers, 21st Annual Municipal Law Institute, Practising Law Institute, Virtual Event. Notes supplied.

July 19, 2021: Panelist, Alumni Panel for Summer Associates, O'Melveny & Myers LLP, Virtual Event. Notes supplied.

July 14, 2021: Panelist, Discussion about the Office of the Attorney General for the District of Columbia, Hispanic Bar Association of the District of Columbia Judicial Council Intern Program, Virtual Event. I spoke about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the Hispanic Bar Association of the District of Columbia is P.O. Box 1011, Washington, DC 20013.

May 7, 2021: Guest Contributor, Was That Justice Breyer's Last Argument?, Bloomberg Law's *Cases and Controversies* Podcast, Virtual Recording. Recording available at https://dcs.megaphone.fm/BL3054122755.mp3?key= 4de634b365edd14db19 ad918fbd241c6.

April 19, 2021: Guest Lecturer, Appellate Courts Immersion Clinic, Georgetown University Law Center, Virtual Event. I used the same outline that was provided for the March 4, 2020, presentation.

April 15, 2021: Panelist, A Day in the Life of a Litigator, South Asian Bar Association of North America, Virtual Event. I spoke about litigating in local and federal courts in the District of Columbia. I have no notes, transcript, or recording. The address of the South Asian Bar Association of North America is 4930 Balboa Avenue, #260468, Encino, California 91426.

March 24, 2021: Panelist, Power Plays: Advocating for Yourself and Others in the Workplace, Penn State Professional Women's Network of Washington, DC, Virtual Event. Notes supplied.

March 16, 2021: Guest Lecturer, Law and Public Service Class, University of Virginia School of Law, Virtual Event. I spoke about my career in public service. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 26, 2021: Moot Court Judge, 2021 D.C. Cup Moot Court Competition, D.C. Bar, Virtual Event. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

February 18, 2021: Panelist, ACS at 20: Honoring Two Decades of Shaping Debate, Building the Network, and Making a Difference, American Constitution Society, Virtual Event. Video available at https://www.acslaw.org/video/acs-at-20-honoring-two-decades-of-shaping-debate-building-the-network-and-making-a-difference.

January 27, 2021: Presenter, Training: Writing a Decision to Withstand Appellate Scrutiny, D.C. Office of Administrative Hearings, Virtual Event. I used the same outline that was provided for the February 21, 2019, presentation.

October 16, 2020: Panelist, Excessive Force Claims: Arrestees, Detainees, and Prisoners, 37th Annual Section 1983 Civil Rights Litigation Program, Practising Law Institute, Virtual Event. I spoke about defending suits under 42 U.S.C. § 1983. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, Second Floor, New York, New York 10036.

October 14, 2020: Panelist, The Role of a Solicitor General, co-hosted by the Georgetown University Law Center Chapter of the American Constitution Society and the Georgetown University Law Center Chapter of the Federalist Society, Virtual Event. Notes supplied.

October 8, 2020: Presenter, Coffee Chat with *Harvard Law Review* Editors, Harvard Law School, Virtual Event. I spoke about my legal career. I have no notes, transcript, or recording. The address of the *Harvard Law Review* is 1511 Massachusetts Avenue, Cambridge, Massachusetts 02138.

October 1, 2020: Panelist, Fighting the Big Fights: Litigating at the Supreme Court, co-hosted by the *Harvard Law Review*, the Harvard Law School Chapter of the American Constitution Society, and the Harvard Law School Chapter of the Federalist Society, Virtual Event. I spoke about litigating in the U.S. Supreme Court. I have no notes, transcript, or recording. The address of the Harvard Law School is 1585 Massachusetts Avenue, Cambridge, Massachusetts 02138.

August 13, 2020: Presenter, Training: Motions for Summary Adjudication, D.C. Office of Administrative Hearings, Virtual Event. I spoke to new administrative law judges about drafting opinions in summary adjudication matters. I have no notes, transcript, or recording. The address of the D.C. Office of Administrative Hearings is 441 4th Street, Northwest, Suite 450, Washington, DC 20001.

August 12, 2020: Panelist, Supreme Court Review, Apple, Inc., Virtual Event. Notes supplied.

August 4, 2020: Panelist, Alumni Panel for Summer Associates, O'Melveny & Myers LLP, Virtual Event. Notes supplied.

July 20, 2020: Presenter, Supreme Court Update for Municipal Lawyers, 20th Annual Municipal Law Institute, Practising Law Institute, Virtual Event. Notes supplied.

June 26, 2020: Panelist, Supreme Court Term Review, South Asian Bar Association of North America Annual Conference, Virtual Event. Video available at https://www.youtube.com/watch?v=WG2YIYyvpec&feature.

June 10, 2020: Panelist, Appellate Practice Group Dinner, American Constitution Society, Virtual Event. I spoke about my career in litigation. I have no notes, transcript, or recording. The address of the American Constitution Society is 601 13th Street, Northwest, Suite 610, Washington, DC 20005.

March 4, 2020: Guest Lecturer, Georgetown Appellate Litigation Clinic, Georgetown University Law Center, Washington, DC. Notes supplied.

February 28, 2020: Moot Court Judge, 2020 D.C. Cup Moot Court Competition, D.C. Bar, Washington, DC. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

February 12, 2020: Panelist, Nationwide Injunctions and Federal Regulatory Programs, Administrative Conference of the United States, Washington, DC. Transcript supplied.

January 24, 2020: Panelist, Working in an Attorney General's Office, Yale Law School Chapter of the American Constitution Society, Washington, DC. I spoke

about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

January 21, 2020: Panelist, Discussion with members of the Harvard Law Supreme Court Clinic, Goldstein & Russell, P.C., Bethesda, Maryland. I spoke about litigating in the U.S. Supreme Court. I have no notes, transcript, or recording. The address of Goldstein & Russell, P.C. is 7475 Wisconsin Avenue, Northwest, Suite 850, Bethesda, Maryland 20814.

October 15, 2019: Guest Lecturer, Federal Practice Seminar: Contemporary Issues, Georgetown University Law Center, Washington, DC. Notes supplied.

October 10, 2019: Panelist, Supreme Court Term Preview, University of Virginia Chapter of the American Constitution Society, Charlottesville, Virginia. I spoke about the 2019-20 Supreme Court Term. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

September 26, 2019: Panelist, Supreme Court Advocacy: Where Are the Women?, Women's Bar Association of the District of Columbia, Washington, DC. I spoke about litigating in the U.S. Supreme Court. I have no notes, transcript, or recording. The address of the Women's Bar Association of the District of Columbia is 2020 Pennsylvania Avenue, Northwest, Suite 446, Washington, DC 20006.

July 29, 2019: Presenter, Supreme Court Update for Municipal Lawyers, 19th Annual Municipal Law Institute, Practising Law Institute, New York, New York. Notes supplied.

July 11, 2019: Moderator, Supreme Court Term Review, National Association of Attorneys General State Solicitors General and Appellate Chiefs Conference, Washington, DC. Notes supplied.

July 2, 2019: Panelist, Alumni Panel for Summer Associates, O'Melveny & Myers LLP, Washington, DC. Notes supplied.

June 22, 2019: The Role and Impact of Solicitors General, South Asian Bar Association of North America Annual Conference, Atlanta, Georgia. Video available at https://www.youtube.com/watch?v=nODqpl70DHA.

June 18, 2019: Speaker, Brown Bag Lunch with D.C. Court of Appeals law clerks, D.C. Court of Appeals, Washington, DC. Notes supplied.

June 17, 2019: Panelist, Discussion with delegates from the Academy of Public Administration of Kazakhstan, Office of the Attorney General for the District of

Columbia, Washington, DC. I spoke about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the Office of the Attorney General for the District of Columbia is 400 6th Street, Northwest, Washington, DC 20001.

June 3, 2019: Remarks at the U.S. District Court for the District of Columbia's Attorney Admissions Ceremony, Washington, DC. Copy supplied.

May 9, 2019: Panelist, Appellate Strategies: Insights on the Many Strategic Issues Facing an Appellate Advocate Before Putting Pen to Paper, National Association of Attorneys General Appellate Advocacy Conference, National Harbor, Maryland. Notes supplied.

April 24, 2019: Moderator, Panel on D.C. Appellate Courts for the 2019 U.K. Supreme Court clerks, American Inns of Court Foundation, Washington, DC. Notes supplied.

April 23, 2019: Panelist, Discussion about U.S. Supreme Court arguments with the 2019 U.K. Supreme Court clerks, American Inns of Court Foundation, Washington, DC. I spoke with visiting law clerks about the differences between practice in the U.S. Supreme Court and the U.K. Supreme Court. I have no notes, transcript, or recording. The address of the American Inns of Court Foundation is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

April 10, 2019: Panelist, Advanced Legal Writing Training, Mayor's Office of Legal Counsel, Washington, DC. Notes supplied.

March 28, 2019: Guest Lecturer, Appellate Courts Immersion Clinic, Georgetown University Law Center, Washington, DC. I used the same outline that was provided for the January 23, 2019, presentation.

February 23, 2019: Panelist, Working at State Attorney General's Offices, American Constitution Society 2019 Student Convention, Charlottesville, Virginia. I spoke about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the American Constitution Society is 601 13th Street, Northwest, Suite 610, Washington, DC 20005.

February 21, 2019: Training for Administrative Law Judges, D.C. Office of Administrative Hearings, Washington, DC. Notes supplied.

February 7, 2019: Panelist, Golden Gate University School of Law Appellate Advocacy Class, Virtual Event. I spoke on a panel about *Nieves v. Bartlett* (17-1174). I have no notes, transcript, or recording. The address of the Golden Gate University School of Law is 536 Mission Street, San Francisco, California 94105.

January 23, 2019: Guest Lecturer, Georgetown Appellate Litigation Clinic, Georgetown University Law Center, Washington, DC. Notes supplied.

December 5, 2018: Panelist, Implications of an Increasingly Conservative Federal Judiciary on GVP Laws, Center for American Progress 2018 Annual National Gun Violence Prevention Meeting, Washington, DC. I spoke about recent Second Amendment cases in the District of Columbia. I have no notes, transcript, or recording. The address for the Center for American Progress is 1333 H Street, Northwest, Suite 1, Washington, DC 20005.

November 2, 2018: Panelist, Nationwide Injunctions: The Good, the Bad, and the Ugly, American Bar Association Administrative Law Conference, Washington, DC. Notes supplied.

October 24, 2018: Panelist, Discussion with members of the Lagos State Judicial Services Commission, Office of the Attorney General for the District of Columbia, Washington, DC. I spoke about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the Office of the Attorney General for the District of Columbia is 400 6th Street, Northwest, Washington, DC 20001.

October 19, 2018: Panelist, The Law Student's Guide to Becoming Solicitor General, University of Virginia Chapter of the American Constitution Society, Charlottesville, Virginia. Recording available at https://soundcloud.com/uva-law/the-law-students-guide-to-becoming-solicitor-general.

October 13, 2018: Opening remarks at the Robert E. Wone Annual Judicial Clerkship and Internship Conference, Asian Pacific American Bar Association of the District of Columbia, Washington, DC. I spoke about my legal career and the importance of judicial clerkships. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, DC 20038.

October 10, 2018: Panelist, Gun Safety Law and Policy in the D.C. Metro Area, co-hosted by the American University Washington College of Law Chapter of the American Constitution Society and the D.C. Lawyer Chapter of the American Constitution Society, Washington, DC. I spoke about recent Second Amendment cases in the District of Columbia. I have no notes, transcript, or recording. The address of the American University Washington College of Law is 4300 Nebraska Avenue, Northwest, Washington, DC 20016.

September 20, 2018: Panelist, Seeking and Defending Certiorari, VBA Appellate Summit, Virginia Bar Association, Richmond, Virginia. I spoke about drafting petitions for certiorari and briefs in opposition to certiorari in the U.S. Supreme Court. I have no notes, transcript, or recording. The address of the Virginia Bar Association is 1111 East Main Street, Suite 905, Richmond, Virginia 23219.

July 30, 2018: Presenter, Supreme Court Update for Municipal Lawyers, 18th Annual Municipal Law Institute, Practising Law Institute, New York, New York. Notes supplied.

July 11, 2018: Guns and Home Rule: 10 Years After *Heller*, D.C. Bar, Washington, DC. I spoke about recent Second Amendment cases in the District of Columbia. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

June 30, 2018: Panelist, Supreme Court Term Review, South Asian Bar Association of North America Annual Conference, New York, New York. Notes supplied.

June 8, 2018: Deregulation, Defunding, and Deference: The Administrative State in the Age of Trump, American Constitution Society 2018 National Convention, Washington, DC. I spoke about recent administrative law cases in the District of Columbia. I have no notes, transcript, or recording. The address of the American Constitution Society is 601 13th Street, Northwest, Suite 610, Washington, DC 20005.

June 5, 2018: Training for Administrative Law Judges, D.C. Office of Administrative Hearings, Washington, DC. Notes supplied.

April 27, 2018: Panelist, Discussion about U.S. Supreme Court arguments with the 2018 U.K. Supreme Court clerks, American Inns of Court Foundation, Washington, DC. I spoke with visiting law clerks about the differences between practice in the U.S. Supreme Court and the U.K. Supreme Court. I have no notes, transcript, or recording. The address of the American Inns of Court Foundation is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

April 20, 2018: Panelist, Framing the Question Presented and Drafting the Petition for Certiorari, International Municipal Lawyers Association Supreme Court and Appellate Practice Program, Washington, DC. Notes supplied.

March 19, 2018: Moot Court Judge, 2018 D.C. Cup Moot Court Competition, D.C. Bar, Washington, DC. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

March 15, 2018: Panelist, Supreme Court Midterm Review, State and Local Law Center, Virtual Event. I spoke about the 2017-18 Supreme Court Term. I have no notes, transcript, or recording. The address of the State and Local Law Center is 444 North Capitol Street, Suite 515, Washington, DC 20001.

February 12, 2018: Panelist, Getting Involved in State and Local Government: A Conversation About Careers in Offices of Attorneys General in the D.C. Area,

D.C. Lawyer Chapter of the American Constitution Society, Washington, DC. I spoke about working in the Office of the Attorney General for the District of Columbia. I have no notes, transcript, or recording. The address of the American Constitution Society is 601 13th Street, Northwest, Suite 610, Washington, DC 20005.

December 11, 2017: Moot Court Judge, Georgetown University Law Center, Washington, DC. I served as a judge for an undergraduate communications class's moot court. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

October 25, 2017: Guest Speaker, Discussion with Georgetown University's undergraduate Courtroom Communications class about oral argument preparation, Georgetown University Law Center, Washington, DC. I spoke with an undergraduate communications class about courtroom advocacy. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

August 14, 2017: Presenter, Supreme Court Update for Municipal Lawyers, 17th Annual Municipal Law Institute, Practising Law Institute, New York, New York. Notes supplied.

July 14, 2017: Panelist, Supreme Court Term Review, South Asian Bar Association of North America Annual Conference, Washington, DC. Notes supplied.

May 8, 2017: Panelist, Appellate Strategies: Insights on the Many Strategic Issues Facing an Appellate Advocate Before Putting Pen to Paper, National Association of Attorneys General Appellate Practice Conference, Washington, DC. Notes supplied.

April 25, 2017: Panelist, Discussion about U.S. Supreme Court arguments with the 2017 U.K. Supreme Court clerks, American Inns of Court Foundation, Washington, DC. I spoke with visiting law clerks about the differences between practice in the U.S. Supreme Court and the U.K. Supreme Court. I have no notes, transcript, or recording. The address of the American Inns of Court Foundation is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

December 12, 2016: Moot Court Judge, Georgetown University Law Center, Washington, DC. I served as a judge for an undergraduate communications class's moot court. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

September 23, 2016: Moot Court Advocate, American Inns of Court Foundation, Washington, DC. I presented a mock argument on behalf of the University of Texas in *Fisher v. University of Texas* (14-981) for visiting barristers as part of a comparative moot exercise. I have no notes, transcript, or recording. The address of the American Inns of Court Foundation is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

August 15, 2016: Presenter, Supreme Court Update for Municipal Lawyers, 16th Annual Municipal Law Institute, Practising Law Institute, New York, New York. I spoke about the 2015-16 Supreme Court Term. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, Second Floor, New York, New York 10036.

March 11, 2016: Moot Court Judge, 2016 D.C. Cup Moot Court Competition, D.C. Bar, Washington, DC. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of the D.C. Bar is 901 4th Street, Northwest, Washington, DC 20001.

February 11, 2016: Panelist, U.S. Supreme Court: A Look Forward and Back, DRI Appellate Advocacy Seminar, Scottsdale, Arizona. I spoke about the 2015-16 Supreme Court Term. I have no notes, transcript, or recording. The address of DRI is 222 South Riverside Plaza, Suite 1870, Chicago, Illinois 60606.

August 17, 2015: Presenter, Supreme Court Update for Municipal Lawyers, 15th Annual Municipal Law Institute, Practising Law Institute, New York, New York. I spoke about the 2014-15 Supreme Court Term. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, Second Floor, New York, New York 10036.

July 1, 2015: Moot Court Judge, Advocacy Institute, O'Melveny & Myers LLP, Washington, DC. I served as a judge for a moot court. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 1625 Eye Street, Northwest, Washington, DC 20006.

June 10, 2015: Panelist, Alumni Panel for Summer Associates, O'Melveny & Myers LLP, Washington, DC. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 1625 Eye Street, Northwest, Washington, DC 20006.

July 7, 2014: Moot Court Advocate, American Inns of Court Foundation, London, U.K. I presented a mock argument based on the Michael Lewis book, *The Big Short: Inside the Doomsday Machine*, as part of a comparative moot exercise. I have no notes, transcript, or recording. The address of the American Inns of Court Foundation is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

July 1, 2014: Moot Court Judge, Advocacy Institute, O'Melveny & Myers LLP, Washington, DC. I served as a judge for a moot court about a securities issue. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 1625 Eye Street, Northwest, Washington, DC 20006.

June 25, 2014: Panelist, Alumni Panel for Summer Associates, O'Melveny & Myers LLP, Washington, DC. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 1625 Eye Street, Northwest, Washington, DC 20006.

January 31, 2014: Panelist, Ms. JD Presents: Women in Appellate Law, O'Melveny & Myers LLP, Washington, DC. I spoke about my career as a litigator. I have no notes, transcript, or recording. The address of O'Melveny & Myers LLP is 1625 Eye Street, Northwest, Washington, DC 20006.

March 21, 2012: Presenter, Legally Speaking, Voice of Russia Radio, Washington, DC. I spoke about the Supreme Court's opinions in *Lafler v. Cooper* (10-209) and *Missouri v. Frye* (10-444). I have no notes, transcript, or recording. Voice of Russia Radio closed its Washington, DC bureau in 2014.

December 6, 2011: Panelist, *Fisher v. University of Texas*: Are Campus Racial Preferences Out of Control?, Heritage Foundation, Washington, DC. I spoke about *Fisher v. University of Texas* (14-981). I have no notes, transcript, or recording. The address of the Heritage Foundation is 214 Massachusetts Avenue, Northeast, Washington, DC 20002.

November 2, 2011: Presenter, Legally Speaking, Voice of Russia Radio, Washington, DC. I spoke about the Supreme Court's oral arguments in *Lafler v. Cooper* (10-209) and *Missouri v. Frye* (10-444). I have no notes, transcript, or recording. Voice of Russia Radio closed its Washington, DC bureau in 2014.

April 10, 2006: Panelist, Do I Have To?, Georgetown University Law Center Office of Public Interest and Community Service, Washington, DC. I spoke to first-year law students about activities, internships, and employment opportunities. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

February 7, 2005: Speaker, Introducing Congresswoman Jane Harmon for the 2005 Congress and the Courts Address, Georgetown University Law Center Chapter of the American Constitution Society. Recording available at https://www.c-span.org/video/?185460-1/intelligence-issues.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

John Murph, "Loren AliKhan, John Howard Take Oath as New D.C. Court of Appeals Judges," D.C. Bar, February 2022. Copy supplied.

Kimberly Strawbridge Robinson, "Women Litigators See More Job Prospects With State SG Offices," *Bloomberg Law*, February 2019. Copy supplied.

Barbara Grzincic, "The School for SCOTUS," *Georgetown Law Magazine*, Fall/Winter 2018. Copy supplied.

Press Release, "Attorney General Racine Appoints Loren AliKhan as the District's Second Solicitor General," March 2018. Copy supplied.

Bee Shapiro, "Two Piece Wedding Dresses Make Their Statement," *New York Times*, September 2015. Copy supplied.

Zoe Tillman, "40 Under 40 – Loren AliKhan," *Legal Times*, September 2014. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since February 2022, I have served as an Associate Judge of the D.C. Court of Appeals. I was nominated by President Joseph R. Biden in September 2021, confirmed by the United States Senate in February 2022, and took the oath of office on February 18, 2022. The D.C. Court of Appeals is the highest appellate court for the District of Columbia. It hears appeals from the Superior Court of the District of Columbia and more than 50 local administrative agencies.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have not presided over any cases that have gone to verdict or judgment. During my tenure as an appellate judge, I estimate that I have heard approximately 100 appeals as a member of a merits panel and issued approximately 200 decisions as a member of a motions panel.

i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	0%

ii. Of these cases, approximately what percent were:

civil proceedings: 65%
criminal proceedings: 35%

b. Provide citations for all opinions you have written, including concurrences and dissents.

In re Paul, 2023 WL 3012151 (D.C. Apr. 20, 2023)

In re S.U., 2023 WL 2920926 (D.C. Apr. 13, 2023)

Smith v. United States, 288 A.3d 766 (D.C. 2023)

In re Tun, 286 A.3d 538 (D.C. 2022)

U Street Music Hall, LLC v. JRC Standard Properties, LLC, 285 A.3d 1250 (D.C. 2022)

Pleasant v. Gibson, 285 A.3d 1246 (D.C. 2022)

Decuir v. United States, 285 A.3d 512 (D.C. 2022)

In re Chapman, 284 A.3d 395 (D.C. 2022)

Caesar v. Westchester Corporation, 280 A.3d 176 (D.C. 2022)

Geary v. National Newspaper Publishers Association, 279 A.3d 371 (D.C. 2022)

I noted a dissent from judgment, but did not write separately, in *Richardson v. United States*, 277 A.3d 940 (D.C. 2022).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I have not generally "presided" over cases in the sense that this term usually connotes. I have identified ten representative cases that I participated in.

1. *Khan v. Orbis Business Intelligence, Ltd.*, 2023 WL 2920883 (Apr. 13, 2023)

In this case, the D.C. Court of Appeals considered an award of attorney's fees and costs to prevailing defendants under the fee-shifting provision of the District of Columbia Anti-SLAPP Act, D.C. Code §§ 16-5501 to -5505. The plaintiffs had filed a defamation action against the defendants, and after the defendants prevailed on a special motion to dismiss under the Anti-SLAPP Act, they sought

fees and costs, which the trial court awarded. On appeal, the plaintiffs raised several arguments against the fee award, including that "special circumstances" made the award unjust, that the fee-shifting provision violated the First Amendment both facially and as-applied, that the fee-shifting provision impermissibly deviated from the Federal Rules of Civil Procedure, and that the trial court had abused its discretion. On appeal, in a decision authored by Senior Judge Glickman, the court rejected each of the plaintiffs' arguments and affirmed.

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2. *Trump v. Carroll*, 2023 WL 2920882 (Apr. 13, 2023) (en banc)

After the U.S. Court of Appeals for the Second Circuit certified a question of District of Columbia *respondeat superior* law to the D.C. Court of Appeals, the en banc court held that the District of Columbia generally follows the scope-of-employment test set forth in the Restatement (Second) of Agency. The court was unable to apply the District's scope-of-employment test to the facts of the case, however, because the scope-of-employment question was both fact-intensive and implicated questions of federal law under the Westfall Act, 28 U.S.C. § 2679(d)(2), making it more appropriate for resolution by the U.S. District Court for the Southern District of New York. Chief Judge Blackburne-Rigsby authored

the opinion for the en banc court, and Associate Judge McLeese issued an opinion concurring in part and dissenting in part.

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3. *Corcoran Gallery of Art v. Petty*, 2023 WL 2604592 (Mar. 23, 2023)

After a probate court in California issued a judgment requiring the Corcoran Gallery of Art to return certain artwork and funds to the trust that owned them, the trust sought to enforce that judgment in the District of Columbia. The Corcoran Gallery opposed the motion, arguing that the California probate court had lacked jurisdiction to enter the order. While the matter was pending in the D.C. Superior Court, the California Court of Appeal affirmed the California probate decision—rejecting the Corcoran Gallery's jurisdictional arguments—and the D.C. Superior Court thereafter granted the motion to enforce after giving full faith and credit to the California Court of Appeal's decision. The D.C. Court of Appeals affirmed, holding that the California Court of Appeal's decision was entitled to full faith and credit. Associate Judge Deahl authored the panel's opinion.

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4. *Rayner v. Yale Steam Laundry Condominium Association,* 289 A.3d 387 (D.C. 2023)

In this dispute between a condominium unit owner and the condominium association concerning the owner's two dogs, the D.C. Court of Appeals affirmed the D.C. Superior Court's orders dismissing the owner's complaint, denying leave to amend, and denying leave to vacate the dismissal and reinstate the complaint. The D.C. Court of Appeals held that the condominium association had complied with its own procedures and with due process in connection with its disciplinary proceedings against the owner, that the owner could not bring claims of negligence, breach of fiduciary duty, or retaliation, that the $100 fine the association had imposed on the owner was reasonable, and that there was no basis for reopening the judgment against the owner. Senior Judge Ferren authored the panel's opinion.

Appellant proceeded *pro se*

Counsel for appellee:
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5. *Smith v. United States*, 288 A.3d 766 (D.C. 2023)

The defendant appealed his conviction for first-degree sexual abuse, alleging a violation of *Batson v. Kentucky*, 476 U.S. 79 (1986), and the subsequent denial of his motion for a new trial under D.C. Code § 23-110, alleging ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). In a decision I authored, the D.C. Court of Appeals affirmed, concluding that the trial court had not clearly erred in crediting the government's race-neutral reasons for striking three jurors, had not clearly erred in crediting the testimony of the defendant's trial attorneys that they had prepared the defendant to testify, and had not abused its discretion in finding that the defendant's trial attorneys had made a reasonable tactical choice in not calling a police witness to testify on behalf of the defense.

Counsel for appellant:
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Counsel for appellee:
Nicholas P. Coleman, Esq.

Elizabeth Gabriel, Esq.
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6. *In re Joseph*, 287 A.3d 1248 (D.C. 2023) (per curiam)

In this per curiam opinion, the D.C. Court of Appeals denied a disbarred attorney's petition for reinstatement to the D.C. Bar. The panel concluded that the petitioner had not satisfied the criteria for reinstatement because he had brought vexatious *pro se* litigation after his disbarment and had not shown that the traits that had led to his disbarment no longer existed.

Petitioner proceeded *pro se*

Counsel for respondent:
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7. *Pleasant v. Gibson*, 285 A.3d 1246 (D.C. 2022)

In an opinion I authored, the D.C. Court of Appeals held that the trial court had erred in finding that a paternal grandfather lacked standing to intervene in a custody proceeding involving his grandchild because the court had misapplied the three-step process for third-party custody set forth in D.C. Code §§ 16-831.01 to -.07.

Counsel for appellant:
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Appellee proceeded *pro se*

8. *Decuir v. United States*, 285 A.3d 512 (D.C. 2022)

The jury convicted the defendant of several offenses at his first trial but was unable to reach a verdict on charges of second-degree murder and a related weapons offense. The second trial on these two charges ended in a mistrial, but the defendant was ultimately convicted of both charges after a third trial. The defendant appealed all of his convictions. In an opinion I authored, the D.C. Court of Appeals concluded that the admission of a witness's testimony from the second trial at his third trial violated the Confrontation Clause because the government had not met its burden of establishing that the witness was unavailable to testify at the third trial. The court concluded that this error was not harmless beyond a reasonable doubt and required vacatur and remand of the convictions for second-degree murder and the related weapons offense. The court affirmed the convictions from the first trial, rejecting the defendant's claims of error.

Counsel for appellant:
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Counsel for appellee:
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9. *In re T.S.*, 279 A.3d 382 (D.C. 2022) (per curiam)

In this per curiam decision, the D.C. Court of Appeals determined that it lacked jurisdiction to consider the merits of a magistrate judge's order placing a child in shelter care because the order had not been reviewed in the first instance by an associate judge of the D.C. Superior Court in accordance with D.C. Code § 11-1732(k). The court further held that the associate judge had erred in dismissing an appeal of the magistrate judge's ruling because the associate judge had not considered Section 11-1732(k) and had misinterpreted a local procedural rule. The court remanded the matter so that an associate judge could review the merits of the magistrate judge's order.

Counsel for appellant:
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10. *McDuffie v. D.C. Board of Elections*, 273 A.3d 838 (D.C. 2022) (per curiam)

In this expedited appeal, the D.C. Court of Appeals affirmed the decision of the D.C. Board of Elections that an individual was not eligible to be a candidate for Attorney General for the District of Columbia because he did not meet the statutory criteria for office under D.C. Code § 1-301.83(a). Specifically, the court concluded that a legislator who has a law degree but does not practice law could not satisfy the requirement that he have "been actively engaged, for at least 5 of the [past] 10 years . . . as . . . [a]n attorney employed in the District of Columbia by . . . the District of Columbia," *id.* § 1-301.83(a)(5)(D), because this provision is most naturally read to require employment in a position for which membership in a bar is a condition.

Counsel for petitioner:
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *In re Paul*, 2023 WL 3012151 (D.C. Apr. 20, 2023)

Appellant proceeded *pro se*

Counsel for appellee:
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2. *In re S.U.*, 2023 WL 2920926 (D.C. Apr. 13, 2023)

Appellants proceeded *pro se*

Appellee proceeded *pro se*

3. *Smith v. United States*, 288 A.3d 766 (D.C. 2023)

Counsel for appellant:
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Counsel for appellee:
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4. *In re Tun*, 286 A.3d 538 (D.C. 2022)

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5. *U Street Music Hall, LLC v. JRC Standard Properties, LLC*, 285 A.3d 1250 (D.C. 2022)

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6. *Pleasant v. Gibson*, 285 A.3d 1246 (D.C. 2022)

Counsel for appellant:
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Stephanie McClellan, Esq.
Marla Spindel, Esq.

DC KinCare Alliance
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Washington, DC 20036
(202) 505-5803

Appellee proceeded *pro se*

7. *Decuir v. United States*, 285 A.3d 512 (D.C. 2022)

Counsel for appellant:
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Public Defender Service for the District of Columbia
633 Indiana Avenue, Northwest
Washington, DC 20004
(202) 628-1200

Counsel for appellee:
Ethan L. Carroll, Esq.
U.S. Attorney's Office for the District of Columbia
601 D Street, Northwest
Washington, DC 20001
(202) 252-6829

8. *In re Chapman*, 284 A.3d 395 (D.C. 2022)

Appellant proceeded *pro se*

Counsel for appellee:
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Hamilton P. Fox III, Esq.
Office of Disciplinary Counsel
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Building A, Room 117
Washington, DC 20001
(202) 638-1501

9. *Caesar v. Westchester Corporation*, 280 A.3d 176 (D.C. 2022)

Counsel for appellant:
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Law Offices of Sander M. Davidson
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Rockville, MD 20852
(301) 881-4488

Appellant proceeded, in part, *pro se*

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Aaron L. Handleman, Esq.
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Washington, DC 20006
(202) 857-1696

10. *Geary v. National Newspaper Publishers Association*, 279 A.3d 371 (D.C. 2022)

Counsel for appellant:
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Counsel for appellee:
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Greenberg Traurig, LLP
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McLean, VA 22102
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e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Approximately 50 percent of my decisions have been unpublished memorandum opinions and judgments. The D.C. Court of Appeals Clerk's Office maintains a record of these decisions. All of my other decisions are available on legal databases such as Westlaw or Lexis.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Khan v. Orbis Business Intelligence, Ltd., 2023 WL 2920883 (Apr. 13, 2023)
Smith v. United States, 288 A.3d 766 (D.C. 2023)
Decuir v. United States, 285 A.3d 512 (D.C. 2022)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Pursuant to the D.C. Courts Code of Judicial Conduct, judges are disqualified from "any proceeding in which the judge's impartiality might reasonably be questioned." D.C. Code of Jud. Conduct R. 2.11 (2018 ed.). Out of an abundance of caution, I have sua sponte recused myself from all cases involving the Office of the Attorney General for the District of Columbia that were pending before the District of Columbia courts and administrative tribunals during my tenure with the office (2013 – 2022). No party has ever sought my recusal from a case.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From February 2018 to February 2022, I served as Solicitor General for the District of Columbia. I was appointed by Attorney General Karl A. Racine.

From November 2017 to February 2018, I served as Acting Solicitor General for the District of Columbia. I was appointed by Attorney General Karl A. Racine.

From November 2013 to November 2017, I served as Deputy Solicitor General for the District of Columbia. I was appointed by Attorney General Irvin B. Nathan.

I have never run for elective office or had an unsuccessful nomination for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any office in or rendered services to any political party or election committee.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 2006 to 2007, I served as a law clerk to the Honorable Louis H. Pollak on the U.S. District Court for the Eastern District of Pennsylvania.

From 2007 to 2008, I served as a law clerk to the Honorable Thomas L. Ambro on the U.S. Court of Appeals for the Third Circuit.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2008 – 2009
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
Bristow Fellow

2010 – 2013
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, DC 20006
Associate (2010 – 2012)
Counsel (2012 – 2013)

2013 – 2022
Office of the Attorney General for the District of Columbia
Office of the Solicitor General
400 6th Street, Northwest, Suite 8100
Washington, DC 20001
Deputy Solicitor General (2013 – 2017)
Acting Solicitor General (2017 – 2018)
Solicitor General (2018 – 2022)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or an arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

The majority of my practice was litigating complex cases in trial courts and handling appellate litigation across a wide variety of subjects (including civil, criminal, and administrative matters).

As a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice from 2008 to 2009, I drafted briefs in opposition to petitions for certiorari, prepared recommendations regarding the authorization of government appeals, and assisted more senior attorneys with their merits briefs and oral arguments in the U.S. Supreme Court. I also briefed and argued an appeal in the U.S. Court of Appeals for the District of Columbia Circuit.

As a litigator with O'Melveny & Myers LLP from 2010 to 2013, I represented Fortune 500 companies in matters involving contract interpretation, statutory interpretation, class certification, antitrust, patent infringement, and products liability in state and federal trial and appellate courts. I also had a robust pro bono practice, through which I represented individual parties and non-profit amici curiae.

During my tenure with the Office of the Attorney General for the District of Columbia, I had substantial responsibility for the District of Columbia's litigation in local and federal trial and appellate courts on a wide range of issues including administrative law, constitutional law, consumer protection, criminal law, employment discrimination, tax, and torts.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice, my sole client was the United States.

At O'Melveny & Myers LLP, I represented a wide variety of clients, including airlines, financial institutions, health care companies, criminal defendants, and non-profit institutions.

At the Office of the Attorney General for the District of Columbia, my client was the District of Columbia, its approximately 50 subordinate agencies, and its employees.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of

your appearances in court varied, describe such variance, providing dates.

While working as a practicing attorney for 14 years (not including the years I spent clerking and serving as a judge), my practice was almost exclusively in litigation. I appeared in court with some frequency between 2008 and 2013, and with even greater frequency while serving in the Office of the Attorney General for the District of Columbia from 2013 to 2022. I have argued in the Supreme Court of the United States once, in the U.S. Courts of Appeals twelve times, in state appellate courts six times, and in federal district courts six times.

i. Indicate the percentage of your practice in:
   1. federal courts: 33%
   2. state courts of record: 66%
   3. other courts: 0%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 85%
   2. criminal proceedings: 15%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While at O'Melveny & Myers LLP, I was associate counsel on three cases tried to jury verdict. I also served as associate or chief counsel during discovery, in class certification proceedings, and on dispositive motions for several more cases. During my tenure with the Office of the Attorney General for the District of Columbia, I was supervisory counsel on numerous bench and jury trials, primarily advising on motions in limine, evidentiary objections, jury instructions, and post-trial motions.

i. What percentage of these trials were:
   1. jury: 50%
   2. non-jury: 50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

During my tenure with the Office of the Attorney General for the District of Columbia, I drafted merits briefs in two cases (*District of Columbia v. Wesby*, No. 15-1485, and *Artis v. District of Columbia*, No. 16-460), argued one merits case

(*Artis v. District of Columbia*, No. 16-460), and drafted several certiorari-stage briefs and amicus briefs. The full list is as follows:

Concepcion v. United States, No. 20-1650, Amicus Brief of the District of Columbia, et al., 2021 WL 5507308 (Nov. 2021)

CVS Pharmacy, Inc. v. Doe, No. 20-1374, Amicus Brief of the District of Columbia, et al., 2021 WL 4220962 (Sept. 2021)

United States v. Vaello Madero, No. 20-303, Amicus Brief of the District of Columbia, et al., 2021 WL 4121484 (Sept. 2021)

Safehouse v. U.S. Department of Justice, No. 21-276, Amicus Brief of the District of Columbia, et al. in support of Certiorari, 2021 WL 4462996 (Sept. 2021) (cert. denied)

Arizona v. City & County of San Francisco, No. 20-1775, Brief in Opposition, 2021 WL 3773258 (Aug. 2021)

Houston Community College System v. Wilson, No. 20-804, Amicus Brief of the State of Texas, et al., 2021 WL 3145958 (July 2021)

Sanchez v. Mayorkas, No. 20-315, Amicus Brief of the District of Columbia, et al., 2021 WL 826695 (Mar. 2021)

Mahanoy Area School District v. B.L., No. 20-255, Amicus Brief of the State of Massachusetts, et al., 2021 WL 859697 (Mar. 2021)

Terry v. United States, No. 20-5904, Amicus Brief of the District of Columbia, et al., 2021 WL 2316772 (Feb. 2021)

Brnovich v. Democratic National Committee, No. 19-1257, Amicus Brief of the District of Columbia, et al., 2021 WL 260089 (Jan. 2021)

Trump v. District of Columbia, No. 20-331, Brief in Opposition, 2020 WL 7495402 (Dec. 2020) (cert. granted, judgment vacated, and case remanded with instructions to dismiss as moot)

Texas v. Pennsylvania, No. 22O155, Motion for Leave to File Amicus Brief, 2020 WL 7315116 (Dec. 2020)

FCC v. Prometheus Radio Project, No. 19-1231, Amicus Brief of the District of Columbia, et al., 2020 WL 7775034 (Dec. 2020)

Uzuegbunam v. Preczewski, No. 19-968, Amicus Brief of the District of Columbia, et al., 2020 WL 7060009 (Nov. 2020)

Andino v. Middleton, No. 20A55, Motion for Leave to File Amicus Brief, 2020 WL 5898735 (Oct. 2020)

Kerpen v. Metropolitan Washington Airports Authority, No. 18-1240, Brief in Opposition, 2019 WL 3496275 (July 2019) (cert. denied)

Nieves v. Bartlett, No. 17-1174, Amicus Brief of the District of Columbia, et al., 2018 WL 4142615 (Aug. 2018)

Lozman v. City of Riviera Beach, No. 17-21, Amicus Brief of the District of Columbia, et al., 2018 WL 637352 (Jan. 2018)

Artis v. District of Columbia, No. 16-460, Transcript, 2017 WL 4961308 (Nov. 2017); Brief for Respondent, 2017 WL 3485557 (Aug. 2017); Brief in Opposition, 2017 WL 75309 (Jan. 2017)

District of Columbia v. Wesby, No. 15-1485, Reply Brief for Petitioners, 2017 WL 3888198 (Sept. 2017); Brief for Petitioners, 2017 WL 1832042 (May 2017); Reply Brief in support of Certiorari, 2016 WL 5807832 (Oct. 2016); Petition for Certiorari, 2016 WL 3194594 (June 2016)

Corr v. Metropolitan Washington Airports Authority, No. 13-1559, Motion to Intervene, 2014 WL 11510275 (Nov. 2014)

Bank of America v. District of Columbia, No. 13-1035, Brief in Opposition, 2014 WL 1365456 (Apr. 2014) (cert. denied)

Abramski v. United States, No. 12-1493, Amicus Brief of the State of Hawaii, et al., 2013 WL 6907723 (Dec. 2013)

My name also appears on the following briefs drafted by other state attorneys general offices:

California v. Texas, No. 19-840, Response and Reply Brief for Petitioners/Cross-Respondents, 2020 WL 4450448 (July 2020); Brief for Petitioners, 2020 WL 2475940 (May 2020); Reply Brief in support of Certiorari; 2020 WL 730290 (Feb. 2020); Petition for Writ of Certiorari, 2020 WL 58603 (Jan. 2020)

As an attorney with O'Melveny & Myers LLP from 2010 to 2013, I drafted the following petitions for certiorari, merits briefs, and amicus briefs:

Heath v. United States, No. 12-11003, Amicus Brief of NACDL in support of Certiorari, 2013 WL 3895248 (July 2013) (cert. denied)

Arizona v. The Inter Tribal Council of Arizona, No. 12-71, Amicus Brief of Community Voter Registration Organizations, 2013 WL 266610 (Jan. 2013)

McNeil-PPC, Inc. v. Hutto, No. 12-122, Reply Brief in support of Certiorari, 2012 WL 4042967 (Sept. 2012); Petition for Writ of Certiorari, 2012 WL 3058321 (July 2012) (cert. denied)

Fisher v. University of Texas, No. 11-345, Amicus Brief of National Latino Organizations, 2012 WL 3418592 (Aug. 2012)

Hynix Semiconductor Inc. v. Rambus Inc., No. 11-549, Reply Brief in support of Certiorari, 2012 WL 105552 (Jan. 2012); Petition for Writ of Certiorari, 2011 WL 5128964 (Oct. 2011) (cert. denied)

Harrison v. Gillespie, No. 11-168, Reply Brief in support of Certiorari, 2011 WL 4400335 (Sept. 2011); Petition for Writ of Certiorari, 2011 WL 3511030 (Aug. 2011) (cert. denied)

Hosanna-Tabor Evangelical Lutheran Church & School v. Perich, No. 10-553, Brief for Respondent, 2011 WL 3380507 (Aug. 2011)

Lafler v. Cooper, No. 10-209, Amicus Brief of the NACDL, et al., 2011 WL 3099713 (July 2011)

Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc., No. 09-1159, Amicus Brief of the National Venture Capital Association, 2010 WL 5385331 (Dec. 2010)

Matrixx Initiatives, Inc. v. Siracusano, No. 09-1156, Reply Brief for Petitioners, 2010 WL 5099373 (Dec. 2010); Brief for Petitioners, 2010 WL 3334501 (Aug. 2010)

Altus Finance S.A. v. SAFG Retirement Services, Inc., No. 09-1578, Brief in Opposition, 2010 WL 4022692 (Oct. 2010) (cert. denied)

Carachuri-Rosendo v. Holder, No. 09-60, Reply Brief for Petitioner, 2010 WL 1130159 (Mar. 2010); Brief for Petitioner, 2010 WL 342042 (Jan. 2010)

As a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice from 2008 to 2009, I did research in support of briefs filed by the United States in the Supreme Court, drafted oppositions to petitions for certiorari, and participated in moot courts for Supreme Court arguments. I did not, however, personally practice before the Supreme Court during that time.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Artis v. District of Columbia*, 135 A.3d 334 (D.C. 2016) (Fisher, Blackburne-Rigsby, Pryor, JJ.), *rev'd*, 138 S. Ct. 594 (2018); *Artis v. District of Columbia*, 51 F. Supp. 3d 135 (D.D.C. 2014) (Boasberg, J.)

From 2014 to 2018, I represented the District of Columbia in this dispute over the proper interpretation of the federal supplemental jurisdiction statute, 28 U.S.C. § 1367, which provides that if a litigant brings a supplemental state-law claim in federal court and the federal court declines to exercise supplemental jurisdiction, the statute of limitations for refiling that claim in state court is "tolled" during the pendency of the federal suit and for 30 days thereafter. After the U.S. District Court for the District of Columbia dismissed Ms. Artis's claims arising under federal law and declined to exercise supplemental jurisdiction over her claims arising under District of Columbia law, Ms. Artis refiled her District of Columbia law claims in D.C. Superior Court. The Superior Court dismissed her claims as barred by the statute of limitations, and the D.C. Court of Appeals affirmed, holding that Ms. Artis had 30 days after the dismissal of her federal suit to refile in D.C. Superior Court. In a 5-4 decision, the Supreme Court reversed, holding that Section 1367 stopped the statute of limitations from running on Ms. Artis's claims during the pendency of her federal suit, thereby giving Ms. Artis the time remaining on the limitations period for her state-law claims as of the date she filed her federal suit, plus an additional 30 days, to refile her claims in D.C. Superior Court. The case went to trial after I left the Office of the Attorney General for the District of Columbia.

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2. *Wesby v. District of Columbia*, 765 F.3d 13 (D.C. Cir. 2014) (Brown, Pillard, Edwards, JJ.), *rehearing denied*, 816 F.3d 96 (D.C. Cir. 2016), *rev'd sub nom.*, *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018) (merits); *Wesby v. District of Columbia*, 189 F. Supp. 3d 31 (D.D.C. 2016) (Contreras, J.), *rev'd*, 2018 WL 11432150 (D.C. Cir. May 31, 2018) (Millett, Pillard, Katsas, JJ.) (fees); *Wesby v. District of Columbia*, 393 F. Supp. 3d 34 (D.D.C. 2019) & 502 F. Supp. 3d 136 (D.D.C. 2020) (Contreras, J.), *aff'd*, 2021 WL 5262578 (D.C. Cir. Nov. 9, 2021) (restitution) (Tatel, Millett, Walker, JJ.)

From 2013 to 2022, I represented the District of Columbia in this suit brought under 42 U.S.C. § 1983. The legal issues were whether police officers had probable cause to arrest individuals who were partying in a vacant home after the homeowner told police that no one had permission to be there, and, in the alternative, whether the officers were entitled to qualified immunity. The U.S. District Court for the District of Columbia granted summary judgment and attorney's fees to the plaintiffs, and the U.S. Court of Appeals for the D.C. Circuit affirmed and subsequently denied rehearing. In 2018, the Supreme Court held (7-2) that the officers had probable cause and (9-0) that they were shielded by qualified immunity. On remand, the district court held, and the D.C. Circuit affirmed, that the District of Columbia was entitled to recover monies paid to satisfy the judgment that was later vacated.

Co-Counsel:
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Aderson B. Francois, Esq.
Institute for Public Representation Civil Rights Law Clinic
600 New Jersey Avenue, Northwest
Washington, DC 20001
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3. *Accenture Sub, Inc. v. District of Columbia*, 283 A.3d 130 (D.C. 2022) (Beckwith, McLeese, Thompson, JJ.)

From 2018 to 2022, I represented the District of Columbia in this tax dispute in which Accenture Sub, Inc., was seeking a tax refund of more than $6 million. After the D.C. Superior Court granted summary judgment in favor of the District, Accenture appealed. I led the team that briefed the case and personally argued the matter in the D.C. Court of Appeals, contending that the appeal should be dismissed as untimely and, if not, the judgment should be affirmed on the merits. The D.C. Court of Appeals agreed that the appeal was untimely and dismissed it.

Co-Counsel:
Mary L. Wilson, Esq. (retired)
Caroline S. Van Zile, Esq.
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Opposing Counsel:
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4. *Banks v. Booth*, 459 F. Supp. 3d 143 (D.D.C. 2020) (Kollar-Kotelly, J.) (TRO); *Banks v. Booth*, 468 F. Supp. 3d 101 (D.D.C. 2020) & 518 F. Supp. 3d 57 (D.D.C. 2021)

(Kollar-Kotelly, J.) (PI), *rev'd*, 3 F.4th 445 (D.C. Cir. 2021) (Henderson, Rogers, Sentelle, JJ.)

From 2020 to 2022, I represented the Director of the District of Columbia Department of Corrections in a class action under 42 U.S.C. § 1983 and a habeas petition related to conditions of confinement at the D.C. Jail during the COVID-19 pandemic. The U.S. District Court for the District of Columbia had entered a preliminary injunction requiring the Department of Corrections to take certain corrective actions, but the U.S. Court of Appeals for the D.C. Circuit agreed with the Department of Corrections that the preliminary injunction had expired after 90 days in accordance with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(2).

Co-Counsel:
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5. *In re District of Columbia*, 792 F.3d 96 (D.C. Cir. 2015) (Kavanaugh, Millett, Wilkins, JJ.); *Brown v. District of Columbia*, 322 F.R.D. 51 (D.D.C. 2017) (Huvelle, J.), *rev'd*, 928 F.3d 1070 (D.C. Cir. 2019) (Henderson, Wilkins, Edwards, JJ.)

From 2014 to 2022, I represented the District of Columbia in this class action brought by Medicaid recipients alleging non-compliance with the "integration mandate" of the Americans with Disabilities Act. After the U.S. District Court for the District of Columbia certified a class, I briefed and argued a Rule 23(f) appeal in the U.S. Court of Appeals for the D.C. Circuit, asserting that the district court had failed to comply with Fed. R. Civ. P. 23(b). Although the D.C. Circuit expressed "some doubts" about the class-certification ruling, it ultimately denied the Rule 23(f) petition. The case then proceeded to a bench trial, after which the district court entered judgment for the District of Columbia. Plaintiffs appealed, and the D.C. Circuit reversed. I left the Office of the Attorney General for the District of Columbia before the second bench trial was scheduled to begin.

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6. *American Council of Life Insurers v. D.C. Health Benefit Exchange Authority*, 815 F.3d 17 (D.C. Cir. 2016) (Tatel, Pillard, Williams, JJ.); *Unum Life Insurance Co. v. District of Columbia*, 238 A.3d 222 (D.C. 2020) (Beckwith, Easterly, Kravitz, JJ.)

From 2015 to 2020, I defended the District of Columbia Health Benefit Exchange Authority against a challenge to its funding mechanism. After the U.S. District Court for the District of Columbia concluded that the challengers had failed to state a claim upon which relief could be granted, the challengers appealed. On appeal to the U.S. Court of Appeals for the D.C. Circuit, I argued that the federal suit ran afoul of D.C. Code § 11-1201—a statute in which Congress has vested exclusive authority over challenges to District of Columbia taxes in the District's local courts, rather than the federal courts—meaning that the D.C. Circuit lacked jurisdiction over the appeal. In 2016, the D.C. Circuit agreed with this argument and vacated the district court's judgment with instructions to dismiss the case for lack of jurisdiction. A group of related plaintiffs then filed suit in D.C. Superior Court, which granted judgment to the Exchange, and I successfully defended that judgment on appeal.

Co-Counsel:
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(202) 371-7127

7. *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, 971 N.E.2d 967 (Ohio Ct. App. 2012) (Stewart, Rocco, Jones, JJ.)

I represented Ford Motor Company in this matter from 2011 to 2013. I joined the trial team after an Ohio judge entered summary judgment on liability against Ford in a class-action breach-of-contract case and scheduled the case for a damages-only trial. I worked with local counsel on the damages-only trial, which resulted in the trial court extrapolating a jury verdict on the named plaintiff's damages into a $2 billion class-wide judgment. On behalf of Ford, I authored the appellate briefs asking, *inter alia*, for the judgment on liability to be overturned because the contract was ambiguous, foreclosing summary judgment, and because a jury was required to consider Ford's affirmative defenses of waiver, estoppel, and failure to provide notice. I also argued that the trial court had erroneously excluded critical rebuttal evidence at the damages trial that would have significantly reduced any damages—an error that was further compounded by the trial court's extrapolation of the named plaintiff's damages award to the entire class. In 2012, the Ohio Court of Appeals agreed, reversing the liability and damages rulings and remanding for further proceedings. I was then involved in the second jury trial, which resulted in a defense verdict in 2013.

Co-Counsel:
Chief Judge Srikanth Srinivasan (formerly with O'Melveny & Myers LLP)
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, Northwest
Washington, DC 20001
(202) 216-7080

Jonathan D. Hacker, Esq.
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, DC 20006
(202) 383-5285

Irene Keyse-Walker, Esq. (retired)
Benjamin C. Sassé, Esq.
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113

(216) 696-3213

Opposing Counsel:
James A. Lowe, Esq.
Lowe Scott Fisher Co., LPA
2639 Wooster Road, Suite 300
Cleveland, OH 44116
(216) 714-8110

Dennis Mulvihill, Esq.
Wright & Schulte, LLC
23240 Chagrin Boulevard, Suite 620
Cleveland, OH 44122
(216) 591-0133

8. *Calhoun v. Murray*, 507 F. App'x 251 (3d Cir. 2012) (Scirica, Fisher, Jordan, JJ.)

In this case, a prisoner filed a civil over-detention suit in Pennsylvania state court asserting that he had been illegally detained in state custody during his federal trial despite having posted bail on the charges. After the federal defendants removed the suit to federal district court under 28 U.S.C. § 1442(a) and all defendants sought dismissal, the district court dismissed the case without providing the plaintiff an opportunity to respond. The plaintiff appealed and, after an initial round of briefing, the U.S. Court of Appeals for the Third Circuit appointed me as counsel for appellant and asked me to brief whether the federal courts lacked jurisdiction under the doctrine of derivative jurisdiction, as well as any other meritorious issues. In 2011, I briefed and argued the appeal, contending that the doctrine of derivative jurisdiction did not deprive the federal courts of jurisdiction to hear the case, but that the district court's judgment should be reversed on the merits because the court had granted the motions to dismiss without first allowing the plaintiff to respond, had erroneously dismissed the claims against the federal defendants on the basis of res judicata when there was no final judgment in the earlier action, and had dismissed the claims against the remaining defendant without providing its reasoning. The Third Circuit agreed with these arguments, holding that the federal courts had jurisdiction over the case, vacating the district court's dismissal orders on the merits, and remanding the matter for further proceedings.

Co-counsel:
Jeremy Maltby, Esq. (formerly with O'Melveny & Myers LLP)
U.S. Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
(202) 514-2000

Opposing counsel:
Charlene Keller Fullmer, Esq.
U.S. Attorney's Office for the Eastern District of Pennsylvania

615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8301

John C. Manning, Esq.
Alan M. Robinson, Esq.
Pennsylvania Board of Probation & Parole
1101 South Front Street, Suite 5100
Harrisburg, PA 17104
(717) 787-8126

9. *United States v. Morgan*, 687 F.3d 688 (6th Cir. 2012) (Martin, Gilman, White, JJ.)

From 2011 to 2013, I served as appointed counsel for Mr. Morgan in his criminal-sentencing appeal and subsequent resentencing. Mr. Morgan had initially been sentenced to a 201-month term of imprisonment for possession of marijuana and a weapons offense. I argued to the U.S. Court of Appeals for the Sixth Circuit that the trial judge had misapplied the Federal Sentencing Guidelines, resulting in certain offense conduct being double-counted. The Sixth Circuit agreed and remanded for resentencing. In late 2012, I represented Mr. Morgan at his resentencing in the U.S. District Court for the Eastern District of Kentucky, where I secured him a two-year reduction in his sentence. I then represented Mr. Morgan in a second appeal to the Sixth Circuit, but a colleague took over the matter when I left O'Melveny & Myers LLP to return to the government.

Co-Counsel:
Jonathan D. Hacker, Esq.
O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, DC 20006
(202) 383-5285

Opposing Counsel:
Erin M. Roth, Esq.
Charles P. Wisdom, Jr., Esq.
U.S. Attorney's Office for the Eastern District of Kentucky
260 West Vine Street, Suite 300
Lexington, KY 40507
(859) 685-4872

10. *Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336 (Fed. Cir. 2011) (Newman, Lourie, Bryson, Gajarsa, Linn, JJ.)

This case involved the enforceability of Rambus's patents concerning a form of computer memory. The district court granted judgment in favor of Rambus, and from 2010 to 2011, I was part of the team representing Hynix on appeal. We argued that the patents were unenforceable for a number of reasons, including that Rambus had engaged in

spoliation of material documents notwithstanding the reasonable foreseeability of litigation, that Rambus's objectionable conduct in connection with a standard-setting organization triggered defenses of implied waiver and equitable estoppel, that a proper construction of the claim rendered the scope of the claimed invention unduly broad, that the patents were invalid for lack of a written description, and that the claims were obvious. The U.S. Court of Appeals for the Federal Circuit ruled in favor of Hynix on the issue of spoliation (but otherwise affirmed the district court) and thus vacated and remanded the case to the district court for further proceedings on the issue of spoliation.

Co-Counsel:
Chief Judge Srikanth Srinivasan (formerly with O'Melveny & Myers LLP)
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, Northwest
Washington, DC 20001
(202) 216-7080

Mark S. Davies, Esq. (formerly with O'Melveny & Myers LLP)
Orrick, Herrington & Sutcliffe LLP
Columbia Center
1152 15th Street, Northwest
Washington, DC 20005
(202) 339-8631

Opposing Counsel:
Hon. Richard G. Taranto (formerly with Farr & Taranto)
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, Northwest
Washington, DC 20439
(202) 275-8000

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a judge, I have designed and taught a number of short seminars for new magistrate and associate judges on the Superior Court of the District of Columbia. These seminars are intended to provide an overview of the appellate process and to give advice on handling trial matters with an eye toward an eventual appeal. During my tenure in the Office of the Attorney General for the District of Columbia (2013 – 2022), I designed and taught similar courses for agency general counsel, trial and appellate attorneys, and administrative hearing officers, and I also led writing-skills trainings.

From 2017 to 2022, I was a member of the U.S. Court of Appeals for the D.C. Circuit's Advisory Committee on Procedures, and from 2010 to 2013, I served as the administrative coordinator of the National Association of Criminal Defense Lawyers' Amicus Curiae Committee.

From 2013 to 2021, I led the Charles F.C. Ruff Fellowship program at the Office of the Attorney General for the District of Columbia, which recruited, trained, and mentored a class of sixteen recent law school graduates each year.

I have not performed any lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    During my time at O'Melveny & Myers LLP (2010 – 2013), I worked with students in O'Melveny's Supreme Court and Appellate Litigation Clinic at Harvard Law School, both supervising case work and co-leading class discussions.

    In Spring 2013, I was an instructor in Professor Noah Messing's class, "Legal Writing Through a Lawsuit," at Yale Law School. Syllabus supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I have no anticipated receipts, expected future benefits, or arrangements to be compensated in the future for any financial or business interest.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If confirmed, I have no plans, commitments, or agreements to pursue any outside employment during judicial service.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

It is possible that a conflict could arise concerning a case I handled as an Associate Judge of the D.C. Court of Appeals or during my time with the Office of the Attorney General for the District of Columbia. If confirmed, I would recuse myself from any case in which I had previously participated as a judge or attorney. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would address any actual or potential conflicts of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant laws, canons, rules, practices, and guidelines.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Throughout my career, I have sought to serve my community, both through pro bono work and public service.

During my time at O'Melveny & Myers LLP, I devoted thousands of hours to pro bono legal service, representing indigent defendants and plaintiffs in several cases, including *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010) (immigration), *United States v.*

Morgan, 687 F.3d 688 (6th Cir. 2012) (criminal sentencing), and *Calhoun v. Murray*, 507 F. App'x 251 (3d Cir. 2012) (prisoner litigation). I also served as the Administrative Coordinator for the National Association of Criminal Defense Lawyers' Amicus Curiae Committee and drafted amicus briefs for the Association, including in *Lafler v. Cooper*, 566 U.S. 156 (2012) (ineffective assistance), and *Missouri v. Frye*, 566 U.S. 134 (2012) (ineffective assistance). Finally, I represented national Latino organizations and community voter registration organizations in various cases in the Supreme Court of the United States and the federal courts of appeals.

During my tenure with the Office of the Attorney General for the District of Columbia, I spent nearly a decade representing the interests of District of Columbia residents, and I worked frequently with community organizations and *pro se* litigants to achieve just outcomes in litigation. As a government employee, I was restricted from providing pro bono legal services, but I continued to participate in non-legal community service by serving on the boards of Bard College at Simon's Rock and the American Inns of Court Foundation, and by serving as a mentor with The Appellate Project and the South Asian Bar Association of Washington, D.C.

As a judicial officer, I have been focused on access to justice issues through court committees and projects.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In December 2022, Congresswoman Eleanor Holmes Norton posted that she was accepting applications for the vacancy on the United States District Court for the District of Columbia created by District Judge Amy Berman Jackson's decision to take senior status. On January 4, 2023, I submitted my application to Congresswoman Norton's Federal Law Enforcement Nominating Commission. On January 18, I was interviewed by the Norton Commission, and on January 24, I was interviewed by Congresswoman Norton. On February 1, I interviewed with attorneys from the White House Counsel's Office. On February 16, an attorney from the White House Counsel's Office notified me that I was under consideration for the vacancy. Since February 16, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Susan Kim DeClercq (birth name: Sun Jin Kim)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Eastern District of Michigan

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Ford Motor Company
   1 American Road
   Dearborn, Michigan 48126

   Residence: Northville, Michigan

4. **Birthplace**: State year and place of birth.

   1974; Seoul, South Korea

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1996 – 1999, Wayne State University School of Law; J.D. (*magna cum laude*), 1999

   1997, University of Nairobi – Faculty of Law; no degree (summer study only)

   1991 – 1995, University of Michigan Ann Arbor; B.A., 1995

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2022 – present

Ford Motor Company
1 American Road
Dearborn, Michigan 48126
Director and Counsel – Special Investigations

2004 – 2022
United States Attorney's Office – Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Civil Division Chief (2022)
Civil Rights Unit Chief (2014 – 2022)
Assistant United States Attorney – Civil Rights Unit (2010 – 2014)
Assistant United States Attorney – Defensive Litigation Unit (2004 – 2010)

2001 – 2004
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, Northwest
Washington, DC 20005
Associate

1999 – 2001
United States District Court for the Eastern District of Michigan
231 West Lafayette Boulevard
Detroit, Michigan 48226
Law Clerk to the Honorable Avern L. Cohn

Spring 1999
Wayne County Prosecutor's Office
1440 Saint Antoine
Detroit, Michigan 48226
Intern, Child and Family Abuse Bureau

Summer 1998
Butzel Long, PC
150 West Jefferson Avenue
Detroit, Michigan 48226
Summer Associate

Spring 1998
United States District Court for the Eastern District of Michigan
231 West Lafayette Boulevard
Detroit, Michigan 48226
Intern to the Honorable Gerald E. Rosen

1998 – 1999
Wayne State University School of Law

471 West Palmer Street
Detroit, Michigan 48202
Research Assistant to Professor Zanita Fenton

1995 – 1996
Butzel Long, PC
32400 Telegraph Road
Bingham Farms, Michigan 48205
Litigation Clerk/Paralegal

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   United States Department of Justice Civil Rights Division Commendation Award (multiple years between 2010 – 2022)

   United States Attorney's Award for work on Detroit Police Department case (2016)

   Wayne State University School of Law
   Magna Cum Laude (1999)
   Order of the Coif (1999)

   University of Michigan Ann Arbor
   College of Literature, Science & Arts Honors Convocation Award (1994 – 1995)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   American Bar Association (2001 – 2002)

   Federal Bar Association, Eastern District of Michigan Chapter (2014 – present)
   Executive Board Member (2014 – present)
   Co-chair, Pro Bono Section (2021 – 2022)
   Co-chair, Civil Rights (formerly Social Justice) Section (2014 – 2021)

   Wayne State University School of Law, Women's Law Caucus (1996 – 1999)
   Co-chair (1998 – 1999)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Michigan, 1999
District of Columbia, 2001

I became an inactive member of the DC Bar in 2004 when I moved to Michigan. There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2001
United States Court of Appeals for the Sixth Circuit, 1999
United States District Court for the Eastern District of Michigan, 1999

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Federal Executive Board Diversity Council (approximately 2017 – 2021)
U.S. Attorney's Office representative (approximately 2017 – 2021)

Woodside Village Homeowners Association (2004 – present)
Architectural Control Committee member (2019 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in my answers currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With Elizabeth Hecker, Friends of the Court: Amicus Briefs and Statements of Interest in Civil Rights Cases, DEPARTMENT OF JUSTICE JOURNAL OF FEDERAL LAW AND PRACTICE, Volume 70 (Jan. 2022). Copy supplied.

With Kimberly G. Musolf, Employment and Labor Law, Annual Survey, 47 WAYNE LAW REVIEW 529 (Summer 2001). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In my capacity as Civil Rights Unit Chief, I sent a Dear Colleague letter to various Michigan municipalities within the Eastern District of Michigan in August 2021, reminding them that the Americans with Disabilities Act applies to outdoor dining spaces. Copy supplied.

In 2017, along with two colleagues at the United States Attorney's Office, I authored a letter nominating Barbara McQuade for a State Bar of Michigan Frank J. Kelley Distinguished Public Service Award. I do not have a copy of the letter but portions were quoted in the press coverage of the award winners, which is supplied.

In my capacity as Civil Rights Unit Chief, I spoke at the 2015 American Civil

Liberties Union of Michigan Hearing on Practices and Policies to Improve Police/Community Relations on the topic of the United States Department of Justice's police and community relations initiatives. I have no notes, transcript, or recording.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I endeavored to find all speeches or talks responsive to this question, however I no longer have access to the professional calendar that I used while at the United States Attorney's Office for the Eastern District of Michigan so it is possible that there are a few I was unable to identify.

September 15, 2022: Panelist, Michigan Department of Civil Rights MI Response to Hate Conference, Lansing, MI. The presentation was on civil and criminal laws on hate crimes. I have no notes, transcript, or recording. The address for the Michigan Department of Civil Rights is 3054 West Grand Boulevard, Suite 3-600, Detroit, Michigan 48202.

January 11, 2022: Presenter, Institute of Continuing Legal Education: Health Law Institute via webcast. Presentation available at https://www.icle.org/modules/seminars/video.aspx?ID=1_g8unf90v&seqn=587.

October 21, 2021: Speaker, Michigan Department of Civil Rights MI Response to Hate Conference, via Zoom. Video available at https://www.youtube.com/watch?v=4Pjxwoc4e1w&t=20s.

May 23, 2019: Panelist, Civil Rights Night, Michigan Department of Civil Rights and the Jackson County Branch of the National Association for the Advancement of Colored People, Jackson, Michigan. I spoke about the civil rights enforcement work done by the United States Attorney's Office for the Eastern District of Michigan. I have no notes, transcript, or recording but press coverage is supplied. The address for the Michigan Department of Civil Rights is 3054 West Grand Boulevard, Suite 3-600, Detroit, Michigan 48202; the address for the Jackson County Branch of the National Association for the Advancement of Colored People is 801 South Mechanic Street, Jackson, Michigan 49203.

March 22, 2019: Speaker, Inaugural Fair Housing Conference, Legal Services of Eastern Michigan Fair Housing Center, Flint, Michigan. The presentation was on

the United States Department of Justice's Sexual Harassment in Housing Initiative. I have no notes, transcript, or recording. The address for the Legal Services of Eastern Michigan is 436 South Saginaw Street, Flint, Michigan 48502.

May 8, 2017: Co-Presenter, Confronting Anti-Semitism: A Local Perspective on Hate-Speech and Threats, Hope Against Hate, American Jewish Joint Distribution Committee and Jewish Federation of Metropolitan Detroit, Southfield, Michigan. The presentation addressed the characteristics and distinctions between "hate speech" and those actions that constitute "true threats" to safety and security; I spoke about civil rights protections in the context of speech. I have no notes, transcripts or recordings but press coverage is supplied. The address for the American Jewish Joint Distribution Committee is P.O. Box 4124, New York, New York 10163, and the address for the Jewish Federation of Metropolitan Detroit is 6735 Telegraph Road, Suite 30, Bloomfield Hills, Michigan 48301.

March 9, 2017: Presenter, Institute of Continuing Legal Education: Health Law Institute, Plymouth, Michigan. I spoke about civil rights in healthcare. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education is 1020 Greene Street, Ann Arbor, Michigan 48109.

October 6, 2015: Host, town hall meeting regarding Detroit Police Department, U.S. Department of Justice Civil Rights Division and United States Attorney's Office for the Eastern District of Michigan, Detroit, Michigan. I received comments from Detroit residents about their experiences with the Detroit Police Department following the termination of the consent decrees imposed as part of the U.S. Department of Justice's civil rights lawsuit. I have no notes, transcript, or recording but press coverage is supplied. The address for the United States Attorney's Office for the Eastern District of Michigan is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

August 1, 2014: Presenter, Protections Afforded by the Americans with Disabilities Act, DEBra Patient Care Conference, Nashville, Tennessee. The presentation was on the Americans with Disabilities Act. I have no notes, transcript, or recording. The address for DEBra is 75 Broad Street, Suite 300, New York, New York 10004.

On various dates from approximately 2015 to 2019 I was a guest lecturer in a number of law school classes at the University of Michigan, Wayne State University, and University of Detroit Mercy, speaking about civil rights law. I have no notes, transcripts, or recordings. The address for the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109; the address of the University of Detroit Mercy School of Law is 651 East. Jefferson Avenue, Detroit, Michigan 48226; the address of Wayne State University School of Law is 471 West Palmer Avenue, Detroit, Michigan 48202.

From 2010 to 2022 I frequently served on the faculty for the National Advocacy Center, the Department of Justice's internal training facility in Columbia, South Carolina, instructing Assistant United States Attorneys and Department of Justice Trial Attorneys in numerous courses focusing on civil rights and trial advocacy.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

In my role as the Unit Chief, I was interviewed about the work of the Civil Rights Unit at the United States Attorney's Office for the Eastern District of Michigan for a webcast associated with the Oakland County Bar Association. I cannot recall the date. I am unable to locate a transcript or recording.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these cases, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

ii. Of these cases, approximately what percent were:

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys

who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1994, while in college, I briefly volunteered with the non-partisan campaign committee to elect Lore Rogers for Washtenaw Circuit Court judge. I held no official position.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1999 to 2001, I served as a law clerk to the Honorable Avern L. Cohn on the United States District Court for the Eastern District of Michigan.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1999 – 2001
United States District Court for the Eastern District of Michigan
231 West Lafayette Boulevard
Detroit, Michigan 48226
Law Clerk to the Honorable Avern L. Cohn

2001 – 2004
Skadden, Arps, Slate, Meagher & Flom, LLP

1440 New York Avenue, Northwest
Washington, DC 20005
Associate – Litigation Group

2004 – 2022
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Civil Division Chief (2022)
Civil Rights Unit Chief (2014 – 2022)
Assistant United States Attorney, Civil Rights Unit (2010 – 2014)
Assistant United States Attorney, Defensive Litigation Unit (2004 – 2010)

2022 – present
Ford Motor Company
1 American Road
Dearborn, Michigan 48126
Director and Counsel – Special Investigations

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Since November 2022, I have been an in-house attorney at the Ford Motor Company. I am responsible for internal investigations into complaints of employee misconduct and potential violations of law or the company's code of conduct, or other ethical concerns.

For the previous 18 years, from 2004 to 2022, I served as an Assistant United States Attorney in Detroit, Michigan. I became an Assistant United States Attorney in 2004 and practiced civil litigation in a variety of areas, including defensive litigation and civil rights enforcement. I handled hundreds of cases at every stage of civil litigation from inception to post-judgment. I briefed and argued dozens of civil dispositive and non-dispositive motions, including motions to dismiss, compel, and obtain summary judgment. I took dozens of depositions and engaged in extensive discovery practice. I led substantial investigations, which included extensive interviews of fact and expert witnesses, factfinding, and recommendations. At any given time, I managed a revolving civil

caseload of approximately 25 to 30 cases. I also held several management positions. From 2014 to 2021, I served as the Chief of the Civil Rights Unit, supervising the work of the other attorneys in the Unit and spearheaded community outreach, as well as handling my own cases. In 2021, I became the Chief of the Civil Division, overseeing approximately 20 attorneys and 10 support staff in the Units within the Civil Division.

I was an associate at Skadden, Arps, Slate, Meagher & Flom, LLP from 2001 to 2004, primarily practicing in white collar defense and commercial litigation. I also worked on internal investigations and assisted clients in responding to government investigations.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In private practice as a law firm associate, I represented large corporations and corporate executives in commercial litigation and government investigations. At the United States Attorney's Office my clients were almost always the United States, federal agencies, and federal employees. I specialized in civil defensive litigation and civil enforcement of federal civil rights laws. At my current position at Ford Motor Company, my client is always the company. I specialize in corporate compliance, specifically investigating complaints of employee misconduct.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice has been primarily litigation and has been almost exclusively in the federal courts since 2001. I appeared in court frequently as an Assistant United States Attorney from 2004 to 2010, including for approximately 50 hearings on dispositive motions and two bench trials. When I transitioned into focusing on civil rights enforcement, my court appearances declined as most of my cases settled pre-suit.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

d. State the number of cases in courts of record, including cases before

administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried two cases to verdict, one as sole counsel and one as co-counsel. I also authored several written briefs and presented oral argument at the United States Court of Appeals for the Sixth Circuit.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As an associate at Skadden, I co-authored an amicus brief, 2003 WL 402128, in *Grutter v. Bollinger*, 539 U.S. 306 (2003), on behalf of Representative Richard A. Gephardt and other individual members of Congress.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. City of Troy, Michigan*, 592 F. Supp. 3d 591 (E.D. Mich. 2022) (Edmunds, J.)

This was the most recent of several cases that I handled alleging that a municipality violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it failed to approve a permit or other land use application submitted by a religious entity for religious use. From 2020 through 2022, I co-led the investigation and litigation into the City of Troy's denial of Adam Community Center's attempt to establish an Islamic place of worship in a building that had previously been used as a restaurant and banquet hall. I took several depositions during discovery and helped to write briefs on the parties' cross-

motions for summary judgment. I also participated in several settlement negotiations mediated by Magistrate Judge Majzoub. The Court ultimately granted summary judgment in favor of the United States, holding that Troy imposed a substantial burden on Adam's exercise of religion and that the city's zoning ordinance violated RLUIPA's equal terms provision by imposing more onerous restrictions on places of worship than comparable places of assembly, and requiring the city to approve the land use application and change its planning ordinance.

Co-Counsel
Shannon Ackenhausen
United States Attorney's Office
211 West Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9100

Abigail Marshak
U.S. Department of Justice
Civil Rights Division, Housing and Civil Enforcement Section
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
(202) 514-1968

Opposing Counsel
Allan T. Motzny
City of Troy Attorney's Office
500 West Big Beaver Road
Troy, MI 48084
(248) 524-3324

2. *United States v. University of Michigan*, Case No. 2:15-cv-12582 (E.D. Mich.) (Friedman, J.)

Along with co-counsel from the Civil Rights Division, from 2014 to 2015, I handled all aspects of this employment discrimination case against the University of Michigan for violations of Title I of the Americans with Disabilities Act. The case arose from an individual charge of discrimination by a maintenance employee at the University of Michigan who alleged that the University violated the Americans with Disabilities Act when it refused to re-assign her to a vacant position for which she was qualified after she was no longer able to perform the essential functions of her original job. My co-counsel and I conducted additional investigation and found evidence that the University engaged in a pattern or practice of discrimination by applying a policy that denied reassignments as a reasonable accommodation. Shortly after filing suit, the University agreed to settle the case based on the evidence that my co-counsel and I had developed during our supplemental investigation. Under the consent decree, which was approved by the District Court, the University agreed to pay damages to the original complainant and other similarly situated employees, as well as to change its policies and train its staff to

avoid future violations.

Co-counsel
Rachel Smith (formerly at the U.S. Department of Justice)
I am unable to locate current contact information for Ms. Smith.

Opposing Counsel
David J. Masson
503 Thompson Street #5010
Ann Arbor, MI 48109
(734) 764-0304

3. *United States v. Pittsfield Charter Township*, Case No. 2:15-cv-13779 (E.D. Mich.)

From approximately 2012 through 2015, I was the lead investigator and litigator in this religious land use case, but I continued to participate in the matter in a supervisory capacity until its resolution in 2016. In this case, Pittsfield Township had denied an Islamic school's request to amend the zoning ordinance to allow it to construct a new school on a vacant parcel located in a residential area. The school worked cooperatively with the Township Planning Department to come to a mutually acceptable design, and expressed a willingness to address every concern raised by the Township and neighbors. Nonetheless, the Township denied the request claiming traffic concerns and noise and light issues. I initiated and conducted the investigation leading up to suit, helped write the complaint and consent decree documents, and provided strategic advice and guidance on litigation and settlement strategy. The parties settled the case on terms favorable to the Islamic school through a consent order, which was approved by Judge Matthew F. Leitman.

Co-Counsel
Luttrell Levingston
United States Attorney's Office
211 West Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9100

Abigail Nurse
U.S. Department of Justice
Civil Rights Division, Housing and Civil Enforcement Section
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
(202) 353-9732

Opposing Counsel
Thomas R. Meagher
Foster Swift Collins & Smith PC
313 South Washington Square

Lansing, MI 48933
(517) 371-8100

4. *United States v. Corral of Westland LLC*, Case No. 02:13-cv-10717 (E.D. Mich.) (Murphy, J.)

I served as lead counsel on all proceedings in this civil rights case from 2011 to 2013. I represented the United States in this case against a buffet-style restaurant for violating the Americans with Disabilities Act when it denied a family service and ejected them from the restaurant based on the appearance of their children's skin caused by a genetic disorder. I conducted the investigation, wrote all court pleadings, and primarily handled the settlement negotiations in front of then-Magistrate Judge Laurie Michaelson. Defendants agreed to settle the case on terms requiring defendants to pay a substantial amount of money damages to the family, a civil monetary payment to the United States, and change their policies and conduct training for their employees to ensure future Americans with Disabilities Act compliance.

Opposing counsel
Dan Bretz
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, MI 48226
(313) 365-8300

Jeffrey A. Steele
Macomb Community College
14500 East 12 Mile Road
Warren, MI 48088
(586) 498-4090

5. *Baetz v. City of Highland Park*, Case No. 2:12-cv-10617 (E.D. Mich.) (Borman, J.)

From 2011 to 2012, I handled all proceedings including pre-suit investigation in this case filed under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) on behalf of a servicemember who was denied a promotion that he would have attained if he had not been called to active-duty military service. I represented an auxiliary firefighter who was also a member of the U.S. Army Reserve. He was called to active duty and deployed to Afghanistan for one year, and when he returned he learned that while he was gone, three auxiliary firefighters with less seniority than him had been promoted to full-time firefighters. I led extensive negotiations and the City eventually agreed to settle the case. As reflected in the consent judgment approved by the district court, the City agreed to, among other things, promote the plaintiff and retroactively adjust his promotion date to the date of his return from active-duty service, as well as pay money damages representing the amount of backpay and present value of union benefits that he would have received in the promotional position.

Opposing Counsel
Todd Perkins
The Perkins Law Group
615 Griswold Street, Suite 400
Detroit, MI 48226
(313) 964-1702

6. *United States v. Tel-Clinton Trailer Courts, Inc.*, Case No. 2:11-cv-12886 (E.D. Mich.) (Tarnow, J.)

In 2011, I investigated and litigated this Fair Housing Act case against the management of a trailer park for engaging in a pattern or practice of discrimination on the basis of familial status. Specifically, the trailer park had policies that prevented families with more than one child from residing there. Along with co-counsel from the Civil Rights Division, I conducted a supplemental investigation into the facts of the case, which had been referred to us by a local fair housing agency, drafted pleadings, coordinated with the victim's private counsel, and eventually settled the case through a consent decree approved by Judge Arthur Tarnow.

Co-Counsel
Christopher J. Fregiato (formerly at the U.S. Department of Justice)
I am unable to locate current contact information for Mr. Fregiato.

Opposing Counsel
Carmine Perrotta
The Perotta Firm, PLC
401 South Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 283-1003

7. *Estate of Berrien v. United States*, Case No. 2:08-cv-13359 (E.D. Mich. Jan.13, 2012) (Roberts, J.), *rev'd*, 711 F.3d 654 (6th Cir. 2013).

I served as lead counsel in all district court proceedings and trial in this tort case from approximately 2008 to 2013. The case was brought by the estate of Mr. Berrien arising from Mr. Berrien's death from a head injury that he sustained while working at Selfridge Air National Guard Base as a maintenance contractor. There were no witnesses to the injury-producing event, but the plaintiff alleged that Mr. Berrien was struck on the head by a falling rain gutter. I represented the United States. I handled all of the discovery in the case, which lasted more than a year and included depositions of a large number of both fact and expert witnesses. I also wrote the briefs involved with cross-motions for summary judgment, and ultimately, a summary trial, which is a trial determined on written evidence only, before Judge Victoria Roberts. The district court found for the plaintiff but the government appealed the case, and ultimately prevailed at the Sixth Circuit. Although the Civil Appellate Section of the Department of Justice handled the appeal, I participated in the briefing and my work laid the foundation for the ultimate

decision in the United States' favor.

Opposing Counsel
Kevin Z. Komar
Sinas, Dramis, Larking, Graves & Waldman
3380 Pine Tree Road
Lansing, MI 48911
(517) 394-7500

8. *Hoffman v. United States*, Case No. 2:08-cv-12093 (E.D. Mich) (Steeh, J.)

In 2008, I was brought on to co-counsel the trial in this tort case arising out of an automobile accident. The plaintiff claimed injuries as a result of a vehicle driven by a government employee hitting the plaintiff's car on the freeway. Along with co-counsel, I participated in a settlement conference where the parties stipulated to the extent of the plaintiff's damages. In a bench trial before Judge George Caram Steeh, my co-counsel and I litigated the issue of liability for the collision. I gave the opening statement and examined the government driver. The verdict assigned 20 percent contributory negligence to the plaintiff.

Co-Counsel
Vanessa Miree Mays
24433 Millcreek Drive
Farmington Hills, MI 48336
(248) 212-0275

Opposing Counsel
David Christensen
Gursten, Koltonow, Gursten, Christensen & Raitt, PC
30101 Northwestern Highway
Southfield, MI 48334
(248) 353-7575

9. *Phelps v. United States*, Case No. 2:08-10957 (E.D. Mich.) (Gadola, J.)

From approximately 2007 to 2009, I primarily handled the litigation of this tort case, which involved claims of injury arising from a car accident with a United States Fish and Wildlife Service employee. Several issues were litigated, including the threshold issue of whether the employee was acting within the scope of his employment at the time of the collision. I conducted extensive discovery in the case, including document review, multiple depositions of fact and expert witnesses, and filed several motions and briefs. My colleague took over the case in 2009 when I went on maternity leave, and he eventually settled the case.

Opposing Counsel
Gregory Scott

Lowe Scott Fisher LPA
2639 Wooster Road, Suite 300
Cleveland, OH 44116
(216) 714-8110

Daniel Romano
Romano Law
23880 Woodward Avenue
Pleasant Ridge, MI 48069
(248) 750-0270

10. *Huling v. United States*, Case No. 2:06-cv-14924 (E.D. Mich.) (Zatkoff, J.)

From 2006 to 2008, I handled all aspects of this automobile negligence case, brought against the United States under the Federal Tort Claims Act, arising out of a collision caused by a United States Postal employee. Although liability for the accident was not in dispute, the government contested the nature and extent of the injuries claimed by the plaintiff, Ms. Huling. I solely handled the extensive discovery in the case, which entailed exchanging a voluminous amount of documents and taking dozens of fact and expert witness depositions, including EMTs, medical doctors, and nursing professionals. Through the course of the case, the plaintiff claimed that prior to the car accident she had been in good health and worked part-time. However, based on records that I uncovered from the Social Security Administration and the Internal Revenue Service, I determined that the plaintiff had been using a different social security number to collect social security disability benefits for the past 10 years, while claiming injuries and symptoms identical to those being claimed in this lawsuit. I presented the evidence of the plaintiff's fraud to her attorney, who promptly withdrew as counsel. The case was eventually dismissed for failure to prosecute the case once plaintiff had her lies exposed. In addition, I notified the Social Security Administration so that they could start revocation proceedings and referred the matter to the criminal division of the United States Attorney's Office for a fraud prosecution.

Opposing Counsel
Brian A. Kutinsky
30777 Northwestern Highway, Suite 300
Farmington, MI 48334
(248) 973-1000

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an Assistant United States Attorney and law firm associate, I also led the United States Attorney's Office's community outreach on civil rights matters, to educate community members on their civil rights and support community organization advocating for civil rights. I also took an active role in the hiring and development of new lawyers, participating in hiring, recruitment, and internship programs at both the United States Attorney's Office and my prior law firm.

Although almost all of my legal practice, until my current position, has been related to litigation, some of the most significant legal activities that I have pursued were significant cases which did not progress to trial or legal matters that did not involve litigation. These matters include representing Enron Corp in multiple investigations by law enforcement, Congress, and various federal agencies in the wake of the company's unexpected collapse, ensuring that the United States held the Detroit Police Department and the Detroit Department of Transportation to their agreed-upon reform commitments as established by consent decree to settle civil rights claims; and bringing the U.S. Department of Justice's first case to challenge a refusal to allow non-medical professionals to administer insulin to younger-than-school-aged children.

I have not performed any lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report,

required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Because of my long tenure with the U.S. Attorney's Office, I would likely be disqualified from cases that originated or were pending during my time at the office. I would also likely be disqualified from cases involving the Ford Motor Company for a period of time after taking the bench. In all instances I would be mindful of any potential conflicts of interest in all of my cases and would not hesitate to recuse myself from any case where there was an actual or perceived conflict.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If faced with a potential conflict of interest, I would refer to Canon 3 of the Code of Conduct for United States Judges and 28 U.S.C. § 455, as well as any other applicable canons, rules, statutes. As appropriate, I would advise the parties before me of the potential conflict and seek their input. I would evaluate each situation on a case-by-case basis to determine the appropriate action, seek counsel where necessary, and recuse myself where necessary.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In working for the Department of Justice, there were many barriers to representing clients other than the United States, even for *pro bono* cases. Accordingly, I instead focused on volunteering my time on non-legal matters as my way of giving back to the community. In addition, I have been actively involved in pro bono issues through my work with the Federal Bar Association, as well as assisting with oral advocacy exercises for first-year

students at Wayne State University School of Law by being a judge for their mock appellate arguments.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

The Eastern District of Michigan has a judicial selection commission. Senators Stabenow and Peters engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On June 14, 2022, I submitted an application, and I interviewed with the committee on July 13, 2022. On August 19, 2022, I interviewed with attorneys from the White House Counsel's Office. Since February 9, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Julia Kathleen Munley
   Julia Fitzgerald
   Julia Rogan

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Middle District of Pennsylvania

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Lackawanna County Court of Common Pleas
   Lackawanna County Government Center
   123 Wyoming Avenue
   Scranton, Pennsylvania 18503

   Residence: South Abington Township, Pennsylvania

4. **Birthplace**: State year and place of birth.

   1965; Carbondale, Pennsylvania

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   2021, Mediation, Program on Negotiation, Harvard Law School; Certificate, 2021

   2021, Mediation, National Judicial College; Certificate, 2021

   2021, Fundamentals of Evidence, National Judicial College; Certificate, 2021

   1989 – 1992, The Dickinson School of Law; J.D., 1992

   1988 – 1989, University of Scranton, Master's Program; no degree received

   1987, Lehigh University, Master's Program; no degree received

1984 – 1987, Marywood College; B.A., *magna cum laude*, 1987

1983 – 1984, College of the Holy Cross; no degree received

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2016 – present
Court of Common Pleas of Lackawanna County
45th Judicial District, Commonwealth of Pennsylvania
123 Wyoming Avenue
Scranton, Pennsylvania 18503
Judge

2001 – 2016
Munley, Munley & Cartwright P.C. (now Munley Law)
227 Penn Avenue
Scranton, Pennsylvania 18503
Partner (2012 – 2016)
Associate (2001 – 2012)

1995 – 1998; 1998 – 2001
Mazzoni & Karam Law Offices (now Mazzoni, Valvano, Szewczyk & Karam)
321 Spruce Street
Scranton, Pennsylvania 18503
Associate Attorney

1998 – 2001
Lackawanna County Area Agency on Aging
123 Wyoming Avenue
Scranton, Pennsylvania 18503
Solicitor – Elderly Law Project, Part-time

1998
Marshall, Dennehey, Warner, Coleman & Goggin
50 Glenmaura National Boulevard
Moosic, Pennsylvania 18507
Associate

1993 – 1995
Masterson, Braunfeld, Maguire & Brown (now The Masterson Braunfeld Law Firm)

600 Old Elm Street #200
Conshohocken, Pennsylvania 19428
Associate

1992 – 1993
The Honorable Stephen J. McEwen, Jr.
Superior Court of Pennsylvania Delaware County Courthouse
201 West Front Street
Media, Pennsylvania 19063
Law Clerk

1991 – 1992
Martson, Deardorf, Williams & Otto (now Martson Law Offices)
10 East High Street
Carlisle, Pennsylvania 17013
Law Clerk, Part-time

1991
Metzger, Wickersham, Knauss & Erb (now Metzger, Wickersham)
2321 Paxton Church Road
Harrisburg, Pennsylvania 17110
Summer Associate

1990
Office of the Attorney General, Commonwealth of Pennsylvania
Bureau of Consumer Protection
Strawberry Square
Harrisburg, Pennsylvania 17120
Summer Intern (Scranton office)

1988 – 1989
Munley, Mattise & Kelly (now Munley Law)
227 Penn Avenue
Scranton, Pennsylvania 18503
Paralegal

1988
Patrick Media Group
2101 Myrtle Street
Scranton, Pennsylvania 18510
Marketing and Advertising Intern

Other Affiliations (uncompensated)

2018 – present
Victim Service Advisory Committee

3101 North Front Street
Harrisburg, Pennsylvania 17110
Committee Member

2010 – present
St. Francis of Assisi Kitchen
500 Penn Avenue
Scranton, Pennsylvania 18503
Officer, Board Member

2008 – 2017
Heritage Valley Partners
213 Railroad Avenue
Scranton, Pennsylvania 18505
Board Member

2007 – 2017
Lackawanna Heritage Valley Authority
213 Railroad Avenue
Scranton, Pennsylvania 18505
Member, Officer, Board Member

1995 – 2001
The Association of Women Lawyers of Lackawanna County (now defunct)
Scranton, Pennsylvania
Officer, Member

1989
Women's Resource Center
P.O. Box 975
Scranton, Pennsylvania 18501
Crisis Counselor/Intern (Part-time)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Lackawanna Bar Association, Exemplary Service Award (2023)

Community Award for Outstanding Service and Efforts in Improving the Lives of Women and Children in Lackawanna County, The Lackawanna County Commission for Women (2019)

The Quiet Man Society, Woman of the Year (2019)

The Trial Lawyer Honor Society of the Litigation Council of America (2015)

Pennsylvania Magazine, Super Lawyer (2015)

National Association of Distinguished Counsel, Nation's Top One Percent (2015)

National Trial Lawyers Association, Top 100 Trial Lawyers in Pennsylvania (2015)

Federation of Democratic Women of Lackawanna County, Woman of the Year (2015)

NEPA Business Journal and Association of Women Business Owners, Top 25 Women in Business (2013)

Recognition for Dedication and Commitment in Representing Victim of World Trade Center Disaster before the September 11th Compensation Fund through Trial Lawyers Care, Presented by Trial Lawyers Care and The Association of Trial Lawyers of America (now American Association for Justice), Boston, Massachusetts (2004)

Business and Professional Women, District 8 Winner, Young Careerist (approximately 1997)

Lehigh University, Full Academic Scholarship, Master's in English Literature (1987)

Marywood College
Magna Cum Laude (1987)
Breslin Medal for Poetry (1987)
Award for Creative Writing (1987)
Lambda Iota Tau, Literary Honor Society (1987)
Delta Epsilon Sigma, Catholic Honor Society (1987)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Association of Trial Lawyers of America (2001 – 2016)

Association of Women Lawyers of Lackawanna County
President (1998)
Member (1995 – 2001)

Federal Bar Association

Lackawanna Bar Association
Executive Board, Member (2006 – 2010)
Civil Rules Committee, Member (2021 – present)
Committee to Study Courthouse History and Preservation, Member (2021 – present)
Induction Committee, Chair (2009 – present)
Lease Committee, Member (2009 – 2015)
Personnel Committee, Member (2009 – present)
Public Relations Committee, Member (2009 – 2013)
Legal Services (2016)
Pro Bono (2009 – 2015)

Lackawanna Pro Bono, Inc., Board of Directors, Board Member (2009 – 2014)

Luzerne Law and Library Association

Montgomery County Bar Association

Northeast Pennsylvania Trial Lawyers Association (2005)

Pennsylvania Bar Association
Civil Litigation Section, Member (2022)
Judicial Administration Committee, Member (2022)

Pennsylvania Commission on Crime and Delinquency
Victims' Services Advisory Committee, Member (2018 – 2023)
Services and Standards Subcommittee, Member (2018 – 2023)

Wilkes University Law School Initiative
Wilkes Advisory Board, Board Member (2004 – 2006)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 1992

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2005
United States Court of Appeals for the Third Circuit, 2001
United States District Court for the Middle District of Pennsylvania, 1992

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Archbald Eynon Lions Club, Member (2017 – present)

Circle 200, Member (2017 – present)

Clarks Summit Centennial Planning Committee (2011)
Co-Chair (2011)

Federation of Democratic Women of Lackawanna County (approximately 1998 – 2016)

Good Will Industries, Scranton, Board Member (2010 – 2016)

Heritage Valley Partners, Board Member (2008 – 2017)

Lackawanna College, Scranton, Pennsylvania, Board Member (approximately 2015 – 2021)

Lackawanna College President's Council (approximately 2014)

Lackawanna Heritage Valley Authority (2007 – 2017)
Chair (2015 – 2017)
Vice-Chair (2009)
Secretary (2008, 2010 – 2014)
Board Member (2007 – 2017)

Marywood University
Alumni Board Member (2010 – 2013)
Alumni Board Member (1999 – 2001)

Peckville Business and Professional Women, Member (1988 – 2000)

Penn State University, Scranton Campus, Scranton, Pennsylvania, Board Member (2019 – present)

St. Francis of Assisi Kitchen, Board Member and Former President (2010 – present)

The Society of Irish Women of Lackawanna County (2016 – 2018)

United Way, Transforming Children's Future Forum, Member (2019)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Circle 200 is a local chapter of a national organization of businesswomen that limits its membership to women. The Peckville Business and Professional Women's Organization was a local chapter of a national and statewide organization of businesswomen that limits its membership to women. The Lackawanna County Federation of Democratic Women is a local chapter of a national and statewide organization advocating for women's involvement in the election process and for promoting female candidates for office. Many of the events of this organization are open to all. There were no membership exclusions based on race, religion, or national origin for any of the above four organizations. To the best of my knowledge, none of the other organizations listed above currently discriminate or previously discriminated on the basis of race, sex, religion, or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply an electronic copy of all published material to the Committee.

Child Support Treatment Court Gives Parents a Second Chance, CHILD SUPPORT REPORT, OFFICE OF CHILD SUPPORT ENFORCEMENT, Vol. 41, No. 5 (May – June 2019). Copy supplied.

Culture Endures Campus Sex Assaults, THE SCRANTON TIMES (Apr. 19, 2015). Copy supplied.

We All Must Protect Children, Letter to the Editor, THE CITIZEN'S VOICE & SUNDAY VOICE (Apr. 17, 2014). Copy supplied.

Protect Children, Letter to the Editor, THE SCRANTON TIMES (Apr. 9, 2014). Copy supplied.

Silent Demon Too Often Preys in Pennsylvania, Guest Column, THE SCRANTON TIMES (Feb. 9, 2014). Copy supplied.

Aging Workers Drive Up Claims, Letter to the Editor, THE SCRANTON TIMES (Dec. 8, 2013). Copy supplied.

Aging Population Behind Rise in Social Security Disability Claims, NORTHEAST PENNSYLVANIA BUSINESS JOURNAL (Oct. 3, 2013). Copy supplied.

Talking 'Bout Their Generation, WOMEN TRIAL LAWYERS' CAUCUS NEWSLETTER (Fall 2013). Copy supplied.

Improve Care, THE SCRANTON TIMES TRIBUNE (Apr. 19, 2009). Copy supplied.

Subtle Sexism, Letter to the Editor, THE SUNDAY TIMES (Feb. 17, 2008). Copy supplied.

b. Supply an electronic copy of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply an electronic copy of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee (2018 – 2023)

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Feb. 8, 2022). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Services and Standards Subcommittee, Meeting Summary (Jan. 24, 2022). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Nov. 9, 2021). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Aug. 10, 2021). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (May 11, 2021). Copy supplied.

Letter from Mike Pennington, Executive Director, Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, to Pennsylvania President Judges Concerning Access to Court Proceedings and Rights of Victims During COVID Pandemic (Apr. 2021). Copy supplied.

Letter from John P. Delaney, Jr., Esq., and Mike Pennington, Chair and Executive Director, respectively, of the Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, to Pennsylvania District Attorneys Concerning Access to Court Proceedings and Rights of Victims During COVID Pandemic (Apr. 2021). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Feb. 9, 2021). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Nov. 10, 2020). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Aug. 11, 2020). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Nov. 12, 2019). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Aug. 6, 2019). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Services and Standards Subcommittee, Meeting Summary (July 12, 2018). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (May 15, 2018). Copy supplied.

Pennsylvania Commission on Crime and Delinquency, Victims' Services Advisory Committee, Meeting Summary (Feb. 13, 2018). Copy supplied.

Lackawanna Heritage Valley Authority Board Meetings

Letter from Julia K. Munley to Lackawanna County Commissioners, Resignation from the Lackawanna Heritage Valley Authority Board (Feb. 3, 2017). Copy supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 26, 2017). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 15, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 17, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Oct. 27, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 25, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jul. 21, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (June 23, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 26, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 24, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 25, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 28, 2016). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Community update (2016). Copy supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 17, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 19, 2015). Meeting

minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 27, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (June 25, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 28, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Apr. 23, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 26, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 26, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 22, 2015). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 18, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 20, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Oct. 23, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Sept. 25, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 22, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 27, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 23, 2014). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Oct. 24, 2013). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 22, 2013). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 28, 2013). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 28, 2013). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 24, 2013). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 13, 2012). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 15, 2012). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Sept. 27, 2012). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 24, 2012). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 26, 2012). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 17, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Oct. 27, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Sept. 22, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 25, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (June 23, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 26, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Apr. 28, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 24, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 24, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 27, 2011). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 18, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Oct. 28, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 26, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting, Minutes (July 22, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 27, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Apr. 22, 2010). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 3, 2010). Amended meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting, (Jan. 28, 2010). Second amended meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 17, 2009). Amended minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Nov. 19, 2009). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Sept. 24, 2009). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Aug. 27, 2009). Meeting

minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (July 23, 2009). Amended meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Apr. 23, 2009). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 5, 2009). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 22, 2009). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Dec. 18, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Sept. 25, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (June 26, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (May 22, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Apr. 24, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Mar. 27, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Feb. 28, 2008). Meeting minutes supplied.

Lackawanna Heritage Valley Authority, Board Meeting (Jan. 17, 2008). Meeting minutes supplied.

Heritage Valley Partners Board Meetings

Heritage Valley Partners, Board Meeting (Feb. 3, 2016). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Nov. 12, 2015). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Aug. 13, 2015). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Jun. 4, 2015). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Feb. 12, 2015). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Apr. 30, 2012). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Sept. 13, 2011). Meeting minutes supplied.

Heritage Valley Partners, Board Meeting (Dec. 8, 2010). Meeting minutes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 26, 2022: Panelist, "Civil Litigation Judicial Forum," National Business Institute, Scranton, Pennsylvania. During a virtual seminar before an audience of lawyers I discussed handling civil cases and some helpful tips for attorneys. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

August 11, 2021: Speaker, "Welcome Back to School Address - Helping Students Avoid Truancy During the Pandemic," Office of Youth and Family Services in conjunction with the school districts of Lackawanna County held at Carbondale High School, Carbondale, Pennsylvania. I addressed teachers and principals throughout Lackawanna County on how to encourage student attendance. I have no notes, transcript, or recording. The address of Office of Youth and Family Services is Lackawanna County Government Center, 123 Wyoming Avenue, Scranton, Pennsylvania 18503.

April 29, 2021: Panelist, "Effects of COVID-19 on Court Proceedings," Lackawanna Bar Association (virtual). I along with other panelists addressed the effects of COVID-19 on court hearings and court-related matters. I have no notes,

transcript, or recording. The address of the Lackawanna Bar Association is 233 Penn Avenue, Scranton, Pennsylvania 18503.

September 17, 2020: Guest Speaker, "Choosing Law as a Career," Criminal Justice Club, University of Scranton (virtual). I addressed the student Criminal Justice Club of the University of Scranton about my career in the law and my work as a judge. I have no notes, transcript, or recording. The address of the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

January 18, 2020: Speaker, "Remarks on Martin Luther King Jr. Day," Greater Scranton MLK Commission, Scranton, Pennsylvania. Remarks supplied.

December 6, 2019: Speaker, "Remarks on the Importance of Being a Lawyer," Lackawanna Bar Association Induction Ceremony for New Lawyers, Scranton, Pennsylvania. Remarks supplied.

September 2019 (specific date unknown): Panelist, "Civil Litigation Judicial Forum," Pennsylvania Bar Institute, Scranton, Pennsylvania. I addressed issues that come up in civil litigation before me. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

May 17, 2019: Presenter, "Mentoring," Lackawanna County Commission on Women legislative breakfast, Dunmore, Pennsylvania. Remarks supplied.

April 2019 (specific date unknown): Panelist, "Questions for Judges," National Court Appointed Special Advocate Forum (virtual). I, along with another judge, answered questions from attorneys and National CASA members regarding the use of special advocates by the court in family court proceedings. I have no notes, transcript, or recording. The address of National CASA is 100 West Harrison Street No. 500, Seattle, Washington 98119.

August 22, 2018: Speaker, "Welcome Back to School Address - Helping Students Avoid Truancy," Office of Youth and Family Services in conjunction with the school districts of Lackawanna County, Moosic, Pennsylvania. Remarks supplied.

July 2018 (specific date unknown): Panelist, "Ethics and Civility in Court Proceedings," Pennsylvania Conference of State Trial Judges, Hershey, Pennsylvania. I addressed issues concerning lawyers and civility in court proceedings before an audience of trial judges. I have no notes, transcript, or recording. The address of the Pennsylvania Conference of State Trial Judges, Administrative Offices of Pennsylvania Courts is 601 Commonwealth Avenue, #1500, Harrisburg, Pennsylvania 17120.

July 2018 (specific date unknown): Panelist, "A Judge's Perspective: How to be an effective advocate in court," Young Lawyers Division of the Pennsylvania Bar

Association, Penn State University. I addressed young lawyers about what I learned as a trial lawyer and what I observed as a trial court judge as to how to be an effective advocate in court in terms of trial advocacy, preparation and working with your client. I have no notes, transcript, or recording. The address of the Young Lawyers Division of the Pennsylvania Bar Association is 100 South Street, Harrisburg, Pennsylvania 17101.

June 19, 2018: Panelist, "The Protection from Abuse Act: For Neophytes & Know-Hows," Lackawanna Pro Bono and Lackawanna Bar Association, Scranton, Pennsylvania. I addressed the legal procedures in filing and proceeding on a Petition for Protection from Abuse before an audience of local attorneys. I have no notes, transcript, or recording. The address of the Lackawanna Bar Association is 233 Penn Avenue, Scranton, Pennsylvania 18503.

March 16, 2018: Presenter, "Address to Social Workers," Hospice of the Sacred Heart Center for Education, Moosic, Pennsylvania. Remarks and press coverage supplied.

September 11, 2017: Speaker, "Remarks on 9/11 Anniversary," September 11th Anniversary, Scranton, Pennsylvania. Remarks and press coverage supplied.

July 16, 2017: Participant, Annual Addiction Awareness Rally, Forever Sammi Foundation, Scranton, Pennsylvania. This is an annual event held in honor of Sammi Henehan who lost her battle with addiction. I attended the event. I have no notes, transcript, or recording, but press coverage is supplied. The Lackawanna County Courthouse Square is at and bordered by Washington Avenue, Linden Street, Adams Avenue, and Spruce Street in downtown Scranton, Pennsylvania 18503.

May 2017 (specific date unknown): Volunteer Judge, "High School Student Ambassador Program," the University of Scranton, Scranton, Pennsylvania. I served on a volunteer panel of judges for a high school legislative advocacy competition hosted by State Senator John Blake. There are no notes, transcript, or recording, but press coverage is supplied. The address of the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

May 2017 (specific date unknown): Panelist, "The Effects of Opioids," The Lackawanna County Commission for Women, Scranton, Pennsylvania. Copy supplied.

May 2017 (specific date unknown): Guest Lecturer, "Process of Becoming a Judge," American Courts Class, University of Scranton, Scranton, Pennsylvania. I addressed students in the American Courts class at the University of Scranton and discussed the process I went through to become a judge and my day-to-day work as a trial court judge. I have no notes, transcript, or recording. The address of the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

April 20, 2017: Presenter, "Projecting Sincerity in Communications," Scranton Chamber of Commerce, NEPA Women's Leadership Conference, Emerging Professionals, Plains, Pennsylvania. Remarks supplied.

April 2017 (specific date unknown): Panelist, "Views from the Bench – Civil Litigation," NEPATLA, Committee for Justice for All, Plains, Pennsylvania. I addressed an audience of local lawyers and answered questions concerning issues that arise in civil litigation and court proceedings. I have no notes, transcript, or recording. The address of NEPATLA, Committee for Justice for All, is 200 Franklin Avenue, Scranton, Pennsylvania 18503.

February 22, 2017: Panelist, "A Roundtable Discussion on Addiction Issues from the Court's Perspective," Families Helping Families, Abington Community Library, Clarks Summit, Pennsylvania. I discussed addiction issues from the court's perspective. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Abington Community Library is 1200 West Grove Street, Clarks Summit, Pennsylvania 18411.

February 2017 – February 2023: Volunteer Judge, Region 10, District 1 Statewide High School Mock Trial Championships. I have served each year since I became a judge as a volunteer judge for the local high school mock trial competition sponsored by the Pennsylvania Bar Association Young Lawyers Division, sitting either in the Lackawanna County Courthouse or the William J. Nealon Federal Building and U.S. Courthouse. I have no notes, transcripts, or recordings. The address of the Lackawanna County Courthouse is 200 North Washington Avenue, Scranton, Pennsylvania 18503 and the address of the U.S. Courthouse is 235 North Washington Avenue, Scranton, Pennsylvania 18503.

January 16, 2017: Speaker, Martin Luther King Jr. Day Annual Walk, Scranton, Pennsylvania. I gave remarks inside the county courthouse following the annual march down North Washington Avenue in Scranton to commemorate Martin Luther King Jr. Day. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Lackawanna County Courthouse is 200 North Washington Avenue, Scranton, Pennsylvania 18503.

December 7, 2016: Speaker, "Remarks on Pearl Harbor," Pearl Harbor 75th Anniversary, Scranton, Pennsylvania. Remarks and press coverage supplied.

September 2016 (specific date unknown): Panelist, "Protection from Abuse Cases, Procedures from the Court's Perspective," Lackawanna Bar Association, Lackawanna Pro Bono, Scranton, Pennsylvania. I addressed the procedures in Protection from Abuse cases from the court's perspective. I have no notes, transcript, or recording. The address of the Lackawanna Bar Association is 233 Penn Avenue, Scranton, Pennsylvania 18503.

September 5, 2016: Speaker, "Remarks on the Importance of Labor Day," Labor Day, John Mitchell Statue, Courthouse Square, Scranton, Pennsylvania. Remarks supplied.

August 2, 2016: Speaker, "Remarks at Swearing In," Court of Common Pleas of Lackawanna County, Scranton, Pennsylvania. Remarks and press coverage supplied.

February 2, 2016: Volunteer Juror, Region 10, District 1 Statewide High School Mock Trial Championships. I served as part of the jury for the local high school mock trial competition sponsored by the Pennsylvania Bar Association Young Lawyers Division. I have no notes, transcript, or recording, but press coverage is supplied. The address of the William J. Nealon Federal Building and United States Courthouse is 235 North Washington Avenue, Scranton, Pennsylvania 18503.

October 2015 (specific date unknown): Presenter, "Civil Litigation Update," Bench Bar Conference, Lackawanna Bar Association, Scranton, Pennsylvania. I addressed members of our local bar about recent cases that pertain to civil litigation. I have no notes, transcript, or recording. The address of the Lackawanna Bar Association is 233 Penn Avenue, Scranton, Pennsylvania 18503.

November 2013 (specific date unknown): Presenter, "Tractor-Trailer Litigation and Discovery," New Jersey Association of Justice, New Jersey Trial Lawyers, East Rutherford, New Jersey. I addressed New Jersey trial lawyers at their fall seminar on the topic of tractor-trailer litigation and pitfalls in discovery. I have no notes, transcript, or recording. The address of the New Jersey Association of Justice, New Jersey Trial Lawyers is 150 West State Street, Trenton, New Jersey 08608.

September 2013 (specific date unknown): Presenter, "Tractor Trailer Litigation and Discovery," ATLAS, Fort Lauderdale, Florida. I discussed tractor-trailer litigation and pitfalls in discovery. I have no notes, transcript, or recording. The mailing address of ATLAS is Munley Law, 227 Penn Avenue, Scranton, Pennsylvania 18503.

September 2011 (specific date unknown): Presenter before an audience of Marywood University alumni, Scranton, Pennsylvania. I addressed the topic of identity theft and how consumers can protect themselves. I have no notes, transcript, or recording. The address of the Nazareth Student Center at Marywood University is 1300 University Avenue, Scranton, Pennsylvania 18509.

June 4, 2011: Presenter with Elizabeth Connery, "Legal Issues in the 21st Century 101: How to Protect Yourself and How to Create Your Personal Estate Plan," Marywood University Alumni Weekend, Scranton, Pennsylvania. I was asked to speak about the importance of estate planning at an alumni luncheon. I have no

notes, transcript, or recording, but press coverage is supplied. The address of the Nazareth Student Center at Marywood University is 1300 University Avenue, Scranton, Pennsylvania 18509.

October 26, 1998: Speaker, "Remarks and Introduction of Judge James M. Munley." Remarks supplied.

Additionally, in my capacity as a judge I have occasionally administered oaths of office for local officials. At each occasion, my involvement has been limited to conducting the swearing-in, without additional remarks. I have no notes, transcripts, or recordings of these events, but representative press coverage is supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Cody Butler, *Breaking Barriers: Marion Munley part of 'Distinguished Citizens Memorial of Lackawanna County,'* WBRE 28 / WYOU 22 Eyewitness News (Oct. 15, 2021). Copy supplied and video clip available at https://www.pahomepage.com/news/breaking-barriers-marion-munley-part-of-distinguished-citizens-memorial-of-lackawanna-county.

David Singleton, *U.S. District Judge James Munley Dies at Age 83*, The Citizens' Voice (Mar. 23, 2020). Copy supplied.

Stacy Lange, *New Court Program Offers Treatment in Lackawanna County*, WNEP 16 ABC (Feb. 15, 2019). Copy supplied and video available at https://www.wnep.com/article/news/local/lackawanna-county/new-court-program-offers-treatment-in-lackawanna-county/523-5c2ed65c-c9fd-4a2c-96ac-a44c5e87bab5 (article and video) and https://www.wnep.com/video/news/local/lackawanna-county/new-court-program-offers-treatment-in-lackawanna-county/523-b9603030-d2f4-4561-94d5-7aebaad43f88 (video only).

Kyle Wind, *Longtime Lackawanna Heritage Valley Authority Director to Retire*, THE SCRANTON TIMES-TRIBUNE (Feb. 6, 2017). Copy supplied.

Joseph Butash, *Julia Munley Appointed Interim County Judge*, CBS-WYOU EYEWITNESS NEWS, (June 30, 2016). Copy supplied.

Roderick Random, *Lawyers Plead Ignorance but Can't Swear to It*, SCRANTON TIMES-TRIBUNE (June 25, 2016). Copy supplied.

Clayton Over, *Contributors to St. Francis of Assisi Kitchen Honored*, The

Scranton Times-Tribune (Apr. 21, 2016). Copy supplied.

Jeff Horvath, *Lackawanna Heritage Valley Awards Mini-Grants*, THE SCRANTON TIMES-TRIBUNE (Dec. 18, 2015). Copy supplied.

Jim Lockwood, *Run Against Hunger in Scranton*, THE SCRANTON TIMES-TRIBUNE (Nov. 15, 2015). Copy supplied.

Valerie Tysanner, *23rd Annual Hook O'Malley 5K Against Cancer*, CBS-WYOU EYEWITNESS NEWS (Aug. 23, 2015). Copy supplied.

Jon Meyer, *New Nature Playground Opens in Scranton*, ABC - 16, WNEP (July 27, 2015). Copy supplied.

Jim Lockwood, *Dispute Stalled Carbondale Riverwalk Trail*, THE SCRANTON TIMES-TRIBUNE (June 25, 2015). Copy supplied.

Tri-County Independent, *Paying Tribute to The Past While Leading into the Future* (Mar. 18, 2015). Copy supplied.

Peggy Lee, *$2 Million Settlement Reached in Pedestrian Wrongful Death Lawsuit*, WNEP 16 ABC (Aug. 28, 2014). Copy supplied.

Stacy Lange, *Bakeries Busy Before Christmas*, ABC - 16 WNEP (Dec. 24, 2013). Copy supplied.

Terrie Morgan-Besecker, *Former Student Sues Teacher Accused of Sexually Assaulting Her*, THE SCRANTON TIMES-TRIBUNE (Scranton, PA) (Nov. 27, 2013). Copy supplied.

Rebekah Brown, *Kingsley Woman Sues Neighbors After She Is Shot*, THE SCRANTON TIMES-TRIBUNE (Nov. 14, 2013). Copy supplied.

Rebekah Brown, *St. Francis of Assisi Kitchen Thanks Supporters with Reception*, THE SCRANTON TIMES-TRIBUNE (Apr. 18, 2013). Copy supplied.

Jennifer Butler, *A Person Who Strives to be Genuine*, NORTHEAST PENNSYLVANIA BUSINESS JOURNAL (March 1, 2013). Copy supplied.

Terrie Morgan-Besecker, *Parents of Girl Sue Over Injuries*, THE SCRANTON TIMES LEADER (Feb. 12, 2013). Copy supplied.

Bright Moments in History, THE TIMES LEADER (Wilkes-Barre, PA) (Aug. 31, 2011). Copy supplied.

On August 27, Centennial Day got underway with a Promenade along Spring

Street at 11 a.m., THE TIMES LEADER (Wilkes-Barre, PA) (Aug. 31, 2011). Copy supplied.

Riley Yates, *Teen in '06 Wreck Wins Jury Award*, THE MORNING CALL (Allentown, PA) (Oct. 1, 2010). Copy supplied.

Michael Buffer, *County Employee Receives at Least $10K in Workers Comp. While on Job*, THE CITIZENS' VOICE (June 16, 2010). Copy supplied.

WYOU - WBRE, Interview with television station regarding student at Scranton Preparatory School sanctioned for particular activity (approximately 2009 – 2010). I am unable to locate a transcript or recording.

Munley: Judge Called a Sensitive, Patient Man, THE CITIZENS' VOICE (Apr. 1, 2007). Copy supplied.

Munley Law Video Advertorials

While in private practice, I participated in a series of online marketing videos for Munley Law on various legal topics. Below is a list of the recordings in which I believe I participated along with URLs for the videos I am able to locate.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Julia Munley Pennsylvania Injury Lawyer* (Dec. 16, 2013). Video available at https://www.youtube.com/watch?v=2h0vySpZhgI.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Munley Minutes Nursing Home* (Aug. 15, 2013). I am unable to locate the video.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Munley Minutes Drunk Driver Accident* (Aug. 15, 2013). I am unable to locate the video.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Munley Minutes Car Accident* (Aug. 15, 2013). I am unable to locate the video.

Mary Cary's Go Media Marketing, Munley Law, *Preventable Construction Accidents – Have you Been Injured in One?* (Aug. 3, 2012). Video available at https://www.youtube.com/watch?v=ovnbzOi-jAY.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Julia Munley Explains Social Security Income* (Aug. 3, 2012). Video available at https://www.youtube.com/watch?v=pr-NNp1-gL4.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *Medical Mistakes that Could Warrant a Medical Malpractice Suit* (Aug. 3, 2012). Video available at https://www.youtube.com/watch?v=zAa48DCVVUs.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *What is a Fracking Accident?* (Aug. 3, 2012). Video available at https://www.youtube.com/watch?v=UVUjxeRX3xM.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *What Should You Do After You Have Been Injured on The Job*? (July 27, 2012). Video available at https://www.youtube.com/watch?v=DLxQ3B3hGEs.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *What should you do after a Car Accident?* (July 27, 2012). Video available at https://www.youtube.com/watch?v=Otda4n78O5I.

Mary Cary's Go Media Marketing, Munley Law Video Advertorial, *What Causes "Fracking Accidents"?* (July 27, 2012). Video available at https://www.youtube.com/watch?v=burLVNYyEwc.

FacesMedia Video Advertorial, Munley Law Video Advertorial, *Motor Vehicle Accident Lawsuits in Pennsylvania* (2007). Video available at https://www.youtube.com/watch?v=QAZy9IcRcSY.

FacesMedia Video Advertorial, Munley Law Video Advertorial, *Car Accident Lawsuits in Pennsylvania* (2007). Video available at https://www.youtube.com/watch?v=hoZ1PrFflnY.

FacesMedia Video Advertorial, Munley Law Video Advertorial, *Workers' Compensation Attorneys in Pennsylvania* (2007). Video available at https://www.youtube.com/watch?v=3m8SJVG9hGc.

FacesMedia Video Advertorial, Munley Law Video Advertorial, *Pennsylvania Personal Injury Law Firm* (2007). Video available at https://www.youtube.com/watch?v=dQi-t_syEOU.

FacesMedia Video Advertorial, Munley Law Video Advertorial, *Medical Malpractice Lawsuits in Pennsylvania* (2007). Video available at https://www.youtube.com/watch?v=2ue6X52IGr4.

Evening News "The Law and You" Appearances

From March 2005 through March 2009, I regularly appeared on a local evening news broadcast, CBS - 22 WYOU, in a segment called "The Law and You." I served as a Legal Analyst with members of my law firm, Munley Law. Members of the public would either call, write, or email the television station questions on various legal topics, including on child custody, contracts, Social Security, auto accidents, and estate issues. Below is a list of all the appearances to the best of my recollection, and I have attached partial transcripts of as many appearances as I

am able to locate.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Mar. 20, 2009. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Mar. 19, 2009. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Mar. 12, 2009. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Feb. 19, 2009. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Feb. 18, 2009. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Jan. 30, 2009. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Jan. 23, 2009. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Dec. 17, 2008. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Dec. 16, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Dec. 14, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Nov. 25, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Oct. 23, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Oct. 9, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 30, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 12, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 10, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Aug. 13, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Aug. 7, 2008. Transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), July 15, 2008. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), July 14, 2008. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Oct. 11, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Oct. 5, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 26, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 18, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Sept. 8, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), June 14, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Apr. 12, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), Feb. 15, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), Jan. 25, 2006. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), Nov. 16, 2005. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), July 20, 2005. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), May 11, 2005. Partial transcript supplied.

"The Law and You," *Evening News*, CBS – 22 WYOU (Wilkes Barre-Scranton, PA), Apr. 19, 2005. Partial transcript supplied.

"The Law and You," *Evening News*, CBS - 22 WYOU (Wilkes Barre-Scranton, PA), Mar. 23, 2005. Partial transcript supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a judge on the Lackawanna County Court of Common Pleas, 45th Judicial District, in Scranton, Pennsylvania, since June 2016. I was appointed to the court by Governor Tom Wolf, and was then elected on November 7, 2017, to a ten-year term.

The Lackawanna County Court of Common Pleas is a trial court of general jurisdiction with original jurisdiction over cases not assigned by law to another court and with appellate jurisdiction over judgments from magisterial courts. I was initially assigned to family court. Currently, I handle civil and family court matters. Periodically, I am also assigned criminal cases.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 57 trials.

i. Of these, approximately what percent were:

jury trials:	9%
bench trials:	91%

ii. Of these, approximately what percent were:

civil proceedings:	95%
criminal proceedings:	5%

b. Provide citations for all opinions you have written, including concurrences and dissents.

SMS Financial CH, LLC v. Bolus, 2017-CV-522 (C.P. Lacka. Cnty. Apr. 29, 2022), *aff'd*, 287 A.3d 876 (Table), 2022 WL 10357413 (Pa. Super. Ct. Oct. 18,

2022) (trial court opinion adopted)

Sandrowicz v. Sparaney, 2018-FC-41633 (C.P. Lacka. Cnty. Mar. 11, 2022), *aff'd*, 300 MDA 2022, 2023 WL 2359817 (Pa. Super. Ct. Mar. 6, 2023), *petition for allowance of appeal pending*, 196 MAL 2023 (Pa.)

Jones v. Jones, 2018-FC-40937 (C.P. Lacka. Cnty. Jan. 14, 2022), *aff'd*, 1647 MDA 2021, 2022 WL 1210673 (Pa. Super. Ct. Apr. 25, 2022)

Pilchesky v. Off. of Adult Probation Lacka. Co., 2021-CV-103 (C.P. Lacka. Cnty. Sept. 30, 2021), *aff'd*, 283 A.3d 905 (Table), 2022 WL 2840511 (Pa.Commw. Ct. July 21, 2022)

Fick v. Fick, 2011-FC-41281 (C.P. Lacka. Cnty. Sept. 9, 2021), *aff'd*, 287 A.3d 845 (Table), 535 MAL 2022 (Pa.)

Janiszewski v. Millville Mut. Ins. Co., 2021-CV-839, 2021 WL 2367932 (C.P. Lacka. Cnty. June 2, 2021)

Kadtka v. 81 Keystone, LLC, 2019-CV-7109, 2021 WL 1877488 (C.P. Lacka. Cnty. May 6, 2021)

Ovens v. Ovens, 2014-CV-40988 (C.P. Lacka. Cnty. Apr. 6, 2021), *aff'd, J.E.O. v. T.O.*, 262 A.3d 583, 2021 WL 3855799 (Pa. Super. Ct. Aug. 30, 2021)

Lackawanna County v. Correctional Care, Inc., 2021-CV-147, 2021 WL 1115282 (C.P. Lacka. Cnty. Feb. 5, 2021), *aff'd*, 274 A.3d 778, 2022 WL 468540 (Pa. Commw. Ct. Feb. 16, 2022)

C.L. v. M.P., 2019-FC-41210, (C.P. Lacka. Cnty. Dec. 17, 2019), *aff'd*, (Pa. Super. Ct. July 8, 2020), *rearg. granted*, (Aug. 25, 2020), *aff'd in part, rev'd in part*, 255 A.3d 514 (May 26, 2021) (sealed trial court record)

Cascades Tissue Group v. Reading Blue Mtn. & N. R.R. Co., 2018-CV-3021, 2019 WL 8643859 (C.P. Lacka. Cnty. Aug. 8, 2019)

B.V. o/b/o/ T.V., a Minor v. J.W., 2019-FC-41660 (C.P. Lacka. Cnty. June 9, 2019), *aff'd*, 746 MDA 2020 (Pa. Super. Ct. Sept. 22, 2020), 240 A.3d 953, 2020 WL 5641249 (trial court opinion attached to appellate opinion)

Sands v. Hamilton, 2013-CV-55, 2018 WL 6004360 (C.P. Lacka. Cnty. Nov. 5, 2018)

Trunov v. Liberty Mut. Ins. Co., 2016-CV-6199, 2018 WL 5046491 (C.P. Lacka. Cnty. Aug. 31, 2018)

Cascades Tissue Group v. Reading Blue Mtn. & N. R.R. Co., 2018-CV-3021, 2018 WL 10705097 (C.P. Lacka. Cnty. Aug. 14, 2018), *appeal discontinued*, 1166 MDA 2018 (Pa. Super. Ct. Aug. 14, 2018)

Jablonowski v. Jablonowski, 2012-FC-40822 (C.P. Lacka. Cnty. May 23, 2018), *aff'd*, 1481 MDA 2018, 2019 WL 3231726 (Pa. Super. Ct. July 17, 2019) (trial court opinion attached to appellate opinion)

In RE: M.M.-A., 35-DP-154-2016 (C.P. Lacka. Cnty. July 7, 2017), *aff'd*, 928 MDA 2017, 2017 WL 5953545 (Pa. Super. Ct. Dec. 1, 2017) (trial court opinion attached to appellate opinion)

Panek v. Panek, 16-DR-0250 (C.P. Lacka. Cnty. Feb. 2, 2017), *aff'd*, 2017 WL 2378302 (Pa. Super. Ct. June 1, 2017) (trial court opinion adopted)

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *PPL Electric Utility Corp. v. Judge*, 2021-CV-4966 (C.P. Lacka. Cnty. Mar. 24, 2022). Order and Opinion supplied.

An electric utility filed a motion for a preliminary injunction seeking to enforce two different right-of-way agreements against a landowner as part of a planned infrastructure upgrade. This matter involved an agricultural parcel and a separate residential parcel in a mountainous area, where the landowner resided with his wife and children. The electric utility asserted that it had the right to access, from a township road, its power lines on the agricultural parcel. However, the electric utility also asserted rights to traverse over the residential parcel to access and construct on the right-of-way on the agricultural parcel. The landowner testified that the proposed construction activities would risk injury to his family and his animals and would disrupt his home-based small business. The right-of-way agreements themselves were executed by the predecessor utility and previous landowners in the 1920s and the agreement governing the residential parcel was once part of a much larger tract. After a hearing where the parties took different positions on the language of the right-of-way agreements and after a complicated series of land transactions were reviewed, I granted the utility's injunctive relief in part and denied in part. One right-of-way agreement granted the utility the right to access and reconstruct its power lines on the agricultural parcel from a township road. The other right-of-way agreement granted the utility the right to enter upon a specifically delineated area that was now on a neighboring parcel, not the landowner's residential parcel. As such, I determined that the utility was unlikely to succeed on the merits as to its claim for ingress and egress over the residential parcel, but was likely to succeed on the merits as

to its rights over the agricultural parcel. The other factors governing injunctive relief weighed against access through the residential parcel but weighed in favor of access through the agricultural parcel. The injunction, as issued, prevented the landowner from interfering with the utility's rights to reconstruct the transmission lines on the agricultural parcel or its rights to enter the right-of-way from the property of a neighboring landowner or from the township road. However, I denied the utility's request for an injunction regarding ingress and egress through the residential parcel. The utility was also required to post a $100,000 injunction bond as the result of testimony by the landowner that the utility's previous vegetation management activities interfered with his ability to grow corn on the agricultural parcel.

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2. *Jackson v. Lead Intelligence d/b/a Jornaya*, 2020-CV-3695 (C.P. Lacka. Cnty. Nov. 16, 2021), *appeal discontinued*, 1325 MDA 2021 (Pa. Super. Ct. Nov. 22, 2022). Opinion supplied.

This matter involved a proposed class action against a developer of lead generation software for websites alleging violations of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S. § 5701, *et seq.* Plaintiff alleged that the lead generation software began recording her interactions with the website from the moment she started browsing and before she could assent to any terms and conditions of the website. Defendant filed preliminary objections to Plaintiff's complaint asserting that, based on Pennsylvania law and decisions from the Third Circuit Court of Appeals and from various United States District Courts, Plaintiff's claims were legally insufficient. I denied Defendant's preliminary objections. Following the close of pleadings and with discovery responses pending to Plaintiff, Defendant filed a motion to compel arbitration and a motion to stay, arguing that the matter should be submitted to binding arbitration pursuant to the website terms of service maintained by the third-party website operator. I denied Defendant's motions, determining that Defendant availed itself of the judicial process in the Lackawanna County Court of Common Pleas and only moved to compel

arbitration after receiving an adverse ruling on its preliminary objections seeking to dismiss the complaint. Defendant had also filed a responsive pleading asserting nine affirmative defenses but did not raise the existence of the arbitration clause despite reference to the website terms and conditions. I determined, based on precedent from the Superior Court of Pennsylvania, that Defendant waived any claim to arbitration by not asserting its right through preliminary objections or in raising affirmative defenses. I also determined that the website terms were available to both parties at all relevant times and that Defendant had previously attached exhibits containing other website terms in support of its preliminary objections and cited the website terms in its answer and new matter. I noted as well that compelling arbitration at that stage would have unfairly disadvantaged Plaintiff and given Defendant an undue advantage by precluding the parties from being heard on whether Defendant waived the arbitration clause's class action waiver. The Defendant then appealed my decision to the Pennsylvania Superior Court and later discontinued the appeal as the parties settled the matter.

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3. *PSN Realty, Inc. v. City of Scranton, et al.*, 2021-CV-1832 (C.P. Lacka. Cnty.); *PSN Realty, Inc. v. City of Scranton, et al.*, 2021-CV-1840 (C.P. Lacka. Cnty.)

PSN Realty Inc. filed petitions for preliminary injunctions against the City of Scranton to stop demolition of two properties, one in a residential neighborhood and one in a mixed residential and commercial district. I held a hearing on the two matters. The City of Scranton responded during the hearing with evidence that the properties were long-blighted and that Plaintiff had failed to take the appropriate legal steps at the appropriate times over the previous years to challenge the condemnation and demolition of the structures such that it was unlikely that the Plaintiff would prevail on the merits of its claims. I denied the petitions for preliminary injunctions as Plaintiff had not established all required elements to obtain the preliminary injunctions, specifically Plaintiff's likelihood of success on the merits.

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Counsel for Defendant:
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4. *Lackawanna County v. Correctional Care, Inc.*, 2021-CV-147, 2021 WL

1115282 (C.P. Lacka. Cnty. Feb. 5, 2021), *aff'd*, 274 A.3d 778, 2022 WL 468540 (Pa. Commw. Ct. Feb. 16, 2022)

Lackawanna County filed an application for a mandatory preliminary injunction against the former medical services provider for Lackawanna County Prison, seeking to enforce a provision in their agreement that Defendants would secure tail insurance to cover medical malpractice claims. Under the insurance contract, only Defendants could secure the tail insurance to cover both parties after the agreement between the parties ended. Defendants refused to comply with the agreement and purchase the tail insurance to cover these claims. The matter went to a full hearing before me. I found that the Plaintiff established a clear right to mandatory injunctive relief. Specifically, Plaintiff proved the following: that it would sustain immediate and irreparable harm if the injunction was not issued as a lack of the tail insurance would expose both parties to unlimited number of potential claims without insurance coverage such that the harm would be irreversible once the deadline to procure the insurance passed; that greater harm would occur in refusing to issue the injunction as it would leave the county open to innumerable medical malpractice claims without insurance coverage resulting in a risk in the county's insolvency and/or loss of services to the detriment of the citizens of Lackawanna County; that entry of the injunction would restore the parties to their status quo prior to Defendants' refusal to obtain tail insurance as the parties were previously covered by insurance for professional liability claims; their likelihood of success on the merits, that the Defendants violated the agreement by not procuring the tail insurance and further that Plaintiff did not have an adequate remedy at law as the damages the county would incur if such claims became judgments was not able to be adequately computed or ascertained; that issuance of the injunction was reasonably suited to abate the offending activity; and lastly that the injunction would not adversely affect the public interest since denying the Plaintiff's prayer for relief would potentially jeopardize county services to the public and risk potential insolvency of the county. As such, I granted the preliminary injunction. Defendants appealed the decision to the Commonwealth Court and my decision was affirmed.

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Counsel for Defendant:
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5. *B.V. o/b/o/ T.V., a Minor v. J.W.*, 2019-FC-41660 (C.P. Lacka. Cnty. June 9, 2019), *aff'd*, 746 MDA 2020 (Pa. Super. Ct. Sept. 22, 2020), 240 A.3d 953, 2020 WL 5641249 (trial court opinion attached to appellate opinion).

Father filed a petition for protection from abuse on behalf of his minor child against mother's fiancé related to a contentious dispute over physical custody between the father and mother. A Guardian ad Litem was appointed to represent the minor child's best interest and the minor child was interviewed at a children's advocacy center as part of a law enforcement investigation. The case went to a full hearing before me. I found that the father failed to sustain his burden of proof with competent, credible evidence to justify an order of protection, and therefore denied his petition. My decision was then appealed to the Pennsylvania Superior Court, which affirmed.

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Guardian ad Litem for Minor Child:
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6. *Crispino v. Harding*, 2018-FC-41401 (C.P. Lacka. Cnty. Apr. 29, 2019)

Plaintiff filed a petition for protection from abuse which involved allegations of stalking and harassment by a former romantic partner who was a detective. The matter was vigorously contested and proceeded to a full hearing before me. Sufficient evidence was presented by the plaintiff to warrant imposition of a three-year protection from abuse order, which I therefore granted.

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Counsel for Defendant:
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Joe D'Andrea Attorney at Law
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7. *Commonwealth v. Efthimou*, 2018-CR-853 (C.P. Lacka. Cnty.)

Mr. Efthimiou was charged by the Pennsylvania Attorney General with involuntary deviate sexual intercourse relative to alleged incidents occurring while he was a corrections officer at Lackawanna County Prison. Upon agreement of the Commonwealth and the defendant, Mr. Efthimiou pled *nolo contendere* to one count of official oppression, a misdemeanor, and all other charges were withdrawn by the Commonwealth. At the plea hearing, the victim was present with her private counsel. The Commonwealth and the defense requested an immediate sentence. The victim through her attorney objected to an immediate sentence and requested a full opportunity to address the court. I denied the request for an immediate sentence and ordered a presentence investigation and a sentencing hearing. I indicated that the victim would be given a full opportunity to be heard through her communication with the probation office during the presentence investigation and through her oral statement at the time of sentencing if she wished. However, the victim ultimately chose neither. I sentenced Mr. Efthimiou to the maximum sentence allowed under the sentencing guidelines, 24 months of probation. I also added 100 hours of community service to his sentence.

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8. *Commonwealth v. Johnson*, 2018-CR-638 (C.P. Lacka. Cnty.)

Mr. Johnson was charged by the Pennsylvania Attorney General with institutional sexual assault, involuntary deviate sexual intercourse, indecent assault, and harassment relative to alleged incidents occurring while he was a corrections officer at Lackawanna County Prison. The Commonwealth filed pretrial motions seeking to admit evidence of other crimes or acts pursuant to Pa. R. Evid. 404(b) for the purpose of proving motive, intent, plan, or absence of mistake, including a request to admit testimony of other victims. I granted the Commonwealth's request for one of the victims to testify as I found that the circumstances were substantially similar to and consistent with the instant case. I denied the request to admit testimony of another victim, however, as I found the circumstances not substantially similar to or consistent with the instant case. On another issue in the Commonwealth's motion, I granted their request and permitted prior testimony of a deceased victim, who had been murdered in an unrelated matter during the pendency of the instant case, finding that the deceased victim had fully testified at the preliminary hearing in the instant case and that defense counsel had a full and fair opportunity to cross examine her and did in fact cross examine her at that time.

Closer to trial, defense counsel filed motions *in limine*, the most significant of which was a motion to preclude testimony of an expert witness, a forensic psychologist who was offered by the Commonwealth to explain how victims react in terms of reporting their victimization and to testify about the reporting delay in the instant case. I denied the defense motion. I allowed the psychologist to testify and ordered the Commonwealth to immediately tender to the defense the psychologist's report and *curriculum vitae*, before testimony. Mr. Johnson was acquitted by the jury after a four-day trial.

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Counsel for Defendant:
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9. *Commonwealth v. McHale*, 2018-CR-780 (C.P. Lacka. Cnty.)

Mr. McHale was charged by the Pennsylvania Attorney General with institutional sexual assault and indecent assault relative to alleged incidents occurring while he was a corrections officer at Lackawanna County Prison. The Commonwealth filed a motion to admit certain evidence of other crimes pursuant to Pa. R. Evid. 404(b) for the purpose of proving motive, intent, plan, or absence of mistake. The Commonwealth's evidence concerned testimony from other victims of sexual assault by defendant. The Commonwealth withdrew their request for the testimony of one victim. As to another victim, I denied their request, finding the proposed testimony inadmissible as it was too remote in time with circumstances too dissimilar from the instant case.

Defense counsel filed motions to compel the Commonwealth to immediately produce before trial the criminal record of the victim along with non-medical and medical prison records of the victim. I granted the motions to compel the criminal record and the non-medical records but I denied their request for medical records. Defense counsel also requested transcripts of any testimony in the Commonwealth's possession of any other alleged victim. I granted the request to the extent that the Commonwealth was in possession of same. Reciprocally, I ordered defense counsel to provide the Commonwealth with copies of any transcripts in their possession concerning any other alleged victim. Other motions by defense counsel included requests for specific information about the prison cell, an inspection of the prison block and cell, and a jury view of the cell block and the actual cell. I granted the motions requesting information about the cell and allowed an inspection. I denied the defense request for a jury view as I concluded it would be too disruptive and a security concern. All documents and information which I allowed through the motions were ordered to be immediately turned over. Mr. McHale was acquitted by the jury after a four-day trial.

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Counsel for Defendant:
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10. *In RE: M.M.-A.*, 35-DP-154-2016 (C.P. Lacka. Cnty. July 7, 2017), *aff'd*, 928 MDA 2017, 2017 WL 5953545 (Pa. Super. Ct. Dec. 1, 2017)

The Lackawanna County Office of Youth and Family Services ("OYFS") filed a dependency petition in regard to the minor child and her sibling alleging a lack of parental care and control under the Juvenile Act. OYFS also petitioned for a finding of abuse against the parents under the Child Protective Services Law. The minor child was initially removed from the parents' home and was alleged to have sustained more than three dozen rib fractures while in her parents' care. During this lengthy proceeding, there was extensive testimony which included multiple medical experts offered by both parties. I adjudicated the minor child to be dependent, that the child was without parental care, control, and supervision, and ordered the agency to continue to oversee the custody and care of the minor child temporarily while returning the minor child to the parents. However, I denied OYFS's petition seeking a finding of abuse of the minor child by the parents because, on the record before me, I was unable to rule out a natural medical defect regarding the stability and fragility of the child's bones. The minor child's sibling was not adjudicated dependent, as there was no issue concerning the parents' care of that minor child. OYFS appealed and my decision was upheld.

Counsel for the Agency:
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(570) 880-0612

Guardian ad Litem for Minor Children:
Kevin O'Hara (deceased)

Counsel for Mother:

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Counsel for Father:
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *PPL Electric Utility Corp. v. Judge*, 2021-CV-4966 (C.P. Lacka. Cnty. Mar. 24, 2022). Copy previously supplied in response to Question 13c.

Counsel for Plaintiff:
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Counsel for Defendant
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Blake & Walsh, LLC
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(570) 342-0505

2. *Jackson v. Lead Intelligence d/b/a Jornaya*, 2020-CV-3695 (C.P. Lacka. Cnty. Nov. 16, 2021), *appeal discontinued*, 1325 MDA 2021 (Pa. Super. Ct. Nov. 22, 2022). Copy previously supplied in response to Question 13c.

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David B. Farkas

DLA Piper, LLP (US)
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3. *Kadtka v. 81 Keystone, LLC*, 2019-CV-7109, 2021 WL 1877488 (C.P. Lacka. Cnty. May 6, 2021)

Counsel for Plaintiff:
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Counsel for Defendant:
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Jillian Denicola
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Suite 403
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(570) 825-5653

4. *Lackawanna County v. Correctional Care, Inc.*, 2021-CV-147, 2021 WL 1115282 (C.P. Lacka. Cnty. Feb. 5, 2021), *aff'd*, 274 A.3d 778, 2022 WL 468540 (Pa. Commw. Ct. Feb. 16, 2022)

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Counsel for Defendant:
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2nd Floor
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5. *Cascades Tissue Group v. Reading Blue Mtn. & N. R.R. Co.*, 2018-CV-3021, 2019 WL 8643859 (C.P. Lacka. Cnty. Aug. 8, 2019)

Counsel for Plaintiff:
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(570) 602-3560

6. *B.V. o/b/o/ T.V., a Minor v. J.W.*, 2019-FC-41660, (C.P. Lacka. Cnty. June 9, 2019), *aff'd*, 746 MDA 2020 (Pa. Super. Ct. Sept. 22, 2020), 240 A.3d 953, 2020 WL 5641249

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Guardian ad Litem for Minor Child:
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(570) 543-2427

7. *Sands v. Hamilton*, 2013-CV-55, 2018 WL 6004360 (C.P. Lacka. Cnty. Nov. 5, 2018)

Counsel for Plaintiff:
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Minora Krowiak Munley
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Counsel for Defendant:
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Moosic, PA 18507
(570) 496-4621

8. *Trunov v. Liberty Mut. Ins. Co.*, 2016-CV-6199, 2018 WL 5046491 (C.P. Lacka. Cnty. Aug. 31, 2018)

Counsel for Plaintiff:
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9. *Jablonowski v. Jablonowski*, 2012-FC-40822 (C.P. Lacka. Cnty. May 23, 2018), *aff'd*, 2019 WL 3231726 (Pa. Super. Ct., July 17, 2019)

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10. *In RE: M.M.-A.*, 35-DP-154-2016 (C.P. Lacka. Cnty. July 7, 2017), *aff'd*, 928 MDA 2017, 2017 WL 5953545 (Pa. Super. Ct. Dec. 1, 2017)

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Guardian ad Litem for Minor Children:
Kevin O'Hara (deceased)

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e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari has not been requested or granted in any of my cases.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

C.L. v. M.P., 2019-FC-41210, (C.P. Lacka. Cnty. Dec. 17, 2019), *aff'd*, (Pa. Super. Ct. July 8, 2020), *rearg. granted*, (Aug. 25, 2020), *aff'd in part, rev'd in part*, 255 A.3d 514 (May 26, 2021). Mother and Father cross-filed emergency petitions for custody regarding an infant and I held an emergency hearing. After significant testimony of the parties and their witnesses was completed, I appointed a Guardian ad Litem to represent the best interests of the minor child. Mother objected to the release of her mental health treatment records to the Guardian ad Litem. On reconsideration and based on the testimony, I ordered a mental health examination of both parties and the release of three years of mental health records of both parents to the Guardian ad Litem as part of the Guardian ad Litem's fact-gathering to make a report and recommendation under the Child Custody Act. I also sealed the record to protect the privacy of the parties. There was no existing appellate precedent on point at the time of my decision regarding whether there was any conflict between the provisions of the Child Custody Act and the Mental Health Procedures Act and the interpretation of the two. I proceeded in a manner that attempted to balance the competing statutes and Rules of Civil Procedure and to harmonize same. I determined that the mental health records could be released to the Guardian ad Litem in a manner that protected the parties' privacy rights under the Mental Health Procedures Act and that satisfied the obligations of the Child Custody Act where the safety of the minor child and the mental health conditions of the parties were critical components of the best interests analysis, and which are mandated considerations contained in the statutory child-custody factors. Mother appealed to the Pennsylvania Superior Court. A three-judge panel

affirmed my decision. Mother moved for reargument, and the Pennsylvania Superior Court granted her motion and retracted its panel opinion. A nine-judge panel affirmed in part and reversed in part. The provisions of my order directing the parties to a mental health examination were affirmed. The provisions of my order directing the release of mental health records were reversed.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

None of my opinions have been published, though some are available on Westlaw or Lexis. The trial court opinions I authored are filed and stored on dockets maintained by the Lackawanna County Clerk of Judicial Records. To the extent that the opinions are public records, they are available on the Lackawanna County Clerk of Judicial Records website, https://www.lackawannacounty.org/index.php/departmentsagencies/courts-and-judiciary/clerk-of-judicial-records.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

B.L., a minor v. Moses Taylor Hospital, et al., 2019-CV-4692 (C.P. Lacka. Cnty. Sept. 7, 2021). Copy supplied.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal**: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

For recusal, a judge of the Pennsylvania Court of Common Pleas is required to do a two-part analysis: a subjective inquiry as to whether the judge can be fair and impartial; and an objective inquiry as to whether there is an appearance of impropriety such that the judge's impartiality might reasonably be questioned.

The Lackawanna County Court Administrator's office automatically assigns matters involving Munley Law, P.C. to other judges due to my partnership with that firm while in private practice. Similarly, the Lackawanna County Court Administrator's office automatically assigns to other judges matters for which my husband is counsel.

I issued recusal orders following assignment in the below cases.

Arpino v. Goffer, 2019-FC-40143 (C.P. Lacka. Cnty.). I recused *sua sponte* from this case due to my professional relationship with the plaintiff. Upon assignment, I confirmed the identity of the parties and determined, pursuant to Pennsylvania Rule of Judicial Conduct 2.11, that my impartiality might be reasonably questioned on an objective basis, and therefore that recusal was warranted.

Comerford v. Fanelli, 2018-FC-40342 (C.P. Lacka. Cnty.). I recused following a motion for recusal and after hearing from defendant and her counsel that she believed I had a close personal relationship with plaintiff's family. Although I believed I could be fair and impartial, I recused on the basis that defendant had sincerely held concerns that I could not be fair and impartial. I considered testimony from the defendant and determined that the case should be reassigned to another judge based on the defendant's concerns. Pursuant to Pennsylvania Rule of Judicial Conduct 2.11, I recused.

Commonwealth v. Hazzouri, MD, MJ-45102-CR-0000227-2021. I recused *sua sponte* because my family members have an ongoing professional relationship with the defendant. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Dragann v. Florey Lumber Co., 2020-CV-4118 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that I had a professional relationship with defendants. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Gerrity v. Adamo, M.D., et. al., 2020- CV-2782 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that I had a personal and professional relationship with both a plaintiff and a defendant. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

In re: Name Change of J.A.C., 2021-CV-4320 (C.P. Lacka. Cnty.). I recused *sua sponte* because my family members provided legal representation to petitioner's husband's immediate family members on more than one occasion. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Italian Congregation of St. Francis D'Assisi, Eynon, PA, Inc. v. Smargiassi Construction, Inc. and the Borough of Archbald, 2015-CV-3579 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that Archbald, Pennsylvania is my hometown and members of my family resided in Archbald for generations. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Kelly v. Kelly, 2020-CV-40975 (C.P. Lacka. Cnty.). I recused *sua sponte.* Due to the nature of the proceeding, I entered an order that maintained the *status quo* so that the matter could be assigned to another judge. I recused on the basis that I had a long personal relationship with the defendant and his family. I confirmed the identity of the parties and determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Litts v. Walmart Inc., 2013-CV-3852 (C.P. Lacka. Cnty.). I recused *sua sponte* because I had been a partner in a law firm that previously represented plaintiff and/or referred plaintiff to other attorneys for legal services related to the litigation and/or other personal injury claims. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Litts v. Walmart Inc., 2014-CV-2353 (C.P. Lacka. Cnty.). I recused *sua sponte* because I was a partner in a law firm that previously represented Plaintiff and/or referred Plaintiff to other attorneys for legal services related to the litigation and/or other personal injury claims. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Lodovici v. Bohenek, 2021-CV-1301 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that I had represented the plaintiff while I was in private practice and because I have a familial relationship with the defendant. I confirmed the identity of the parties and determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Munley v. Munley, 2016-FC-41593 (C.P. Lacka. Cnty.). I recused after an oral motion by the plaintiff during a pre-hearing conference. I recused because it was determined during the conference that I was a relative of the defendant. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

N & A Holdings v. Bronson, 2020-CV-4242 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that while in private practice I had filed a lawsuit against the plaintiff. I

confirmed the identity of the plaintiff corporation and its principal shareholders and determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

O'Malley v. Blakegreen, Inc., et al., 2019-CV-2765 (C.P. Lacka. Cnty.). I recused *sua sponte* on the basis that my former law firm had represented the plaintiffs while I practiced there. I confirmed the identity of the plaintiffs and determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Responsible Party Services, Inc., Administrator of the Estate of Walsh, et al. v. Kulesa, 2021- CV-1024 (C.P. Lacka. Cnty.). I recused *sua sponte* during preparation for a non-jury trial. The plaintiff was the administrator of the estate of a deceased woman, Arlene Walsh, bringing the action against her daughter. In reviewing pre-trial submissions, I determined that I had previously represented plaintiff's decedent, Ms. Walsh's, other daughter who was the defendant's sister. I recused on the basis that I had a professional relationship with a close family member of the decedent and the defendant. I also recused because my former client was believed to be a beneficiary of the estate. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

Washko v. Washko, 2020-CV-3477 (C.P. Lacka. Cnty.). I recused *sua sponte* because I had represented plaintiff while I was in private practice. I determined that my impartiality might be reasonably questioned on an objective basis pursuant to Pennsylvania Rule of Judicial Conduct 2.11.

15. **Public Office, Political Activities and Affiliations**:

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

    None.

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

    I served as Co-Chair for the Campaign to Elect Joseph Corcoran to Pennsylvania Senate in 2010. As Co-Chair, I attended events and introduced the candidate.

    I was a delegate to the 1996 Democratic National Convention, representing my

congressional district. Additionally, from approximately 1995 to 2016, I did occasional election-related volunteer work for the local and national Democratic Party, including phone banking, driving voters to polls, and canvassing.

16. **Legal Career**: Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Stephen J. McEwen, Jr., of the Superior Court of Pennsylvania, from 1992 to 1993.

ii. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1993 – 1995
Masterson, Braunfeld, Maguire & Brown (now The Masterson Braunfeld Law Firm)
600 Old Elm Street #200
Conshohocken, Pennsylvania 19428
Associate

1995 – 2001
Mazzoni & Karam (now Mazzoni, Valvano, Szewczyk & Karam)
321 Spruce Street
Suite 201
Scranton, Pennsylvania 18503
Associate

1998
Marshall, Dennehey, Warner, Coleman & Goggin
50 Glenmaura National Boulevard
Moosic, Pennsylvania 18507
Associate

1998 – 2001
Lackawanna County Area Agency on Aging
123 Wyoming Avenue

Scranton, Pennsylvania 18503
Solicitor – Elderly Law Project (part-time)

2001 – 2016
Munley Law
227 Penn Avenue
Scranton, Pennsylvania 18503
Associate (2001 – 2012)
Partner (2012 – 2016)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

In approximately 2011 I served as an arbitrator on a panel where the plaintiff and defendant each selected their own arbitrator with one neutral. The case was a personal injury matter and I was selected as plaintiff's arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1992 to 1993, I served as a law clerk to a judge on the Superior Court of Pennsylvania. I was responsible for research and writing drafts of opinions.

From 1993 to 1995, I was employed as an associate with the defense firm of Masterson, Braunfeld, Maguire & Brown where I was responsible for answering discovery, writing and arguing motions and briefs, and attending depositions in medical negligence cases.

From 1995 to 2001, I was a trial attorney with Mazzoni & Karam where I represented clients in criminal defense cases, civil rights litigation, personal injury cases, and family law matters. I handled cases from their inception through discovery and trial as sole counsel and also as co-counsel with one of the partners of my firm. In family law matters I handled cases solely. I wrote and argued many motions and briefs before trial and appellate courts, both state and federal.

In 1998, for a short period, I became employed as an associate in the defense firm of Marshall, Dennehey, Warner, Coleman & Goggin doing civil litigation, medical negligence, and automobile negligence cases.

Between 1998 and 2001, I was a part-time solicitor for the Lackawanna

County Area Agency on Aging, the Elderly Law Project, where I provided legal services through the agency to seniors on wills, powers of attorney, consumer issues, and general legal questions. On occasion, I had to represent seniors at medical depositions when the agency was involved.

From 2001 to 2016, I was a trial lawyer with Munley Law, where I represented plaintiffs in personal injury litigation, including automobile, tractor-trailer, premises liability, medical negligence, and civil rights cases in state and federal courts throughout Northeastern Pennsylvania. I handled cases from inception through all aspects of discovery and trial, sitting as first and second chair depending on the case. I also handled workers' compensation and social security cases on behalf of the claimant.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While at Masterson, Braunfeld, Maguire & Brown, my clients were doctors and hospitals defending against claims for medical negligence.

While at Mazzoni & Karam, my clients included individuals who were accused of a crime, involved in civil rights litigation, injured in an automobile accident or slip and fall, or involved in a family court matter.

While at Marshall, Dennehey, Warner, Coleman & Goggin, my clients were doctors and individuals defending against alleged negligence.

While at Lackawanna County Area Agency on Aging, I provided legal services and represented seniors in need of legal advice and representation.

While at Munley Law, my clients included individuals who were victims of injury in various circumstances.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Almost the entirety of my practice throughout my legal career was in litigation. From 1995 to 2016, I appeared in court on a regular basis. From 1993 to 1995, I appeared in court occasionally.

i. Indicate the percentage of your practice in:

1. federal courts: 20%
2. state courts of record: 70%
3. other courts: 10%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 95%
2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried 22 civil cases to jury verdict at the trial court level and one criminal bench trial which went to verdict. In those cases, I was sole counsel in four; chief counsel in nine; and associate counsel in ten.

Additionally, I handled 30 Workers' Compensation cases before a Workers' Compensation judge through final decision, and I handled 98 Social Security cases before an Administrative Law judge through final decision.

i. What percentage of these trials were:
1. jury: 97%
2. non-jury: 3%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply an electronic copy of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I did not practice before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Baker v. O'Malley et al.*, 2014-CV-423 (C.P. Susq. Cnty.)

This negligence case involved a woman, my client, who had been shot in the chest by a semi-automatic weapon. This weapon and others had gotten into the hands of a group of minors and one young adult who did not have appropriate training and who were not being supervised. The weapons were owned by one of the youth's parents. The group was target shooting on a property owned by one of the minor's parents. My client resided on a neighboring property and was outside her home when a bullet ricocheted and struck her in the chest. She sustained permanent injuries, both physical and emotional, as a result of the trauma. I was sole counsel in this matter and handled every aspect of the case from filing of the complaint through discovery, including taking and defending depositions, to the resolution of this matter on behalf of my client by way of settlement.

Representation:
2013 – 2015 (approximately)

Court and Judge:
Court of Common Pleas of Susquehanna County
The Honorable Kenneth Seamans

Defense Counsel:
Daniel Cummins
Cummins Law
610 Morgan Highway
Clarks Summit, PA 18411
(570) 319-5899

Kevin Higgins
Byrne, Neyhart & Higgins
1803 Sanderson Avenue
Scranton, PA 18509
(570) 343-2480

Zygmunt Bialkowski
Margolis Edelstein
220 Penn Avenue
Scranton, PA 18503
(570) 342-4231

Patrick Walsh
715 North State Street
Clarks Summit, PA 18411
(570) 586-7730

2. *Hartman v. Lombardo*, 2013-CV-2061 (C.P. Lacka. Cnty.)

This negligence case involved a drunk driver who struck my clients' vehicle head-on causing each of them significant injuries, both physical and emotional. I handled all

aspects of the case including filing the complaint, filing and presentation of any motions, written discovery, taking and defending depositions, and settlement negotiations which culminated in resolution of the case. The case settled before trial.

Representation:
2011 – 2015

Court:
Court of Common Pleas of Lackawanna County
Because the case was not listed for trial, a judge was not specifically assigned to the case.

Defense Counsel:
Michael Giannetta
670 North River Street
Plains, PA 18705
(570) 825-7360

3. *Pehala v. Roche, Inc., et al.*, 2008-CV-14801 (C.P. Luz. Cnty.)

This complex negligence case involved my client who had sustained injuries to her spine when a large, metal awning structure collapsed on top of her due to overload of snow on top of the awning. Complicated issues concerning construction of the awning structure, sustainable loads and the awning's inadequacy to withstand forces were central to this litigation. I handled all aspects of this matter including filing the complaint, filing and presentation of any motions, all written discovery, taking and defending depositions, and the companion workers' compensation case. Ultimately, the case settled before trial.

Representation:
2007 – 2011 (approximately)

Court:
Court of Common Pleas of Luzerne County
Because the case was not listed for trial, a judge was not specifically assigned to the case.

Defense Counsel:
Michael Perry
O'Malley & Perry Law
345 Wyoming Avenue
Scranton, PA 18503
(570) 348-3711

Mark Sheridan
Margolis Edelstein
220 Penn Avenue
Scranton, PA 18503
(570) 342-4231

Harry McMunigal
Bingaman Hess
Treeview Corporate Center
2 Meridian Boulevard
Suite 100
Wyomissing, PA 19610
(610) 374-8377

Conrad Falvello
Falvello Law Firm
641 PA-93
Conyngham, PA 18219
(570) 788-4191

Nicholas Noel
Noel, Noel, Kovacs & Maguire
2505 Newburg Road
Easton, PA 18045
(610) 258-0866

Richard Polachek
Polachek & Associates, P.C.
22 East Union Street
Wilkes-Barre, PA 18701
(570) 822-8515

4. *Cooke v. Pennsylvania Department of Transportation et al.*, 984 C.D. 2011 (Pa. Commw. Ct. Jan. 27, 2012)

My client in this matter had been a passenger in a motor vehicle operated by another minor who was under the legal driving age. The vehicle went off the roadway and struck a tree. My client had to be removed from the vehicle with the jaws-of-life. As a result of the crash, he underwent numerous surgeries and had to be placed on a ventilator for a period. Plaintiff alleged negligence by the minor driver and her parent, the owner of the vehicle, as well as by the Pennsylvania Department of Transportation for its failure to make appropriate changes to the roadway, given that many serious accidents had previously occurred on that stretch of road. Defendants were willing to settle for a *de minimis* amount, which plaintiff rejected. The case proceeded to trial before a jury, which returned a verdict in favor of plaintiff against Defendant Pennsylvania Department of Transportation and the minor driver. Defendants appealed, arguing the trial court erred by allowing into evidence prior accidents along the roadway. The Commonwealth Court upheld the jury's verdict. I handled the case as sole counsel from the filing of the complaint, motions practice, all discovery, including depositions, trial depositions, trial and the appeal.

Representation:
2006 – 2011

Court and Judge:
Court of Common Pleas of Northampton County
The Honorable Michael Franciosa

Defense Counsel:
Joseph G. McHale
Schwartz, Campbell, LLC
5100 Tilghman Street
Suite 230
Allentown, PA 18104
(610) 395-5903

John Stahl
Office of Attorney General
1000 Madison Avenue
Suite 310
Norristown, PA 19403
(610) 631-6207

5. *Shenosky v. Hazelton General Hospital*, 2007-CV-1688 (C.P. Luz. Cnty.)

The case involved an elderly woman who was a high risk for falls and sustained fatal injuries in a fall at a hospital where the nursing staff failed to implement proper and appropriate safety measures to prevent her from getting out of the hospital bed and falling when she had a documented history of falls. The hospital through its nursing staff inappropriately placed this woman at the end of the hallway away from the nurses' station and failed to put in place appropriate guarding on and around her bed. Furthermore, the nursing staff failed to do regular and routine checks on the woman. In this negligence action, I represented the plaintiff, a daughter of the decedent. I handled all aspects of the case from the filing of the complaint through discovery, trial depositions, and trial. At trial I was lead counsel and I presented evidence to the jury that the hospital wrongfully altered this patient's hospital records from the original version. The alterations removed relevant information concerning the woman's prior history of falls at the hospital. I additionally proved the hospital's deficiencies in the care of this woman at the time of this hospitalization. A jury was selected and trial commenced. Before completion of plaintiff's case, the case settled.

Representation:
2007 – 2010 (approximately)

Court and Judge:
Court of Common Pleas of Luzerne County
The Honorable Thomas Burke

Co-Counsel:
Robert W. Munley, III
Munley Law
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401

Defense Counsel:
Timothy Holland
The Perry Law Firm, LLC
305 Linden Street
Scranton, PA 18503
(570) 344-6323

6. *Cantner v. First Express, Inc., et al.*, 3:07-CV-00343 (M.D.P.A.)

This case involved a serious collision with a tractor-trailer in which my client's vehicle had been struck. My client sustained complicated injuries involving Reflex Sympathetic Dystrophy to his upper extremity from the crash. I handled all aspects of the case from the filing of the complaint, all motions practice, taking and defending depositions, obtaining expert reports, until the point of resolution. Additionally, I was lead counsel during a *Daubert* hearing in this matter. Ultimately, the case settled before having to proceed to trial.

Representation:
2006 – 2009 (approximately)

Court and Judge:
United States District Court for the Middle District of Pennsylvania
The Honorable Richard Caputo

Co-Counsel for Daubert Hearing:
Daniel W. Munley
Munley Law
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401

Defense Counsel:
Michael T. Traxler
Saxton and Stump
4250 Crums Mill Road
Suite 201
Harrisburg, PA 17112
(717) 216- 5505

7. *Hazeltine v. Thomas*, 2002-CV-1971 (C.P. Luz. Cnty.)

This negligence case involved an intersectional collision where my client was driving her motor vehicle and was struck by another, sustaining injuries. The defense contested liability and damages. I was lead counsel and handled all aspects of the case from the filing of the complaint, motions practice, taking and defending depositions, all trial preparation, trial depositions, and trial.. A jury verdict was rendered in favor of the plaintiff, my client.

Representation:
2003 – 2006 (approximately)

Court and Judge:
Court of Common Pleas of Luzerne County
The Honorable Hugh Mundy

Co-Counsel:
Robert W. Munley, III
Munley Law
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401

Defense Counsel:
Dean Arthur
250 North Pennsylvania Avenue
Morrisville, PA 19067
(215) 736-2521

8. *Kahn v. Loisele*, 2001-CV-544 (C.P. Wayne Cnty.)

This civil litigation case involved my client who was driving her vehicle when she was rear-ended by another motor vehicle, sustaining injuries. I was lead counsel and handled all aspects of this negligence case from the filing of the complaint, motions practice, taking and defending depositions, obtaining expert reports,trial depositions, and trial. A jury verdict was render in favor of the plaintiff, my client.

Representation:
2002 – 2005 (approximately)

Court and Judge:
Court of Common Pleas of Wayne County
The Honorable Robert Conway

Co-Counsel:

Caroline Munley
Munley Law
227 Penn Avenue
Scranton, PA 18503
(570) 346-7401

Defense Counsel:
Catherine Carey
2200 Stafford Avenue
Scranton, PA 18505
(570) 961-7585
(last-known address and phone number)

9. *Shovlin v. The Woodlands Inn and Resort et al.*, 867 A.2d 656 (Pa. Super. Ct. 2004)

This civil premises liability case involved my client, the plaintiff, who was an overnight guest at the defendant's resort and nightclub. He sustained serious injuries directly caused by security personnel who were employed by the defendants at their nightclub while he was a patron. I proved at trial that the defendants failed to appropriately train and supervise their security which led to certain members of their security staff using excessive force with my client. The defendants failed to have liability insurance available at the time to cover such losses. I handled every aspect of the case from filing the complaint, motions practice, taking and defending depositions, trial depositions, and trial. The case proceeded to trial before a jury which returned a verdict in favor of the plaintiff. The defendants then appealed to the Superior Court and the verdict and the trial court's rulings were upheld on appeal. As a result of this case defendants obtained liability insurance for their facilities.

Representation:
2001 – 2003

Court and Judge:
Court of Common Pleas of Luzerne County
The Honorable Thomas Burke

Defense Counsel:
Norman Namey
Bennett, Bricklin and Saltzburg
960 Harvest Drive
Building B, Suite 100
Blue Bell, PA 19422
(570) 468-8186

10. *Johnson v. Stevens et al.*, 283 F.3d 138 (3rd Cir. 2002)

In this civil rights lawsuit, I represented the defendant, Mr. Stevens, a Black male teacher

and guidance counselor at a school, who had been wrongfully accused and sued by a white female student for alleged sexual assault/harassment in violation of her civil rights. I was associate counsel and assisted in preparation of the writing of pleadings including motions and briefs, all discovery including depositions, and sitting as co-counsel through trial of the matter, which resulted in a jury verdict in Mr. Stevens's favor. Plaintiff appealed to the Third Circuit, and I had sole responsibility for the appeal, including preparation and writing of the brief and presenting oral argument before the panel. The Circuit upheld the jury's verdict and the court's rulings.

Representation:
1997 (approximately) – 2001

Court and Judge:
U.S. District Court for the Middle District of Pennsylvania
The Honorable James McClure

U.S. Court of Appeals for the Third Circuit
The Honorable Samuel Alito
The Honorable Edward Becker
The Honorable Maryanne Trump Barry

Co-Counsel:
Judge Robert A. Mazzoni
Lackawanna County Court of Common Pleas
200 North Washington Avenue
Scranton, PA 18503
(570) 963-6531

Plaintiff's Counsel:
Peter Loftus (deceased)

Counsel for Defendant School District:
Jeffrey H. Quinn
Dickie, McCamey and Chilcote, P.C.
1650 Arch Street
Suite 2110
Philadelphia, PA 19103
(215) 925-2289

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued in my career which did not proceed to trial or involve litigation include my representation of a victim emergency responder to the 9/11 World Trade Center attack. I was responsible for gathering all applicable information relating to this individual to document from witnesses through affidavits and statements his response to the disaster and his presence at Ground Zero in lower Manhattan, along with numerous medical records concerning his treatment for ongoing pulmonary issues following his emergency work at the disaster site. Further, I was responsible for ensuring all information was appropriately submitted on time and that paperwork was completed and the claim filed through the federal government's 9/11 Victim Compensation Fund. After review of the claim, I was responsible for preparing my client for the hearing. I represented my client at the hearing in Manhattan. Kenneth Feinberg was the administrator of the federal government's 9/11 Victim Compensation Fund who oversaw this process. As a result of my representation, my client recovered an award to compensate him for his pulmonary issues stemming from his exposure to toxins and debris while responding at Ground Zero.

As a lawyer and now as a judge, I have always taken great interest in mentoring high school, college, and law school students. Almost every summer I have had and have a student who is interested in pursuing a legal career work with me in my office to observe depositions, hearings, and trials, write memos, and experience what it is like to be a trial lawyer. I also participate each year in the Lackawanna County high school moot court competition through our local bar association, sitting as a juror when I was an attorney and now sitting as a judge. I have also sat as a judge during college moot court competitions.

I have not performed any lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide an electronic copy to the committee.

    None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your

service with the court? If so, explain.

None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I was a partner in my family's law firm, Munley Law, where my relatives continue to practice, and so I would continue to recuse myself from any case in which Munley Law or any of its attorneys are representing any party, intervenor, or third party. My husband is an attorney and I would continue to recuse myself from any case in which he represents any party, intervenor, or third party. I would continue to recuse myself in any litigation in which I have ever played a role or represented any party previously and would also continue to recuse in matters involving family members or close friends of mine. Further, I will continue to evaluate any other real or potential conflicts or relationships that could give rise to an appearance of a conflict on a case-by-case basis and determine the appropriate action with the advice of parties and their counsel, including recusal where necessary.

a. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed I would carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my career as an attorney, I represented a victim emergency responder in a *pro bono* capacity before the September 11th Compensation Fund. The work I did included numerous meetings with the client, gathering of medical documentation to substantiate his pulmonary condition as a result of exposure to toxins and debris at the site, interviewing witnesses over the phone, and obtaining affidavits and statements from witnesses who could attest to my client responding to the disaster, to his presence at Ground Zero, to his emergency work at the disaster site and to the duration of time he was present. Further, I was responsible for completing all necessary filings, preparation of my client for the hearing before the Compensation Fund board and personal attendance with my client in Manhattan for said hearing. During my career in private practice, I also on occasion provided free legal services at the Hope Clinic in Luzerne County, Pennsylvania which offered free legal, dental and medical services to persons in need. I also took on *pro bono* cases, including Protection from Abuse cases, representing individuals through Lackawanna Pro Bono, Inc.

26. **Selection Process:**

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

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

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Vernon Dion Oliver

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Connecticut

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Superior Court
   Middlesex Judicial District
   State of Connecticut
   One Court Street
   Middletown, CT 06457

4. **Birthplace**: State year and place of birth.

   1971; Bridgeport, Connecticut.

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1994 – 1997, University of Connecticut School of Law; J.D., 1997

   1989 – 1994, University of Connecticut; B.A., 1994

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2009 – present
   State of Connecticut, Judicial Branch, Superior Court
   231 Capitol Avenue

Hartford, Connecticut 06106
Middlesex Judicial District, Administrative Judge (2020 – present)
New Britain Judicial District, Assistant Administrative Judge (2018 – 2020)
Manchester Superior Court, Presiding Judge (2017 – 2018)
Tolland Judicial District, Habeas Corpus Matters, Criminal Matters (2014 – 2017)
Waterbury Superior Court, Criminal Docket (2013 – 2014)
Meriden Superior Court, Civil and Criminal jury trials (2012 – 2013)
Housing Sessions, Hartford and New Britain Judicial Districts (2010 – 2012)
Windham Judicial District (2009 – 2010)

2004 – 2009
State of Connecticut, Office of the Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, Connecticut 06105
Assistant Attorney General

1999 – 2004
State of Connecticut, Division of Criminal Justice
300 Corporate Place
Rocky Hill, Connecticut, 06067
Assistant State's Attorney
Bristol Superior Court (2000 – 2004)
Office of the Chief State's Attorney (1999 – 2000)

1998 – 1999
Montstream & May, LLP (now defunct)
Associate, Insurance Defense

1997 – 1998
State of Connecticut, Judicial Branch
Hartford Judicial District
101 Lafayette Street
Hartford, Connecticut 06114
Temporary Assistant Clerk

1997
Kenneth B. Lerman, PC
651 Day Hill Road
Windsor, Connecticut 06095
Associate

Summer 1996
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, Connecticut 06604

Summer Associate

Summer 1995
Neighborhood Legal Services (now defunct)
Summer Associate; Landlord-Tenant Law

Summer 1995
University of Connecticut School of Law
55 Elizabeth Street
Hartford, Connecticut 06105
Summer Employee; Professor Loftus Becker
Summer Employee; Gallivan Conference

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I timely registered for the selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Connecticut Bar Association, Distinguished Volunteer (2004)

   Moot Court Board, University of Connecticut School of Law (1995 – 1997)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   Committee on Judicial Ethics, Chair (2019 – present)

   Connecticut Bar Association

   Connecticut Bar Foundation, Fellow

   Connecticut Hall of Change Selection Committee (2022 – present)

   Connecticut Judges Institute: 2009, 2019, 2022: Criminal Law, Juvenile Law, Ethics

   Connecticut Lawyers Concerned for Lawyers, Board of Directors (2022 – present)

   Connecticut Pre-Bench Orientation (2020 – present): Criminal Law, Habeas Corpus

Connecticut Sentencing Commission, Member (2020 – April 5, 2023)
Animal Cruelty Subcommittee, Chair (2020 – April 5, 2023)
Mental Health Subcommittee, Co-Chair (2020 – 2023)

Criminal Jury Instructions Committee (2023 – present)

George W. Crawford Black Bar Association

Judicial Branch Civics Academy

Judicial-Media Committee, Member (2018 – 2023)

Judicial Review Council, Member (2022 – present)

Middlesex County Bar Association

State Wiretap Panel, Chair (2020 – present)

10. **Bar and Court Admission:**

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Connecticut, 1997

There have been no lapses in membership. As a Connecticut State Court judge, I am no longer considered a member of the bar.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of Connecticut, 1998

There have been no lapses in membership. As a Connecticut State Court judge, I am no longer considered a member of the bar.

11. **Memberships:**

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Friends of the Portland Library (2005 – present)

Portland Library Board (2008 – 2009)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

Connecticut Sentencing Commission: Mental Health Disorders in Connecticut's Incarcerated Population. (Jan. 2023). Copy supplied.

2019 – 2023: State of Connecticut Judicial Branch's Committee on Judicial Ethics, Annual Reports. Copies supplied.

c. Supply four (4) copies of any testimony, official statements or other

communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

From November 2018 to February 2023, I participated in monthly (when there was business for that month) and special meetings of the Connecticut Committee on Judicial Ethics as a member and, from 2022 to 2023, as Acting Chair and Chair. Meeting minutes are supplied.

On February 09, 2023, I chaired a meeting for the Mental Health Subcommittee of the Connecticut Sentencing Commission. Meeting minutes supplied.

On January 3, 2023, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Meeting minutes supplied.

On November 16, 2022, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Video available at https://ct-n.com/ctnplayer.asp?odID=21164.

On September 14, 2022, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Video available at https://ct-n.com/ctnplayer.asp?odID=21014.

On April 4, 2022, I participated in a meeting of the Judicial-Media Committee in the Connecticut Judicial Branch as a member. Meeting minutes supplied.

On March 29, 2022, I testified before the Executive and Legislative Nominations Committee at the Connecticut General Assembly regarding my nomination to the Judicial Review Council. Video available at https://ct-n.com/ctnplayer.asp?odID=19595.

On January 19, 2022, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Video available at https://ct-n.com/ctnplayer.asp?odID=19268.

On November 17, 2021, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Meeting minutes supplied.

On September 27, 2021, I participated in a meeting of the Judicial-Media Committee in the Connecticut Judicial Branch. Meeting minutes supplied.

On September 15, 2021, I participated in a Regular Meeting of the Connecticut

Sentencing Commission. Video available at https://ct-n.com/ctnplayer.asp?odID=13761.

On April 19, 2021, I participated in a meeting of the Judicial-Media Committee in the Connecticut Judicial Branch. Meeting minutes supplied.

On March 24, 2021, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Meeting minutes supplied.

On January 20, 2021, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Video available at https://ct-n.com/ctnplayer.asp?odID=12958.

On December 16, 2020, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Meeting minutes supplied.

On September 16, 2020, I participated in a Regular Meeting of the Connecticut Sentencing Commission. Video available at https://www.ct-n.com/ctnplayer.asp?odID=12561.

On July 17, 2019, I made a presentation to the Habeas Corpus Matters Task Force of the Connecticut General Assembly. Video available at https://ct-n.com/ctnplayer.asp?odID=11439.

On January 13, 2017, I testified before the Judiciary Committee at the Connecticut General Assembly regarding my re-nomination to be a judge on the Connecticut Superior Court. Video available at https://ct-n.com/ctnplayer.asp?odID=8708.

On February 23, 2009, I testified before the Judiciary Committee at the Connecticut General Assembly regarding my nomination to be a judge on the Connecticut Superior Court. Transcript supplied.

Since December 2020, I have served on the Connecticut Sentencing Commission. The mission of the Commission includes reviewing proposed criminal justice legislation. Its enactment statute states that the Commission shall review criminal justice legislation, as requested, and shall make legislative recommendations concerning criminal justice issues. The practice is for a member or members of the Connecticut General Assembly to first submit a request to the Commission to review a specific matter. Then, the Commission often forms a working group or subcommittee to research and review the matter and make proposals to the full Commission. Finally, the full Commission membership reviews and approves sending certain proposals to the relevant legislative or judicial committee for debate and consideration, and individual members may vote to advance the proposals, not to advance the proposal, or to abstain from voting. Below is a list of proposals that the Commission has made to the General Assembly during my

time of service:

An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Parole Eligibility for an Individual Serving a Lengthy Sentence for A Crime Committed Before the Individual Reached the Age of Twenty-One (Oct. 1, 2023). Copy supplied.

An Act Concerning the Recommendations of the Connecticut Sentencing Commission Providing Judicial Discretion for Certain Motor Vehicle Offenses with Mandatory Minimum Sentences (Oct. 1, 2023). Copy supplied.

An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Sexual Assault in the Fourth Degree (Oct. 1, 2023). Copy supplied.

Proposed Amendment to Connecticut Practice Book Section 38-8 concerning ten percent cash bail (Jan. 1, 2023). Copy supplied.

An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Appointment of an Advocate in a Criminal Proceeding Regarding the Welfare or Custody of an Animal (Jan. 1, 2023). Copy supplied.

An Act Concerning Sentence Modification (Mar. 11, 2022). Copy supplied.

An Act Repealing Statutory Provisions that Impose Liability on an Individual for Repayment of Costs Incurred when the Individual was Incarcerated (Mar. 7, 2022). Copy supplied.

An Act Concerning the Criminal Justice Process (Oct. 1, 2021). Copy supplied.

An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses, Prohibiting Discrimination Based on Erased Criminal History Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences (July 1, 2021). Copy supplied.

An Act Concerning Review of Animal Cruelty Laws by the Connecticut Sentencing Commission (Apr. 13, 2021). Copy supplied.

An Act Facilitating Voting by Persons Who Are Incarcerated in Connecticut Correctional Facilities and Restoring Voting Rights and Electoral Privileges for Persons who are Incarcerated for Felony Convictions (Dec. 16, 2020).

Copy supplied.

An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding the Enhanced Penalty for the Sale or Possession of Drugs Near Schools, Day Care Centers and Public Housing Projects (Oct. 1, 2020). Copy supplied.

An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to the Sexual Offender Registry, Petitions to Terminate Parental Rights of Incarcerated Parents and Sentence Review and Sentence Modification (Apr. 29, 2019). Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

March 2, 2022: Virtual Reader, Connecticut Judicial Branch Read Across America Day, Brewster Elementary School, Regional School District 13, Durham, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

April 8, 2019: Panelist, Violence Against Women Act (VAWA) roundtable discussion. I do not recall the location of the event or the sponsoring organization. I participated, on behalf of the Connecticut Judicial Branch, in a panel discussing the importance of the reauthorization of the federal Violence Against Women Act. I have no notes, transcript, or recording, but press coverage is supplied.

March 15, 2019: Presenter, Career Day, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to high school success, paths to college, my career path, goal setting, study skills and organizational skills. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

March 2, 2019: Reader, Connecticut Judicial Branch Read Across America Day,

Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 2018 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

February 2018 (specific date unknown): Presenter, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to high school success, paths to college, my career path, goal setting, study skills and organizational skills. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

March 2017 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

February 2017 (specific date unknown): Presenter, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to high school success, paths to college, my career path, study skills and organizational skills. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

March 2016 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

February 2016 (specific date unknown): Presenter, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to high school success, paths to college, my career path, study skills and organizational skills. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

May 29, 2015: Faculty, Youth Law Academy, Connecticut Bar Association Young Lawyers Section at Quinnipiac University School of Law, North Haven, Connecticut. I participated in small group discussions with high school students covering general legal concepts and potential careers in the law. I have no notes, transcript, or recording, but press coverage is supplied. The address for the

Connecticut Bar Association is 30 Bank Street, New Britain, Connecticut 06051.

March 2015 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

April 25, 2014: Presenter, Career Day, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to high school success, paths to college, my career path, study skills and organizational skills. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

March 7, 2014: Reader, Connecticut Judicial Branch Read Across America Day, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 1, 2013: Reader, Connecticut Judicial Branch Read Across America Day, Park City Magnet School, Bridgeport Public Schools, Bridgeport, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

July 2, 2012: Speaker, Connecticut Judicial Branch Law Day Ceremony, Waterbury, Connecticut. As part of an annual ceremony sponsored by the Judicial Branch and local bar association, I spoke about that year's Law Day theme, *No Courts, No Justice, No Freedom*, selected by the American Bar Association. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 2012 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 2011 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial

Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 2010 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

March 2009 (specific date unknown): Reader, Connecticut Judicial Branch Read Across America Day, Connecticut. As part of an organized effort, Connecticut judges go into public elementary schools to read a Dr. Suess book to children. I have no notes, transcript, or recording. The address for the Connecticut Judicial Branch is 231 Capitol Avenue, Hartford, Connecticut 06106.

June 2007 (specific date unknown): Speaker, Dr. James H. Naylor School Commencement, I, along with several other speakers, addressed graduating eighth graders and their families, about their future success. I have no notes, transcript, or recording. The address of the Dr. James H. Naylor School is 639 Franklin Avenue, Hartford, Connecticut 06114.

June 2005 (specific date unknown): Speaker, Noah Webster Microsociety Magnet School Commencement, Hartford Public Schools, Hartford, Connecticut. I, along with several other speakers, addressed graduating eight graders and their families, about their future success. I have no notes, transcript, or recording. The address of Noah Webster Microsociety Magnet School is 5 Cone Street, Hartford, Connecticut 06105.

January 2005 (specific date unknown): Speaker, Connecticut Bar Association, Weaver High School Classroom Connection Speaker, Hartford Public Schools, Hartford, Connecticut. I discussed study skills and paths to college. I have no notes, transcript, or recording. The address of Weaver High School is 415 Granby Street, Hartford, Connecticut 06112.

April 2004 (specific date unknown): Advisor, Connecticut Bar Association, Fox Middle School Spring Advisor, Hartford Public Schools, Hartford, Connecticut. I mentored students on study habits and success in high school. I have no notes, transcript, or recording. The address of Michael D. Fox Middle School is 470 Maple Avenue, Hartford, Connecticut 06114.

March 2004 (specific date unknown): Speaker, Park City Magnet School Career Day, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to college, law school, the legal profession, and my career path. I have no notes, transcript, or recording. The address of Park City Magnet School is 1526 Chopsey Hill Road, Bridgeport, Connecticut 06606.

March 2004 (specific date unknown): Speaker, Connecticut Bar Association, CT

Works public service speaker, State Government career center, New Britain, Connecticut. I discussed my career path and my career in public service. I have no notes, transcript, or recording. The address of CT Works, New Britain is 260 Lafayette Street, New Britain, Connecticut 06053.

February 2004 (specific date unknown): Speaker, Connecticut Bar Association, Weaver High School Law Practicum, Hartford Public Schools, Hartford, Connecticut. I discussed paths to college, law school, the legal profession, and my career path. I have no notes, transcript, or recording. The address of Weaver High School is 415 Granby Street, Hartford, Connecticut 06112

February 2004 (specific date unknown): Speaker, Connecticut Division of Criminal Justice, University of Connecticut School of Law Black Law Students Association, Hartford, Connecticut, I discussed careers in criminal prosecution. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

February 2003 (specific date unknown): Speaker, Connecticut Division of Criminal Justice, Public Interest Career Fair, University of Connecticut School of Law, Hartford, Connecticut. I discussed with law students potential careers within the Connecticut Division of Criminal Justice. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

April 2002 (specific date unknown): Speaker, Weaver High School Career Day, Hartford Public Schools, Hartford, Connecticut. I discussed paths to college, law school, the legal profession, and my career path. I have no notes, transcript, or recording. The address of Weaver High School is 415 Granby Street, Hartford, Connecticut 06112.

March 2002 (specific date unknown): Speaker, Bridgeport Central High School Career Day, Bridgeport Public Schools, Bridgeport, Connecticut. I discussed paths to college, law school, the legal profession, and my career path. I have no notes, transcript, or recording. The address of Bridgeport Central High School is 1 Lincoln Blvd., Bridgeport, Connecticut 06606.

February 2002 (specific date unknown): Speaker, Connecticut Division of Criminal Justice, Public Interest Career Fair, University of Connecticut School of Law, Hartford, Connecticut. I discussed with law students potential careers within the Connecticut Division of Criminal Justice. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

February 2001 (specific date unknown): Speaker, Connecticut Division of Criminal Justice, Public Interest Career Fair, University of Connecticut School of Law, Hartford, Connecticut. I discussed with law students potential careers within

the Connecticut Division of Criminal Justice. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

February 2000 (specific date unknown): Speaker, Connecticut Division of Criminal Justice, Public Interest Career Fair, University of Connecticut School of Law, Hartford, Connecticut. I discussed with law students potential careers within the Connecticut Division of Criminal Justice. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut 06105.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

To the best of my recollection, I spoke with a reporter for the Bristol Press in 2004 about moving from the Connecticut Division of Criminal Justice to the Office of the Attorney General. I am unable to locate the resulting article.

Town News Briefing, HARTFORD COURANT (Apr. 5, 2003). Copy supplied.

Diane Struzzi, *New Prosecutor Gets His Start*, HARTFORD COURANT (Nov. 4, 2000). Copy supplied.

Cara Solomon, *Swindler Nearer to Freedom—Contractor Pays Way Out of Possible Prison Term*, HARTFORD COURANT (Sept. 13, 2000). Copy supplied.

JoAnne Viviano, *Officer Gets Special Probation*, NEW HAVEN REGISTER (Sept. 14, 1999). Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since 2009, I have served as a Superior Court Judge on the Superior Court of Connecticut. I was nominated to this position by Governor M. Jodi Rell and, after having been confirmed by the General Assembly, I took the oath of office in March 2009. I was reappointed to a successive eight-year term 2017. The Superior Court of Connecticut is a court of general jurisdiction.

As a Superior Court Judge presently assigned as the Administrative Judge for the

Middlesex Judicial District, I am charged with the administrative tasks of overseeing the assignments of the several judges within the Judicial District and some degree of personnel and facilities oversight. Additionally, I am the primary criminal trial judge with additional responsibilities for presiding over other criminal, civil, juvenile, and housing matters as necessary.

Over the course of my several years on the bench, I have, in addition to the added administrative and supervisory responsibilities, had varying assignments presiding over criminal, civil, habeas corpus, and housing matters. I have also sat by designation in three matters at the Connecticut Appellate Court.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 300 bench trials, approximately 20 jury trials and dozens of evidentiary hearings. I have also presided over thousands of hearings in misdemeanor and felony matters, including hundreds of resolutions via pleas of guilty or no contest by the defendant.

i. Of these cases, approximately what percent were:

Jury trials:	5%
bench trials:	95%

ii. Of these cases, approximately what percent were:

civil proceedings:	90%
criminal proceedings:	10%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of citations.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Myers*, No. MMX-CR18-0215306-T, 2022 WL 16570456 (Conn. Super. Ct. Oct. 19, 2022); 2022 WL 16571204 (Conn. Super. Ct. Oct. 21, 2022); 2022 WL 16570341 (Conn. Super. Ct. Oct. 21, 2022)

This case was a two-week jury trial on charges of murder and home invasion. Defendant Myers was charged with killing a 29-year-old Hartford special needs

teacher by stabbing her 19 times. The trial involved issues of domestic violence and coercive control. The evidence included DNA, electronic records, cell phone extractions, and claims of illegal interrogation. I was required to rule on several pre-trial motions and motions in limine, most significantly on the authenticity requirements and admissibility of printed versions of social media posts attributed to the defendant, and held evidentiary hearings as well before the case proceeded to trial. In November 2022 Myers was convicted by a jury and in January 2023 I sentenced him to 57 years in state prison. The matter is now on appeal.

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Counsel for the Defense
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2. *State v. Kosuda-Bigazzi*, No. HHBCR180068925T, 2018 WL 4655590 (Conn. Super. Ct. Sept. 12, 2018); 2019 WL 4513807 (Conn. Super. Ct. Aug. 16, 2019), *aff'd*, 335 Conn. 327 (2020)

The defendant, charged with murder in a domestic violence context, claimed that police seized and read documents protected by attorney-client privilege, irreparably damaging her ability to present a defense. I presided over an evidentiary hearing to determine whether there were privilege violations, what, if any, prejudice the defendant suffered from the violations, and fashion a remedy, pursuant to *State v. Lenarz*, 301 Conn. 417 (2011), *cert. denied*, 565 U.S. 1156 (2012). I found that although there were violations of attorney-client privilege, dismissal was not necessary under the circumstances. Instead, I ruled, inter alia, that the removal from the case of the prosecution team and specific law enforcement agencies, as well as a transfer of jurisdiction, was sufficient to address any prejudice suffered by the defendant. I was then affirmed on appeal.

The matter is pending before a new judge in the Hartford Judicial District criminal court.

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Counsel for the Defense
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3. *Budziszewski v. Warden*, No. CV134005604, 2018 WL 3015205 (Conn. Super. Ct. May 21, 2018), *aff'd*, 199 Conn. App. 518 (2020), *cert. denied*, 335 Conn. 965 (2020)

On remand from the Connecticut Supreme Court for a new trial on the issue of the proper advice to be given by counsel to criminal defendants who may be subject to mandatory deportation, as required by *Padilla v. Kentucky*, 559 U.S. 356 (2010). I found, after trial, that defense counsel's advice was not constitutionally deficient because he properly explained to the petitioner that he would unquestionably be subject to deportation, even if it might take some time for immigration authorities to locate him. This judgement was affirmed by the Court of Appeals; certification was denied by the Connecticut Supreme Court.

Counsel for the Petitioner
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Counsel for the Respondent
Adrienne Russo
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4. *Greene v. Commissioner of Correction*, No. CV134005678S, 2016 WL 4007537 (Conn. Super. Ct. June 20, 2016), *aff'd*, 330 Conn. 1 (2018), *cert. denied sub nom. Greene v. Semple*, 139 S. Ct. 1219 (2019)

Petitioner Greene's habeas petition claimed that the state violated his due process rights during his criminal trial by failing to correct false testimony given by an accomplice and cooperating witness and by failing to disclose evidence favorable to him, pursuant to *Brady v. Maryland*. Specifically, Greene claimed that the cooperating witness falsely claimed during the criminal trial that the witness had not negotiated a lower sentence with prosecutors in exchange for his testimony. I presided over a bench trial on the claims. I determined that the prosecutor properly disclosed to the defense that the witness would testify against Greene, satisfying *Brady*, and that the witness's statements at trial were not false or misleading. The Connecticut Supreme Court agreed with me that the witness's statements at trial were "not substantially misleading" and the prosecutor had no duty to correct them.

Trial Counsel for the Petitioner
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Trial Counsel for the Respondent
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New Haven Judicial District
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5. *State v. Smith*, 179 Conn. App. 734 (2018), *cert. denied*, 328 Conn. 927 (2018)

The defendant was charged with witness tampering and operating a motor vehicle under the influence of alcohol and/or drugs. Following a six-day jury trial, the defendant was convicted on both counts. I imposed a total effective sentence of 15 years of incarceration, with execution suspended after seven years to serve, followed by five years of probation. The defendant then appealed, arguing that I erred in admitting certain copies of electronic evidence relating to the witness tampering charge. I was affirmed on appeal. The defendant's subsequent habeas corpus requests for relief were denied.

Counsel for the State
Charles W. Johnson

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Counsel for the Defense
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6. *TA Operating, LLC v. Geddes et al.*, X06UWYCV 094020994-S, 2013 WL 7760846 (Conn. Super. Ct. Nov. 4, 2013)

This case required me to determine whether the terms of a proposed settlement agreement were clear, unambiguous, and not in dispute between the parties, such that I could enforce the proposed agreement pursuant to the plaintiff's motion. In this civil action brought by the Chapter 7 bankruptcy Trustee for the plaintiff corporate entity, the plaintiff sought to enforce a supposed settlement agreement between the plaintiff and the several defendants in this matter. The plaintiff asserted that during the course of judicial mediation, a clear and unambiguous agreement to resolve the instant litigation was reached between the parties, subject to Bankruptcy Court approval. After an evidentiary hearing, I found that the precise terms of the agreement were not clear and unambiguous in that there existed ambiguity as to the disposition of the bankruptcy petition of one of the named defendants, pursuant to *Audubon Parking Association Limited Partnership v. Barclay and Stubbs, Inc.*, 225 Conn. 804 (1993). Accordingly, there was no agreement to enforce. There was no appeal, and the parties later settled.

Counsel for the Plaintiff
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Counsel for the Principal Defendants
Edward Taiman
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George P. Seabourne (for Mr. Daddona)
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Timothy Francis Sullivan (for Richard Renner, LLC and RHR LLC)
Mahaney, Geghan & Sullivan
One Exchange Place
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Richard C. Marquette
Goldblatt Marquette & Rashba P.C. (for Mr. Whitten, Donahue Mountain Farm LLC, Inland Forest Properties LLC)
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Hamden, CT 06518
(203) 687-4050

7. *State v. Vaught*, No. H15NCR11266931T, 2013 WL 1715703 (Conn. Super. Ct. Apr. 2, 2013), *aff'd*, 157 Conn. App. 101 (2015)

The defendant in this case was charged with attempt to possess one kilogram or more of a cannabis-type substance with intent to sell by a person who is not drug-dependent, and criminal possession of a revolver. In ruling on the defendant's motion to suppress physical evidence – drugs and a firearm – discovered after a warrantless search of his residence, I was required to analyze the exclusionary rule and its exceptions under *Mapp v. Ohio*, and under the Connecticut Constitution. I found that the defendant consented to the search of the entire premises. I also evaluated the anticipated trial evidence and potential prejudice to the defendant in granting the prosecution's motion to join the drug and firearm matters for trial. After a jury trial, over which I presided, the defendant was convicted on both charges, and I sentenced him to eight years of incarceration, followed by five years of special parole. On appeal, the Appellate Court affirmed my rulings.

Counsel for the State
Seth R. Garbarsky

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(203) 503-6823

Counsel for the Defense
Joseph Elder
Joseph S. Elder, LLC.
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(860) 622-9585

8. *Chung v. Belton et al.*, No. CVH-8221, 2012 WL 3206455 (Conn. Super. Ct. July 31, 2012)

This was a landlord-tenant action alleging violations of the Connecticut Entry and Detainer statute as well as the Connecticut Unfair Trade Practices Act. At a bench trial over which I presided, the tenant asserted that she was illegally removed from her rented premises by her landlord and that her personal property was improperly discarded and lost to her. Further, as a result of having been illegally made homeless, the evidence established that the plaintiff had faced an attempted sexual assault. After trial, I found in favor of the plaintiff and awarded economic damages and attorney's fees. There was no appeal.

Counsel for the Plaintiff
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Counsel for the Defense
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Jeremy E. Baver (successor counsel for the defense)
J.E. Baver Law
193 Girard Avenue
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(860) 656-7719

9. *Commission on Human Rights and Opportunities ex. rel. Palmer v. Burkamp,*

2012 WL 2356585 (Conn. Super. Ct. May 18, 2012)

The matter involved a claim of housing discrimination brought by the CHRO on behalf of the relator against her would-be landlord. After a bench trial, I found that the plaintiff established that the defendant violated state law by refusing to rent to the relator based on her intended use of a State Security Deposit Guarantee for the required security deposit. After finding in the plaintiff's favor, I ordered non-economic damages, a civil penalty, and attorney's fees. There was no appeal.

Counsel for the Plaintiff
Greg Kirschner
Connecticut Fair Housing Center
60 Popieluszko Court
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(860) 247-4400

Counsel for the Defendant
Stanley Falkenstein
Marte, Keith, Falkenstein, Meggers & Paul
113 East Center Street
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(860) 649-2865

10. *Bloomfield Early Learning Center v. Town of Bloomfield, Connecticut*, No. HHDCV124060677S, 2011 WL 6945301 (Conn. Super. Ct. Nov. 25, 2011)

The plaintiff daycare center filed a complaint alleging violation of the Connecticut Unfair Trade Practices Act, and breach of contract after having been "locked out" of their commercial premises by the defendant town. It sought, among other relief, a mandatory temporary injunction directing the town to make repairs sufficient to return the premises to a condition suitable for occupancy as a child early learning center. Based on the evidence adduced at the motion hearing, I was persuaded that the plaintiff was likely to succeed on the merits of its claim that the defendant violated the provisions of the operative lease agreement relating to the maintenance and repair of the subject premises. I also found that the plaintiff demonstrated the potential for irreparable harm in the absence of the requested injunctive relief. I found further that the plaintiff proved that an action for monetary damages was an inadequate remedy at law, both for the plaintiff and for the low- and moderate-income children and families who had been educationally, socially, and financially displaced as a result of the continued dispossession. Finally, in balancing the equities between the parties, I found that the expenditure of certain sums for permanent or temporary heating systems were not overly burdensome on the defendant when compared to the potential losses to the plaintiff and the losses to the clients served by the plaintiff. I therefore ruled for the plaintiff, and issued several orders relating to commercial premises, alternative premises, and compliance with applicable health, fire and building

codes. An appeal was initially filed but later withdrawn.

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *State v. Ferreira*, No. MMX-CR20-0241028-T, 2023 WL 2204022 (Conn. Super. Ct. Jan. 20, 2023)

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2. *Rose v. DMHAS et al.*, No. MMC-CV19-5011772-S, 2022 WL 17443393 (Conn. Super. Ct. Dec. 1, 2022)

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3. *State v. Myers*, No. MMX-CR18-0215306-T, 2022 WL 16571204 (Conn. Super. Ct. Oct. 21, 2022)

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4. *Delgado v. Commissioner of Correction*, No. CV 13-4005557-S, 2022 WL 4234061 (Conn. Super. Ct. Sept. 14, 2022)

Counsel for the Respondent
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5. *Stephenson v. Warden*, No. TSR-CV13-4005730-S, 2022 WL 1223985 (Conn. Super. Ct. Apr. 26, 2022)

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6. *Seramonte Associates, LLC v. Town of Hamden*, 202 Conn. App. 467 (2021), *aff'd*, 345 Conn. 76 (2022)

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7. *State v. Kosuda-Bigazzi*, No. HHBCR180068925T, 2019 WL 4513807 (Conn. Super. Ct. Aug. 16, 2019), *aff'd*, 335 Conn. 327 (2020)

Counsel for the State
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Counsel for the Defense
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8. *State v. Pagan*, No. HHB-CR17-0287620-T, 2019 WL 2246570 (Conn. Super. Ct. Mar. 29, 2019)

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9. *State v. Glowicki*, No. HHB-CR18-0292448-T, H15N-CR17-0287074-S, 2019 WL 1504009 (Conn. Super. Ct. Feb. 22, 2019)

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10. *Carabetta Management Co. v. Sealy*, No. HDSP-160135, 2011 WL 6945247 (Conn. Super. Ct. Nov. 8, 2011)

Counsel for the Plaintiff
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e. Provide a list of all cases in which certiorari was requested or granted.

Greene v. Commissioner of Correction, No. CV134005678S, 2016 WL 4007537 (Conn. Super. Ct. June 20, 2016), *aff'd*, 330 Conn. 1 (2018), *cert. denied sub nom. Greene v. Semple*, 139 S. Ct. 1219 (2019)

Shipman v. Warden, No. CV124004631S, 2015 WL 9897700 (Conn. Super. Ct. Dec. 14, 2015), *aff'd sub nom. Shipman v. Comm'r of Correction*, 172 Conn. App. 600 (2017), *cert. denied*, 326 Conn. 908 (2017), *cert. denied sub nom. Shipman v. Semple*, 138 S. Ct. 405 (2017)

Robinson v. Warden, No. CV134005253, 2015 WL 4430558 (Conn. Super. Ct. June 17, 2015), *aff'd sub nom. Robinson v. Comm'r of Correction*, 169 Conn. App. 907 (2016), *cert. denied sub nom. Robinson v. Semple*, 137 S. Ct. 2235 (2017)

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

State v. Patrick M., HHB CR170287470T (Conn. Super. Ct. Sept. 2, 2022), *rev'd and remanded*, 344 Conn. 565 (2022). The defendant was convicted by the jury of murder and weapons charges in connection with the death of his wife in 2017. In 2019, I sentenced the defendant to 55 years in prison and he appealed, arguing he was denied his right to a fair trial because of statements the prosecutor made during closing arguments. The Connecticut Supreme Court reversed the murder conviction in September 2022 and remanded for a new trial, finding that, while the evidence was sufficient to establish the defendant's conviction, the prosecutor's statements that the defendant's in-court testimony was the "first time" the defendant told an exculpatory version of events was "fundamentally unfair" in violation of the defendant's right to due process. The Court also found that the error was not harmless. The matter remains pending in the Superior Court after remand.

State v. Juan J., No. HHB-CR170286740-T (Conn. Super. Ct. 2019), *rev'd and remanded*, 344 Conn. 1 (2022). After jury trial and conviction on sexual assault charges, the defendant appealed. At trial, the prosecution offered evidence of previous sexual assaults by the defendant against the same victim as uncharged misconduct on the issue of intent. The Connecticut Supreme Court found that uncharged prior misconduct against the minor victim was not relevant to show intent, and thus was inadmissible on the issue of intent as the defense theory was one of general denial. They also found that the erroneous admission of evidence of uncharged prior misconduct against minor victim was not harmless. The case was reversed and remanded for a new trial, and it remains pending in the Superior Court.

McCarthy v. Commissioner of Correction, No. CV134005222S, 2017 WL 5014900 (Conn. Super. Ct. Sept. 12, 2017), *aff'd in part, rev'd in part*, 192 Conn. App. 797 (2019). In this habeas corpus litigation, the petitioner challenged his underlying conviction for murder, claiming that ineffective assistance of his initial counsel led him to reject a plea offer from the state after being misled regarding the strength of the state's case against him because that counsel had fabricated affidavits from certain eyewitnesses to the underlying crime. At the habeas trial over which I presided, I found that the petitioner's initial counsel, who filed a limited "bond purposes only" appearance for the petitioner, took actions outside

of the scope of his limited appearance and was not to be considered trial counsel. I found further that, as "bond counsel" did not represent the petitioner during plea negotiations or at trial, he was not functioning as "counsel" within the meaning of the Sixth Amendment at the time of the plea offer or at trial. The Appellate Court of Connecticut affirmed me in part and reversed in part, finding that, when denying the habeas corpus petition, I applied an unduly narrow view of the scope and duration of the attorney-client relationship when I found that counsel's actions during his brief period of representing the petitioner in his underlying criminal matter was insufficient to constitute deficient performance and to prejudice petitioner. The matter was remanded to the habeas court for a new trial to determine whether previous counsel was representing petitioner, within the meaning of the Sixth Amendment, when he fabricated certain witness affidavits. On remand before another judge, the habeas petition was granted. *McCarthy v. Warden*, No. CV134005222S, 2021 WL 3409811 (Conn. Super. Ct. June 30, 2021).

Kelsey v. Commissioner of Correction, No. CV174008700 (Conn. Super. Ct. May 15, 2017), *rev'd and remanded*, 329 Conn. 711 (2018). The Connecticut Supreme Court, in a certified public interest appeal interpreting certain "habeas reform" statutes, found that the pleadings need not have been closed before the habeas court can take action on the respondent's motion for an order for the petitioner to show cause why an untimely-filed habeas petition should not be dismissed. The court's interpretation of the relevant section of the statute found that the ability to conduct the hearing prior to the close of pleadings was within my discretion. My decision to the contrary was reversed and the case was remanded for further proceedings, including the adjudication of the respondent's "show cause" motion. Copy supplied. On remand before a different judge, the habeas petition was dismissed. 2019 WL 1766069 (Conn. Super. Ct. Mar. 20, 2019), *aff'd*, 202 Conn. App. 21 (2020), *aff'd*, 343 Conn. 424 (2022).

Boria v. Commissioner of Correction, No. TSR-CV16-4008315-S (Conn. Super. Ct. Sept. 17, 2016), *aff'd*, 186 Conn. App. 332 (2018), *rev'd and remanded*, 345 Conn. 39 (2022). Upon preliminary consideration of a newly-filed habeas corpus writ, I dismissed the petition for lack of subject matter jurisdiction pursuant to the Connecticut Rules of Court. Copy supplied. The Connecticut Supreme Court, in clarifying the distinction between two similar sections of the Rules of Court, found that I should have declined to issue the writ for lack of subject matter jurisdiction following its preliminary consideration of the petition, rather than dismissing it on the same basis, without notice. The judgment of the Appellate Court was reversed and that court was directed to reverse my judgment and to remand the case to the habeas court for further proceedings to determine whether it was appropriate to decline to issue the writ. This matter was handled on remand by another judge, pursuant to the Rules of Court.

Gilchrist v. Commissioner of Correction, No. TSRCV164008219S (Conn. Super. Ct. July 28, 2016), *aff'd*, 180 Conn. App. 56 (2018), *rev'd and remanded*, 334

Conn. 548 (2020). Upon preliminary consideration of a newly-filed habeas corpus writ, I dismissed the petition for lack of subject matter jurisdiction pursuant to the Connecticut Rules of Court. Copy supplied. The Connecticut Supreme Court, in clarifying the distinction between two similar sections of the Rules of Court, found that I should have declined to issue the writ for lack of subject matter jurisdiction, rather than dismissing it on the same basis, without notice. Accordingly, on remand I declined to issue the writ.

Edwards v. Warden, No. CV134005574S, 2016 WL 4253398 (Conn. Super. Ct. July 13, 2016), *rev'd and remanded sub nom. Edwards v. Comm'r of Correction*, 183 Conn. App. 838 (2018). In this case, the defendant, having been convicted of first-degree assault at his underlying trial, claimed, among other things, that his counsel was ineffective at trial in failing to subject the state's case against him to any meaningful adversarial testing through proper cross-examination of the state's witnesses. I found that counsel's strategic decision on cross-examination and at closing arguments was sufficiently competent such that the petitioner failed to overcome the presumption of competency. The Appellate Court found that counsel's actions constituted per se prejudice under *United States v. Chronic*, 466 U.S. 648 (1984). The judgment was reversed and the case was remanded with direction to grant the habeas petition, to vacate the petitioner's conviction of assault in the first degree and the revocation of his probation, and to order a new trial.

Gomez v. Warden, No. CV134005558S, 2016 WL 3202693 (Conn. Super. Ct. May 23, 2016), *aff'd sub nom. Gomez v. Comm'r of Correction*, 178 Conn. App. 519 (2017), *rev'd and remanded*, 336 Conn. 168 (2020). The Supreme Court of Connecticut, having granted certification from the affirmance of the Appellate Court, found I erred in finding that the prosecuting authority's disclosure of a witness's cooperation agreements to defense counsel, without more, satisfied the prosecutor's obligation to correct false testimony and vindicated the defendant's due process rights when prosecution witnesses were untruthful in their characterization of their lack of self-interested motive to testify against the defendant. The Supreme Court reversed and remanded with instructions to grant the habeas petition, vacate the petitioner's underlying convictions, and order a new trial. On August 4, 2020, I entered judgment and orders consistent with the remand order.

Bell v. Commissioner of Correction, No. CV124004791S, 2015 WL 5315427 (Conn. Super. Ct. Aug. 12, 2015), *rev'd and remanded*, 184 Conn. App. 150 (2018), *aff'd*, 339 Conn. 79 (2021). Bell was convicted by a jury of two counts of robbery, burglary, larceny, and kidnapping, and received an effective sentence of 36 years in prison. Bell filed a petition for habeas corpus, claiming that he was denied due process because jury instructions on the kidnapping charge failed to require finding that restraint of victims was not merely incidental to another crime. I denied the petition, finding that the failure of the trial judge to give a nonincidental movement instruction to the jury as to the kidnapping charge was

harmless beyond a reasonable doubt. The Appellate Court reversed and found the instructional error was not harmless beyond a reasonable doubt. The judgment was reversed and the case was remanded with direction to enter judgment granting the habeas petition, vacating the petitioner's kidnapping convictions, and ordering a new trial on those offenses. The Connecticut Supreme Court affirmed.

James v. Warden, No. CV114004013, 2015 WL 4880187 (Conn. Super. Ct. Jul. 14, 2015), *rev'd in part and remanded sub nom. James v. Comm'r of Correction*, 327 Conn. 24 (2017). The petitioner asserted, inter alia, that the respondent had incorrectly calculated his total effective sentence and his jail credit, resulting in a loss of 1,624 days of jail credit. I credited the testimony of the respondent's Records Specialist and found her testimony as to the calculation and application of jail credit overwhelmingly persuasive. The Connecticut Supreme Court found, in an issue of first impression, that calculation of presentence confinement credit should be adjusted for concurrent sentences imposed under one docket number but on different dates.

Wilcox v. Commissioner of Correction, No. CV114004205S, 2014 WL 5356250 (Conn. Super. Ct. Sept. 17, 2014), *rev'd and remanded sub nom. Wilcox v. Comm'r of Correction*, 162 Conn. App. 730 (2016). In this habeas trial over which I presided, the petitioner, serving a sentence after conviction on several charges, including kidnapping, asserted that there was instructional error to the jury at the underlying criminal trial and that the error was not harmless beyond a reasonable doubt. I agreed with the petitioner's claim, finding that the petitioner was entitled to a new trial on the kidnapping charge due to the trial court's failure to properly instruct the jury pursuant to current case law, that if it found that the restraint of the victim was merely incidental to the defendant's commission of the assault, it could not find him guilty of kidnapping. The Appellate Court found that I erred in so finding and held that the petitioner had failed to establish actual prejudice resulting from the trial court's kidnapping instruction. The judgment was reversed and the case remanded with directions to dismiss the habeas petition.

Mukon v. Gollnick, No. CV116003894S, 2013 WL 951328 (Conn. Super. Ct. Feb. 15, 2013), *rev'd and remanded*, 151 Conn. App. 126 (2014). At the court trial in which the plaintiff alleged malpractice against the defendant accountant, I credited the testimony of the plaintiff's expert and the other evidence adduced at trial, found for the plaintiff, and ordered economic damages. The Appellate Court reversed, finding that I failed to apply certain Connecticut General Statutes and improperly found that the dissolution of the corporate entity, rather than the plaintiff's failure to conform to statutory requirements, triggered the taxable event I attributed to the malpractice of the accountant. The judgment was reversed, and the case remanded with directions to render judgment in favor of the defendant.

State v. Ayala, No. CR12-267745 (Conn. Super. Ct. Jan. 22, 2013), *rev'd and remanded*, 154 Conn. App. 631 (2015), *aff'd*, 324 Conn. 571 (2017). In this case,

the defendant was convicted of three counts of interfering with a police officer in a jury trial over which I presided. After the close of evidence, the prosecuting authority sought to file an amended long form information modifying the location of one of the alleged interfering charges. I allowed the amendment, finding that the petitioner was not subject to unfair surprise. The Appeals Court of Connecticut reversed the conviction, finding that the state failed to demonstrate good cause to permit the amended information and that I failed to make the requisite finding of good cause. The Connecticut Supreme Court affirmed. On remand, the defendant entered a *nolo contendere* plea to interfering with the police and was sentenced to an unconditional discharge.

Centrix Management Co. v. Valencia, No. NBSP–054299145, 2012 WL 2202352 (Conn. Super. Ct. May 24, 2012), *aff'd in part, rev'd in part,* and remanded,145 Conn. App. 682 (2013). After a summary process bench trial over which I presided, I ruled for the defendant-tenant. As the prevailing party, I found the defendant entitled to attorney's fees. There had also been pending a "payment into court" action between these same parties, where the defendant alleged certain housing code violations absolved her from her rental obligations. That matter was resolved in favor of the plaintiff-landlord. I ordered some of the funds paid into court by the plaintiff to satisfy my previous order awarding the plaintiff attorney's fees. The Appellate Court affirmed as to the granting of the defendants' motion for attorney's fees, but reversed as to the distribution of the use and occupancy payments to the defendants for attorney's fees, finding that I erred in the manner in which I ordered distribution of use and occupancy payments. The monies held by the clerk of the court were properly directed to offset the tenant's rental obligation and not to attorney's fees for the tenant.

State v. Polanco, No. CR080135107S (Conn. Super. Ct. Aug. 14, 2009), *aff'd in part, rev'd in part, and remanded*, 126 Conn. App. 323 (2011), *aff'd in part, rev'd in part*, 308 Conn. 242 (2013). After defendant was convicted on drug charges in a jury trial over which I presided, the Connecticut Supreme Court, in remanding the matter with direction to vacate one of the convictions, adopted a new standard of vacatur versus merger for certain criminal convictions at trial. The Supreme Court held that when a defendant has been convicted of greater and lesser included offenses, the trial court must vacate the conviction for the lesser offense rather than merging the convictions, and vacated the sentence for the lesser included offense. It also held that a defendant's conviction for a lesser included offense that was previously vacated as violative of double jeopardy may be reinstated if his conviction for the greater offense subsequently is reversed for reasons not related to the viability of the vacated conviction. On remand, the conviction in question was vacated, but the defendant's total effective sentence of 10 years incarceration, five of which were mandatory, followed by 10 years special parole, was unchanged.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished

opinions are filed and/or stored.

I have issued thousands of orders, opinions, decisions, and memorandum orders during my time on the bench. Approximately 1000 rulings involved substantive factual or legal analysis. Of these rulings, approximately 25 percent are available on Lexis and/or Westlaw, and the remaining 75 percent are unpublished and are stored and maintained electronically within the State of Connecticut Judicial Branch electronic case management system.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Seramonte Associates, LLC v. Town of Hamden, CV166065237S, 2019 WL 1313254 (Conn. Super. Ct. Feb. 5, 2019), 202 Conn. App. 467 (2021) (sitting by designation), *aff'd*, 345 Conn. 76 (2022)

Stephenson v. Warden, CV13-4005730-S, 2022 WL 1223985 (Conn. Super. Ct. May 16, 2022)

Little v. Warden, No. CV205000641-S, 2020 WL 8265397 (Conn. Super. Ct. Dec. 14, 2020)

Hurdle v. Commissioner of Correction, No. CV205000647-S, 2020 WL 5540600 (Conn. Super. Ct. Aug. 17, 2020)

Rivera v. Commissioner, No. TSRCV205000561S, 2020 WL 3790741 (Conn. Super. Ct. June 8, 2020).

Greene v. Commissioner of Correction, No. CV134005678S, 2016 WL 4007537 (Conn. Super. Ct. June 20, 2016), *aff'd*, 330 Conn. 1 (2018), *cert. denied sub nom. Greene v. Semple*, 139 S. Ct. 1219 (2019)

State v. Pagan, No. HHB-CR17-0287620-T, 2019 WL 2246570 (Conn. Super. Ct. Mar. 29, 2019)

Jamison v. Warden, No. CV124004692, 2014 WL 3587496 (Conn. Super. Ct. June 9, 2014), *aff'd sub nom. Jamison v. Comm'r of Correction*, 167 Conn. App. 312 (2016)

Betancourt v. Warden, No. CV12-4004762-S, 2016 WL 490285 (Conn. Super. Ct. Jan. 12, 2016)

State v. Vaught, No. H15NCR11266931T, 2013 WL 1715703 (Conn. Super. Ct. Apr. 2, 2013), *aff'd*, 157 Conn. App. 101 (2015)

Pires v. Warden, No. TSRCV074001591, 2015 WL 544656 (Conn. Super. Ct. Jan. 16, 2015)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal**: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Connecticut Practice Book Section 1-22 requires the judicial authority to recuse, upon its own motion or upon motion of either party, if the court previously tried the same matter and a new trial is ordered or the matter was reversed on appeal.

Rule 2.11 of the Connecticut Code of Judicial Conduct, which governs State Court judges, also requires disqualification in any matter in which the judge's impartiality might reasonably be questioned.

In my service as a Superior Court judge, I have never, to the best of my recollection, been asked to recuse myself for cause pursuant to Section 1-22. I have, however, recused myself sua sponte on three occasions.

I recused myself from one habeas matter based on a previous close, personal relationship with a witness. I recused myself in two other instances based upon the filing of Judicial Review Council complaints against me by the litigants. These three sua sponte recusals were based on the appearance of impropriety standard due to a potential perceived conflict of interest.

As all Judicial Review Council complaints filed against me were dismissed as lacking a factual basis, I am unable to recall which matters were the subject of recusal. As evidence had not opened on any of these three matters, no written decision regarding recusal was made as the matter was simply transferred to another judge. After review of my notes, computerized records and searching my own recollection, I am unable to identify the names or docket numbers of these cases.

15. **Public Office, Political Activities and Affiliations**:

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

       From 2008 to 2009, I was a member of the Board of the Portland, Connecticut Public Library appointed by First Selectwoman Susan Bransfield. I was required to resign from this appointed office after I was confirmed as a Superior Court judge pursuant to the Code of Judicial Conduct.

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

       To the best of my recollection, my only involvement in any campaign was volunteering very briefly to distribute leaflets for Biagio "Billy" Smith's campaign for Connecticut State Representative, District 37 in approximately 2008.

16. **Legal Career:** Answer each part separately.

    a. Describe chronologically your law practice and legal experience after graduation from law school including:

       i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

          I have never served as a clerk to a judge.

       ii. whether you practiced alone, and if so, the addresses and dates;

          I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1997
Law Office of Kenneth B. Lerman, PC
651 Day Hill Road
Windsor, Connecticut 06095
Associate

1997 – 1998
State of Connecticut, Judicial Branch
Hartford Judicial District
Temporary Assistant Clerk

1998 – 1999
Monstream & May, LLP (now defunct)
Associate

1999 – 2004
State of Connecticut, Division of Criminal Justice
300 Corporate Place
Rocky Hill, Connecticut 06067
Assistant State's Attorney

2004 – 2009
State of Connecticut, Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Assistant Attorney General

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative resolution proceedings.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

The nature of my law practice prior to becoming a judge varied widely over the years. After graduating from law school in 1997, I worked briefly for a local solo practitioner reviewing contracts and incorporating small

businesses.

From 1997 to 1998, I was employed as a Temporary Assistant Clerk in the Hartford Judicial District where I maintained the courts files, including filings and trial exhibits. I also assisted the judges in the courtroom during jury selection and criminal jury trials.

From 1998 to 1999, I was an associate at Monstream & May, LLP, a small insurance and worker's compensation defense firm. While there, I conducted research and drafted pleadings, motions, and memoranda for review by supervising attorneys, took part in depositions, and argued motions in courts across the state.

From 1999 to 2004, I was employed by the State of Connecticut, Division of Criminal Justice as an Assistant State's Attorney. In that role, I prosecuted felony, misdemeanor, and motor vehicle matters. In addition to my daily criminal docket, I represented the people of the State of Connecticut in approximately 22 criminal jury trials, dozens of evidentiary hearings, and countless daily bail hearings, motion hearings and other dispositive hearings.

From 2004 to 2009, I was employed with the State of Connecticut, Office of the Attorney General as an Assistant Attorney General in the Child Protection Unit. In this role, I represented the Connecticut Department of Children and Families in child abuse, neglect, and termination of parental rights matters in bench trials, administrative hearings, and in one appellate matter. At the Statewide Child Protection Session in Middletown, Connecticut, I handled some of the state's most complex and serious child protection matters.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a Temporary Assistant Clerk, I worked for the Connecticut Judicial Branch.

At the Law Office of Kenneth Lerman PC, I represented individual parties to a contract and those seeking to incorporate.

As an associate at Montstream & May, LLP, from 1998 to 1999, I represented business entities in food-borne illness and "slip and fall" personal injury cases in civil litigation in Connecticut state courts.

As an assistant state's attorney from 1999 to 2004, I represented the interests of the people of the State of Connecticut in criminal matters,

ranging from felonies and misdemeanors to motor vehicle violations.

As an attorney at the Office of the Attorney General from 2004 to 2009, my client was the Connecticut Department of Children and Families. I represented their mission to protect the best interest of children in abuse, neglect, and termination of parental rights matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I was a litigator for the entirety of my career in legal practice. From 1999 to 2004 as an Assistant State's Attorney, I was in court daily, handling felony and criminal matters. From 2004 to 2009, as an Assistant Attorney General in the Child Protection Unit, I was assigned to the Statewide Child Protection Session, where I was in court several days per week trying cases.

i. Indicate the percentage of your practice in:
   1. federal courts: 0%
   2. state courts of record: 100%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 55%
   2. criminal proceedings: 45%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an Assistant State's Attorney, I tried 20 criminal jury matters to verdict as sole counsel and two criminal jury matters as co-counsel. I also tried many violation of probation matters and represented the state in arraignments, bond hearings, and other criminal matters.

As an Assistant Attorney General, I tried as sole counsel several dozen termination of parental rights, abuse, neglect, and order of temporary custody matters to the court. I also appeared once before the Connecticut Appellate Court.

i. What percentage of these trials were:
   1. jury: 25%
   2. non-jury: 75%

e. Describe your practice, if any, before the Supreme Court of the United States.

Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I did not practice before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re Stephen M.*, Nos. W10CP02014057A, W10CP02014058A, W10CP03014314A, 2006 WL 3042152, (Conn. Super. Ct. 2008), *rev'd and remanded*, 109 Conn. App. 644 (2008).

In 2006, as an Assistant Attorney General, I was sole bench trial counsel and sole appellate counsel at the trial and appeal of this termination of parental rights petition. The Department of Children and Families sought the termination of the parental rights of the respondent-parents to the subject children based on their failure to rehabilitate.

The trial of this matter was before the Hon. Juliett Crawford, who denied the petitions. On appeal, the trial court's decision was reversed as the appellate court, in a decision by the Hon. Douglas S. Lavine, found it was improper for the trial court to disregard and sua sponte reopen the prior court's earlier neglect findings deciding the termination petition. The cases were remanded for a new trial which was handled by other counsel.

Pursuant to statute, the records of this matter are sealed.

Counsel for the Mother
Della Kathryn Steadman (deceased)

Counsel for the Father
Karen Oliver Damboise
Office of Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106

(860) 706-5059

2. *In re Jelani C.*, No. K09CP02008587A, 2006 WL 3929520 (Conn. Super. Ct. Dec. 5, 2006)

As an Assistant Attorney General, I was sole counsel in the State of Connecticut's lengthiest child protection trial – 62 full days over 21 months, from 2004 to 2006. The Department of Children and Families sought and ultimately obtained the termination of the parental rights of four respondent-parents to three subject children based on the felony assault of one of the children by one of the respondent-fathers and the abandonment of two respondent-fathers. As this is a Child Protection matter the file and proceedings and transcripts are statutorily sealed from the public.

The Honorable Carl E. Taylor presided over the bench trial of this matter.

Counsel for Respondent-mother
Sandy M. Moore
The Law Offices of Sandy M. Moore, LLC
80 Broad Street
New London, CT 06320
(860) 444-6124

Other Counsel
Assigned Counsel through the Office of the Chief Public Defender:

Michael Miller
247 Shaw Street
New London, CT 06320
(860) 443-6453

Susan Carr
728 Broad Street Extension
Waterford, CT 06385
(860) 701-1535

Michael Maggiacomo
P.O. Box 772
Danielson, CT 06239
(860) 447-0279

3. *State v. Sachok*, H17B-CR01-0013969-S (Conn. Super. Ct. 2003)

In 2003, as a Deputy Assistant State's Attorney, I was sole counsel in the jury trial of this defendant, who was convicted of intimidation based on bigotry or bias related to threats of violence against a Southeast Asian businessman in the aftermath of the September 11, 2001, attack. The defendant received a total effective sentence of four years, execution

suspended 15 months to serve, followed by two years of probation. There was no appeal.

The Hon. Bernard D. Gaffney presided over the trial.

Counsel for the Defense
Marc William Vallen
Office of the State's Attorney
New Britain Judicial District
20 Franklin Square
New Britain, CT 06051
(860) 515-5270

4. *State v. Janulawicz*, H17BCR020017510T, 2004 WL 1051144 (Conn. Super. Ct. 2004), *aff'd*, 95 Conn. App. 569 (2006), *cert. denied*, 311 Conn. 941(2014)

In 2003, as a Deputy Assistant State's Attorney, I was sole counsel at the suppression hearing wherein the defendant, who was charged with criminal possession of a firearm, carrying a dangerous weapon, risk of injury to a minor, reckless endangerment in the first degree, threatening in the second degree, interfering with a police officer, breach of peace in the second degree, and disorderly conduct, moved to suppress the fruits of the search of the subject premises. I argued, and the trial court agreed, that the police possessed the authority to enter the premises for two reasons: consent by a co-habitant; and the co-habitant's apparent authority to consent to a search of the premises. Accordingly, the motion to suppress was denied. The defendant entered a conditional *nolo contendere* plea with the intent to appeal. On May 13, 2004, the court sentenced him to a total effective term of 10 years imprisonment, execution suspended after seven years, and three years of probation. The Appellate Court, in affirming the trial court, held that there was ample evidence to support trial court's determination that the homeowner consented to the officers' initial entry into the home. The Supreme Court denied certification to appeal.

The Hon. Joan K. Alexander presided over the hearing.

Counsel for the Defense
Deron Freeman
Freeman Law Firm, LLC
90 Brainard Road
Suite 201
Hartford, CT 06114
(860) 728-0359

5. *State v. Sawyer*, H17BCR980003618S (Conn. Super. Ct. 2001), *aff'd*, 74 Conn. App. 743 (2006), *rev'd*, 279 Conn. 331 (2006), *overruled by State v. DeJesus*, 228 Conn. 418 (2008)

The defendant was charged with first-degree sexual assault of his developmentally challenged sister-in-law. I was sole counsel in this matter, which I tried successfully to a

jury in 2001, as a Deputy Assistant State's Attorney. The defendant was sentenced to 12 years in prison. He appealed the conviction on evidentiary grounds; the appeal was handled by other attorneys. After being affirmed at the Appellate Court, the Connecticut Supreme Court reversed the conviction and remanded the matter for a new trial. The defendant later entered a guilty plea to reduced charges of first-degree unlawful restraint and first-degree reckless endangerment. He was sentenced to five years incarceration, execution suspended, followed by three years of probation. Subsequently, the rationale used by the Court to reverse the conviction was overruled in *State v. DeJesus*.

The Honorable Carmen Espinosa presided over the jury trial.

Counsel for the Defense
James Sward (resigned from the bar)

6. *State v. Stephen O.*, H17BCR020015192S (Feb. 6, 2002), *aff'd*, 106 Conn. App. 717 (2008), *cert. denied*, 287 Conn. 916 (2008).

I was sole counsel as a Deputy Assistant State's Attorney in this jury trial, which took place in 2001, of the defendant, who was convicted of sexual assault second degree and risk of injury to a minor. The evidence established a pattern of physical and sexual assault against the developmentally challenged minor. After trial, the court imposed a total effective sentence of 19 years imprisonment, suspended after 16 years, followed by five years of probation.

The Honorable Bernard G. Gaffney (Retired) presided over the jury trial.

Counsel for the Defense
James Sward (resigned from the Connecticut Bar in 2007)

7. *State v. Ciccio*, H17BCR980002175S (Conn. Super. Ct. 2001), *aff'd*, 77 Conn. App. 368 (2003), *cert. denied*, 265 Conn. 905 (2003)

The defendant was convicted of first-degree assault, after striking the teen victim with a wooden pole and causing him serious physical injury. In 2001, as a Deputy Assistant State's Attorney and sole counsel in this criminal jury trial, I presented several witnesses, including a medical expert. The defendant was sentenced to 15 years in prison, suspended after a mandatory five-year term, and five years of probation.

The Honorable Carmen Espinosa presided over the jury trial.

Counsel for the Defense
Susan Nawrocki
56 Arbor Street, Suite 109
Hartford, CT 06106
(860) 244-8228

8. *State v. Walker*, HHDCR96-0090077-T (Conn. Super. Ct. 2000), *appeal dismissed sub nom. Walker v. Comm'r of Correction*, 110 Conn. App. 816 (2008), *cert. denied*, 289 Conn. 949 (2008)

In 2000, as a Deputy Assistant State's Attorney, I was co-counsel for the State of Connecticut at all stages of this criminal litigation, from preliminary motions hearings, through jury selection, trial, the defendant's eventual guilty plea during trial and sentencing. This was the first of two trials of separately tried co-defendants in the 1996 double murder of a physician and his wife in their home. Walker pleaded guilty near the close of the prosecution's case-in-chief and was sentenced to 80 years on two counts of felony murder. Subsequent petitions for habeas corpus relief on claims of involuntary pleas were denied. I was not involved in the trial of the other defendant, Mr. Jones, as I was by that time employed as a prosecutor at a different courthouse.

The Honorable Julia DiCocco Dewey presided over the jury trial.

Co-Counsel for the State
Herbert E. Carlson, Jr. (Retired)

Counsel for the Defense
M. Fred DiCaprio (Retired)

Hon. Karen Goodrow (formerly of the Connecticut Office of the Public Defender)
Judge of the Superior Court
New London Judicial District
70 Huntington Street
New London, CT 06320
(860) 442-2977

9. *State v. Ramos*, H15NCR980178582S, *rev'd in part, judgment directed*, 70 Conn. App. 855 (2002), *rev'd*, 271 Conn. 785 (2004)

In 2000, as a Deputy Assistant State's Attorney, I was co-counsel in the jury trial of this matter in which the defendant was convicted of second-degree assault and possession of a weapon in a motor vehicle involving his use of a hammer to cause physical injury to the victim by striking him on the head. After trial, the court sentenced the defendant to two concurrent sentences of five years, execution suspended, with five years of probation. The Appellate Court reversed the conviction for possession of a weapon in a motor vehicle, finding that the evidence was insufficient to support his conviction on that charge. The Supreme Court reversed the ruling of the Appellate Court and remanded the case to that court with direction to affirm the trial court's judgment of conviction, finding that if a defendant knowingly has an item in a vehicle and intentionally uses that item in a manner capable of causing serious physical injury, the elements of the crime of possession of a weapon in a motor vehicle have been met, regardless of whether he had a prior intent to do so. I was not involved in the appellate litigation.

The Honorable Bernard G. Gaffney (Retired) presided over the jury trial.

Counsel for the Defense
Sharon Elias (formerly of the New Britain Office of the Public Defender)
I am unable to locate current contact information for Ms. Elias.

10. *State v. Buddhu*, 65 Conn. App. 104 (2001), *rev'd and remanded*, 264 Conn. 449 (2003), *cert. denied*, 541 U.S. 1030 (2004)

As a Deputy Assistant State's Attorney, I served as associate counsel in an evidentiary hearing in this case. The defendant was charged with multiple counts of forgery, larceny, money laundering, racketeering. He filed a motion to suppress evidence seized by law enforcement pursuant to a search and seizure warrant, challenging the sufficiency of the warrant's description of the particularity of the place to be searched. After the September 1999 suppression hearing, the trial court found that the search and seizure warrant failed to state with sufficient particularity the location to be search and suppressed the challenged evidence. On appeal, the Appellate Court affirmed and the Connecticut Supreme Court reversed. The defendants' petition for writ of certiorari to the Supreme Court of the United States was denied. The matter was later disposed of by plea agreement on charges of money laundering, forgery, and money laundering, and the defendant was sentenced to a ten years execution suspended after serving one year of incarceration followed by five years of probation.

The Honorable Carmen Espinosa presided over the hearing.

Counsel for the Defense
Wesley S. Spears
145 Glastonbury Turnpike
P.O. Box 462
Glastonbury, CT 06033
(860) 724-0505

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to my regular duties as a judge, I have been the Administrative Judge of the Middlesex Judicial District since 2020. In that role, I am responsible for generally overseeing operations within the courthouse, including the courthouse staff, including clerks, marshals, and judges. For the last three years, I was a member of the Connecticut Sentencing Commission, which proposes potential legislation at the request of the Connecticut Legislature.

I also serve on several committees within the Connecticut judiciary. I have been a member, and now chair, of the Committee on Judicial Ethics, where I have the responsibility of advising colleagues on how to apply the Code of Judicial Conduct to the myriad circumstances that confront judicial officials in and out of the courtroom while still remaining active participants in their legal and social communities, and I serve on the Criminal Jury Instructions Committee, which evaluates new legal precedent and modifies the existing Criminal Jury Instructions to keep them legally correct and understandable to juries. Since 2022, I have also been a member of the Judicial Review Council, which accepts, investigates, adjudicates, and disposes of complaints against judges and administrative law judges pursuant to the Code of Judicial Conduct and other relevant laws, regulations and policies. Additionally, I have presented on various topics to judicial colleagues as faculty of the Connecticut Judges Institute and for the Connecticut Pre-Bench Orientation.

Outside of the judiciary, I have been involved in organizations including Lawyers Concerned for Lawyers-Connecticut, which provides support and referral services to attorneys facing personal struggles related to substance abuse, behavioral health, and gambling, and the Connecticut Hall of Change, which encourages rehabilitation and entrepreneurship in prisoner re-entry efforts.

I have never engaged in lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar

year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

A potential conflict of interest could arise from matters brought on collateral review for which I was the judge in Connecticut state court. I would recuse from any such matters in which I had previous involvement in my current role. If other potential conflicts of interest arise, I would follow the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would evaluate and resolve any potential conflict of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Given the restrictions on the outside practice of law for employees of the State of Connecticut, I have made great efforts to participate in serving the disadvantaged in ways other than the provision of pro bono representation. For example, I have organized food and clothing drives, volunteered at a soup kitchen, appeared frequently at my "alma mater" elementary school, worked with a prisoner re-entry non-profit, and served as a frequent speaker for the Connecticut Judicial Branch and Connecticut Bar Association.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 20, 2023, I applied to the Offices of Senators Blumenthal and Murphy for a federal judicial vacancy in the District of Connecticut. On January 30, 2023, I was contacted and offered an interview with the Connecticut Senators' Advisory Panel. On February 4, 2023, I interviewed with the Senators' Advisory Committee. On February 15, 2023, I interviewed with Senators Blumenthal and Murphy. On March 3, 2023, I was interviewed by attorneys from the White House Counsel's Office. Since March 4, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Loren L. AliKhan
Nominee to be United States District Judge for the District of Columbia
June 14, 2023

1. During your confirmation hearing, you were asked about the amicus brief the District of Columbia filed in the Third Circuit Court of Appeals in *Safehouse v. U.S. Department of Justice*, No. 21-276, Amicus Brief of the District of Columbia, et al., 2021 WL 4462996 (Sept. 2021) (cert. denied).

   As the former Solicitor General of the District of Columbia, please explain the role you played in filing this amicus brief, particularly as it related to your duty to execute on the agenda set by the Attorney General of the District of Columbia.

2. During your confirmation hearing, you were asked questions relating to your work defending the District of Columbia's COVID-19 policies in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).

   a. **Did you play a role in drafting these policies?**

   b. **Please explain your role in defending the District in this case and your associated obligations as Solicitor General.**

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Loren Linn AliKhan
Nominee to be United States District Judge for the District of Columbia

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

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

3. Please define the term "living constitution."

4. In February 2021, you said the American Constitution Society "launched" your career and that you were able to "carry out and live some of the values of ACS" in your work. Please answer the following questions based on your statement:
    a. How would you describe the "values of ACS?"
    b. Do you share ACS's stated vision of a "legal civil society that actively promotes progressive legal transformation and redress of the founding failures of our Constitution and of our laws and legal systems."
    c. Was it appropriate to "carry out and live some of the values of ACS" as the Solicitor General of Washington, D.C.?
    d. Do you plan to "carry out and live some of the values of ACS" in your position as a federal judge, if you are confirmed?
    e. Would it be appropriate if a member of the Federalist Society said that they used their position in government to "carry out and live some of the values" of the Federalist Society?

5. Under federal law, it is unlawful to "manage or control any place…and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." 21 U.S.C. § 856(a). In amicus briefs filed in *Safehouse v. Department of Justice*, however, you relied on policy arguments to urge the Court to disregard the plain language of this law and permit state-sanctioned "consumption rooms" or "safe injection sites" for illegal drugs like heroin and fentanyl.
    a. Do you believe that policy considerations should play a role in interpreting statutes?
    b. Do you believe that the text of a statute can be disregarded if the statute results in bad policy?
    c. Do you believe that illegal drugs like heroin or fentanyl can ever be consumed or injected "safely?"

6. You have previously defended the use of nationwide injunctions and said that "[l]imiting the use of universal injunctions would gravely affect some of our country's most vulnerable residents. These injunctions have been necessary to provide complete relief in immigration cases." You also suggested that nationwide injunctions were necessary to address "environmental harms implicating, for example, natural resources, endangered species, greenhouse gases, and fuel emissions."
    a. What legal authority grants a district court the power to issue a nationwide or universal injunction?
    b. Do you equally support the use of nationwide injunctions when they are used to enjoin COVID-19 mandates or the approval of abortion drugs?
    c. How do you respond to the concern that nationwide injunctions encourage forum shopping?

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

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

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

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

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

12. Please identify a D.C. Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

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

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

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

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

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

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

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

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

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

21. 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?
    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?
    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?

22. 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?
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?
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?

23. 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?
    b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.
    c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.
    d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

24. 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?
    b. Are you currently in contact with anyone associated with the Open Society Foundations?
    c. Have you ever been in contact with anyone associated with the Open Society Foundations?

25. 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?

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?
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?

26. 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).

27. 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?

28. 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?

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

30. 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?

31. 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?

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

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

Senator Mike Lee
Questions for the Record
Loren AliKhan, Nominee to the United States District Court for the District of Columbia

1. How would you describe your judicial philosophy?

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

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

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

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

   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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

30. You are listed as an attorney for the respondent Cheryl Perich on the respondent's brief filed in *Hosanna-Tabor v. EEOC*. Your client lost that seminal case upholding the ministerial exception 9-0. Do you believe that the Supreme Court decided that case correctly?

31. During your hearing, Senator Hawley asked you about your work on behalf of the District of Columbia in *Capitol Hill Baptist Church v. Bowser*. As part of your response you referenced the declaration made by Christopher Rodriguez, which you also relied on heavily during the litigation, that religious services involving singing and standing in one place for extended periods are more dangerous than large gatherings where people are moving. The district court did not lend any credence to this argument and found that the restrictions placed on churches by the District of Columbia were unconstitutional. Do you agree with the district court that the assertions made by Christopher Rodriguez did not constitute scientific evidence under the *Daubert* standard?

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

Questions for the Record for Loren Linn AliKhan, nominated to be United States District Judge for the District of Columbia

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?

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

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.

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

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

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?

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

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

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. 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?

26. 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?

27. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

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

29. Is the criminal justice system systemically racist?

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

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

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

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

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

35. Have you ever personally owned any firearms?

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

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

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

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

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

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

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

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

44. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

45. Are you member of the American Constitution Society?

46. In 2021, ACS hosted a series on race and the Constitution, including its first event "Reckoning with the Constitution," which, according to ACS< "set the stage for discussing how our country's founding document was encoded with white supremacy since its inception and the constitutional, legal, and policy reforms required to address the institutional racism that continues to infect our economic, legal, educational, and health systems."

    a. Do you agree with those views that "racism is baked into our laws" and into "our institutions that interpret and apply those laws"?

47. ACS President Russ Feingold, appeared before the House Judiciary Committee in December 2022 and testified, "[t]o solve the Supreme

Court's legitimacy crisis also requires structural and other non-structural reforms. To fully redress the Right's capture of the Supreme Court and to restore the Court's legitimacy, there must be structural reform. This means expanding the Court to remove the impact of the Right's capture."

a. Do you agree with Russ Feingold that the Supreme Court has a legitimacy crisis?

b. If yes, does the alleged crisis require structural reform?

c. If yes, should the Court be expanded?

48. At a February 18, 2021 ACS event, you discussed your tenure as the Solicitor General of the District of Columbia and your responsibility for the District's appellate litigation. At this event, you acknowledged, "I think through my job to carry out and live some of the values of ACS."

a. What are the values of ACS that you are living out through your job?

b. How are the values of ACS that you are living out different from the values expressed by ACS and its president?

49. The American Constitution Society's mission statement notes its vision for the federal bench is "a judiciary that reflects the diversity of the public it serves, interprets the U.S. Constitution through the backdrop of history and through the lens of lived experience and protects democratic guardrails, upholds the rule of law and vindicates fundamental rights.

a. Should judges use their "lived experiences" in judging or should judges simply interpret the law without resorting to individual policy preferences?

b. Does upholding the "rule of law" mean intimidating Supreme Court Justices' in front of their homes?

50. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, you argued the ministerial exception, should not apply to a commissioned minister.

a. Should the government be involved in the employment decisions of

religious institutions?

51. In *Texas v. Pennsylvania*, you wrote "simply put, there is no evidence that voting by mail threatens the integrity of elections."

    a. Do you disagree with former President Jimmy Carter's determination that "Absentee ballots remain the largest source of potential voter fraud," as set forth in his bipartisan report on voter integrity?

52. In *Abramski v. United States*, your name is on a brief that claimed "[b]ecause the federal false statement prohibitions are indispensable to amici's own efforts to deny prohibited persons access to firearms, combat gun trafficking, and aid law enforcement, amici have a strong interest that these prohibitions be enforced to the full extent of Congress's design."

    a. Do you agree that false statements on ATF forms should be prosecuted to the fullest extent of the law?

    b. Do you agree Hunter Biden should be prosecuted for lying on a firearm purchase form?

53. In *Safehouse v. Department of Justice*, you wrote a brief arguing the Supreme Court should grant certiorari to allow the amici states to assess the viability of safe injection sites in their jurisdictions. You argued "safe injection sites are a promising way to address opioid use disorder and reduce overdose deaths."

    a. Are programs that provide tools that let people continue using drugs actually helpful for harm reduction?

    b. If confirmed, can you commit to following the law and enforcing our nation's drug laws, including mandatory minimums?

54. In *Fisher v. University of Texas*, you drafted an amicus brief arguing "[i]n light of the past discrimination against Latinos in Texas and continuing institutional barriers that still unfortunately exist, it is appropriate for UT to diversify its student body in a constitutional manner by opening its doors to highly qualified Latinos, among other highly qualified students of diverse backgrounds."

a. Do these "continuing institutional barriers" still in exist in 2023?

b. If yes, when will the need for affirmative action become unnecessary?

c. Do you agree or disagree with Chief Justice John Roberts who said, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race"? If you disagree, please explain why.

55. In *Capitol Hill Baptist Church v. Bowser*, you argued in favor of the District's stringent COVID lockdown policies, including the closure of in-person religious services. Despite the closure of churches, the District simultaneously permitted mass protest marches, despite the COVID risk. You justified this glaring double standard by introducing a declaration by Dr. Christopher Rodriguez, in which he argued "Different events present different levels of threat about the spread of COVID-19; for example, the risk is higher for an event involving people standing in one place than for one in which people are moving."

a. Isn't it true that Dr. Rodriguez has no medical background whatsoever?

b. Rather, isn't it true that Dr. Rodriguez holds a PhD in political science?

c. If yes, why did you offer Dr. Rodriguez's opinion regarding disease transmission vectors, knowing his education was entirely non-medical?

Senator John Kennedy
Questions for the Record

Judge Loren AliKhan

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

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

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

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

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

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

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

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

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

    a. Do you agree?

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

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

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

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

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

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

    b. Is one factor alone ever sufficient?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. Do you believe the death penalty is constitutional?

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

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

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

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

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

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

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

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

Questions from Senator Thom Tillis
for Loren Linn AliKhan
Nominee to be United States District Court for the District of Columbia

1. Did you write any legal briefs in support of sanctuary city policies, where state and local governments refuse to cooperate with federal immigration officials?

    a. If yes, what was the position you took in these cases and who was your client?

2. What is your view of sanctuary city policies? Specifically, do you believe that state and local governments can and should ignore federal immigration law?

    a. If yes, what is the legal justification you believe permits state and local governments to ignore federal immigration law?

3. It is my understanding you gave a speech to the American Constitution Society where you

specifically highlighted their work on sanctuary city policies. You stated the following:

a. "And then we've also participated in cases um you know whether it's LGBTQ discrimination, sanctuary cities, other immigrant issues and so I've been, I think through my job to carry out and live some of the values of ACS…"

b. Do you believe that supporting sanctuary city policies is a value of ACS?

c. Is supporting sanctuary city policies through your work as Solicitor General part of living "some of the values of ACS"?

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

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

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

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

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

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

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

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

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

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

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

15. 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?

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

17. 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?

    b. Please describe any particular experiences you have had involving 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?

    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?

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

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

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?

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?

19. 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?

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?

20. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

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

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

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?

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

21. 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?

22. 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?

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Susan Kim DeClercq
Nominee to be United States District Judge for the Eastern District of Michigan

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

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

3. Please define the term "living constitution."

4. Please describe your *criminal* law experience, specifically:
   a. How many jury trials have you prosecuted during the course of your career?
   b. How many bench trials?

5. Please describe your *civil* law experience as an AUSA, specifically:
   a. How many jury trials have you prosecuted during the course of your career?
   b. How many bench trials?
   c. Is that number typical for your district and/or representative of the *civil* AUSA experience, generally?

6. When did the Eastern District of Michigan establish its Civil Rights Unit? Please provide a list of examples of the types of affirmative cases it prosecuted.
   a. How many of those cases were you involved in as the lead counsel?
   b. How many of those cases were you involved in as the co-counsel?
   c. How many of those types of cases proceeded to trial?

7. In 2022 you authored a chapter in the Department of Justice's Journal of Federal Law and Practice, entitled "Friends of the Court: Amicus Briefs and Statements of Interest in Civil Rights Cases." You noted that DOJ statements of interest are a "powerful tool" and an "effective mechanism for the Department to influence the development of federal civil rights laws across the country." Do you think the Department of Justice filing statements of interest on controversial topics such as gender identity in schools builds trust in the impartiality of the Department of Justice? Please explain why or why not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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?
    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?
    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?

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?
    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?
    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?

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

Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

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

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

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?
    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?
    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?

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

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

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

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

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

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

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

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

Senate Judiciary Committee
Nominations Hearing
June 7, 2023
Questions for the Record
Senator Amy Klobuchar

Susan DeClercq, nominee to be U.S. District Court Judge for the Eastern District of Michigan

For eighteen years, you served in the U.S. Attorney's Office for the Eastern District of Michigan. During your tenure as an Assistant U.S. Attorney you handled hundreds of cases, led investigations, supervised other attorneys, and spearheaded community outreach.

- What are some challenges you faced as a prosecutor that will inform your approach as a judge?

Senator Mike Lee
Questions for the Record
Susan DeClercq, Nominee to the United States District Court for the Eastern District of Michigan

1. How would you describe your judicial philosophy?

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

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

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

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

   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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

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

Questions for the Record for Susan Kim DeClercq, nominated to be United States District Judge for the Eastern District of Michigan

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?

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

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.

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

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

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?

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

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

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Would it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

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?

27. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

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

30. Is the criminal justice system systemically racist?

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

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

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

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

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

36. Have you ever personally owned any firearms?

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

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

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

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

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

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

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

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

45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

46. You co-authored an amicus brief arguing for affirmative action in *Grutter v Bollinger*. In 2023, twenty years after the decision, is the use of race as a factor in university admission decisions still appropriate?

    a. If yes, when will it become inappropriate?

47. Do you disagree with Chief Justice John Roberts who said, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race"? If you do disagree, please explain why.

Senator John Kennedy
Questions for the Record

Susan DeClercq

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

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

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

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

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

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

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

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

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

    a. Do you agree?

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

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

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

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

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

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

    b. Is one factor alone ever sufficient?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. Do you believe the death penalty is constitutional?

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

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

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

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

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

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

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

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

Questions from Senator Thom Tillis
for Susan Kim DeClercq,
Nominee to be United States District Court for
the Eastern District of Michigan

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

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

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

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

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

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

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

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

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?

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?

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

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?

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

14. 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?

b. Please describe any particular experiences you have had involving 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?

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?

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts

have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

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

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?

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?

16. 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?

    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?

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested

division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

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

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

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?

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

18. 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?

19. 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?

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

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

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

    a. Did you agree with this "consensus"?

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

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

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

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

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

7. Please define the term "living constitution."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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?
    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?
    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?

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?
    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?
    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?

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

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

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

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?
    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?
    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?

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

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

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

30. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with

Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

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

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

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

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

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

1. According to your committee questionnaire, you have "served as a judge on the Lackawanna County Court of Common Pleas, 45th Judicial District, in Scranton, Pennsylvania, since June 2016." Based on public records, it appears that you have made multiple donations to political candidates and political action committees after you became a judge. Specifically, it appears that you donated to Sid Michaels Kavulich, a candidate for the Pennsylvania House of Representatives, twice, once in 2017 in the amount of $100 and again in 2018 in the amount of $100. It also appears that you donated to John Blake, a candidate for Pennsylvania Senate, in 2018 in the amount of $400, and that you made more than a dozen donations after becoming a judge to the American Association for Justice Political Action Committee from 2016-2017 in the total amount of $1083.29. It also appears that you received a refund from the same organization in 2021 for $1083.00.

   Did you make these contributions?

   If yes,

   i. Were you subject to the Pennsylvania Code of Judicial Conduct at the time these contributions were made?

   ii. With respect to each contribution, please state whether it was a violation of the Pennsylvania Code of Judicial Conduct. Also, please specifically address whether these contributions violate Rule 4.1(A)(4), which provides that a judge shall not "make a contribution to a political organization or a candidate for public office?".

   iii. With respect to each contribution, what corrective action, if any, did you take to resolve this violation and when did you take it?

      1. With respect to each contribution where you did not take corrective action, please explain why not.

   iv. Please specifically address the circumstances surrounding the refund from the American Association for Justice PAC in 2021.

2. Did you make any other contributions to a political organization or political candidate while serving as a judge?

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

1. How would you describe your judicial philosophy?

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

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

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

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

    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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

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

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

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

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.

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

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

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?

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

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

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Would it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

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?

27. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

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

30. Is the criminal justice system systemically racist?

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

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

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

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

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

36. Have you ever personally owned any firearms?

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

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

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

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

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

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

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

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

45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

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

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

    b. Are you in favor of banning fracking?

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

all women in society.

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

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

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

Senator John Kennedy
Questions for the Record

Julia Munley

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

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

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

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

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

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

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

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

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

    a. Do you agree?

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

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

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

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

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

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

    b. Is one factor alone ever sufficient?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. Do you believe the death penalty is constitutional?

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

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

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

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

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

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

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

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

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

    a. Have you ever participated in federal litigation?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

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

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?

    b. Please describe any particular experiences you have had involving 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?

    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?

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

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

    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?

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?

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?

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?

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

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

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

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?

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

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

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

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Vernon Oliver
Nominee to be United States District Judge for the District of Connecticut

1. In 2009 you suggested that pretextual stops of minorities by the police contributed to racial disparity in criminal justice system. Do you believe that police unlawfully targeting minorities for enforcement action explains the racial disparity problem? Please explain.

2. While you served on the Connecticut Sentencing Commission a number of concerning recommendations emerged.

    a. Do you support the commission's recommendation to restore convicted felons' right to vote and to provide assistance in voting from prison?

    b. In 2020 the Commission unanimously supported a proposal to reduce drug-free school zones from 1,500 feet to 200 feet. Why did you support this proposal?

    c. You abstained from voting on a proposal to permit sex offenders to petition the court to have their names removed from the registry early. Do you support the proposal?

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

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

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

6. Please define the term "living constitution."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. 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?
    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?
    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?

22. 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?
    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?
    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?

23. 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?
    b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.
    c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

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

24. 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?
    b. Are you currently in contact with anyone associated with the Open Society Foundations?
    c. Have you ever been in contact with anyone associated with the Open Society Foundations?

25. 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?
    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?
    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?

26. 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).

27. 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?

28. 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?

29. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with

Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

30. 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?

31. 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?

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

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

Senate Judiciary Committee
Nominations Hearing
June 7, 2023
Questions for the Record
Senator Amy Klobuchar

Vernon Dion Oliver, nominee to be United States District Court Judge for the District of Connecticut

Over the past 14 years you have presided over 300 bench trials, approximately 20 jury trials, and dozens of evidentiary hearings as a judge on the Connecticut Superior Court. You have also presided over thousands of hearings involving felony and misdemeanor matters.

- How do you typically approach a new case, or an area of the law that you may be unfamiliar with?

- How have you worked to ensure that those who appear before you believe that the court reached a fair and just decision, regardless of the outcome?

Senator Mike Lee
Questions for the Record
Vernon Oliver, Nominee to the United States District Court for the District of Connecticut

1. How would you describe your judicial philosophy?

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

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

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

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

    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?

6. What are the constitutional requirements for standing?

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

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

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

10. What rights are protected under substantive due process?

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?

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

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

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

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?

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

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

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?

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

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?

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.

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?

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?

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?

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

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

27. How do you define "systemic racism?"

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

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

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

Questions for the Record for Vernon Oliver, nominated to be United States District Judge for the District of Connecticut

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?

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

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.

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

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

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?

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

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

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

    a. Was it correctly decided?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Would it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

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?

27. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

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

30. Is the criminal justice system systemically racist?

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

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

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

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

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

36. Have you ever personally owned any firearms?

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

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

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

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

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

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

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

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

45. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

46. As a co-chair of the Connecticut Sentencing Commission, you provided legislative recommendations to the Connecticut General Assembly, including recommendations to grant inmates the ability to vote and to provide certain sex offenders the opportunity to be removed from the sex offender registry early.

    a. Did you vote in favor of these measures?

    b. Did you support the Sentencing Commission's proposal to reduce the drug-free school zones from 1,500 feet to just 200 feet?

47. In your 2009 confirmation hearing before the Connecticut General Assembly Judiciary Committee to be a judge on the Connecticut Superior Court, you argued that racial disparities are present in the criminal justice

system.

a. Is America a systematically racist country?

b. Is Connecticut's criminal justice system systemically racist? If so, please explain how.

c. Is the federal criminal justice system systemically racist? If so, please explain how.

Senator John Kennedy
Questions for the Record

Vernon Oliver

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

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

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

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

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

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

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

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

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

    a. Do you agree?

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

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

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

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

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

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

    b. Is one factor alone ever sufficient?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. Do you believe the death penalty is constitutional?

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

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

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

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

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

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

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

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

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

    a. Have you ever participated in federal litigation?

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

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

Questions from Senator Thom Tillis
for Vernon Dion Oliver
Nominee to be United States District Judge for the District of Connecticut

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

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

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

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

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

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

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

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

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?

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?

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

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?

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

14. 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?

b. Please describe any particular experiences you have had involving 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?

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?

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts

have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

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

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?

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?

16. 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?

    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?

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested

division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

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

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

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?

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

18. 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?

19. 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?

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Loren L. AliKhan
Nominee to be United States District Judge for the District of Columbia
June 14, 2023

1. **During your confirmation hearing, you were asked about the amicus brief the District of Columbia filed in the Third Circuit Court of Appeals in *Safehouse v. U.S. Department of Justice*, No. 21-276, Amicus Brief of the District of Columbia, et al., 2021 WL 4462996 (Sept. 2021) (cert. denied).**

   As the former Solicitor General of the District of Columbia, please explain the role you played in filing this amicus brief, particularly as it related to your duty to execute on the agenda set by the Attorney General of the District of Columbia.

   Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). As with all amicus briefs for which I served as counsel of record, the decision for the District of Columbia to author the brief in *Safehouse v. U.S. Department of Justice* (21-276) was made by the Attorney General. After the Attorney General decided that the District of Columbia should file an amicus brief in that case, it was my responsibility to supervise the drafting of the brief and serve as counsel of record. I did so consistent with my ethical obligation to zealously represent my client within the bounds of the law and my statutory obligation to carry out the duties assigned to me by the Attorney General, relying on then-current data about ways to address the opioid epidemic.

2. **During your confirmation hearing, you were asked questions relating to your work defending the District of Columbia's COVID-19 policies in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).**

   a. **Did you play a role in drafting these policies?**

      Response: No, I did not. The Mayor, who is elected independently from the Attorney General, drafted these policies.

   b. **Please explain your role in defending the District in this case and your associated obligations as Solicitor General.**

      Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). After the Attorney General decided to

defend the Mayor's COVID-19 policies, I did so consistent with my ethical obligation to zealously represent my client within the bounds of the law and my statutory obligation to carry out the duties assigned to me by the Attorney General. Moreover, I did not become involved in this case until after the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).

As Solicitor General, I was tasked with advising the Attorney General on whether to take an affirmative appeal of the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). While my duty of confidentiality prohibits me from disclosing any recommendation I made to, or instructions I received from, my client, it is a matter of public record that the District of Columbia did not appeal the district court's decision.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Loren Linn AliKhan
Nominee to be United States District Judge for the District of Columbia

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

   Response: I am not familiar with this statement or the context in which it was made, but I do not agree with it. Judges must decide cases fairly and impartially and without regard to any personal views or positions previously taken on behalf of any former clients. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

   Response: I am not familiar with this statement or the context in which it was made, but I do not agree with it. Lower court judges are bound to follow binding precedent. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

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

4. **In February 2021, you said the American Constitution Society "launched" your career and that you were able to "carry out and live some of the values of ACS" in your work. Please answer the following questions based on your statement:**

   a. **How would you describe the "values of ACS?"**

      Response: The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues.

b. Do you share ACS's stated vision of a "legal civil society that actively promotes progressive legal transformation and redress of the founding failures of our Constitution and of our laws and legal systems."

Response: I am not familiar with this statement, nor is it a statement that I have ever made or endorsed. As a sitting D.C. Court of Appeals judge, I hear cases fairly and impartially and faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would hear cases fairly and impartially and would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

c. Was it appropriate to "carry out and live some of the values of ACS" as the Solicitor General of Washington, D.C.?

Response: The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues. This included encouraging law students and lawyers to pursue careers in public service. As Solicitor General, it was appropriate to mentor law students and lawyers and encourage them to pursue careers in public service.

d. Do you plan to "carry out and live some of the values of ACS" in your position as a federal judge, if you are confirmed?

Response: The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues. This included encouraging law students and lawyers to pursue careers in public service. If confirmed as a district judge, I would hear cases fairly and impartially and faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me. To the extent consistent with the Code of Conduct for United States Judges, I would continue to mentor law students and lawyers.

e. Would it be appropriate if a member of the Federalist Society said that they used their position in government to "carry out and live some of the values" of the Federalist Society?

Response: I am not familiar with all of the values of the Federalist Society, but in my work with the organization over the years, I understand their values to include education and mentorship, and it would be appropriate for a government employee, consistent with any applicable codes of conduct, to engage in educational activities and mentorship.

5. Under federal law, it is unlawful to "manage or control any place…and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." 21 U.S.C. § 856(a). In amicus briefs filed in *Safehouse v. Department of Justice*, however, you relied on policy arguments to urge the Court to disregard the plain language of this law and permit state-sanctioned "consumption rooms" or "safe injection sites" for illegal drugs like heroin and fentanyl.

a. Do you believe that policy considerations should play a role in interpreting statutes?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). As with all amicus briefs for which I served as counsel of record, the decision for the District of Columbia to author the brief in *Safehouse v. U.S. Department of Justice* (21-276) was made by the Attorney General. After the Attorney General decided that the District of Columbia should file an amicus brief in that case, it was my responsibility to supervise the drafting of the brief and serve as counsel of record. I did so consistent with my ethical obligation to zealously represent my client within the bounds of the law and my statutory obligation to carry out the duties assigned to me by the Attorney General, relying on then-current data about ways to address the opioid epidemic.

As a sitting D.C. Court of Appeals judge, I consider the text of the statute and binding Supreme Court and D.C. Court of Appeals precedent when interpreting a statute. In cases where the statutory text is ambiguous and there is no binding precedent, I employ accepted methods of statutory interpretation, including consulting dictionary definitions, applying appropriate canons of construction, and, as a last resort, reviewing the forms of legislative history that the Supreme Court has endorsed, such as committee reports.

b. Do you believe that the text of a statute can be disregarded if the statute results in bad policy?

Response: No.

c. Do you believe that illegal drugs like heroin or fentanyl can ever be consumed or injected "safely?"

Response: The suitability of any program designed to prevent drug abuse is a question for policymakers. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals

to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

6. You have previously defended the use of nationwide injunctions and said that "[l]imiting the use of universal injunctions would gravely affect some of our country's most vulnerable residents. These injunctions have been necessary to provide complete relief in immigration cases." You also suggested that nationwide injunctions were necessary to address "environmental harms implicating, for example, natural resources, endangered species, greenhouse gases, and fuel emissions."

a. What legal authority grants a district court the power to issue a nationwide or universal injunction?

Response: An injunction is an equitable form of relief, issued in accordance with a court's inherent equitable authority and Federal Rule of Civil Procedure 65. Under the Administrative Procedure Act, Congress has also authorized federal courts to "set aside" unlawful agency action. 5 U.S.C. § 706(2).

The Supreme Court has explained that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, and if presented with this issue, I would apply precedent from the Supreme Court and the D.C. Circuit to determine whether to issue, and the proper scope of, any injunction.

b. Do you equally support the use of nationwide injunctions when they are used to enjoin COVID-19 mandates or the approval of abortion drugs?

Response: An injunction is an equitable form of relief, issued in accordance with a court's inherent equitable authority and Federal Rule of Civil Procedure 65. Under the Administrative Procedure Act, Congress has also authorized federal courts to "set aside" unlawful agency action. 5 U.S.C. § 706(2).

The Supreme Court has explained that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, and if presented with this issue—regardless of the subject matter of the case—I would apply precedent from the Supreme Court and the D.C. Circuit to determine whether to issue, and the proper scope of, any injunction.

c. How do you respond to the concern that nationwide injunctions encourage forum shopping?

Response: This is an important issue for policymakers to consider. If confirmed, I would follow the Constitution, applicable federal statutes, Supreme Court and D.C. Circuit precedent, and federal and local rules of procedure in addressing issues related to venue.

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

Response: I am not familiar with this statement or the context in which it was made. To the extent then-Judge Jackson was explaining that the Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V, I agree. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines a "fact" as "[s]omething that actually exists; an aspect of reality" or "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." The Supreme Court has "noted the vexing nature of the distinction between questions of fact and questions of law," and has explained that there is no set "rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). Congress often sets forth whether something is a question of fact or a question of law. *See, e.g.*, *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1068-69 (2020). In situations where "Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *see United States v. Klat*, 213 F.3d 697, 702 (D.C. Cir. 2000).

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

Response: Criticism of judicial opinions, and the judges who write them, is protected by the First Amendment. I understand an "attack" to be something that warrants referral to law enforcement because it implicates judicial security. *See, e.g.*, 18 U.S.C. §§ 1503, 1521.

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

Response: 18 U.S.C. § 3553(a)(2) sets forth retribution, deterrence, incapacitation, and rehabilitation as the four purposes a judge must consider when imposing a sentence, but the statute does not assign any one purpose greater weight than any other. If confirmed, my approach to sentencing would be to apply the law in a fair and neutral manner to the facts and circumstances of each defendant's individual case. I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit; follow the factors set forth in 18 U.S.C. § 3553(a) and the relevant provisions of the United States Sentencing Guidelines; and consider the presentence report prepared by the United States Probation Department, the presentencing memoranda filed by the parties, the parties' arguments at the sentencing hearing, and any additional relevant materials (such as the plea agreement, victim impact statements, and the defendant's presentence statement).

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

Response: I am not familiar with every Supreme Court decision from the past 50 years, but my judicial philosophy has three components. First, it includes the humility to recognize that a judge's role is quite limited. Legislatures pass laws and executives enact regulations, and the judge's only role is to read the law and apply it to the facts of the case before them. Next, while judging should be a neutral and impartial process, it should also be one in which all parties leave the courtroom feeling that they have been heard and respected. Finally, it is a core tenet of my judicial philosophy to issue opinions that are faithful to binding precedent, timely, and written in a way that can be understood by lawyers and laypeople alike.

12. Please identify a D.C. Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: I am not familiar with every D.C. Circuit opinion from the last 50 years. Please see my response to Question 11, which describes my judicial philosophy.

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

Response: 18 U.S.C. § 1507 provides:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or

> resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

It further directs that "[n]othing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt." *Id.*

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

Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld a state statute modeled after 18 U.S.C. § 1507, reasoning that the "statute on its face [wa]s a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." *Id.* at 564.

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

Response: The Supreme Court described the "fighting words" doctrine as follows:

> [T]he exclusion of "fighting words" from the scope of the First Amendment simply means that, for purposes of that Amendment, the unprotected features of the words are, despite their verbal character, essentially a "nonspeech" element of communication. Fighting words are thus analogous to a noisy sound truck: Each is, as Justice Frankfurter recognized, a "mode of speech," *Niemotko v. Maryland*, 340 U.S. 268, 282 (1951) (opinion concurring in result); both can be used to convey an idea; but neither has, in and of itself, a claim upon the First Amendment. As with the sound truck, however, so also with fighting words: The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed. *Compare Frisby v. Schultz*, 487 U.S. 474 (1988) (upholding, against facial challenge, a content-neutral ban on targeted residential picketing), *with Carey v. Brown*, 447 U.S. 455 (1980) (invalidating a ban on residential picketing that exempted labor picketing).

R.A.V. v. City of Saint Paul, 505 U.S. 377, 386 (1992).

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

Response: "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). "The speaker need not actually intend to carry out the threat. Rather, a

prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." *Id.* at 359-60 (internal quotations marks and alteration omitted).

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

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). That said, because the constitutionality of laws prohibiting interracial marriage is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Loving v. Virginia* was correctly decided.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Griswold v. Connecticut* is binding precedent, and I would apply it fully and faithfully.

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

Response: The Supreme Court's decision in *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). The Supreme Court's decision in *Dobbs* is binding precedent, and I would apply it fully and faithfully.

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

Response: The Supreme Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey* was overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). The Supreme Court's decision in *Dobbs* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Gonzales v. Carhart* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *District of Columbia v. Heller* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *McDonald v. City of Chicago* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen* is binding precedent, and I would apply it fully and faithfully.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent, and I would apply it fully and faithfully.

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

Response: Under *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), a court must first assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct," and the government bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* To do so, the government must identify a historical regulation that is "relevantly similar" to the challenged regulation. *Id.* at 2132. This is the legal standard that I would apply to any Second Amendment case.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I apply binding precedent to the facts of the cases that come before me without regard to any personal views or positions my clients previously took when I served as their advocate.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). In all cases, I apply binding precedent to the facts of the cases that come before me without regard to any personal views or positions my clients previously took when I served as their advocate.

21. 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.

22. 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.

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

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

Response: No.

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

Response: I have not had any contact with any of these groups.

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

Response: No.

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

Response: No.

24. 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.

25. 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.

26. 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: In December 2022, Congresswoman Eleanor Holmes Norton posted that she was accepting applications for the vacancy on the United States District Court for the District of Columbia created by District Judge Amy Berman Jackson's decision to take senior status. On January 4, 2023, I submitted my application to Congresswoman Norton's Federal Law Enforcement Nominating Commission. On January 18, I was interviewed by the Norton Commission, and on January 24, I was interviewed by Congresswoman Norton. On February 1, I interviewed with attorneys from the White House Counsel's Office. On February 16, an attorney from the White House Counsel's Office notified me that I was under consideration for the vacancy, and I thereafter spoke with officials from the Office of Legal Policy at the Department of Justice to complete my paperwork. On May 3, the President announced his intention to nominate me.

27. 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.

28. 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.

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

Response: No.

30. 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.

31. 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.

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

Response: On February 1, 2023, I interviewed with several attorneys from the White House Counsel's Office. Since that time, I have been in contact with attorneys from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office concerning my nomination and the confirmation process.

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

Response: I received these questions on June 14, 2023, conducted legal research, and drafted my responses. I submitted my draft responses to the Office of Legal Policy at the Department of Justice on June 15, 2023, and received limited feedback. I then finalized and submitted my answers.

Senator Mike Lee
Questions for the Record
Loren AliKhan, Nominee to the United States District Court for the District of Columbia

1. How would you describe your judicial philosophy?

Response: My judicial philosophy has three components. First, it includes the humility to recognize that a judge's role is quite limited. Legislatures pass laws and executives enact regulations, and the judge's only role is to read the law and apply it to the facts of the case before them. Next, while judging should be a neutral and impartial process, it should also be one in which all parties leave the courtroom feeling that they have been heard and respected. Finally, it is a core tenet of my judicial philosophy to issue opinions that are faithful to binding precedent, timely, and written in a way that can be understood by lawyers and laypeople alike.

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

Response: I would consider the text of the statute and binding Supreme Court and D.C. Circuit precedent interpreting the statute. In cases where the statutory text is ambiguous and there is no binding precedent, I would employ accepted methods of statutory interpretation, including consulting dictionary definitions, applying appropriate canons of construction, and, as a last resort, reviewing the forms of legislative history that the Supreme Court has endorsed, such as committee reports.

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

Response: I would consider the text of the constitutional provision and any binding Supreme Court and D.C. Circuit precedent interpreting the provision, construing the provision in related contexts, or construing analogous constitutional provisions. Where the Supreme Court or the D.C. Circuit has set forth a method for interpreting the provision, such as looking to original public meaning in cases concerning the Second Amendment, *see, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause, *see, e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004), I would apply that interpretive method to the case.

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

Response: If a constitutional issue came before me for which there were no Supreme Court or D.C. Circuit precedent on point, I would begin by examining the text of the constitutional provision. In doing so, I would abide by the Supreme Court's instruction to look to the original public meaning of constitutional provisions at the time that they were enacted. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("[T]he

public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." (italics omitted)).

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: The Supreme Court "normally 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).

6. What are the constitutional requirements for standing?

Response: There are three requirements to satisfy Article III standing. First, a plaintiff must show that he or she has suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent," rather than conjectural or hypothetical. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Second, "there must be a causal connection between the injury and the conduct complained of," such that the injury is "fairly . . . trace[able] to the challenged action." *Id.* (alterations in original). Third, the injury must be "redress[able]" by a decision in the plaintiff's favor. *Id.* at 561.

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

Response: Since its decision in *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court has recognized that the Necessary and Proper Clause gives Congress certain powers beyond those expressly enumerated in the Constitution.

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 begin by examining both the text of Article I, which enshrines Congress's enumerated powers, as well as any relevant Amendments to the Constitution. I would then look to relevant Supreme Court and D.C. Circuit precedent. The Supreme Court has made clear that the constitutionality of Congressional action "does not depend on recitals of the power which it undertakes to exercise." *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: While the Constitution is generally a Constitution of enumerated rights, the Supreme Court recognized in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that it also protects certain unenumerated rights through the Fifth and Fourteenth Amendments. *Id.* at 719-20. Examples of those unenumerated rights include (but are not limited to) the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), and the right to keep one's family together, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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

Response: As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals concerning substantive due process. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit concerning substantive due process. In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court concluded that substantive due process does not protect a right to abortion, overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). And in *W. Coast Hotel v. Parrish*, 300 U.S. 379 (1937), the Supreme Court overturned its decision in *Lochner v. New York*, 198 U.S. 45 (1905).

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

Response: The Supreme Court has held that Congress's power under the Commerce Clause extends to regulating the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). But the Court has made clear that the Commerce Clause does not grant Congress the right "to regulate individuals as such, as opposed to their activities." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557 (2012) ("The Commerce Clause is not a general license to regulate an individual . . . simply because he will predictably engage in particular transactions.").

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

Response: The Supreme Court has found that a group is a "suspect class" when its members (1) have been "historical[ly] . . . subjected to discrimination"; (2) "exhibit

obvious, immutable, or distinguishing characteristics that define them as a discrete group"; and (3) are "a minority or politically powerless." *Lyng v. Castillo*, 477 U.S. 635, 638 (1986). The Court has recognized four suspect classes: race, religion, national origin, and alienage. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: The Constitution's checks and balances and its delineated separation of powers are integral to the proper functioning of our democracy. The Supreme Court has explained that our system of checks and balances "was regarded by the Framers as 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) (internal quotation marks and citation omitted).

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

Response: As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me. If confronted with such a case, I would look to cases including *Marbury v. Madison*, 5 U.S. 137 (1803), *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and *United States v. Nixon*, 418 U.S. 683 (1974).

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

Response: Judges must approach all cases with an open mind, consider the issues fairly and impartially, and faithfully apply the law to the facts of the case without regard to any personal views or positions previously taken on behalf of former clients.

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

Response: The hypotheticals are equally undesirable and contrary to law.

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 had occasion to study this issue. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government," particularly its "power to invalidate legislative and executive actions as being unconstitutional." It defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] 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: Elected officials swear an oath to defend and uphold the Constitution of the United States, and that oath requires following properly issued decisions of the Supreme Court that interpret the Constitution. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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

Response: In Federalist 78, Alexander Hamilton referred to the judiciary as the weakest of the three branches of government because it controls neither the "sword" nor the "purse." The judiciary neither enforces nor makes the laws of the United States. Its role is limited to interpreting and upholding the laws, and it may only do so in actual cases or controversies that come before it.

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: A district judge's role is to apply all binding precedent fairly, faithfully, and impartially to the facts of each case. If binding precedent controls a case's outcome, the court must apply it. If no precedent directly addresses the issue before the court, the court must take guidance from any and all relevant precedent, conduct its own analysis of the facts of the case, and render a reasoned opinion that is grounded in both law and fact.

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: Group identities should play no role in a judge's sentencing analysis. 18 U.S.C. § 3553(a) specifies the factors that a federal judge shall consider in imposing a sentence. Section 5H1.10 of the United States Sentencing Guidelines states that race, sex, national origin, creed, religion, and socio-economic status are not relevant in the determination of a defendant's sentence.

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

Response: I am not familiar with this statement or its context. *Black's Law Dictionary* (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing."

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

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

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

Response: The Fourteenth Amendment does not reference "equity."

27. How do you define "systemic racism?"

Response: *Black's Law Dictionary* (11th ed. 2019) does not have a definition for systemic racism, but it defines "racism" as "[t]he belief that some races are inherently superior to other races," and the "[u]nfair treatment of people, often including violence against them, because they belong to a different race from one's own." The source further defines "systemic discrimination" as "[a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location," and explains that "[e]xamples of systemic discrimination include excluding women from traditionally male jobs, holding management trainee programs on evenings and weekends, and asking unlawful preemployment screening questions."

The Oxford English Dictionary (3rd ed. 2023) defines "systemic racism," as "[d]iscrimination or unequal treatment on the basis of membership in a particular racial or ethnic group (typically one that is a minority or marginalized), arising from systems, structures, or expectations that have become established within society or an institution."

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

Response: *Black's Law Dictionary* (11th ed. 2019) 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."

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

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

30. You are listed as an attorney for the respondent Cheryl Perich on the respondent's brief filed in *Hosanna-Tabor v. EEOC*. Your client lost that seminal case upholding the ministerial exception 9-0. Do you believe that the Supreme Court decided that case correctly?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* is binding precedent, and I would apply it fully and faithfully.

31. During your hearing, Senator Hawley asked you about your work on behalf of the District of Columbia in *Capitol Hill Baptist Church v. Bowser*. As part of your response you referenced the declaration made by Christopher Rodriguez, which you also relied on heavily during the litigation, that religious services involving singing and standing in one place for extended periods are more dangerous than large gatherings where people are moving. The district court did not lend any credence to this argument and found that the restrictions placed on churches by the District of Columbia were unconstitutional. Do you agree with the district court that the assertions made by Christopher Rodriguez did not constitute scientific evidence under the *Daubert* standard?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). At the direction of the Attorney General, I became involved in this case after the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). In that decision, the trial judge found that Dr. Rodriguez's statement did not comport with *Daubert*. *Id.* at 299. I was not involved in the decision to provide a declaration from Dr. Rodriguez.

As Solicitor General, I was tasked with advising the Attorney General on whether to take an affirmative appeal of the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). While my duty of confidentiality prohibits me from disclosing any recommendation I made to, or instructions I received from, my client, it is a matter of public record that the District of Columbia did not appeal the district court's decision.

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

Questions for the Record for Loren Linn AliKhan, nominated to be United States District Judge for the District of Columbia

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.

I. Questions

1. Is racial discrimination wrong?

Response: Yes.

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). If a case concerning a potential unenumerated right were to come before me, I would apply the test set forth in *Washington v. Glucksberg*, 521 U.S. 702 (1997). Under that test, "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 720-21 (internal quotation marks and citations omitted).

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: I am not familiar with the judicial philosophies of all of the Justices on the Warren, Burger, Rehnquist, and Roberts Courts, but my judicial philosophy has three components. First, it includes the humility to recognize that a judge's role is quite limited. Legislatures pass laws and executives enact regulations, and the judge's only role is to read the law and apply it to the facts of the case before them. Next, while judging should be a neutral and impartial process, it should also be one in which all parties leave the courtroom feeling that they have been heard and respected. Finally, it is a core tenet of my judicial philosophy to issue opinions that are faithful to binding precedent, timely, and written in a way that can be understood by lawyers and laypeople alike.

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and, more specifically, as "the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." I do not characterize myself with labels; instead, I employ the interpretive methods set forth by the Supreme Court for particular issues, such as looking to original public meaning in cases concerning the Second Amendment, *see, e.g.*, *District of Columbia v. Heller*, 554 U.S.

570 (2008), and the Confrontation Clause, *see, e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004).

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* (11th ed. 2019) defines the term "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." I do not characterize myself with labels. The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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 a constitutional issue came before me for which there were no Supreme Court or D.C. Circuit precedent on point, I would begin by examining the text of the constitutional provision. I would consider Supreme Court and D.C. Circuit cases construing the provision in related contexts or construing analogous constitutional provisions. Where the Supreme Court or the D.C. Circuit has set forth a method for interpreting the provision, such as looking to original public meaning in cases concerning the Second Amendment, *see, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause, *see, e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004), I would apply that interpretive method to the case.

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

Response: As a sitting judge, I follow the interpretive methods set forth by the Supreme Court for the particular constitutional or statutory provision. *Compare District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (looking to original public meaning of the Second Amendment), *and Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."), *with Graham v. Florida*, 560 U.S. 48, 58 (2010) (considering "evolving standards of decency that mark the progress of a maturing society" in determining whether a form of punishment violates the Eighth Amendment), *and Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (looking to "contemporary community standards" in assessing obscenity under the First Amendment (italics omitted)).

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

Response: The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), is binding precedent.

a. Was it correctly decided?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

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

Response: *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), is binding precedent.

a. Was it correctly decided?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen* is binding precedent, and I would apply it fully and faithfully.

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

Response: *Brown v. Board of Education*, 347 U.S. 483 (1954), is binding precedent.

a. Was it correctly decided?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is generally not appropriate for me to comment on whether a Supreme Court decision was correctly or incorrectly decided, because it is possible that a related issue could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). That said, because the constitutionality of *de jure* racial segregation in public schools is one of the very few issues not likely to be relitigated, I am comfortable stating that I believe *Brown v. Board of Education* was correctly decided.

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

Response: Under 18 U.S.C. § 3142(e)(2), there is a rebuttable presumption in favor of pretrial detention for defendants with certain prior convictions, including convictions for certain crimes of violence, crimes for which the maximum penalty is life imprisonment, and other specified offenses. There is also a rebuttable presumption in favor of pretrial detention when the judge finds that there is probable cause to believe that the defendant committed certain drug offenses for which the maximum penalty is ten years or more, certain firearms offenses, certain offenses involving minor victims, offenses involving slavery and human trafficking, and other specified offenses. *Id.* § 3142(e)(3).

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

Response: I am not aware of any Supreme Court or D.C. Circuit precedent explaining the policy rationale for these presumptions. If confirmed, I would apply the statute as written and interpreted by the Supreme Court and the D.C. Circuit.

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

Response: Yes, there are both constitutional and statutory limits. The Free Exercise Clause of the First Amendment prohibits discrimination on the basis of religion, and it constrains the federal government's interactions with private institutions, including religious organizations and small businesses operated by observant owners. If a law or policy burdens religion and is not "neutral and of general applicability," the government must establish that the law or policy satisfies strict scrutiny. To survive that standard, the challenged law "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (internal quotation marks and citation omitted); *see Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam). If the government cannot meet this high burden, the action is unconstitutional. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546.

The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, imposes statutory limits. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that RFRA protects the religious exercise of religious organizations and small businesses operated by observant owners. *Id.* at 719. Under RFRA, the federal government may not "substantially burden a person's exercise of religion" unless it can demonstrate that the substantial burden furthers a compelling government interest through the least restrictive means. 42 U.S.C. § 2000bb-1.

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

Response: Please see my response to Question 13.

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court granted religious organizations' applications for injunctive relief pending appeal. The organizations claimed that New York State's COVID-19 occupancy restrictions violated the Free Exercise Clause, and the Court sided with the organizations. First, the Court concluded that the religious organizations were likely to succeed on the merits of their Free Exercise claims because the COVID-19 restrictions "single[d] out houses of worship for especially harsh treatment." *Id.* at 66. Second, the Court explained that "[t]here c[ould] be no question that the challenged restrictions, if enforced, w[ould] cause irreparable harm." *Id.* at 67. Third, the Court determined that New York had not shown that granting the applications would harm the public, especially where "the State ha[d] not claimed that attendance at the applicants' services ha[d] resulted in the spread of" COVID-19. *Id.* at 68. Fourth and finally, the Court held that the matter had not become moot based on changes in the applicable occupancy requirements. *Id.*

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court explained that where a regulation treats comparable religious activity less favorably than secular activity, it fails strict scrutiny unless the government can "show that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. In other words, "[t]he State cannot assume the worst when people go to worship but assume the best when people go to work." *Id.* (internal quotation marks and citation omitted).

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

Response: Yes. The First Amendment protects the rights of Americans to hold and exercise religious beliefs in their daily lives. *See, e.g.*, *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 763 (1995); *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877-78 (1990).

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court considered whether the Colorado Civil Rights Commission's application of the Colorado Anti-Discrimination Act to a bakery comported with the Free Exercise Clause of the First Amendment. The Colorado Civil Rights Commission had determined that the refusal of the petitioner, a bakery business, to provide wedding cakes to same-sex couples on the basis of religious beliefs violated the Act, which prohibits discrimination in places of public accommodation on the basis of protected characteristics, including sexual orientation. *Id.* at 1725-26. The Supreme Court held that the Colorado Civil Rights Commission's consideration of the case exhibited hostility to religion and therefore violated the state's duty under the Free Exercise Clause "not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731.

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

Response: Yes. The Supreme Court has explained that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981)). As long as the individual's religious beliefs are sincere, they are protected, even if those beliefs are not based on teachings of the faith tradition to which they belong. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

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

Response: Please see my response to Question 19.

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

Response: Please see my response to Question 19.

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

Response: I am not familiar with the official positions of the Catholic Church, and, as a sitting D.C. Court of Appeals judge and as a nominee, it would not be appropriate for me to opine on the positions of a religious institution.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that "[w]hen a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." *Id.* at 2069.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that "[t]he refusal of Philadelphia to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment." *Id.* at 1882. The Court applied strict scrutiny after determining that Philadelphia's policy burdened the organization's religious beliefs and was not a generally applicable policy. *Id.* at 1876-81.

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

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's tuition assistance program, under which parents living in districts without a public high school could direct state-funded subsidies to secular private schools but not to religious private schools, violated the Free Exercise Clause of the First Amendment. *Id.* at 2002. The Court reaffirmed the principle that "a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Id.* at 1996. The Court also held that Maine's tuition assistance program, which

disqualified private schools based on their religious character, ran afoul of that principle and could not satisfy strict scrutiny. *Id.* at 1997-98.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), "a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Id.* at 2433. The Supreme Court held that "[t]he Constitution neither mandates nor tolerates that kind of discrimination." *Id.*

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court granted the petition for certiorari, vacated the judgment below, and remanded for further proceedings in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In his concurrence, Justice Gorsuch wrote that the lower courts had not properly applied the strict scrutiny test required by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a). *See Mast*, 141 S. Ct. at 2432-34 (Gorsuch, J., concurring).

25. Would it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

26. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: Yes.

27. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

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

Response: The executive and legislative branches are required to follow the Constitution in making political appointments. If confirmed, and if such an issue were to come before me, I would faithfully apply all binding precedent from the Supreme Court and the D.C. Circuit to resolve the case.

29. Is the criminal justice system systemically racist?

Response: As a sitting judge, I consider each criminal case that comes before me on its individual facts. I am not an academic or a policymaker, and so I have not studied systemic issues.

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

Response: Whether the number of Supreme Court justices should be changed is a question for policymakers. As a sitting D.C. Court of Appeals judge and as a nominee, it would not be appropriate for me to opine on the size of the Supreme Court. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

Response: No.

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

Response: The Supreme Court described in detail the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). As a sitting D.C. Court of Appeals judge, I faithfully apply these binding precedents. If confirmed, I would continue to faithfully apply these binding precedents and any other binding Supreme Court or D.C. Circuit precedent interpreting the Second Amendment.

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

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court set forth the test for assessing whether a restriction is prohibited by the Second Amendment. First, the court must assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct," and the government bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* To do so, the government must identify a historical regulation that is "relevantly similar" to the challenged regulation. *Id.* at 2132.

The Court's decisions in *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), also invalidated certain restrictions on the right to keep and bear arms. In *Heller* and *McDonald*, the Court held that the government may not prohibit law-abiding, responsible citizens from possessing firearms for self-defense within their homes. *Heller*, 554 U.S. at 636; *McDonald*, 561 U.S. at 791. In *Bruen*, the Court held that the Second Amendment applies outside the home, and that New York's "proper cause" licensing provision was incompatible with the Second Amendment. 142 S. Ct. at 2156. As a sitting D.C. Court of Appeals judge, I faithfully apply these binding precedents. If confirmed, I would continue to faithfully apply these binding precedents and any other binding Supreme Court or D.C. Circuit precedent interpreting the Second Amendment.

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

Response: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to keep and bear arms. *Id.* at 602. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court confirmed that the right to keep and bear arms is a fundamental right. *Id.* at 778.

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

Response: No. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Second Amendment "standard accords with how we protect other constitutional rights." *Id.* at 2130.

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

Response: No. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Second Amendment "standard accords with how we protect other constitutional rights." *Id.* at 2130.

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

Response: The Constitution states that the President "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. If confirmed, and if such an issue were to come before me, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to resolve the case.

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

Response: *Black's Law Dictionary* (11th ed. 2019) defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." The same source defines "administrative rule" as "[a]n officially promulgated agency regulation that has the force of law." I thus understand a "substantive administrative rule change" as a substantive change to an administrative rule.

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

Response: Article I of the Constitution vests Congress with "[a]ll legislative Powers herein granted." U.S. Const. art. I, § 1. Under that power, Congress has authorized the death penalty for certain offenses. *See* 18 U.S.C. §§ 3591-3594. The President cannot unilaterally change federal statutes, but the President does have the "Power to grant Reprieves and Pardons for Offenses against the United States." U.S. Const. art. II, § 2.

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

Response: In *Alabama Ass'n of Realtors v. Department of Health & Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court vacated the nationwide moratorium on evictions that had been promulgated by the Centers for Disease Control during the COVID-19 pandemic. *Id.* at 2490. The Court concluded that petitioners were likely to succeed on their argument that the Centers for Disease control did not have such authority under 42

U.S.C. § 264(a) and further concluded that the equities militated in favor of vacating the stay. *Ala. Ass'n of Realtors*, 141 S. Ct. at 2488-89. The Court emphasized that it "expect[s] Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489 (internal quotation marks omitted) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

41. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on the workings of the executive branch.

42. Are you member of the American Constitution Society?

Response: No, I am not.

43. In 2021, ACS hosted a series on race and the Constitution, including its first event "Reckoning with the Constitution," which, according to ACS "set the stage for discussing how our country's founding document was encoded with white supremacy since its inception and the constitutional, legal, and policy reforms required to address the institutional racism that continues to infect our economic, legal, educational, and health systems."

a. Do you agree with those views that "racism is baked into our laws" and into "our institutions that interpret and apply those laws"?

Response: I am not familiar with this statement or the context in which it was made, but I do not agree with it.

44. ACS President Russ Feingold, appeared before the House Judiciary Committee in December 2022 and testified, "[t]o solve the Supreme Court's legitimacy crisis also requires structural and other non-structural reforms. To fully redress the Right's capture of the Supreme Court and to restore the Court's legitimacy, there must be structural reform. This means expanding the Court to remove the impact of the Right's capture."

a. Do you agree with Russ Feingold that the Supreme Court has a legitimacy crisis?

Response: I am not familiar with this quotation or the context in which it was made, but I do not agree with it.

b. If yes, does the alleged crisis require structural reform?

Response: I do not agree with the statement.

c. If yes, should the Court be expanded?

Response: I do not agree with the statement.

45. At a February 18, 2021 ACS event, you discussed your tenure as the Solicitor General of the District of Columbia and your responsibility for the District's appellate litigation. At this event, you acknowledged, "I think through my job to carry out and live some of the values of ACS."

a. What are the values of ACS that you are living out through your job?

Response: The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues. This included encouraging law students and lawyers to pursue a career in public service. As Solicitor General, it was appropriate to mentor new lawyers and encourage them to pursue careers in public service.

b. How are the values of ACS that you are living out different from the values expressed by ACS and its president?

Response: The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues. I am not aware of all of ACS's values or those of its president.

46. The American Constitution Society's mission statement notes its vision for the federal bench is "a judiciary that reflects the diversity of the public it serves, interprets the U.S. Constitution through the backdrop of history and through the lens of lived experience and protects democratic guardrails, upholds the rule of law and vindicates fundamental rights.

a. Should judges use their "lived experiences" in judging or should judges simply interpret the law without resorting to individual policy preferences?

Response: Judges should not use their "lived experiences" in judging, but should simply apply binding precedent to the facts of the individual cases that come before them. That is what I do as a sitting D.C. Court of Appeals judge, and it is what I would continue to do if confirmed.

b. Does upholding the "rule of law" mean intimidating Supreme Court Justices' in front of their homes?

Response: No. *See* 18 U.S.C. § 1507.

47. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, you argued the ministerial exception, should not apply to a commissioned minister.

a. Should the government be involved in the employment decisions of religious institutions?

Response: The Supreme Court has held that the ministerial exception, which is grounded in the First Amendment, bars employees from bringing claims against religious organizations under the federal civil rights laws, including Title VII, *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012), and the Age Discrimination in Employment Act, *see Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

48. In *Texas v. Pennsylvania*, you wrote "simply put, there is no evidence that voting by mail threatens the integrity of elections."

a. Do you disagree with former President Jimmy Carter's determination that "Absentee ballots remain the largest source of potential voter fraud," as set forth in his bipartisan report on voter integrity?

Response: In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021), the Supreme Court acknowledged that "[a] State indisputably has a compelling interest in preserving the integrity of its election process." *Id.* at 2347 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam)). Citing "the view of the bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker," the Supreme Court observed that, in the context of that case, "[l]imiting the classes of persons who may handle early ballots to those less likely to have ulterior motives deters potential fraud and improves voter confidence." *Id.* As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

49. In *Abramski v. United States*, your name is on a brief that claimed "[b]ecause the federal false statement prohibitions are indispensable to amici's own efforts to deny prohibited persons access to firearms, combat gun trafficking, and aid law enforcement, amici have a strong interest that these prohibitions be enforced to the full extent of Congress's design."

a. Do you agree that false statements on ATF forms should be prosecuted to the fullest extent of the law?

Response: Under our system of separation of powers, the decision about whether to bring a prosecution and what charges to pursue is generally a matter for local, state, and federal prosecutors. As a sitting D.C. Court of Appeals judge, I

faithfully apply the law to the individual cases that come before me. If confirmed, I would continue to do so.

b. Do you agree Hunter Biden should be prosecuted for lying on a firearm purchase form?

Response: Under our system of separation of powers, the decision about whether to bring a prosecution and what charges to pursue is generally a matter for local, state, and federal prosecutors. As a sitting D.C. Court of Appeals judge, I faithfully apply the law to the individual cases that come before me. If confirmed, I would continue to do so.

50. In *Safehouse v. Department of Justice*, you wrote a brief arguing the Supreme Court should grant certiorari to allow the amici states to assess the viability of safe injection sites in their jurisdictions. You argued "safe injection sites are a promising way to address opioid use disorder and reduce overdose deaths."

a. Are programs that provide tools that let people continue using drugs actually helpful for harm reduction?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). As with all amicus briefs for which I served as counsel of record, the decision for the District of Columbia to author the brief in *Safehouse v. U.S. Department of Justice* (21-276) was made by the Attorney General. After the Attorney General decided that the District of Columbia should file an amicus brief in that case, it was my responsibility to supervise the drafting of the brief and serve as counsel of record. I did so consistent with my ethical obligation to zealously represent my client within the bounds of the law and my statutory obligation to carry out the duties assigned to me by the Attorney General.

The suitability of any program designed to prevent drug abuse is a question for policymakers. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

b. If confirmed, can you commit to following the law and enforcing our nation's drug laws, including mandatory minimums?

Response: Yes. As a sitting D.C. Court of Appeals judge, my role is to faithfully apply the laws, including drug laws and mandatory minimum sentences, to the cases that come before me. If confirmed, I would continue to do so.

51. In *Fisher v. University of Texas*, you drafted an amicus brief arguing "[i]n light of the past discrimination against Latinos in Texas and continuing institutional barriers that still unfortunately exist, it is appropriate for UT to diversify its student body in a constitutional manner by opening its doors to highly qualified Latinos, among other highly qualified students of diverse backgrounds."

a. Do these "continuing institutional barriers" still in exist in 2023?

Response: In 2012, my law firm represented a group of national Latino organizations as amici curiae in support of respondents in *Fisher v. University of Texas* (11-345). The firm drafted and filed the brief at the direction of the clients and did so consistent with the ethical obligation to zealously represent clients within the bounds of the law, relying on the then-governing body of law about affirmative action and social science research. I am not familiar with the current social science research on this issue.

I understand that similar issues are currently pending before the Supreme Court. As a sitting D.C. Court of Appeals judge, and if confirmed, I would faithfully apply those decisions once they are issued.

b. If yes, when will the need for affirmative action become unnecessary?

Response: Please see my response to Question 51(a).

c. Do you agree or disagree with Chief Justice John Roberts who said, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race"? If you disagree, please explain why.

Response: I am familiar with this quote from Chief Justice Roberts's plurality opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 748 (2007). As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals, including precedent on race discrimination, to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit, including precedent on race discrimination, to the facts of the cases that would come before me.

52. In *Capitol Hill Baptist Church v. Bowser*, you argued in favor of the District's stringent COVID lockdown policies, including the closure of in-person religious services. Despite the closure of churches, the District simultaneously permitted mass protest marches, despite the COVID risk. You justified this glaring double standard by introducing a declaration by Dr. Christopher Rodriguez, in which he

argued "Different events present different levels of threat about the spread of COVID-19; for example, the risk is higher for an event involving people standing in one place than for one in which people are moving."

a. Isn't it true that Dr. Rodriguez has no medical background whatsoever?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). At the direction of the Attorney General, I became involved in this case after the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). In that decision, the trial judge wrote that Dr. Rodriguez, who was the Director of the District of Columbia Homeland Security and Emergency Management Authority, "appears to have no medical background." *Id.* at 299 n.13. I was not involved in the decision to provide a declaration from Dr. Rodriguez.

b. Rather, isn't it true that Dr. Rodriguez holds a PhD in political science?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). At the direction of the Attorney General, I became involved in this case after the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). In that decision, the trial judge noted that, at a court hearing, the Church had "pointed out [that] . . . Dr. Rodriguez earned his Ph.D in political science." *Id.* at 299 n.13. I was not involved in the decision to provide a declaration from Dr. Rodriguez.

c. If yes, why did you offer Dr. Rodriguez's opinion regarding disease transmission vectors, knowing his education was entirely non-medical?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1-301.87(b)(1). At the direction of the Attorney General, I became involved in this case after the district court's decision in *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020). In that decision, the trial judge noted that, at a court hearing, the Church had "pointed out [that] . . . Dr. Rodriguez earned his Ph.D in political science." *Id.* at 299 n.13. I was not involved in the decision to provide a declaration from Dr. Rodriguez.

Senator John Kennedy
Questions for the Record

Judge Loren AliKhan

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

Response: My judicial philosophy has three components. First, it includes the humility to recognize that a judge's role is quite limited. Legislatures pass laws and executives enact regulations, and the judge's only role is to read the law and apply it to the facts of the case before them. Next, while judging should be a neutral and impartial process, it should also be one in which all parties leave the courtroom feeling that they have been heard and respected. Finally, it is a core tenet of my judicial philosophy to issue opinions that are faithful to binding precedent, timely, and written in a way that can be understood by lawyers and laypeople alike.

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

Response: The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: As a sitting D.C. Court of Appeals judge, I consider the text of the statute and binding Supreme Court and D.C. Court of Appeals precedent interpreting the statute. If the text is clear, that ends my inquiry.

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

Response: Consistent with Supreme Court and D.C. Circuit precedent, I would consider legislative history only when there is no applicable binding precedent and when the text of the statute at issue is ambiguous. *See Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011). To my knowledge, neither the Supreme Court nor the D.C. Circuit has taken a clear position on whether a presidential statement, like a signing statement, should be considered. I understand that other courts are divided on the issue. *Compare U.S. Aviation Underwriters Inc. v. Nabtesco Corp.*, 697 F.3d 1092, 1099-1100 (9th Cir. 2012), *with Estate of Reynolds v. Martin*, 985 F.2d 470, 477 n.8 (9th Cir. 1993).

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

Response: While the private owner of a shopping center may not be constrained by the First Amendment, depending on the specific circumstances of the case, the owner may be constrained by the constitution of the state in which the shopping mall is located. *Compare Amalgamated Food Emps. Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), *with PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980).

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

Response: In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court stated that "the [F]ourteenth [A]mendment to the [C]onstitution is not confined to the protection of citizens," but instead applies "to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Id.* at 369. More recently, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court observed that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

Response: In *United States v. Ramsey*, 431 U.S. 606 (1977), the Supreme Court held that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *Id.* at 616.

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

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court returned the issue of abortion "to the people and their elected representatives," *id.* at 2279, and it explained that its "opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth," *id.* at 2261. The answer to this question is thus one for policymakers. As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

a. Do you agree?

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that are or could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* is binding precedent, and I would apply it fully and faithfully.

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

Response: No. Lower court judges must follow binding precedent.

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

Response: No. District court judges must follow binding precedent.

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

Response: The Supreme Court has held that states may lawfully require voters to present identification in order to cast a ballot. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

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

Response: Under *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), a court must first assess whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 2126. If so, "the Constitution presumptively protects that conduct," and the government bears the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* To do so, the government must identify a historical regulation that is "relevantly similar" to the challenged regulation. *Id.* at 2132. This is the methodology that I would apply to any Second Amendment case.

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

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

Response: In *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018), the Supreme Court considered five factors in deciding whether to overrule an earlier decision: "the quality of [the prior decision's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Id.* 2478-79. I am not aware of any Supreme Court case specifying how many factors must be present to overturn precedent.

b. Is one factor alone ever sufficient?

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

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

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

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

Response: The Ninth Amendment, like the rest of the Constitution, has a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: The Ninth Amendment makes clear that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." While I am not aware of any binding Supreme Court precedent on this question, Justice Thomas, in his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), wrote that "certain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the First Amendment's Establishment Clause, which 'does not purport to protect individual rights.'" *Id.* at 851 n.20 (citations omitted).

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

Response: Yes, because the text of the Ninth Amendment expressly refers to the enumeration of other rights in the Constitution.

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

Response: I am not aware of a Supreme Court case specifically addressing the use of Founding-era history in understanding the text of the Ninth Amendment, but the Supreme Court has looked to original public meaning and historical practices and understandings in interpreting other provisions of the Bill of Rights. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022) (First Amendment); *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 60 (2004) (Confrontation Clause).

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

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

Response: In *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Supreme Court stated that "'the people' seems to have been a term of art employed in select parts of the Constitution." *Id.* at 265. "The Preamble declares that the Constitution is ordained and established by 'the People of the United States.' The Second Amendment protects 'the right of the people to keep and bear Arms,' and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to 'the people.'" *Id.* "While this textual exegesis is by no means conclusive, it suggests that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* Later, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court defined the meaning of "the people" as used in the Second Amendment as referring to "all members of the political community." *Id.* at 580.

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

Response: Please see my response to Question 19(a).

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

Response: The Supreme Court has held that non-citizens and immigrants are included in "the people" for the purposes of some amendments. *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."). As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that the Due Process Clauses of the Fifth and Fourteenth Amendments protect fundamental rights that are "deeply rooted in th[e] Nation's history and tradition" and "implicit in the concept of ordered liberty." *Id.* at 721. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court explained that the Constitution has a "historically fixed meaning" that can "appl[y] to new circumstances." *Id.* at 2132.

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

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court explained that "[s]ome scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights." *Id.* at 2248 n.22. The Court further noted that "the question whether the Privileges or Immunities Clause protects 'any rights besides those enumerated in the Constitution'" was reserved in *McDonald v. City of Chicago*, 561 U.S. 742, 819-20, 832, 854 (2010) (Thomas, J., concurring in part and concurring in the judgment). *Dobbs*, 142 S. Ct. at 2248 n.22. A majority of the Supreme Court, however, has not endorsed such an approach. If they were to do so in a future case, I would faithfully apply that precedent.

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

Response: Please see my response to Question 22.

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

Response: In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court held that:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.[] If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute,[] as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[]

Id. at 842-43. The Court's conception of how much deference to afford agency action has evolved in subsequent cases, including the Supreme Court's adoption of the "major questions" doctrine in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), in which the Court presumed that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Id.* at 2609 (citation omitted).

The Supreme Court has granted certiorari to reconsider *Chevron* in *Loper Bright Enterprises v. Raimondo* (22-451). As a sitting D.C. Court of Appeals judge, and if confirmed as a district judge, I will faithfully apply the Court's decision in *Loper* after it is issued.

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

Response: The Supreme Court has explained that "[a]dministrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022). Additionally, the Supreme Court presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) (citation omitted). In addition to cases, the judicial branch must assess whether agency action is consistent with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

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

Response: The Constitution limits Congress's powers through the separation of powers, through federalism, and through the Bill of Rights. First, the Constitution provides for

the separation of powers by expressly dividing authority between Congress (Article I), the Executive (Article II), and the Judiciary (Article III). While Congress maintains certain powers outside of Article I (for example, the ability to create inferior federal courts in Article III, and the ability to levy a federal income tax under the Sixteenth Amendment), this clear allocation of power among the branches of government places important limitations on Congress. Next, through federalism, the Constitution divides powers between the federal and state governments. As the Supreme Court has explained: "The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms. And conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). Finally, the Bill of Rights places express prohibitions on Congressional action. For example, under the First Amendment, "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."

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

Response: The Supreme Court has held that Congress's power under the Commerce Clause extends to regulating the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). But the Court has made clear that the Commerce Clause does not grant Congress the right "to regulate individuals as such, as opposed to their activities." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557 (2012) ("The Commerce Clause is not a general license to regulate an individual . . . simply because he will predictably engage in particular transactions.").

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

Response: In *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court held that the Commerce Clause did not permit Congress to enact a federal civil remedy for victims of gender-motivated violence in the Violence Against Women Act.

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

Response: The Supreme Court has applied similar analyses to due process claims arising under the Fifth and Fourteenth Amendments. *See, e.g.*, *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (noting that the "standard typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments"). In the District of Columbia, however, only the Fifth

Amendment, and not the Fourteenth Amendment, applies. *See Bolling v. Sharpe*, 347 U.S. 497 (1954).

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

Response: In *Gundy v. United States*, 139 S. Ct. 2116 (2019), the Supreme Court held that "a delegation is constitutional so long as Congress has set out an intelligible principle to guide the delegee's exercise of authority. Or in a related formulation, the Court has stated that a delegation is permissible if Congress has made clear to the delegee the general policy he must pursue and the boundaries of [his] authority." *Id.* at 2129 (alteration in original) (internal quotation marks and citations omitted).

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

Response: In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Supreme Court explained the presumption that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Id.* at 2609 (citation omitted). Accordingly, an administrative agency must be able to point to clear Congressional authorization when it claims the power to make a decision of vast economic and political significance. *Id.* at 2605-10. As far as I am aware, a majority of the Court has not yet provided guidance as to when a decision is one of vast economic and political significance, although Justice Gorsuch proposed some such guidance in his concurring opinion. *Id.* at 2620-21 (Gorsuch, J., concurring).

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

Response: "[W]hile Congress has substantial power under the Constitution to encourage the States to [take an action], the Constitution does not confer upon Congress the ability simply to compel the States to do so." *New York v. United States*, 505 U.S. 144, 149 (1992); *see Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."). "The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). "The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, *i.e.*, the decision to withhold from Congress the power to issue orders directly to the States." *Id.* at 1475.

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

Response: The Constitution is a written document, the text of which does not change unless it is amended in accordance with the procedures set forth in Article V. The

Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that can "appl[y] to new circumstances." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022). In the context of the Eighth Amendment, the Supreme Court has explained that "[t]he standard itself remains the same, but its applicability must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008), *modified* 554 U.S. 945 (2008); *see Graham v. Florida*, 560 U.S. 48, 58 (2010).

34. Do you believe the death penalty is constitutional?

Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008), *modified* 554 U.S. 945 (2008).

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

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

Response: Please see my answer to Question 5.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

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

Response: The Supremacy Clause in Article VI of the Constitution provides that the Constitution, federal laws, and certain treaties are the "supreme Law of the Land; and the

Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Consistent with the Supremacy Clause, a state court decision that "fails to honor federal rights and duties" is subject to review by the Supreme Court. *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981). But where there is an independent and adequate state-law ground for a result, the Supreme Court will not grant certiorari given the principles of federalism. *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) ("This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. The reason is so obvious that it has rarely upon thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." (citations omitted)).

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

Response: While I am not aware of any Supreme Court or D.C. Circuit precedent addressing this question, in *Kashem v. Barr*, 941 F.3d 358 (9th Cir. 2019), the Ninth Circuit held that the government's use of a reasonable suspicion standard in determining whether to place individuals on the no-fly list satisfied procedural due process in light of the government's interest in combatting terrorism, the public's manifest interest in aviation safety, and the availability of post-deprivation process to clear one's name. *Id.* at 380-84, 389.

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

Response: To the best of my knowledge, the Supreme Court has not cited a textual source for the different standards of review for determining whether state laws or regulations violate constitutional rights. Instead, the standards of review come from the Court's decisions. *See, e.g.*, *Munn v. People of the State of Ill.*, 94 U.S. 113, 131-32 (1876) (rational basis); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (intermediate scrutiny); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 538-39, 541 (1942) (strict scrutiny).

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

Response: An injunction is an equitable form of relief, issued in accordance with a court's inherent equitable authority and Federal Rule of Civil Procedure 65. Under the Administrative Procedure Act, Congress has also authorized federal courts to "set aside" unlawful agency action. 5 U.S.C. § 706(2).

The Supreme Court has explained that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, and if presented with this issue, I would apply precedent from the Supreme Court and the D.C. Circuit to determine whether to issue, and the proper scope of, any injunction.

Questions from Senator Thom Tillis
for Loren Linn AliKhan
Nominee to be United States District Court for the District of Columbia

1. Did you write any legal briefs in support of sanctuary city policies, where state and local governments refuse to cooperate with federal immigration officials?

Response: In my former role as Solicitor General of the District of Columbia, I was responsible for overseeing appellate litigation at the direction of the elected Attorney General for the District of Columbia. I "serve[d] under the direction and control of the Attorney General" and was required to "perform such duties as" he assigned. D.C. Code § 1301.87(b)(1). After the Attorney General decided that the District of Columbia should file an amicus brief in a case, it was my responsibility to supervise the drafting of that brief and serve as counsel of record. I did so consistent with my ethical obligation to zealously represent my client within the bounds of the law and my statutory obligation to carry out the duties assigned to me by the Attorney General. This included a handful of briefs supporting other jurisdictions that were challenging the imposition of immigration-related conditions on Byrne JAG grants, which fund important state and local law enforcement functions.

a. If yes, what was the position you took in these cases and who was your client?

Response: At the direction of the Attorney General for the District of Columbia, the position in these briefs was that the proposed immigration-related conditions were not connected to the purpose of Byrne JAG funds and would divert critical resources away from local law enforcement priorities.

2. What is your view of sanctuary city policies? Specifically, do you believe that state and local governments can and should ignore federal immigration law?

Response: Cities' policies on immigration are best left to the decisions of policymakers. As a sitting D.C. Court of Appeals judge, I faithfully apply federal and local law to the facts of the cases that come before me. If confirmed, I would continue to faithfully apply all applicable law to the facts of the cases that come before me.

a. If yes, what is the legal justification you believe permits state and local governments to ignore federal immigration law?

Response: Please see my response to Question 2.

3. It is my understanding you gave a speech to the American Constitution Society where you specifically highlighted their work on sanctuary city policies. You stated the following:

a. "And then we've also participated in cases um you know whether it's LGBTQ discrimination, sanctuary cities, other immigrant issues and so I've

been, I think through my job to carry out and live some of the values of ACS…"

b. Do you believe that supporting sanctuary city policies is a value of ACS?

Response: I do not know whether ACS has a position on sanctuary city policies. The "values of ACS" that I was referring to were mentorship, public service, and vibrant discussion about legal issues.

c. Is supporting sanctuary city policies through your work as Solicitor General part of living "some of the values of ACS"?

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

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

Response: Yes. Judges have a sworn duty to fairly and faithfully apply the laws to the facts of the cases before them, without regard to any personal views or positions previously taken on behalf of former clients.

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

Response: *Black's Law Dictionary* (11th 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." I do not believe that judicial activism is appropriate.

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

Response: Impartiality is indisputably an expectation for a judge.

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

Response: No.

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

Response: A judge is sworn to faithfully interpret the law in every case that comes before her regardless of the judge's personal views on the outcome.

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

Response: No.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." *Id.* at 595. This right is incorporated against the states via the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court further clarified that any laws regulating the right to keep and bear arms must be "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. As a sitting D.C. Court of Appeals judge, I faithfully apply these binding precedents. If confirmed, I will continue to do so.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that are currently before the courts. *See* Code of Conduct for United States Judges, Canon 3(A). But in all cases, I apply binding precedent to the facts of the cases that come before me, which includes *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: The qualified immunity inquiry is a two-part test. Government officials are entitled to immunity from claims brought under 42 U.S.C. § 1983 unless (1) they violate a "statutory or constitutional right" and (2) that right was "clearly established at the time" of the violation. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on whether existing legal doctrines provide "sufficient" protection from liability. In all cases, I apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me without regard to any personal views or positions my clients previously took when I served as their advocate. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

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

Response: In *Wilson v. Layne*, 526 U.S. 603 (1999), the Supreme Court explained that "government officials performing discretionary functions generally are granted a qualified immunity and are 'shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Id.* at 609 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). As a sitting D.C. Court of Appeals judge, I faithfully apply binding precedent from the Supreme Court and the D.C. Court of Appeals to the facts of the cases that come before me. If confirmed as a district judge, I would faithfully apply binding precedent from the Supreme Court and the D.C. Circuit to the facts of the cases that would come before me.

15. 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: I have not had occasion to study the Supreme Court's jurisprudence on patent eligibility. As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on this issue. If confirmed, I would faithfully apply the relevant patent law decisions of the Supreme Court and the D.C. Circuit to all cases that would come before me.

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

Response: Please see my response to Question 15.

17. 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: When I was clerking on the U.S. District Court for the Eastern District of Pennsylvania, I handled at least one case involving copyright law. I also handled a considerable number of intellectual property matters as an attorney at O'Melveny & Myers LLP.

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

Response: I cannot recall whether the copyright case I handled while I was clerking involved the Digital Millennium Copyright Act specifically.

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

Response: To the best of my recollection, I have not had the opportunity to handle any matters involving 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: From 2008 to 2022, during my time in the Office of the Solicitor General at the U.S. Department of Justice, in private practice at O'Melveny & Myers LLP, and in the Office of the Attorney General for the District of Columbia, I handled several matters involving the First Amendment, free speech, and intellectual property. As noted in my response to Question 17(a), I also handled at least one case involving copyright law while serving as a law clerk.

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

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

Response: I would consider the text of the Digital Millennium Copyright Act and binding Supreme Court and D.C. Circuit precedent interpreting the statute. If the statutory text were ambiguous and there were no binding precedent, I would employ accepted methods of statutory interpretation, including consulting dictionary definitions, applying appropriate canons of construction, and, as a last resort, reviewing the forms of legislative history that the Supreme Court has endorsed, such as committee reports.

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: Under the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), courts owe deference to a federal agency's proper and reasonable interpretations of ambiguity within their governing statutes.

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

Response: As a sitting D.C. Court of Appeals judge and as a nominee, it is not appropriate for me to comment on matters that could come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A).

19. 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: The question of whether existing digital environment laws are appropriate is one that should be left to policymakers. If I were confronted with a question regarding the Digital Millennium Copyright Act, I would begin by examining the text of the statute and any relevant Supreme Court or D.C. Circuit precedent construing the statute. If the statutory text were ambiguous and there were no binding precedent, I would employ accepted methods of statutory interpretation, including consulting dictionary definitions, applying appropriate canons of construction, and, as a last resort, reviewing those forms of legislative history that the Supreme Court has endorsed, such as committee reports.

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 19(a).

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

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

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

Response: The question of whether "judge shopping" and "forum shopping" are problems in litigation is one that should be left to policymakers. If confirmed, I will faithfully apply venue and other federal and local procedural rules, as well as any binding precedent, in all cases that come before me. Among those rules is Local Rule 40.3 of the United States District Court for the District of Columbia, under which cases are generally assigned "at random."

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 20(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 any judge to affirmatively take steps to attract a particular set of cases, parties, or issues.

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

Response: I will not take affirmative steps to attract a particular set of cases, parties, or issues.

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

Response: This question is best left to policymakers and the Judicial Conference of the United States. As a judicial nominee, it would not be appropriate for me to comment on this issue. I will faithfully apply venue and other federal and local procedural rules, as well as any binding precedent, in all cases that come before me.

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

Response: Please see my response to Question 21.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Susan Kim DeClercq
Nominee to be United States District Judge for the Eastern District of Michigan

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

   Response: I am not familiar with the context of this statement, but I disagree with the statement. A judge must always follow the law and precedent when interpreting the Constitution, regardless of the judge's personal values.

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

   Response: I am not familiar with the context of this statement, but with due respect to Judge Reinhardt, I disagree with this approach. If I were confirmed as a district judge, I would faithfully follow Supreme Court and Sixth Circuit precedent in all cases.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "living constitution" as "A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values."

4. **Please describe your *criminal* law experience, specifically:**
   a. **How many jury trials have you prosecuted during the course of your career?**

      Response: I have been a lawyer for 23 years, primarily as a civil litigator handling both defensive and affirmative cases, and now work as in-house counsel, so I have not handled any criminal jury trials.

   b. **How many bench trials?**

      Response: I have been a lawyer for 23 years, primarily as a civil litigator handling both defensive and affirmative cases, and now work as in-house counsel, so I have not handled any criminal bench trials.

5. **Please describe your *civil* law experience as an AUSA, specifically:**
   a. **How many jury trials have you prosecuted during the course of your career?**

Response: Through my work as an AUSA for 18 years, as well as in private practice at Skadden Arps and now at Ford Motor Co., I have handled hundreds of cases at virtually every stage of litigation, from conducting pre-suit investigations to engaging in hard fought discovery, two bench trials to judgment, and post judgment appellate work. I've represented both plaintiffs and defendants. I've briefed and argued dozens of motions. I've taken dozens of depositions, both expert and fact, and conducted hundreds of witness interviews. I've also handled dozens of settlement conferences, mediations, and less formal negotiations.

b. **How many bench trials?**

Response: Please see my response to Question 5(a).

c. **Is that number typical for your district and/or representative of the *civil* AUSA experience, generally?**

Response: Yes, civil trials are not common.

6. **When did the Eastern District of Michigan establish its Civil Rights Unit? Please provide a list of examples of the types of affirmative cases it prosecuted.**

Response: The Civil Rights Unit was established in 2010. Here is a list of cases that reflect the types of affirmative cases it prosecuted:

- *In re: Learning Care Group* - Americans with Disabilities Act (Title III)
- *United States v. Michigan Department of Corrections* – Employment (Title VII)
- *United States v. City of Detroit* – Law Enforcement Misconduct (34 U.S.C. §12601)
- *United States v. City of Troy* – Religious Land Use and Institutionalized Persons Act
- *In re: Hartland Consolidated Schools* – Racial Harassment (Title IV)
- *United States v Tel-Clinton Trailer Courts, Inc.* – Fair Housing Act (familial status discrimination)
- *Baetz v. City of Highland Park* – Uniformed Services Employment and Re-employment Act
- *United States v. City of Eastpoint* – Voting Rights Act
- *In re: Wayne County Jail* – Civil Rights of Institutionalized Persons Act
- *In re: Michigan Department of Health and Human Services* – Americans with Disabilities Act (*Olmstead*)

a. **How many of those cases were you involved in as the lead counsel?**

Response: Of the cases listed, I was lead counsel in five cases. I was lead counsel in many other cases brought by the Civil Rights Unit that are not listed as well.

b. **How many of those cases were you involved in as the co-counsel?**

Response: Of the cases listed, I was co-counsel in two cases. I was co-counsel in many other cases brought by the Civil Rights Unit that are not listed.

c. **How many of those types of cases proceeded to trial?**

Response: Of the cases listed, none of them proceeded to trial.

7. **In 2022 you authored a chapter in the Department of Justice's Journal of Federal Law and Practice, entitled "Friends of the Court: Amicus Briefs and Statements of Interest in Civil Rights Cases." You noted that DOJ statements of interest are a "powerful tool" and an "effective mechanism for the Department to influence the development of federal civil rights laws across the country." Do you think the Department of Justice filing statements of interest on controversial topics such as gender identity in schools builds trust in the impartiality of the Department of Justice? Please explain why or why not.**

Response: The Department of Justice is an advocate and its client is the United States. It files statements of interest on a wide range of cases on a wide range of legal issues to advance the interest of its client, the United States.

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

Response: The Constitution is an enduring document that sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

Response: A "fact" is evidence that is admissible under the federal rules of procedure and federal rules of evidence. Courts consider Supreme Court and circuit precedent to determine whether something is a question of fact or a question of law.

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

Response: Genuine disagreement over the quality of an opinion can be done in a focused and respectful manner and such disagreements or criticism would ordinarily be protected by the First Amendment. In contrast, when the discourse strays outside of the merits of the opinion, such as to personal attributes of the judge, it seems to be more than "mere criticism." Moreover 18 U.S.C. §1507 prohibits certain conduct that could be considered an "attack" in the way contemplated by this question. According to that statute, "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both." *Id.*

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

Response: To the extent I have a personal opinion on sentencing, it is irrelevant. What matters is the legislature's pronouncements on sentencing. Congress has set forth the factors that a judge must consider when sentencing a defendant in 18 U.S.C. §3553, which include, (A) "the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training…." In enacting §3553, Congress did not direct courts to favor one factor over another. In addition, the sentencing guidelines, although not mandatory, set forth a very specific structure by which to analyze the individual facts relevant to sentencing decisions. I would apply the relevant factors in §3553, look to the guidelines, and apply any binding Supreme Court and Sixth Cir precedent to craft a sentence that is "sufficient, but not greater than necessary" as directed by Congress in §3553(a).

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

Response: Having never been a judge I have not had an opportunity to put my judicial philosophy into effect. I can only speak to my experience as a lawyer, to the judges before whom I have appeared, and to the approach that I would take if I were fortunate enough to be confirmed. To that end, I would approach each case with an open mind, and will listen to the facts and the arguments with no preconceived notions. I would also research the applicable law, I will faithfully apply all Supreme Court and Sixth Circuit precedent, I will treat lawyers and parties fairly, and I will be fair and even handed to the

administration of justice. I am not aware of any Supreme Court decision that is a typical example of this.

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

Response: Having never been a judge I have not had an opportunity to put my judicial philosophy into effect. I can only speak to my experience as a lawyer, to the judges before whom I have appeared, and to the approach that I would take if I were fortunate enough to be confirmed. To that end, I would approach each case with an open mind, and will listen to the facts and the arguments with no preconceived notions. I would also research the applicable law, I will faithfully apply all Supreme Court and Sixth Circuit precedent, I will treat lawyers and parties fairly, and I will be fair and even handed to the administration of justice. I am not aware of any Sixth Circuit decision that is a typical example of this.

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

Response: 18 U.S.C. § 1507 states the following: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld the constitutionality of a state law modeled on 18 U.S.C. §1507.

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

Response: In *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), the Supreme Court held that speech is not protected under the First Amendment when "by their very utterance inflict injury or tend to incite an immediate breach of the peace" by listeners.

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

Response: In *Virginia v. Black,* 538 U.S. 343, 359 (2003), the Supreme Court held that a statement is not protected speech where "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

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

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

Response to all subparts: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. However, because they involve issues that are so foundational to our legal system that they are unlikely to be relitigated, I believe that both *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided. In addition, I recognize that *Roe v. Wade* and *Planned Parenthood v. Casey* were overruled by the decision in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen,* 142 S. Ct. 2111 (2022), the Supreme Court held, "In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 2126 (citation omitted).

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

Response: As a judicial nominee, it is inappropriate for me to opine on a law or regulation that I either support or oppose as a matter of policy because such a law or regulation could come before me if I am fortunate enough to be confirmed as a district judge. If confirmed, I would apply all binding precedent of the Supreme Court and the Sixth Circuit.

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

Response: Please see my answer to Question 20.

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

Response to all subparts: 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?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response to all subparts: 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?**
    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?**

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 to all subparts: No.

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

Response: The Eastern District of Michigan has a judicial selection commission. Senators Stabenow and Peters engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On June 14, 2022, I submitted an application, and I interviewed with the committee on July 13, 2022. On August 19, 2022, I interviewed with attorneys from the White House Counsel's Office. Since February 9, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me and my nomination was submitted to the Senate.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: The Eastern District of Michigan has a judicial selection commission. Senators Stabenow and Peters engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On June 14, 2022, I submitted an application, and I interviewed with the committee on July 13, 2022. On August 19, 2022, I interviewed with attorneys from the White House Counsel's Office. Since February 9, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me and my nomination was submitted to the Senate.

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

Response: The Office of Legal Policy provided me with these questions on June 15, 2023. I submitted draft responses to the Office of Legal Policy for feedback and finalized my answers for submission.

Senate Judiciary Committee
Nominations Hearing
June 7, 2023
Questions for the Record
Senator Amy Klobuchar

Susan DeClercq, nominee to be U.S. District Court Judge for the Eastern District of Michigan

For eighteen years, you served in the U.S. Attorney's Office for the Eastern District of Michigan. During your tenure as an Assistant U.S. Attorney you handled hundreds of cases, led investigations, supervised other attorneys, and spearheaded community outreach.

- **What are some challenges you faced as a prosecutor that will inform your approach as a judge?**

  Response: I was very fortunate to have served in many different capacities at the U.S. Attorney's Office for the Eastern District of Michigan. There were a number of challenges that I faced in those roles that will inform my approach as a judge, if I were to be confirmed. When I handled civil rights cases, which also involved conducting a great deal of community outreach, I was often interacting with people who were unfamiliar with the legal system, or often had a negative impression of it due to their prior life experience. Although they were not my clients, it was still very important to me to make sure that they understood everything that was going on and why certain things were happening (or not). In this way I hoped to instill in them confidence in the system and comfort in the proceedings. If confirmed as a judge, I would also be very deliberate about making sure all people involved in a case, not just the parties but the victims, witnesses, and even spectators, understand the proceedings and the reasoning behind any decision. In addition, spending years personally conducting investigations has given me a profound appreciation of the importance of scrupulously learning the facts of a case. Like the old adage, "the devil is in the details," I am acutely aware that cases can often turn on the slightest difference in facts and circumstances. Finally, as a manager of the Civil Rights Unit and later the entire Civil Division, I understand the importance of treating people well and having high expectations of them. I would bring this to the management of my personal chambers and the lawyers who appear before me.

Senator Mike Lee
Questions for the Record
Susan DeClercq, Nominee to the United States District Court for the Eastern District of Michigan

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

Response: Having never been a judge I have not had an opportunity to put my judicial philosophy into effect. I can only speak to my experience as a lawyer, to the judges before whom I have appeared, and to the approach that I would take if I were fortunate enough to be confirmed. To that end, I would approach each case with an open mind, and will listen to the facts and the arguments with no preconceived notions. I would also research the applicable law, I will faithfully apply all Supreme Court and Sixth Circuit precedent, I will treat lawyers and parties fairly, and I will be fair and even handed to the administration of justice.

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

Response: I would first look to the plain language of the text of the statute. If it is clear and unambiguous, my analysis would stop there. If not, I would then look to Supreme Court and Sixth Circuit precedent. If there was no binding precedent, I would look at other analogous cases, relevant canons of statutory interpretation, and legislative history only to the extent allowed by Supreme Court precedent. If confirmed as a district judge, I would follow Supreme Court and Sixth Circuit precedent in analyzing and interpreting any federal statute.

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

Response: I would first look to the plain language of the text of the constitutional provision. If it is clear and unambiguous, my analysis would stop there. If not, I would then look to Supreme Court and Sixth Circuit precedent. If there was no binding precedent, I would look at other analogous cases, relevant canons of statutory interpretation, and legislative history only to the extent allowed by Supreme Court precedent. If confirmed as a district judge, I would follow Supreme Court and Sixth Circuit precedent in analyzing and interpreting any constitutional provision.

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

Response: Please see my answer to Question 3. If I am fortunate enough to be confirmed as a district judge, I would follow Supreme Court and Sixth Circuit precedent with respect to the role of text and original meaning of constitutional provisions when interpreting the Constitution. *See e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (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 answer 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: "Plain meaning" refers to the understanding of words held by the general public at the time of the statutory or constitutional provision's enactment, that is, the original public meaning for original public understanding. If I am fortunate enough to be confirmed as a district judge, I would follow Supreme Court precedent with respect to the role of text and "plain meaning" of constitutional provisions when interpreting the Constitution. *See e.g., District of Columbia v. Heller,* 554 U.S. 570 (2008); *Bostock v. Clayton Cty*, 140 S. Ct. 1731 (2020).

6. What are the constitutional requirements for standing?

Response: The Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), held that the plaintiff must have "actual or imminent" injury that is "concrete and particularized," there must be a causal connection between the injury and the accused conduct, and it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

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

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized that Congress has implied powers to carry out its enumerated powers under the Necessary and Proper clause.

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

Response: Under binding Supreme Court precedent, Congress need not specifically reference a constitutional enumerated power for the Congressional action to be constitutionally sound. *See e.g., Nat'l Federation of Ind. Business v. Sebelius*, 567 U.S. 519, 570 (2012) ("the question of the constitutionality of action taken by Congress does not depend on recitals of the power that it undertakes to exercise.")

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

Response: Yes. The Supreme Court has held that there are rights that are not specifically enumerated in the Constitution. *See Washington v. Glucksberg*, 521 U.S.

702 (1997) In *Glucksberg*, the Supreme Court noted that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* at 720-21. Such rights include, among others, the right to marry, to have children, and to use contraceptives. *See id.* at 720 (citing rights recognized by the Supreme Court beyond those "protected by the Bill of Rights.")

10. What rights are protected under substantive due process?

Response: Please see my answer 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 determined that economic rights in *Lochner v. New York* were overturned. In addition, the right to abortion was overturned in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If confirmed as a judge, I would follow binding Supreme Court and Sixth Circuit precedent on the issue of substantive due process.

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), the Supreme Court held that Congress has the authority to regulate (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) "those activities having a substantial relation to interstate commerce." (internal citations omitted.)

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

Response: The Supreme Court has identified race, religion, national origin, and alienage as suspect classes. In determining a suspect classification, the Supreme Court takes into consideration whether such individuals have "as a historical matter,...been subjected to discrimination," "exhibit obvious, immutable, or distinguishing characteristics," and are "a minority or politically powerless." *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987).

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

Response: The framers of the Constitution were deliberate in setting forth separate powers between the legislative, executive, and judicial branches. *See* Constitution,

Art. I - III. The checks and balances that each branch holds on the others is integral "to protect each branch of government from incursion by the others" but also "the structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

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

Response: If I were confirmed as a judge and faced with a case where one branch assumed authority not granted it by the text of the Constitution, I would review the Constitutional text and apply any relevant binding precedent from the Supreme Court or the Sixth Circuit. *See e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) (holding that executive order exceeded president's authority where that there was no statute or act of Congress that authorized such action, and noting that the Constitution's framework, which sets forth "the President's power to see that the laws are faithfully executed refutes the idea that he is to be lawmaker.")

16. What role should empathy play in a judge's consideration of a case?

Response: None. Empathy should not play a role in a judge's consideration of a case. Decisions should be guided solely by the law and the facts of the case and by application of any binding precedent.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: They are both wrong.

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 do not know what accounts for this change; I would leave that to historians and law professors. If confirmed as a district judge, I will follow the Supreme Court and Sixth Circuit precedent when reviewing federal statutes.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: According to Black's Law Dictionary (11th ed. 2019), judicial review is "a court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Whereas it defines judicial supremacy as "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." *Id.*

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Article VI of the constitution requires all elected and judicial officials to swear by oath or affirmation to support the constitution. Further, the Supreme Court has itself held that elected officials are bound to respect duly rendered judicial decisions that interpret the constitution. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: It is important for judges to remember that the role of the judiciary is a limited one, confined only to the review of cases and controversies before them.

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 I were to be confirmed as a district judge, I would faithfully follow applicable Supreme Court and Sixth Circuit precedent, regardless of whether I agreed with the opinion.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None. A defendant should be sentenced based on the factors set forth in 18 U.S.C.§ 3553, as guided by the Sentencing Guidelines, not on group identities.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including

individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this statement. Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing."

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing" and defines "equality" as "The quality, state, or condition of being equal; esp., likeness in power or political status."

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The 14th Amendment's Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction, the equal protection of the laws." I am not aware of any Supreme Court of Sixth Circuit decision addressing whether the 14th Amendment guarantees "equity" as defined in Question 24.

27. How do you define "systemic racism?"

Response: The online Merriam-Webster dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/systemic%20racism.

28. How do you define "critical race theory?"

Response: Black's Law Dictionary (11th ed. 2019) 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."

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: Please see my responses to Questions 27 and 28.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Susan Kim DeClercq, nominated to be United States District Judge for the Eastern District of Michigan

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is racial discrimination wrong?

Response: Yes.

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: The Supreme Court has held that there are rights that are not specifically enumerated in the Constitution. *See Washington v. Glucksberg*, 521 U.S. 702 (1997). In *Glucksberg*, the Supreme Court noted that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* at 720-21. Such rights include, among others, the right to marry, to have children, and to use contraceptives. *See id.* at 720 (citing rights recognized by the Supreme Court beyond those "protected by the Bill of Rights.") If confirmed as a district judge, I would faithfully apply binding Supreme Court and Sixth Circuit precedent to any case involving a right that is not enumerated in the Constitution.

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: Having never been a judge I have not had an opportunity to put my judicial philosophy into effect. I can only speak to my experience as a lawyer, to the judges before whom I have appeared, and to the approach that I would take if I were fortunate enough to be confirmed. To that end, I would approach each case with an open mind, and will listen to the facts and the arguments with no preconceived notions. I would also research the applicable law, I will faithfully apply all Supreme court and Sixth Circuit precedent, I will treat lawyers and parties fairly, and I will be fair and even handed to the administration of justice. I believe that all of the named Justices are similar in this way.

4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I would not define myself by any particular label but if confirmed as a district judge, I would follow all Supreme Court and Sixth Circuit precedent concerning interpretative methods.

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 (11th ed. 2019) defines "living constitution" as the doctrine that "the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I would not define myself by any particular label but if confirmed as a district judge, I would follow all Supreme Court and Sixth Circuit precedent concerning interpretative methods.

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 I were to be confirmed as a district judge, I would be bound to follow the interpretive methods established by the Supreme Court and the Sixth Circuit. I would begin my analysis with the text, and look to Supreme Court and Sixth Circuit precedent interpreting analogous provisions, as well as canons of construction.

7. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: It is relevant only to the extent that it comports with Supreme Court precedent. *See, e.g., Miller v. California*, 413 U.S. 15, 16 (1973) (holding that the test for obscenity should apply "contemporary community standards."); *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (noting that an excessive punishment claim is judged the standards "that currently prevail.")

8. 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 that sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?

Response: I recognize that the Supreme Court's ruling in *Dobbs* is established precedent and I would be duty bound to follow it if confirmed.

a. **Was it correctly decided?**

Response: As a judicial nominee, it is not appropriate for me to share any personal opinion on a particular case but I recognize *Dobbs* as binding Supreme Court precedent that I must follow.

10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: I recognize that the Supreme Court's ruling in *Bruen* is binding precedent that I must follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, it is not appropriate for me to share any personal opinion on a particular case but I recognize *Bruen* as binding Supreme Court precedent that I must follow.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: I recognize that the Supreme Court's ruling in *Brown* is binding precedent that I must follow.

a. **Was it correctly decided?**

Response: Yes. As a judicial nominee, it is generally not appropriate for me to share any personal opinion on a particular case. However, because it involves issues that are so foundational to our legal system that they are unlikely to be relitigated, I believe that *Brown v. Board of Education* was correctly decided.

12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

Response: Under 18 U.S.C. §3142(e), criminal offenses can give rise to a rebuttable presumption for pretrial detention where a judicial officer finds, among other things, that:

- "the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;
- the offense described [above] was committed while the person was on release pending trial for a Federal, State, or local offense; and
- a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later."

Also, if "there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed" or "there is probable cause to believe that the person committed an offense under 18 U.S.C. § 924(c)."

a. **What are the policy rationales underlying such a presumption?**

Response: Under the Bail Reform Act, pretrial detention is concerned with reasonably assuring the appearance of the person and the safety of any other person and the community. *See* 18 U.S.C. §3142(c).

13. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: Religious freedom is one of our country's oldest and most cherished rights so generally strict scrutiny is applied to a law that creates a substantial burden on the free exercise of religion. But, if there is a facially neutral state action with general applicability that only incidentally impacts religion, strict scrutiny is not applied. *See Tandon v. Newsom,* 141 S. Ct. 1294 (2021); *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby,* 573 U.S. 682 (2014). In addition, the Religious Freedom Restoration Act of 1993 "prohibits any agency, department, or official of the United States or any State (the government) 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."

14. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Please see my answer to Question 13.

15. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020), the Supreme Court held that the religious entity-applicants were entitled to a preliminary injunction because they showed that the imposed Covid restrictions were not facially neutral because they treated similar secular activity more favorably and a loss of a First Amendment freedom was an irreparable harm.

16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.*

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the Supreme Court held that governmental regulations are not facially neutral and generally applicable if they "treat *any* comparable secular activity more favorably than religious exercise." Accordingly, they must satisfy strict scrutiny. Moreover, simply because the regulations may have been withdrawn, the case is not moot because they could be reinstated. *Id.* at 1297.

17. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes.

18. Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 138 S. Ct. 1719 (2018), the Supreme Court held that an order of the Colorado Commission evaluating a cake owner's refusal to make a cake for a same-sex wedding violated the free exercise clause. The Court held that the order was not a neutral state action because members of the Commission had made religiously hostile comments at public meetings.

19. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes, according to the Supreme Court in *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014), if the beliefs are sincerely held, they are protected even if the belief is not "the command of a particular religious organization."

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Please see my answer to Question 19.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my answer to Question 19.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am not familiar with the "official position of the Catholic Church," but my general understanding is that this is not consistent with it.

20. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses

foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that courts should "defer to religious organizations' good-faith claims that a certain employee's position is 'ministerial'" and therefore exempt from employment anti-discrimination laws.

21. In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that the law at issue was not a neutral, generally applicable law because it allowed exceptions and did not apply to the general public, so it was subject to strict scrutiny, which it did not meet.

22. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that the state could not withhold otherwise generally available payments to a religious school simply because of its religious nature.

23. Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that private prayer by a coach during his personal time was protected as religious expression and the school district's concern that such conduct could possibly be an Establishment clause violation is not a compelling state interest.

24. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.

Response: In his concurrence in *Mast v. Fillmore County*, 141 S. Ct. 2430, 2432 (2021), Justice Gorsuch emphasized that courts cannot "rely on 'broadly formulated'" governmental interests, but must "scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." He also stressed that it is the government's burden to show both a compelling state interest and that any imposition

on religious exercise is narrowly tailored, so that "if the government can achieve its interests in a manner that does not burden religion, it must do so." (citing *Fulton v. City of Philadelphia,* 141 S. Ct. 1868 (2021)).

25. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: 18 U.S.C. §1507 states: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both." The First Amendment protects the right to peaceably assemble. As a judicial nominee, it would be inappropriate for me express an opinion on an issue or matter that may come before me if I were fortunate enough to be confirmed as a district judge. However, if faced with such a question, I would carefully research Supreme Court and Sixth Circuit precedent, review the records and arguments of parties, and fairly and impartially apply the law to the facts of the case.

26. Would it be appropriate for the court to provide its employees trainings which include the following:

a. **One race or sex is inherently superior to another race or sex;**

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 parts: To the extent that any such trainings would violate Title VII or any other employment related laws, it would not be appropriate for the court to provide such trainings.

27. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: Yes.

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

29. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: As a judicial nominee, I feel that it is inappropriate for me to opine on a policy matter or the constitutionality of an issue that could come before me if I am fortunate enough to be confirmed as a district judge. If confirmed, I would carefully research Supreme Court and Sixth Circuit precedent, review the records and arguments of parties, and fairly and impartially apply the law to the facts of the case.

30. Is the criminal justice system systemically racist?

Response: This is a question that is best addressed by social scientists and policymakers. If I am confirmed as a district judge, I would handle each case before me on an individual basis, guided only by legal precedent and the facts of the case.

31. 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 question that is best addressed by the Legislative branch. If I am confirmed as a district judge, I would handle each case before me on an individual basis, guided only by legal precedent and the facts of the case.

32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?

Response: No.

33. What do you understand to be the original public meaning of the Second Amendment?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Supreme Court held, looking at the original public meaning, that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation."

34. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court

held that there is an individual right to possess a firearm. The court recognized, however, that the right is not unlimited, and longstanding prohibitions such as possession by felons or mentally ill individuals may be constitutionally permissible. The Supreme Court in *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022) further clarified that "if a firearm regulation is consistent with this Nation's historical tradition" a court may conclude that "the individual's conduct falls outside the Second Amendment[ ]."

35. Is the ability to own a firearm a personal civil right?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." It further held, in *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010) that it is a "fundamental right[ ] necessary to our system of ordered liberty."

36. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2156, the Supreme Court specifically noted that "the constitutional right to bear arms in public for self-defense is not a 'second-class right'." I am not aware of any Supreme Court or Sixth Circuit case holding that the Second Amendment right to possess a firearm is less protected that any other individual right specifically enumerated in the Constitution.

37. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." I am not aware of any Supreme Court or Sixth Circuit case holding that the Second Amendment right to possess a firearm is less protected that any other Constitutional right, including right to vote.

38. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

Response: A president is obligated under Article II of the Constitution to "take Care that the Laws be faithfully executed." Under *United States v. Nixon*, 418 U.S. 683, 693 (1974), the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."

39. Explain your understanding of what distinguishes an act of mere 'prosecutorial

discretion' from that of a substantive administrative rule change.

Response: The "decision whether or not to prosecute, and what charges to bring," as well as plea negotiation, "rests entirely in [the prosecutor's] discretion." *Bordenkircher v. Hayes*, 434 U.S. 357 (1978). A substantive administrative rule change generally falls within the Administrative Procedure Act.

40. Does the President have the authority to abolish the death penalty?

Response: Under current federal law, the death penalty is a lawful punishment in certain circumstances and the Supreme Court has upheld its constitutionality. *See Gregg v. Georgia*, 428 U.S. 153 (1976); *Coker v. Georgia*, 433 U.S. 584 (1977). Congress generally sets penalties for unlawful conduct and no constitutional provision permits a president to overrule duly enacted legislation setting such penalties.

41. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.*

Response: During the COVID-19 pandemic, the Directors of the Centers for Disease Control "imposed a nationwide moratorium on evictions of any tenants who live in a county that is experiencing substantial or high levels of COVID-19." *Alabama Ass'n of Realtors v. Dept. of Health and Human Services,* 594 U.S. __, 2021. The District Court for the District of Columbia "vacated the moratorium on that ground that it is unlawful" but stayed the judgment pending appeal. *Id.* The Supreme Court denied the application to vacate stay. The per curium opinion agreed with the lower court's decision that the CDC exceeded its authority when it issued a nationwide moratorium on evictions.

42. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: As a judicial nominee, it is inappropriate for me to publicly comment on an issue that could come before me if I am fortunate enough to be confirmed as a district judge. If confirmed and faced with such a case, I would follow Supreme Court and Sixth Circuit precent and render a fair and impartial decision.

43. You co-authored an amicus brief arguing for affirmative action in *Grutter v Bollinger*. In 2023, twenty years after the decision, is the use of race as a factor in university admission decisions still appropriate?

Response: Under current Supreme Court precedent, including *Grutter v. Bollinger,* 539 U.S. 306 (2003) and *Fisher v. Univ. of Texas,* 579 U.S. 365 (2016), race can be used as part of an admissions decision by a university only if "the admissions process can withstand strict scrutiny." *Fisher*, 579 U.S. at 376. The university must be able to "demonstrate with clarity that its 'purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary…to the

accomplishment of its purpose.'" *Id.* quoting *Fisher I*, 570 U.S. at 309. This issue, however, is currently pending before the Supreme Court in *Students for Fair Admissions v. Harvard*. I would faithfully apply binding Supreme Court and Sixth Circuit precedent on this topic should it come before me if I were confirmed as a district judge.

a. **If yes, when will it become inappropriate?**

Response: Please see my response to Question 43.

44. Do you disagree with Chief Justice John Roberts who said, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race"? If you do disagree, please explain why.

Response: As a judicial nominee, it is not appropriate for me to comment on the Chief Justice's statement, made in *Parents Involved in Cmty Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). If confirmed as a district judge, I would faithfully follow binding Supreme Court and Sixth Circuit precedent on questions of race discrimination.

Senator John Kennedy
Questions for the Record

Susan DeClercq

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: Having never been a judge I have not had an opportunity to put my judicial philosophy into effect. I can only speak to my experience as a lawyer, to the judges before whom I have appeared, and to the approach that I would take if I were fortunate enough to be confirmed. To that end, I would approach each case with an open mind, and will listen to the facts and the arguments with no preconceived notions. I would also research the applicable law, I will faithfully apply all Supreme Court and Sixth Circuit precedent, I will treat lawyers and parties fairly, and I will be fair and even handed to the administration of justice.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Constitution is an enduring document that sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. If confirmed as a judge, I would first look to Supreme Court and Sixth Circuit precedent to see if the law's text had been previously addressed. If not, I would determine if the meaning of the test is clear and unambiguous. If it is, my analysis would stop there.

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: I am not aware of any Supreme Court or Sixth Circuit precedent that instructs consideration of statements made by a president to be part of legislative history.

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

   Response: In *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980), the Supreme Court held that a shopping center owner can "restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its

commercial functions." If confirmed as a district judge, I would follow Supreme Court and Sixth Circuit precedent as well as applicable state law to decide an issue like this.

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

   Response: Although not specifically relating to privacy, the Supreme Court has held that due process extends to non-citizens. *See e.g., Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: In *United States v. Ramsey*, 431 U.S. 606, 615-17 (1977), the Supreme Court noted the long history of cases holding that border searches "were not subject to the warrant provisions of the Fourth Amendment" that that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border."

8. **At what point is a human life entitled to equal protection of the law under the Constitution?**

   Response: In *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, 2261 (2022) the Supreme Court expressly noted that its opinion "is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." I am not aware of any Supreme Court or Sixth Circuit precedent resolving this question.

9. **A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.**

   a. **Do you agree?**

      Response: As a judicial nominee, it is inappropriate for me to comment publicly on an issue that may come before me, if I am fortunate enough to be confirmed as a district judge.

   b. **Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?**

      Response: As a judicial nominee, it is inappropriate for me to comment publicly on an issue or matter that may come before me, if I am fortunate enough to be

confirmed as a district judge. However, judges are obligated at all times to follow precedent.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: The Supreme Court in *Crawford v. Marion County Election Board,* 553 U.S 181 (2008) has held that voter identification laws are constitutional. If I am confirmed as a district judge, I will follow binding Supreme Court and Sixth Circuit precedent on this, and all other issues.

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: In *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022), the Supreme Court held that a court must first assess whether "the Second Amendment's plain text covers an individual's conduct. *Id.* at 2126. If so, "the Constitution presumptively protects that conduct" and the government bears the burden of "demonstrating that the regulation is consistent with this nation's historical tradition of firearms regulation." *Id.* To do so, the government must identify a historical regulation that is "relatively similar" to the challenged regulation. *Id.* at 2132. If I am confirmed as a district judge, I will follow binding Supreme Court and Sixth Circuit precedent on this, and all other issues.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: The Supreme Court considers five factors: "the quality of [the prior decision's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *See Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

b. Is one factor alone ever sufficient?

Response: I am not aware of any Supreme Court decision indicating how many factors are necessary to provide a specific justification for overturning precedent.

14. Please explain the difference between judicial review and judicial supremacy.

Response: According to Black's Law Dictionary (11th ed. 2019), judicial review is "a court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Whereas Black's Law Dictionary defines judicial supremacy as "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."

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: Like the rest of the Constitution, the Ninth Amendment sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: The Ninth Amendment states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage other retained by the people." Constitution, Article IX. In holding that the Second Amendment protects individual rights, Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 579 (2008) noted that the "Ninth Amendment uses very similar terminology." If I were to be confirmed as a judge, I will follow Supreme Court and Sixth Circuit precedent when interpreting constitutional provisions.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment should be understood in relation to other amendments since its text makes that clear.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: In cases like *Heller* and *Bruen*, the Supreme Court has looked to Founding-era history to understand the meaning of the Second Amendment, so such history could be applied to understanding other amendments. If I were to be confirmed as a judge, I will look to Supreme Court and Sixth Circuit precedent on the use of Founding-era history.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: In *Heller*, the Supreme Court stated that "in all six other provisions of the Constitution that mention 'the people' the term unambiguously refers to all members of the political community, not an unspecified subset." The Court also referenced that in *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Court had previously stated that "'the people' protected by the Fourth Amendment and by the First and Second Amendments" included "a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

b. Is the term's meaning consistent in each amendment?

Response: Please see my response to Questions 19(a) and 20.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: the supreme court has held that "the people" captures non-citizens within the meaning of some amendments. For example, in *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court held that immigrants and their children, although unlawfully present in the United States, are "people" for purposes of the Equal Protection Clause.

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: The Constitution sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *New York State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111 (2022).

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: I am not aware of any Supreme Court or Sixth Circuit precedent interpreting the Privileges or Immunities Clause as a source of unenumerated rights. As a judicial nominee, it is inappropriate for me to make public statements on issues or matters that may come before me if confirmed. If confirmed as a district judge, I will follow Supreme Court and Sixth Circuit precedent when interpreting constitutional provisions.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my answer to Question 22.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: In *Chevron U.S.A., Inc. v. Nat'l Resources Defense Council*, 467 U.S. 837, 845 (1984), the Supreme Court held that "Congress did not have a specific intention on the applicability of the bubble concept in these cases, and conclude[d] that the EPA's use of that concept here is a reasonable policy choice for the agency to make." Other cases such as *Auer v. Robbins,* 519 U.S. 452 (1997), *Skidmore v. Swift & Co.*, 323 U.S.134 (1944), and *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022) have more precisely defined the level of deference agencies are afforded. I recognize that the Supreme Court has granted cert in a case involving Chevron deference, *Loper Bright Enterprises v. Raimando*, and will faithfully apply binding Supreme Court and Sixth Circuit precedent when analyzing agency decisions.

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: In *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2609 (2022), the Supreme Court stated that the agency must convince the court of "something more than a merely plausible textual basis for the agency action" and instead, "point to clear congressional authorization for the power it claims." (internal quotation and citation omitted).

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The framers of the Constitution were deliberate in setting forth separate powers between the legislative, executive, and judicial branches. *See* Constitution, Art. I - III. The checks and balances that each branch holds on the others is integral "to protect each branch of government from incursion by the others" but also "the structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011). The Tenth Amendment also limits the powers by reserving those not given to the federal government to the states.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that Congress has the authority to regulate (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons, or things in interstate commerce," and (3) "those activities having a substantial relation to interstate commerce."

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that Congress could not prohibit the possession of a firearm within 1,000 feet from a school because it had no relationship to interstate commerce.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: The Due Process guarantee in the Fifth Amendment applies to the federal government while the Fourteenth Amendment applies to the states. They are generally interpreted with similar analysis.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a judicial nominee, it is inappropriate for me to make public statements on issues or matters that may come before me if confirmed. I will follow all Supreme Court and Sixth Circuit precedent on delegation issues, if confirmed as a district judge.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: In *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2610 (2022), the Supreme Court held that there are "extraordinary cases" involving "major questions" where courts should "hesitate before concluding" that Congress meant to confer certain authority to an agency. The Court looked at the "history and breadth of the authority" and the "economic and political significance" of the asserted authority in its decision. *Id.* at 2595.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: In *New York v. United States*, 505 U.S. 144, 161 (1992), the Supreme Court held that Congress cannot "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." This concept is consistent with the Constitution's power to "regulate individuals, not States." However, the Supreme Court held that Congress can use its "spending power" to "encourage a State to regulate in a particular way."

33. Does the meaning of 'cruel and unusual' change over time? Why or why not?

Response: Like the rest of the Constitution, the Eighth Amendment sets forth enduring principles that can be applied to different circumstances as society changes, but the principles themselves are generally fixed. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022). However, the Supreme Court has held that an excessive punishment claim is judged under the standards "that currently prevail."

Atkins v. Virginia, 536 U.S. 304, 311 (2002).

34. Do you believe the death penalty is constitutional?

Response: Under current federal law, the death penalty is a lawful punishment in certain circumstances and the Supreme Court has upheld its constitutionality. *See Gregg v. Georgia*, 428 U.S. 153 (1976).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: Congress's authority is broad, but cannot usurp that of other branches of the government including the Executive Branch.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a judicial nominee, it is inappropriate for me to make public statements on issues or matters that may come before me if confirmed.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: In *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Supreme Court held that a state requirement permitting free expression and petition on privately owned shopping center property does not infringe on the owner's property rights.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a judicial nominee, it is inappropriate for me to make public statements on issues or matters that may come before me if confirmed.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: Although the Supremacy Clause establishes that federal law is the "supreme law of the land," the Adequate and Independent State Grounds doctrine says that the Supreme Court has no jurisdiction to review a state court judgment if there exists a state ground that is adequate to support the judgment and completely independent of federal law. *See Herb v. Pitcairn*, 324 U.S. 117 (1945). If, however, there is a similar federal law, federal jurisdiction exists.

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: As a judicial nominee, it is inappropriate for me to make public statements on issues or matters that may come before me if confirmed.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: To the best of my understanding the standards of review come from the Supreme Court. If confirmed as a district judge, I would follow all Supreme Court and Sixth Circuit precedent to determine whether state laws or regulations violate constitutional rights.

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Injunctions generally are governed by Federal Rule of Civil Procedure 65. When an injunction is issued against the federal government prohibiting enforcement of a specific law that can apply to anyone, it can have nationwide or "universal" effect. The Sixth Circuit has also held that a "court's ability to issue injunctions…springs from the court's inherent equitable powers." *Innovation Ventures v. N2G Distrib.*, 763 F.3d 524, 544 (6th Cir. 2014). If confirmed as a district judge, I would follow all binding Supreme Court and Sixth Circuit precedent when addressing a case involving a potential nationwide or universal injunction.

Questions from Senator Thom Tillis
for Susan Kim DeClercq,
Nominee to be United States District Court for the Eastern District of Michigan

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes. If confirmed as a judge, my personal beliefs would not be relevant to interpreting and applying the law.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary (11th 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." Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Judges are expected to be impartial and fair. If confirmed as a district judge, I would be both.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No. A judge's role is to decide cases based on the binding law and established facts; what a judge desires the outcome to be should never be a consideration.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes, faithfully interpreting the law can sometimes result in an outcome not personally desired by the judge. As a lawyer, I have had occasion to make an argument desired by my client and supported by the law that I have not agreed with, but that was part of my role as an advocate. I understand the obligation of a judge to follow precedent and if I am confirmed as a district judge, I will faithfully follow Supreme Court and Sixth Circuit precedent.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. Please also see my answer to Question 1.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If I am confirmed as a district judge, I will faithfully follow Supreme Court and Sixth Circuit precedent, including the decisions set forth in *Heller*, *McDonald*, and *Bruen*.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: As with all cases if I were confirmed as a judge, when evaluating a lawsuit challenging a policy involving handgun permits I would research the law and precedents including *Heller*, *McDonald*, and *Bruen*, scrupulously learn the facts of the case, apply the law to the facts and render a fair and impartial decision.

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: As with all cases if I were confirmed as a judge, the process I would follow when considering qualified immunity cases is that I would research the law and precedents, scrupulously learn the facts of the case, apply the law to the facts and render a fair and impartial decision. Through *Harlow v. Fitzgerald,* 457 U.S. 800 (1982) and *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court has held that qualified immunity is granted to law enforcement personnel unless the conduct had been "clearly established" to be unconstitutional at the time of the alleged incident.

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 inappropriate for me to express any personal beliefs on issues or matters that may come before me if confirmed. However, having defended many *Bivens* cases as an Assistant United States Attorney, I understand the very difficult job of law enforcement.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Through *Harlow v. Fitzgerald,* 457 U.S. 800 (1982) and *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court has held that qualified immunity is granted to law enforcement personnel unless the conduct had been "clearly established" to be unconstitutional at the time of the alleged incident. If I were to be confirmed as a judge, I would be bound by the laws and precedent of the Supreme Court and the Sixth Circuit and would follow them, regardless of what I personally thought on any subject.

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: In my 23 years of being a lawyer, including being an AUSA for 18 years doing both defensive and affirmative litigation, as well as being in private practice at a law firm and in-house, I have not encountered this issue. But if I were to be confirmed as a district judge, I would follow Supreme Court, Sixth Circuit, and Federal Circuit precedent on patent eligibility and every issue.

13. **Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my answer to Question 12.

14. **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: When I was a law clerk over 20 years ago, I may have handled a case that involved copyright law. If I were confirmed as a district judge, I would approach this issue the same way that I approach new and novel issues as practicing attorney. I would research the laws, review in depth the arguments of the litigants, apply binding Supreme Court and Sixth Circuit precedent and impartially and fairly apply the law to facts.

    b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

    Response: I have not had any particular experiences involving the Digital Millennium Copyright Act. Same as above.

    c. **What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

    Response: I have not had any experience in 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: Although I have had some experience with free speech cases, I have not had any experience addressing free speech issues in the context of intellectual property or copyright cases.

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: When deciding a case involving Congressional intent, I would start with the plain text and application of binding precedent. I would look at legislative history only if other methodologies do not provide the answer. *See Garcia v. United States*, 469 U.S. 70, 75 (1984) (noting that legislative history is "an additional tool of analysis" but "only the most extraordinary showing of contrary intentions from those data would justify a limitation on the 'plain meaning' of the statutory language.")

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: The Supreme Court has held that the advice and analysis of an agency will be given deference if its interpretation is reasonable and "it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001).

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, it is inappropriate for me to comment on an issue that could come before me, if confirmed. If I were confirmed as a district judge, I would faithfully follow Supreme Court and Sixth Circuit precedent on issues of copyright infringement, as well as any other legal issue.

16. 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: As a judicial nominee, it is inappropriate for me to comment on an issue that could come before me, if confirmed. If I were confirmed as a district judge, I would faithfully follow Supreme Court and Sixth Circuit precedent on how to interpret and apply the DMCA, as well as any other law.

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: As a judicial nominee, it is inappropriate for me to comment on an issue that could come before me, if confirmed. If I were confirmed as a district judge, I would faithfully follow Supreme Court and Sixth Circuit precedent on how to interpret and apply prior judicial opinions on then-current state of technology, as well as any other legal issue.

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: In my experience with the U.S. District Court for the Eastern District of Michigan, I have not seen this problem. The Easter District of Michigan has a random case assignment approach to limit or prevent judge shopping.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my answer to Question 12 (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: No.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: Yes, I commit not to engage in such conduct.

18. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: As a judicial nominee, it is inappropriate for me to comment on an issue that could come before me, if confirmed.

19. 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: If confirmed as a district judge, I would confer with my colleagues on such issues if they were presented.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Julia Kathleen Munley
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **A 2016 Scranton Times-Tribune article suggested that vacancies on the state court were only being advertised to select people. The article mentions you by name and said: "She won't say how she knew to apply." Please explain how you learned about the vacancy on the Court of Common Pleas and how you knew to apply. Please explain the application process.**

   Response: In December of 2015, it was public knowledge that there was a judicial vacancy on the Court of Common Pleas of Lackawanna County. I had always hoped to become a judge and follow in my father's footsteps in doing this public service. I thought at some point because of this vacancy that the Governor might make an appointment. From the time I learned of the vacancy in December of 2015 and onward I looked online and in legal publications for any announcement of the application process. In mid to late Spring of 2016, there was an online announcement from the Governor's office available to the public indicating that the Governor was seeking applications for judicial vacancies across the Commonwealth which included the vacancy in the 45th Judicial District of Lackawanna County Court of Common Pleas. When I saw this online I filled out the application that was included and available to anyone online. I then submitted my application as the online announcement directed. I was then contacted in May of 2016 for scheduling of a panel interview which occurred that month before a panel who interviewed applicants in Scranton, Pennsylvania for judicial vacancies in the Northeast region of the state.

2. **You are a member of the Pennsylvania Commission on Crime and Delinquency. While you were on the Victims' Services Advisory Committee, the committee decided "by consensus" to give preference for certain funding to "people of color," "LGBTQ," "immigrants" and other groups.**

   a. **Did you agree with this "consensus"?**

      Response: To clarify, I resigned my position with the Victims' Services Advisory Committee in March 2023 as my civil docket of cases became heavier and meetings of the Committee were scheduled during weeks I was not available to attend. I have no recollection of a "consensus" to give funding to specified groups over others. I am aware that the Committee allocates funding across the Commonwealth to providers who service victims of violence and abuse of all backgrounds. As a sitting judge and nominee for District Court, any views or opinions of mine have no place in judicial decision-making including my work on any boards or committees. I treat every party before me with dignity and respect

and uphold my Oath to decide cases on the law, fairly and impartially. That is my record for the past 7 years as a judge.

b. **Do you believe funding should be allocated on the basis of race or sexual identity?**

Response: Please see my response to Question 2a above.

3. **Over the course of your legal practice, how many criminal matters have you personally handled?**

Response: Over the course of my 31-year legal career, specifically during the past 7 years as a judge I have been assigned and handled criminal cases, including at least 50 Indirect Criminal Contempt hearings, at least 4 arraignments, 2 criminal jury trials, imposing at least 12 sentences which included one murder case. And prior to becoming a judge, during my 24 years as a lawyer I personally handled at least 10 criminal juvenile matters, at least 10 DUI cases, a murder case where I sat assisting as an associate attorney doing brief writing and at trial, at least one or two sexual assault cases assisting as an associate attorney, among other criminal matters in state court before district justices and in the court of common pleas. If confirmed, I am confident in my abilities to handle any matter that comes before me, including criminal matters, without reservation.

4. **As a sitting judge, how many criminal cases have you presided over?**

Response: Please see response to Question 3 above.

5. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

Response: I am not familiar with this statement. However, I disagree with this statement. A judge is prohibited from allowing personal value judgments or beliefs to enter into judicial decision making. Over the past 7 years as a judge I have applied binding precedent to the facts before me impartially. If confirmed, I will continue to do just that, faithfully apply binding precedent of the Supreme Court and the Third Circuit to the facts presented fairly and impartially.

6. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's stock response was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with this statement. A judge is duty bound to apply binding precedent to the facts before him or her fairly and impartially. As a judge over the past 7 years, I have applied binding precedent to the facts before me fairly and impartially. If confirmed I will continue to uphold my oath and apply binding precedent of the Supreme Court and the Third Circuit to the facts presented fairly and impartially.

7. Please define the term "living constitution."

Response: Pursuant to Black's Law Dictionary the term "living constitution" is defined as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Black's Law Dictionary, (11th ed. 2019).

8. Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?

Response: I am not familiar with this statement. I believe the Constitution has an enduring fixed quality to it "…to be adapted to the various crises of human affairs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

9. Under Supreme Court and Third Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: Pursuant to Supreme Court precedent, facts are "basic" or "historical" matters that address "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Assoc. v. Village at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Stated another way, the Supreme Court has indicated that a "fact" is a "recital of external events[.]" *Thompson v. Keone*, 516 U.S. 99, 110 (1995). Similarly, the Third Circuit has indicated that facts are "a recital of external events[.]" *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007). The Supreme Court has not yet set forth a manner in which to "unerringly" determine whether something is a question of fact or a question of law. *Miller v. Fenton*, 474 U.S, 104, 113 (1985). However, in making such a determination the Court has considered whether "as a matter of sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Id.* at 114.

10. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: As a sitting judge, I am duty bound to apply precedent to the facts before me irrespective of the outcome including public outcry or criticism. One quality that is essential to the makeup of a judge is courage to follow and apply the law. If confirmed, I

would be duty bound to my oath to uphold the United States Constitution and faithfully apply precedent of the Supreme Court and the Third Circuit to the facts before me irrespective of an unpopular outcome.

11. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

Response: If confirmed, as a United States District Court Judge I will consider, analyze and apply all the factors set forth in 18 U.S.C. 3553(a) in sentencing. No one factor is more important than another. It will be incumbent upon me to thoroughly analyze each factor according to the facts and circumstances of each case presented to me. I will also faithfully apply the appropriate binding precedent, rules of evidence in imposing sentence, consider all the information contained within the presentence reports and listen to arguments from counsel, the victim's statement(s) and the allocution of the defendant.

12. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: In reviewing Supreme Court decisions, I have not reviewed them to determine if they are similar to my judicial philosophy. As a sitting judge for the past 7 years, I approach every case essentially the same way and give that case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

13. Please identify a Third Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: In reviewing Third Circuit decisions, I have not reviewed them to determine if they are similar to my judicial philosophy. As a sitting judge for the past 7 years, I approach every case essentially the same way and give that case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

14. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.

Response: 18 U.S.C. Section 1507 concerns picketing or parading and prohibits someone from acting with the intent to interfere with, obstruct or impede the administration of justice or with the intent to influence any judge, juror, witness, or court officer in the discharge of his duty, picketing or parading in or near a building housing a federal court, or in or near a building or residence occupied or used by such judge, juror, witness or court officer, or with the intent to use any sound and truck or similar device or resort to any demonstration in or near any such building or residence. Penalties are indicated within this section. If a case comes before me involving this statute, I will faithfully apply binding precedent of the Supreme Court and the Third Circuit to the facts.

15. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court held that a state statute modeled on 18 U.S.C. Section 1507 was constitutional.

16. What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?

Response: In the Supreme Court case of *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942), the court held that insulting words or "fighting words" by their utterance would inflict injury or incite an immediate breach of the peace. If confirmed, and a case involving First Amendment issues and the "fighting words" doctrine came before me, I would faithfully apply binding Supreme Court and Third Circuit applicable precedent to the facts before me.

17. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: In the Supreme Court case of *Virginia v. Black*, 538 U.S. 343 (2003), "true threats" were defined as those statements where a speaker is communicating serious expressions of intent to commit acts of unlawful violence to a particular individual or group of individuals. If confirmed, and if a case comes before me concerning the "true threats" doctrine, I would faithfully apply the applicable binding precedent of the Supreme Court and the Third Circuit to the facts before me.

18. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

a. **Was *Brown v. Board of Education* correctly decided?**
b. **Was *Loving v. Virginia* correctly decided?**

c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response 18 a-k: As a sitting judge and a nominee for the United States District Court, I am precluded by the Canons of the Code of Conduct for United States Judges from making comment as to whether I agree or disagree with judicial decisions including those of the Supreme Court. I can assure this committee that I will faithfully apply all binding precedent of the Supreme Court and of the Third Circuit. However, there are two decisions mentioned in the listing above that I can state were correctly decided as they are not likely to be relitigated. Those decisions include *Brown v. Board of Education* and *Loving v. Virginia*. Furthermore, two cases mentioned in the listing above, *Roe v. Wade* and *Planned Parenthood v. Casey* have been overruled by the *Dobbs v. Jackson Women's Health* decision. If confirmed, I will faithfully apply the precedent of *Dobbs* to any matter that came before me concerning the issue of abortion along with any other Supreme Court and Third Circuit precedent on any issues that come before me.

19. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: The Supreme Court has set forth the legal standard to apply in evaluating whether or not a regulation or statutory provision infringes on the Second Amendment. That standard is whether the regulation or restriction at issue is "consistent with the nation's historical tradition of firearm regulation." If confirmed and if confronted with a Second Amendment case as a United States District Court judge, I would faithfully apply the binding precedent of *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008), along with any applicable binding precedent of the Third Circuit to the facts before me.

20. Please describe a law or regulation that you oppose as a matter of policy, but believe is constitutional under current Supreme Court and Third Circuit precedent.

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving a view or opinion about whether I oppose a law or regulation as a matter of policy as that matter could

come before me. If confirmed, I will faithfully and impartially apply all applicable federal law and Supreme Court and Third Circuit precedent to the facts before me.

21. Please describe a law or regulation that you support as a matter of policy, but believe is unconstitutional under current Supreme Court and Third Circuit precedent.

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving a view or opinion about whether I support a law or regulation as a matter of policy as that matter could come before me. If confirmed, I will faithfully and impartially apply all applicable federal law and Supreme Court and Third Circuit precedent to the facts before me.

22. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

23. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

24. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

25. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

26. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

27. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On July 2, 2021, I submitted an application for the judicial vacancy in the U.S. District Court for the Middle District of Pennsylvania to the bipartisan judicial nomination advisory panel established by the offices of Senator Robert Casey and Senator Patrick Toomey. On August 23, 2021, I interviewed with the Senators' advisory panel. On September 23, 2021, I interviewed with members of Senator Casey's staff. On October 8, 2021, I interviewed with Senator Casey. On March 22, 2022, I interviewed with members of Senator Toomey's staff. On April 12, 2022, I interviewed with Senator Toomey. On May 3, 2022, I interviewed with attorneys from the White House Counsel's Office. Since July 19, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and White House Counsel's Office. On April 12, 2023, I was contacted by Senator John Fetterman's office for an interview with Senator Fetterman, which occurred on April 14, 2023. On May 4, 2023, the President sent my nomination to the United States Senate. A hearing was held on my nomination by the United States Senate Judiciary Committee on June 7, 2023.

28. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No. I am not familiar with this organization or anyone associated with this organization.

29. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf?? If so, what was the nature of those discussions?

Response: No. I am not familiar with this organization or anyone associated with this organization.

30. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No. I am not familiar with this organization or anyone associated with this organization.

31. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No. I am not familiar with this organization or anyone associated with this organization.

32. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No. I am not familiar with this organization or anyone associated with this organization.

33. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

Response: On May 3, 2022, I interviewed with attorneys from the White House Counsel's Office. Since July 19, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and White House Counsel's Office.

34. Please explain, with particularity, the process whereby you answered these questions.

Response: I received the questions from the Office of Legal Policy. I then prepared draft responses. I then received feedback from the Office of Legal Policy. I finalized my answers and all responses and answers are my own to all questions submitted.

Senator Lindsey Graham, Ranking Member
Follow-up Questions for the Record
Judge Julia Kathleen Munley
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **According to your committee questionnaire, you have "served as a judge on the Lackawanna County Court of Common Pleas, 45th Judicial District, in Scranton, Pennsylvania, since June 2016." Based on public records, it appears that you have made multiple donations to political candidates and political action committees after you became a judge. Specifically, it appears that you donated to Sid Michaels Kavulich, a candidate for the Pennsylvania House of Representatives, twice, once in 2017 in the amount of $100 and again in 2018 in the amount of $100. It also appears that you donated to John Blake, a candidate for Pennsylvania Senate, in 2018 in the amount of $400, and that you made more than a dozen donations after becoming a judge to the American Association for Justice Political Action Committee from 2016-2017 in the total amount of $1083.29. It also appears that you received a refund from the same organization in 2021 for $1083.00.**

   Did you make these contributions?

   Response: I was nominated to the Lackawanna County Court of Common Pleas by Governor Tom Wolf in June 2016, and was sworn into office and became a judge in August 2016. In 2017, I was a candidate for judge for a full 10-year term and won election in November 2017.

   From November 9, 2016, the day immediately after the general election of 2016, to November 7, 2017, the day of the general election of 2017 when I was on the ballot, I was a candidate pursuing public election for judicial office for a full 10-year term.

   Regarding Sid Michaels Kavulich's campaign, I made one $100 contribution to his campaign on August 1, 2017 when I was a candidate on the ballot for judicial office for a full 10-year term and attended an event of his so that I could interact with voters.

   As permitted by the Pennsylvania Code of Judicial Conduct Rule 4.2(B), a candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the general election in the year prior to the calendar year in which a person may become a candidate for such office:

   > (4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
   > (6) contribute to a political organization or candidate for public office.

I did not make any contribution to Mr. Kavulich's campaign in 2018. A review of the 2018 campaign finance reports filed by Mr. Kavulich with the Pennsylvania Department of State does not show any contribution made by me in 2018.
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=277720&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=283632&isStatement=0&is24Hour=0
The online database, Follow the Money, appears to attribute my $100 contribution dated August 1, 2017 to the 2018 election year. It should be noted that Mr. Kavulich died in October 2018 before the general election.

Regarding John Blake's campaign, I did not make any contribution to his campaign in 2018. The referenced $400 contribution appears to be an aggregate of two contributions: $250 on August 20, 2015, and $150 on August 26, 2015, before I was a judge. I have confirmed the dates and amounts of these contributions by way of a review of a report filed by Mr. Blake's campaign committee. His committee's finance report filed in 2015 with the Pennsylvania Department of State contains my two August 2015 contributions.
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=181283&isStatement=0&is24Hour=0
A review of his campaign finance reports filed for 2018 shows no contributions from me in 2018.
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=276055&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=277088&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=283018&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=286517&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=288409&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=290384&isStatement=0&is24Hour=0
https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=298819&isStatement=0&is24Hour=0
The online database, Follow the Money, appears to attribute both the $250 and the $150 contributions from me in 2015 to the 2018 election year.

Regarding contributions to the American Association for Justice Political Action Committee (AAJ) from 2016 to 2017 in the total amount of $1,083.29, I did receive a refund from AAJ in the full amount of $1,083.29 in 2021. My previous employer, Munley Law, is an active plaintiff personal-injury law firm and has been a long-time member of AAJ, a trial lawyer organization. The members of the firm had a long history

of giving to AAJ. When I was with the firm, I pledged $1,000 a year paid by monthly auto debits of $83 from my account. When I became a judge, I ensured that my membership with AAJ ceased but I inadvertently did not discontinue the auto payments. Upon learning of this, I immediately requested and obtained a full refund for the pertinent year even though most of the monthly auto debits occurred during the Code's 4.2(B) exception period referenced above.

If yes,

i. **Were you subject to the Pennsylvania Code of Judicial Conduct at the time these contributions were made?**

Response: Please see my response to Question 1 above. Furthermore, since I became a judge in August 2016, I have been subject to the Pennsylvania Code of Judicial Conduct and I have adhered to same. Regarding contributions to Mr. Kavulich's campaign, I did not make any contribution in contravention of the Code. Regarding contributions to Mr. Blake's campaign, I did not make any contribution while subject to the Code as I was not a judge in 2015. Regarding contributions to AAJ, I corrected any inadvertent contributions by requesting and receiving a full refund immediately upon learning of same.

ii. **With respect to each contribution, please state whether it was a violation of the Pennsylvania Code of Judicial Conduct. Also, please specifically address whether these contributions violate Rule 4.1(a)(4), which provides that a judge shall not "make a contribution to a political organization or a candidate for public office?".**

Response: Please see my responses above to Questions 1 and 1(i). Furthermore, Rule 4.1(A) sets forth that, except as permitted by Rules 4.2, 4.3 and 4.4, a judge or judicial candidate shall not engage in certain conduct including that he or she shall not: (4) … make a contribution to a political organization or a candidate for public office.

Rule 4.2(B) provides an exception that in public elections a candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the general election in the year prior to the calendar year in which a person may become a candidate for such office:

> (4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
> (6) contribute to a political organization or candidate for public office.

iii. With respect to each contribution, what corrective action, if any, did you take to resolve this violation and when did you take it?

Response: Please see my responses above to Questions 1, 1(i) and 1(ii).

1. With respect to each contribution where you did not take corrective action, please explain why not.

Response: Please see my responses above to Questions 1, 1(i) and 1(ii).

iv. Please specifically address the circumstances surrounding the refund from the American Association for Justice PAC in 2021.

Response: Please see my responses above to Questions 1, 1(i) and 1(ii).

2. Did you make any other contributions to a political organization or political candidate while serving as a judge?

Response: No.

Senator Mike Lee
Questions for the Record
Julia Munley, Nominee to the United States District Court for the Middle District of Pennsylvania

1. How would you describe your judicial philosophy?

Response: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: First and foremost, look at the actual plain language of the statute. If it is clear and unambiguous, my inquiry would stop there and I would apply that provision strictly. If it is ambiguous, I would look for Supreme Court precedent, Third Circuit precedent and would be strictly guided by that precedent in the interpretation. If no precedent, then I would look to the Canons of Statutory Construction. I would only look to legislative history if that source was permitted by Supreme Court precedent and if so, follow the dictates of that precedent in using this source.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: First and foremost, I would look to the plain language, the actual text of the Constitution. If it is clear and unambiguous, my inquiry would stop there and I would apply it strictly. If it is not clear and is ambiguous, then I would seek out Supreme Court precedent. I would follow that precedent strictly in the interpretation of the constitutional provision including utilizing the public meaning of the language in the provision at the time it was enacted, as directed by the Supreme Court.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: The text and the original public meaning of the constitutional provision play an important role when interpreting the Constitution as the Supreme Court has held. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). See also *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). Please also see my response to Question 3 above.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: I would first look to the actual plain language of the statute. If the plain meaning of the language is clear and unambiguous, my inquiry stops there. If there is ambiguity, I would look for Supreme Court precedent and Third Circuit precedent interpreting the language of the statute. If there is none, then I would look for analogous Supreme Court cases and Third Circuit cases. If there is no precedent, I would also look to the Canons of Statutory Construction.

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: Pursuant to Supreme Court precedent, the "plain meaning" of a statute is the meaning at the time the statute was adopted. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. What are the constitutional requirements for standing?

Response: There are three requirements for standing in federal court: 1) that plaintiff has sustained a concrete harm or injury; 2) that the harm or injury be traceable to the conduct of the defendant; and 3) that the harm or injury be redressable by a favorable decision. *Massachusetts v. EPA*, 549 U.S. 497, 498 (2007).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: Pursuant to the Supreme Court case of *McCulloch v. Maryland*, 17 U.S. 316 (1819), Congress had implied powers under Article I, Section 8 of the Constitution "[t]o make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof."

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: Pursuant to Supreme Court precedent *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the determination of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise. In *McCulloch v. Maryland*, 17 U.S. 316, 323-24 (1819), the Supreme Court noted that "[i]f the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect." If confirmed and I was confronted with this issue, I would be guided by binding precedent of the Supreme Court and that of the Third Circuit in my

determination as to whether the law was constitutional and I would faithfully apply that precedent in making my decision.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has addressed this issue in a number of precedential decisions, stating that the Constitution protects certain rights that are fundamental if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720, 721 (1997). Some of the rights the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to parent, *Troxel v. Granville*, 530 U.S. 57 (2000).

10. What rights are protected under substantive due process?

Response: The Supreme Court has addressed substantive due process rights stating that the Constitution protects certain rights that are fundamental if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720, 721 (1997). Some of the rights the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to parent, *Troxel v. Granville*, 530 U.S. 57 (2000).

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from answering this question as it is an issue that may come before me. If confirmed, I will faithfully apply binding precedent of the Supreme Court and that of the Third Circuit on any cases concerning substantive due process. Over my 7 years as a judge, I have faithfully and impartially applied binding precedent and will continue to do so if I have the honor of being confirmed, including application of the binding precedent of *Washington v. Glucksberg*, *New York State Rifle & Pistol Ass'n v. Bruen*, and *District of Columbia v. Heller*. Substantive due process does not protect the right to an abortion. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Nor does it protect the economic rights implicated by *Lochner v. New York*, 198 U.S. 45 (1905). *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

12. What are the limits on Congress's power under the Commerce Clause?

Response: Congress has the authority to regulate 1) the use of the channels of interstate commerce; 2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and 3) those activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed I will faithfully apply this binding precedent and any applicable binding precedent of the Supreme Court and Third Circuit if a case comes before me regarding these issues.

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The criteria that qualifies a particular group as a suspect class includes that: 1) the group has experienced historical discrimination; 2) they possess immutable traits; 3) they are powerless to protect themselves in the political process; and 4) the distinguishable trait of the group does not preclude it from contributing in meaningful way. See *Lyng v. Castillo*, 477 U.S. 635 (1986); *Graham v. Richardson*, 403 U.S. 365 (1971).

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Framers established three co-equal branches of government through Articles I, II and III. The Framers made the branches with separate powers such that each would serve as a check and balance to the others so that no one branch would become too powerful. In *Morrison v. Olson,* 487 U.S. 654, 693 (1988), the Supreme Court noted that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." (internal quotation marks and citation omitted)

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: If confirmed and confronted with such a case I would review all submissions from the parties, look closely at the record, examine the actual plain language of the text in the Constitution, seek out binding Supreme Court precedent, Third Circuit precedent, and apply that precedent and that law faithfully and impartially to the facts before me. For example, *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) discusses an analytical framework dividing the exercise of Presidential power into the following three categories: express or implied authorization of Congress; a "zone of twilight" where Congress' inertia, indifference or quiescence invites the exercise of executive power; and the President's own constitutional powers minus constitutional powers of Congress over the matter, as set forth in Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952). *Youngstown* also explained that "[t]he Constitution limits [the president's] functions in the lawmaking process to the recommending of laws he thinks wise and

the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of Article I says that 'All legislative Powers herein granted shall be vested in a Congress of the United States....'" *Id.* at 587-588. Further, *United States v. Nixon,* 418 U.S. 683 (1974) discussed the President's executive privilege and explained that a President is not immune from judicial process.

16. What role should empathy play in a judge's consideration of a case?

Response: Empathy should not play any role in judicial decision making. A judge takes an Oath to decide cases by applying the law to the facts impartially and fairly. Empathy, personal beliefs, values, preferences are not to be considered in judicial decision making. This is what I have done as a trial judge over the past 7 years. If confirmed, I will continue to do just that to uphold the rule of law pursuant to my Oath.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is appropriate and both are bad outcomes. As a judge and if confirmed I am and will be duty bound to apply the binding precedent of the Supreme Court and the Third Circuit and the applicable federal law, including the United States Constitution, to the facts of the case which I will do faithfully and impartially.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: In my 31-year legal career, I have not analyzed these issues. If a case comes before me regarding such issues, I will faithfully and impartially apply binding Supreme Court and Third Circuit precedent to the facts of the case.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: Black's Law Dictionary defines judicial review as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Black's Law Dictionary (11th ed. 2019). The Supreme Court case of *Marbury v. Madison*, 5 U.S. 137 (1803) did establish the Supreme Court's power of judicial review of the constitutionality of the actions of the legislative and executive branches. Judicial supremacy is defined as the doctrine that the interpretations of the United States Constitution by the federal judiciary, especially the interpretation by the

Supreme Court is binding on the other branches of government, both federal and state. Black's Law Dictionary (11th ed. 2019).

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Article VI, Section 3 of the United States Constitution provides that government officials, federal and state, shall be bound by an Oath to support the United States Constitution. Furthermore, pursuant to the Supreme Court case of *Cooper v. Aaron*, 358 U.S. 1 (1958) government officials are bound to follow Supreme Court precedent interpreting the Constitution.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: A judge is constrained in decision-making to consider only the facts and the law. That is judgment. A judge's own beliefs, values, preferences hold no place in judicial decision making. To do otherwise would be considered judicial activism or utilizing will which is a violation of a judge's Oath of office. If I have the honor of being confirmed, I will continue to uphold my Oath of office and apply precedent of the Supreme Court and the Third Circuit faithfully and impartially to the facts before me.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed, I would be duty bound to apply Supreme Court precedent and Third Circuit precedent even if that precedent did not seem to be rooted in constitutional text, history or tradition and did not appear to speak directly to the issue at hand. It would be my role to follow precedent and apply it to the facts of the case before me under my Oath of office. I would do so faithfully and impartially.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this statement. When a case comes before me, I treat everyone the same, with dignity and respect no matter who they are or what their background. I ensure everyone before me has a full and fair opportunity to be heard. In my decision making I review the record thoroughly and apply binding precedent fairly and impartially to the facts before me. If confirmed, I will continue to do so and uphold the rule of law under my Oath of office.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: The definition of "equity" in Black's Law Dictionary indicates it is "fairness; impartiality; evenhanded dealing." "Equality" is defined as "[t]he quality, state or condition of being equal." Black's Law Dictionary (11th ed. 2019).

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The word "equity" does not appear in the Equal Protection Clause of the Fourteenth Amendment. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent in any case that comes before me concerning the guarantees in the equal protection clause.

27. How do you define "systemic racism?"

Response: Merriam-Webster dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within the interconnected systems (such as political, economic and social systems)." Merriam-Webster's Dictionary (2022).

28. How do you define "critical race theory?"

Response: "Critical race theory" is defined by Black's Law Dictionary as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: Please see my answers to No. 27 and 28 above.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Julia Munley, nominated to be United States District Court for the Middle District of Pennsylvania

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Pursuant to Title VII of the Civil Rights Act of 1964, it is illegal to discriminate against a person upon the basis of race, religion, sex and national origin.

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: Pursuant to the Supreme Court case of *Washington v. Glucksberg*, 521 U.S. 702, 719-721 (1997), an unenumerated right must be "deeply rooted in the Nation's history and tradition" and "implicit in the concept of ordered liberty." If confirmed and confronted with this issue I would faithfully apply Supreme Court precedent to the facts before me, including the test set forth in *Glucksberg*. As to what I believe, a judge's personal beliefs or opinions cannot be part of judicial decision-making. Furthermore, as a sitting judge and nominee for District Court, I cannot comment or give opinion on a matter that may come before me under Canon 3A(6) of the Code of Conduct for United States Judges.

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. I do not identify with any particular Justice in terms of my philosophy. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?

Response: Originalism is defined within Black's Law Dictionary as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law Dictionary, (11th ed. 2019). I would not characterize myself by any particular label, however, I am aware that the Supreme Court has utilized originalism in the interpretation of the Constitution. If confirmed, I will faithfully apply that Supreme Court and Third Circuit precedent and faithfully follow the Court's directives and guidance in interpreting the Constitution, including utilizing originalism. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?

Response: "Living constitutionalism" has been defined within Black's Law Dictionary as a constitutional interpretive method that applies present day societal values and norms when interpreting the Constitution. Black's Law Dictionary, (11th ed. 2019). I would not characterize myself using any particular label, however, I am aware that the Supreme Court has utilized originalism in the interpretation of the Constitution. If confirmed, I will faithfully apply that United States Supreme Court precedent and faithfully follow the Court's directives and guidance in interpreting the Constitution, including utilizing originalism. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: My analysis always begins with the actual plain language of the text of the Constitution. If that plain language is clear and unambiguous, I would apply it as is, using Supreme Court precedent to support that interpretation. If confirmed, I would continue to follow the guidance and directives of the Supreme Court in interpreting the language of the Constitution including use of the public meaning of that language employed by the Framers at the time of enactment and apply that meaning. See e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008).

7. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: Pursuant to *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), it is the public meaning of the text at the time of enactment that is critical in the interpretation of the Constitution. If confirmed, I would faithfully apply this binding precedent as directed by the Supreme Court.

8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution has an enduring fixed quality as held by the Supreme Court. Any changes to the Constitution would only occur through the amendment process. The Supreme Court has held that the Constitution's meaning is "fixed according to the understandings of those who ratified it…." *New York State Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S. Ct. 2126, 2132 (2022). Although the Constitution's meaning does not change or evolve, its enduring principles "can and must apply to circumstances beyond those the Founders specifically anticipated." *Id.*

9. Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*

settled law?

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges to give comment or opinion on whether this case was correctly decided. However, if confirmed I will faithfully follow and apply the precedent of *Dobbs* if this issue comes before me.

10. Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: Yes.

a. **Was it correctly decided?**

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges to give comment or opinion on whether this case was correctly decided. However, if confirmed I will faithfully follow and apply the precedent of *Bruen* if this issue comes before me.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: Yes.

a. Was it correctly decided?

Response: As a sitting judge and nominee for District Court, I am generally precluded from making comment on whether cases were correctly decided under Canon 3A(6) of the Code of Conduct for United States Judges. However, because *Brown v. Board of Education* is unlikely to be relitigated, I believe I am permitted to state it was correctly decided.

12. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

Response: Pursuant to Title 18 U.S.C. Section 3142, a presumption in favor of pretrial detention applies where probable cause exists to believe that the defendant committed a crime listed in 18 U.S.C. Section 3142(e)(3)(A-E). These crimes include:

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

18 U.S.C. Section 3142(e)(3)(A-E).
A rebuttable presumption in favor of pretrial detention also arises where the person recently committed certain federal crimes, including a crime of violence, an offense where the maximum sentence is life imprisonment or death, drug offenses that carry a maximum sentence of 10 years or more, offenses that involve underage victims or use of a firearm, or analogous state offenses, while on pretrial release. See 18 U.S.C Section 3142(e)(2).

a. **What are the policy rationales underlying such a presumption?**

Response: It appears that the policy behind the presumption in favor of pretrial detention is reflected in 18 U.S.C. Section 3142(f) that a defendant charged with those crimes delineated may be a flight risk and a danger to any other person in the community.

13. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: Yes. The Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) held that the Religious Freedom Restoration Act of 1993 (RFRA) prohibited the "government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability," unless the government can show "that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest." In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court found that there was hostility by the Commission towards religion in their treatment of the baker's case, which was inconsistent with the First Amendment guarantee that laws be applied neutrally and deciding that the Commission violated the bake shop owner's Free Exercise of Religion. In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court in interpreting the First and Fourteenth Amendments held that the government regulations burdened a sincere religious practice under a policy that was not "neutral" or "generally applicable," such that its actions should be subject to strict scrutiny constitutional analysis. The regulations were found to be violative of the Free Exercise Clause.

14. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: It is not permissible for government organizations to discriminate against religious organizations or people and strict scrutiny applies to any state law or action that "discriminates based on religious status…." *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2256 (2020). The First Amendment imposes a duty on government "not to base laws or regulations on hostility to religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1721 (2018).

15. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), the Diocese made application for a preliminary injunction seeking relief from an executive order issued by the governor of the State of New York which imposed severe restrictions on attendance at religious services during the Covid pandemic. In analyzing the elements for an injunction, the Supreme Court held that the applicants met their burden and granted the injunction. Further, the Court found the restrictions to be violative of the Free Exercise Clause. In applying the strict scrutiny test, the Court found the law was not neutral and generally applicable. Once the burden shifted to the government, the restriction failed to survive the strict scrutiny analysis.

16. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.*

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted injunctive relief against a regulation in the State of California that had the effect of restricting bible study groups in homes to three households. The Court noted the regulations were not neutral and generally applicable and as such, a strict scrutiny analysis was required under the Free Exercise Clause. The Court indicated that secular activities versus religious activities needed to be compared by the risk the activities pose, rather than the reasons behind the gatherings. The government failed to establish the religious activities posed a greater risk. The government was not able to meet their burden of satisfying the strict scrutiny analysis.

17. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes. The Supreme Court held exactly that in *Kennedy v. Bremerton*, 142 S. Ct. 2407 (2022).

18. Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Commission in finding that the baker had discriminated against a same-sex couple in refusing to bake a wedding cake because of the baker's sincerely held religious beliefs, did not employ neutrality in the application of their law or regulation with regard to religion and showed clear and impermissible hostility toward his religious beliefs through evidence that had been presented. As such, the Supreme Court invalidated the Commission's order.

19. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: My understanding is that the Religious Freedom Restoration Act of 1993 broadly defines the exercise of religion and that it encompasses all aspects of observance and practices, whether or not central to or required by a particular faith. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695-696 (2014). In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)), a sincerely held religious belief does not need to be "'logical, consistent, or comprehensible to others in order to merit First Amendment protection.'"

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Pursuant to Supreme Court precedent, the function of the courts is narrow, that is to determine if the individual has an "honest conviction," and not to assess whether it is "reasonable." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724-725 (2014), quoting *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707, 715 (1981).

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my answers to Questions 19 and 19a above.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: It is my general understanding that the Catholic Church does not view abortion as acceptable.

20. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) the Supreme Court held that the religious schools were protected under the First Amendment as religious institutions and had the authority under the Free Exercise Clause to dismiss both employees who had important religious functions and qualified for the ministerial exception. As such, the relevant discrimination laws would not apply to these employees.

21. In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the city denied a contract to a religiously affiliated foster care agency when the agency refused to include married same-sex couples as foster parents on religious grounds. The Supreme Court held that the refusal by the city violated the Free Exercise Clause of the First Amendment. The Court applied a strict scrutiny analysis and found that the contract's provision on non-discrimination was not neutral and generally applicable. The Court found that the city could not meet its burden under the strict scrutiny analysis and further held, that the city violated the agency's Free Exercise of Religion.

22. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the state of Maine through a private school voucher program, disallowed vouchers for religious-based private schools. The Court applied the strict scrutiny analysis but the state law did not survive the analysis in that the program in subjecting religious schools to unequal treatment, "effectively penalizes the Free Exercise" of Religion. *Id.* at 1997 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017)).

23. Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.

Response: The Supreme Court held in *Kennedy v. Bremerton Sch. Dist*., 142 S. Ct. 2407 (2022) that a school football coach had a First Amendment free exercise of religion and free speech right to personal prayer during and after football games. The

Court applied strict scrutiny and reasoned that the school district did not establish that prohibiting the prayer was narrowly tailored to serve a compelling purpose.

24. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.

Response: *Mast v. Fillmore County*, involved a septic system mandate imposed by Fillmore County, Minnesota. An Amish community sought an exception to the mandate based upon their sincerely held religious beliefs. The county denied the exception. The Amish community sued alleging that the County violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The lower courts found in favor of the county, but the Supreme Court vacated the judgment and remanded in light of its decision in *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch's concurrence addresses the application of the strict scrutiny analysis to the RLUIPA. The lower courts found the county's general interest in sanitation regulations to be a compelling interest without analyzing the application of those rules specifically to the Amish Community. The concurrence indicates that the strict scrutiny analysis requires a more precise analysis scrutinizing "the asserted harm of granting specific exemptions to particular religious claimants." *Mast v. Fillmore*, 141 S. Ct. 2430, 2432 (2021).

25. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: As a sitting judge and a nominee for District Court, under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving an opinion on the interpretation of 18 U.S.C. Section 1507 in the context of protests in front of the homes of U.S. Supreme Court Justices following the *Dobbs* leak as a case on this issue may come before me. However, if I am confronted with such a case, I always look first to the actual plain language of the text of the statute and would apply binding Supreme Court and Third Circuit precedent, if I have the honor of being confirmed.

26. Would it be appropriate for the court to provide its employees trainings which include the following:

a. **One race or sex is inherently superior to another race or sex;**

Response: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: Yes.

28. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

29. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: As a sitting judge and a nominee for District Court, under the Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from giving views or opinions on the appropriateness or constitutionality of such considerations when making political appointments as such an issue may come before me. If confirmed and if confronted with these issues, I will faithfully apply binding precedent. Political appointments are committed to the Executive Branch, typically with the advice and consent of the Senate pursuant to Article II, Section 2 of the Constitution.

30. Is the criminal justice system systemically racist?

Response: Claims of systemic racism in the criminal justice system may come before the court for which I am nominated. As a sitting judge and nominee for District Court, under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving views or opinions on these issues. If confirmed I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me in any case involving these issues. Additionally, I will treat everyone who comes before me fairly and with dignity regardless of race.

31. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: Whether to increase or decrease the number of justices on the U.S. Supreme Court is a policy decision for policy makers to decide. District Court judges are bound by the decisions of the Supreme Court regardless of whether Congress increases or decreases its size.

32. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?

Response: No.

33. What do you understand to be the original public meaning of the Second Amendment?

Response: Pursuant to its original public meaning, the Second Amendment "protect[s] an individual right to armed self-defense[.]" *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2128 (2022).

34. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: The kinds of restrictions on the Right to Bear Arms prohibited by the U.S. Supreme Court's decisions are those which are not consistent with this country's historical tradition of firearm regulation. *New York State Rifle & Pistol Associaion v. Bruen,* 142 S. Ct. 2111 (2022).

35. Is the ability to own a firearm a personal civil right?

Response: Yes. *See District of Columbia v. Heller*, 554 U.S, 570 (2008).

36. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: No. It is my understanding that the Supreme Court has never held that the right to own a firearm receives less protection than other individual rights specifically enumerated in the Constitution. Rather, the Court has explained that: "The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than other Bill of Rights guarantees." *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

37. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: No. To my knowledge, the Supreme Court has not held that the right to own a firearm receives less constitutional protection than the right to vote.

38. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

Response: As a sitting judge and nominee for District Court, I am precluded under the Canon 3A(6) of the Code of Conduct for United States Judges from answering this question as it is an issue that may come before me if confirmed. Generally, however, under the Constitution, the executive power is vested in the President who is required to "take care that the Laws be faithfully executed." If confronted with such an issue, I would apply the appropriate law and binding precedent to the facts of the case. Such precedent would include *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (holding that the federal Executive Branch's decision "not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.").

39. Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.

Response: It is my understanding that prosecutorial discretion generally refers to the authority of a prosecutor to decide whether or not to charge an individual and if they do charge, what criminal charges to file. I am unaware of its connection to a substantive administrative rule change, which would be subject to the Administrative Procedure Act.

40. Does the President have the authority to abolish the death penalty?

Response: No. The death penalty is authorized by an act of Congress, 18 U.S.C. Section 3591. The President is not empowered to abolish an act of Congress.

41. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.*

Response: The CDC, based on a particular statute, imposed a nationwide moratorium on eviction of tenants who resided in counties experiencing certain levels of COVID-19 transmission. Plaintiffs challenged the moratorium in federal district court. The district court vacated the moratorium on evictions as unlawful. The court, however, stayed the judgment pending appeal. The Supreme Court vacated the stay and made the judgment enforceable. In making its decision, the Court noted that the statute at issue did not provide the clear Congressional authority necessary to permit the agency "to exercise powers of 'vast economic and political significance.'" *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021).

42. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: The answer to this question appears to call for an answer best left to

policymakers. Further, this issue could come before me if confirmed. Under Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from giving views or opinions on this issue. If confirmed and such an issue came before me, I would listen to the parties' arguments, examine the facts, and apply the relevant federal statutes, Supreme Court precedent and Third Circuit precedent to the facts before me.

43. In private practice, you participated in a series of online marketing videos for Munley Law on various legal topics, including multiple on the dangers of fracking. You discussed the "dangers of hydraulic fracturing" and accused energy companies of "decend[ing] upon Pennsylvania in search of deposits of Marcellus shale."

a. **Is it your position that energy companies should avoid coming to Pennsylvania?**

Response: No.

b. **Are you in favor of banning fracking?**

Response: The marketing pieces you refer to were put out by the law firm. I had no role in drafting them or approving them. As a trial lawyer and as a judge I have never handled a fracking case. If confirmed and if a case came before me involving these issues, I would keep an open mind and apply binding Supreme Court and Third Circuit precedent faithfully and impartially to the facts before me.

44. In 2008, you wrote a letter to the editor in The Sunday Times called "Subtle Sexism," in which you criticized the "blatant sexism" against Hillary Clinton during the 2008 presidential campaign, and by extension, all women in society.

a. **Do you think the Daily Beast article calling Casey DeSantis the "Walmart Melania" is sexist?**

Response: I am not familiar with the Daily Beast article calling Casey DeSantis the "Walmart Melania" and cannot give a view or an opinion on whether it was sexist.

45. In your Senate Judiciary Committee questionnaire you listed your criminal law experience at 5% of your practice.

a. **What experience do you have with criminal law that will allow you to be a successful judge?**

Response: Over the course of my 31-year legal career, specifically during the past 7 years as a judge I have been assigned and handled criminal cases, including at least 50 Indirect Criminal Contempt hearings, at least 4 arraignments, 2 criminal jury trials, imposing at least 12 sentences which included one murder case. And

prior to becoming a judge, during my 24 years as a lawyer I personally handled at least 10 criminal juvenile matters, at least 10 DUI cases, a murder case where I sat assisting as an associate attorney doing brief writing and at trial, at least one or two sexual assault cases assisting as an associate attorney, among other criminal matters in state court before district justices and in the court of common pleas. If confirmed, I am confident in my abilities to handle any matter that comes before me, including criminal matters, without reservation.

Senator John Kennedy
Questions for the Record

Julia Munley

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a sitting judge for the past 7 years, I approach every case the same way and give each case and the litigants my full attention. I always keep an open mind, give the litigants a full and fair opportunity to be heard, treat everyone with dignity and respect, review the record carefully, seek out binding precedent and applicable law and apply that precedent and law faithfully and impartially to the facts before me. If confirmed, I will continue to uphold the rule of law in applying binding precedent of the Supreme Court and Third Circuit fairly and impartially to the facts presented. Additionally, I would adhere to my Oath of office under 28 U.S.C. Section 453.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: I believe as stated by the United States Supreme Court that the Constitution has an enduring fixed quality to it to be applied to circumstances "beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. If the plain language of a statute is clear and unambiguous then my inquiry ceases. I would look for Supreme Court and Third Circuit precedent to include in my analysis to ensure my interpretation is correct. However, I would not look to consider the statute's purpose or the consequences of ruling a particular way. That is not an appropriate consideration for a judge. A judge should confine his or her analysis to the text for the plain meaning of that language and follow faithfully Supreme Court and Third Circuit precedent in the interpretation. If confirmed, this is how I would approach my analysis of the law's text. In *Bostock v. Clayton County,* 140 S. Ct. 1731, 1749 (2020), the Supreme Court held that, "[t]his Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: If confirmed I would follow Supreme Court precedent as to whether to utilize legislative history at all in my interpretation of a statute. If the Supreme Court in certain

instances directs use of legislative history, I would follow that guidance on what legislative history is an authoritative source that should be used and how to use it. Certainly, if the statute is clear and unambiguous I would apply that language as is and the inquiry would stop there. The Supreme Court has determined that some forms of legislative history are more probative of legislative intent than others. See *Garcia v. United States,* 469 U.S. 70, 76 (1984).

5. What First Amendment restrictions can the owner of a shopping center place on private property?

Response: The Supreme Court held in *Lloyd, Ltd. v. Tanner*, 407 U.S. 551, 569 (1972) that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." However, in the case of *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Supreme Court upheld a California constitutional provision allowing individuals to exercise their right to free speech and petition at a privately owned shopping center but found it permissible that the shopping center owner may restrict that activity by time, place and manner limitations to minimize interference with business.

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

Response: Under the Equal Protection Clause, the Supreme Court has held that the word "person" includes one who is here lawfully or unlawfully. *Plyler v. Doe*, 457 U.S. 202 (1982). Also in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that "due process" in the Fourteenth Amendment extends to all aliens within the United States. If confirmed, and if confronted with a case involving these issues I will faithfully and impartially apply Supreme Court and Third Circuit precedent to the facts before me. In *Mathews v. Diaz*, 426 U.S. 67, 77 (1976), the Supreme Court observed that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law. …Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection."

7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

Response: In the Supreme Court case of *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Court held that a non-resident alien who was transported to the United States border where United States Drug Enforcement Agency officers arrested him and searched him without a United States search warrant was not entitled to protection under the Fourth Amendment. If confirmed and confronted with such an issue, I would faithfully apply precedent of the Supreme Court and that of the Third Circuit.

8. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: The Supreme Court held in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) that there is no fundamental right to abortion and the issue of abortion is returned to the people and their representatives. The Supreme Court in *Dobbs* declined to state a "view about if and when prenatal life is entitled to any of the rights enjoyed after birth." *Id.* at 2261. As a sitting judge and a nominee for the United States District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from commenting publicly on such issues as a case may come before me. If confirmed, I will faithfully apply this precedent of the Supreme Court and that of the Court of Appeals for the Third Circuit, including the *Dobbs* precedent.

9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

a. Do you agree?

Response: I am not familiar with this comment or the context in which it was stated or written. If I have the honor of being confirmed and have a case with this issue come before me, I will faithfully and impartially apply Supreme Court and Third Circuit precedent to the facts before me, including the *Dobbs* precedent.

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Please see response to Question 9a. Furthermore, a judge is duty bound to apply controlling precedent to the facts of the case before him or her. I have done so over the past 7 years as a judge and would continue to abide by that if confirmed.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. It is never appropriate for a judge to ignore or circumvent precedent. To do so would be considered judicial activism and a violation of a judge's Oath of office he or she swore to uphold. I do not subscribe to that practice.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In the Supreme Court case of *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Supreme Court upheld a voter identification statute. If I am

confirmed, I will faithfully apply this precedent to the facts before me if I am confronted with this issue.

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: The Supreme Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) held that a firearm regulation must be "consistent with this Nation's historical tradition of firearm regulation." If confirmed, I will faithfully and impartially apply Supreme Court precedent including *Bruen*, *McDonald* and *Heller* to the facts in any case involving the Second Amendment that comes before me.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In order to overrule any precedent, the Supreme Court in *Janus v. American Federation of State, County and Municipal Employees*, 138 S. Ct. 2448, 2478-2479 (2018) has set forth five factors that the Court must analyze to overturn precedent. Those factors include: 1) the quality of the reasoning of that decision; 2) the workability of the rule it established; 3) its consistency with related decisions; 4) developments since the time of the decision; and 5) reliance on the decision. I am not aware that the Supreme Court has identified what number of the factors is necessary to overturn the precedent. In *Janus*, it is my understanding that the Court indicated they are all important in the determination.

b. Is one factor alone ever sufficient?

Response: Please see my response to Question 13a.

14. Please explain the difference between judicial review and judicial supremacy.

Response: Black's Law Dictionary defines judicial review as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Black's Law Dictionary (11th ed. 2019). The Supreme Court case of *Marbury v. Madison*, 5 U.S. 137 (1803) did establish the Supreme Court's power of judicial review of the constitutionality of the actions of the legislative and executive branches. Judicial supremacy is defined as the doctrine that the interpretations of the United States Constitution by the federal judiciary, especially the interpretation by the Supreme Court is binding on the other branches of government, both federal and state. Black's Law Dictionary (11th ed. 2019).

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: As is the case with the entirety of the United States Constitution, the Ninth Amendment has an enduring fixed quality to it to be applied to new circumstances "beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: In the Supreme Court case of *McDonald v. City of Chicago*, 561 U.S. 742, 851 n. 20 (2010), in a concurring opinion Justice Thomas stated that the Ninth Amendment was an "obvious example" of a Bill of Rights provision which does not purport to protect individual rights.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment states that those certain rights enumerated in the Constitution, "shall not be construed to deny or disparage others retained by the people." United States Constitution, Amendment IX. In short, the Ninth Amendment itself references rights enumerated in other constitutional provisions.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: In my 31-year legal career, I have not been confronted with this issue. If I have the honor of being confirmed, and have a case involving this issue I will closely review the record, faithfully and impartially apply binding precedent of the Supreme Court and Third Circuit to the facts before me in interpreting the Constitution. I will follow all the guidance and directives set forth by the Supreme Court including in the interpretation of the meaning of the actual text such as the public meaning of the language at the time it was enacted. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court has noted that Founding-era history is useful to understanding the original public meaning of constitutional amendments.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: The Supreme Court in *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) stated that the term "the people" which is incorporated in portions of the Constitution means those groups of persons who are "part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." If I have the honor of being confirmed, I will faithfully apply the precedent of the Supreme Court and the Third Circuit to the facts before me in any case involving such an issue.

b. Is the term's meaning consistent in each amendment?

Response: As a sitting judge and a nominee for District Court, this issue may come before me and under Canon 3A(6) of the Code of Conduct for United States Judges I would be precluded from giving any comment or opinions on those issues. However, if confirmed I would faithfully apply precedent of the Supreme Court and Third Circuit to any facts that come before me with regard to such issues.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Please see my responses to Questions 6, 7 and 19a above. In *Plyler v. Doe*, 457 U.S. 202, 210 (1982), the Supreme Court held that "[a]liens, even aliens whose presence in this country is unlawful have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." Further, as a sitting judge and a nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from making a comment regarding a matter that could come before me as a judge. If confirmed, I will faithfully apply precedent of the Supreme Court and Third Circuit to the facts before me.

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: Pursuant to Supreme Court precedent, the Constitution has an enduring fixed quality which includes the Due Process Clause and which is applied to "circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). If I have the honor of being confirmed and have a case before me concerning these issues, I will faithfully apply precedent of the Supreme Court and the Third Circuit.

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: Pursuant to *McDonald v. City of Chicago*, 561 U.S. 742, 819-820, 832, 854 (2010), the Supreme Court did not rely on the privileges or immunities clause protection in the decision or indicate that there is any right beyond what is already enumerated in the Constitution. The Supreme Court in *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010) noted that the Fourteenth Amendment "protects only those rights which owe their existence to the Federal government, its National character, its constitution or its laws."

As a sitting judge and nominee for District Court, I am precluded from commenting on any such matters that could come before me under Canon 3A(6) of the Code of Conduct for United States Judges. If I am confirmed, I will faithfully apply precedent of the Supreme Court and Third Circuit to the facts before me.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: Please see my response to Question 22 above. Further, I am unaware of any precedent that holds that the right to terminate a pregnancy is among the "privileges or immunities of citizenship." If I am confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: Pursuant to *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), when a court is reviewing an agency's construction of one of its statutes, the court must look to the statute first.

"If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency must give effect to the unambiguously expressed intent of Congress…[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843.

In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022) where, however there are extraordinary cases that involve major questions such as of a significant political or economic nature, the agency must "point to clear congressional authorization for the power it claims." *Id.* at 2609.

If confirmed and I have a case involving these issues I will faithfully apply the applicable binding precedent to the facts that are before me.

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: Please see my response to Question 24. Furthermore, under the Administrative Procedure Act the judiciary has the authority to review agency action to determine if it is arbitrary and capricious or contrary to law. *FCC v. Fox Television Stations*, 566 U.S. 502 (2007). If I am confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: Congress' powers are specifically enumerated in the Constitution to those "herein granted." Article I, Section 1. In Section 8 and 9 of Article I, the specific powers of Congress are set forth including but not limited to the power to regulate interstate commerce. Furthermore, pursuant to *McCulloch v. Maryland*, 17 U.S. 316 (1819) the Supreme Court held that Congress has under Section 8 of Article I limited implied powers that are necessary and proper to carry out those powers that are expressly granted. The Constitution also limits Congress' power by granting enumerated powers to the Executive and Judicial Branches in Articles II and III. The Tenth Amendment reserves for the states powers that the Constitution neither delegates to the United States nor prohibits.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: Under the Commerce Clause contained in Article I, Section 8 of the Constitution, Congress has the power to regulate interstate commerce which includes the power to regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and those activities that substantially relate to interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: In the Supreme Court case of *United States v. Lopez*, 514 U.S. 549 (1995), the Court held that Congress exceeded its authority under the Commerce Clause when it enacted federal law making it unlawful to knowingly possess a firearm in a school zone.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: Pursuant to *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) the Supreme Court has held that the Due Process Clause in the Fourteenth and Fifth Amendments should be interpreted the same.

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a sitting judge and a nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving opinions on matter that may come before me. If confirmed, I would keep an open mind, review the record and faithfully apply binding precedent to the facts before me.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: Please see my response to Questions 24 and 25 above.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The anti-commandeering doctrine is a Supreme Court doctrine that prohibits the federal government from compelling states to enforce or effectuate federal acts or federal regulatory programs. *Printz v. United States*, 521 U.S. 898 (1997), is an example of the limitations of the anti-commandeering doctrine in which the Supreme Court held a provision in the Brady Gun Bill was unconstitutional as the federal act was directing state and local law enforcement officers to participate in a federally enacted regulatory scheme.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: In a plurality opinion from the Supreme Court *Trop v. Dulles*, what is considered cruel and unusual punishment in violation of the Eighth Amendment is viewed as evolving with society's "sense of decency." In the Supreme Court case of *Atkins v. Virginia*, 536 U.S. 304 (2002) the Supreme Court found that punishments including death sentences for the intellectually disabled were unconstitutional. Under *Kennedy v. Louisiana*, 554 U.S. 407 (2008) the Supreme Court held the standard remains the same but how it is applied must change as the "mores of society" changes.

34. Do you believe the death penalty is constitutional?

Response: The death penalty has been held by the Supreme Court to be constitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed and if I have a case where the death penalty is sought, I will faithfully apply the appropriate federal laws, the statutory guidelines and the statutory factors set forth in 18 U.S.C. Section 3553, as well as applicable binding precedent to the facts before me in imposing sentence and in any decisions.

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: Pursuant to *United States v. Nixon*, 418 U.S. 683, 693 (1974), the Executive Branch has "the exclusive authority and absolute discretion to decide whether to prosecute a case…." As a sitting judge and nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from commenting or giving opinions on matters that may come before me at some point. If confirmed, I would keep an open mind, review the record, and apply binding precedent to the facts before me.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a sitting judge and a nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from commenting or giving opinions on matters that may come before me. If confirmed, I will keep an open mind, review the record and faithfully apply binding precedent to the facts before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my response to Question 5.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a sitting judge and a nominee for District Court under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving comment or opinions on matters that could come before me. If confirmed, I will faithfully apply precedent of the Supreme Court and the Third Circuit to the facts before me.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: In Article VI of the Constitution, the Supremacy Clause is set forth which indicates that the Constitution, the laws of the United States and all treaties made are the "supreme Law of the Land" and that "Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The adequate and independent state grounds doctrine is a doctrine of the Supreme Court that the Supreme Court will not review a case where there was a decision in state court that rests on state grounds independent of a federal question that is adequate to support the decision or judgment. *Coleman v. Thompson*, 501 U.S. 722 (1991).

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: As a sitting judge and nominee for District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving comment or opinions on matters that could come before me. If confirmed, and if these issues come before me I will review the record, keep an open mind and faithfully apply precedent of the Supreme Court and Third Circuit to the facts presented to me.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: Other than the precedent of the Supreme Court I do not know of any textual sources for the different standards of review for determining whether state laws or regulations violate constitutional rights. In *Skinner v. Oklahoma*, 316 U.S. 535 (1942),

the Supreme Court applied strict scrutiny (is the law "narrowly tailored to achieve a compelling government interest") where the state passed a law allowing sterilization of a person convicted three or more times of a felony involving moral turpitude.

In *Craig v. Boren*, 429 U.S. 190 (1976), the Supreme Court applied intermediate scrutiny (does the law substantially further an important government interest).

And in the Supreme Court case of *Nebbia v. New York*, 291 U.S. 502 (1934), the Court applied the lowest level of scrutiny rational basis test (is the law rationally related to serve a legitimate government interest).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: The applicable federal rule of civil procedure that concerns issuance of injunctions is Rule 65. The Supreme Court has issued many decisions addressing the extreme and extraordinary nature of this remedy as well as in cases requesting nationwide or universal injunctions. This is true as such injunctions extend beyond the litigants who are before the Court to those who do not necessarily have standing to begin with. As the Supreme Court indicated in *Lewis v. Casey*, 518 U.S. 343, 357 (1996), such relief would be afforded far beyond "the inadequacy that produced the injury in fact that the plaintiff had established." If confirmed and confronted with this issue, I would take great care in consideration of any request for a nationwide injunction and be guided and directed by binding precedent of the Supreme Court and Third Circuit before issuing any such requested injunction.

43. Please answer the following questions regarding your experience in federal court. If the answer is no to any question below, please explain how you are prepared to serve on the federal bench.

a. Have you ever participated in federal litigation?

Response: Yes. Over my 24 years as a trial lawyer, I handled a number of complex litigation cases in federal court involving both pretrial practice and trial practice as a board certified trial attorney. This experience will serve me well if I have the honor of being confirmed.

b. Have you ever filed a motion or brief in federal court as a counsel of record?

Response: Yes.

c. Have you ever participated in oral argument in a federal court?

Response: Yes.

Questions from Senator Thom Tillis
for Julia Kathleen Munley
Nominee to be United States District Judge for the Middle District of Pennsylvania

1. **I understand you gave a lecture at the Scranton Chamber of Commerce, NEPA Women's Leadership Conference in Plains, Pennsylvania on "Projecting Sincerity in Communications" in 2017. During this lecture, one of your slides stated that "invoking religion" could be a sign of deception. What did you mean by that statement, and how should people of faith interpret your statement?**

   Response: This presentation addressed ways in which people in different professions can communicate in sincere ways for the purpose of understanding each other. As to the particular slide you refer to, I was quoting from a book Spy the Lie written by former CIA officers who developed skills to determine when people may not be truthful. They included certain expressions and mannerisms people say or do when they may not be telling the truth including the expression "I swear to God." This example of "I swear to God" refers to a figure of speech, not used in a religious context at all. It is where someone is swearing as to the truth of what they are saying when they are not being truthful at all, such as "as God is my witness…" or "I swear on my father's grave…."

   This slide and this reference has no correlation with someone's Free Exercise of Religion nor is it suggesting in any way that someone who is religious or prays is deceptive. Free Exercise of Religion is a fundamental right, protected in our Constitution and if confirmed, I will uphold that fundamental right and the United States Constitution and faithfully apply binding precedent to all matters that come before me while treating everyone before me with dignity and respect.

2. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: "Judicial activism" is defined in Black's Law Dictionary as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Black's Law Dictionary (11th ed. 2019). I have not and do not subscribe to judicial activism. It is never appropriate for a judge to allow personal views or beliefs to play a role in judicial decision making.

4. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation for a judge. Pursuant to the Oath of office under 28 U.S.C. Section 453, a judge swears and commits to administer justice without respect to persons who come before that judge and to do equal rights to the poor and the rich alike, to faithfully and impartially discharge the duties incumbent upon that judge in accordance with

the laws and the United States Constitution. Furthermore, under Canon 2 of the Code of Conduct for United States Judges, a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Impartiality is absolutely necessary in the role of a judge to uphold the public's confidence in our judiciary. Over the past 7 years as a trial judge, I have heard many cases and entered decisions in those cases fairly and impartially. If I have the honor of being confirmed, I will uphold my Oath of office and will apply binding precedent in all of my decisions both fairly and impartially.

5. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No.

6. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: A judge is required to apply the binding precedent to the facts presented, regardless of the outcome. It would be improper for a judge to allow his or her personal feelings, beliefs or preferences on the law or the case to play a role in judicial decision making. Over the past 7 years, I have faithfully applied the applicable law and binding precedent fairly and impartially to the facts before me. If confirmed, I will continue to abide by my Oath of office and faithfully apply the binding precedent without regard to the outcome of the decision.

7. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No. A judge should never interject his or her own politics or policy preferences when interpreting or applying the law. Doing that is judicial activism and a violation of a judge's Oath of office which is improper. I do not subscribe to that. If confirmed, I will continue to faithfully interpret and apply the law fairly and impartially, without consideration of any preferences, beliefs or feelings according to my Oath of office.

8. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If I have the honor of being confirmed, I will faithfully apply binding precedent of the Supreme Court and Third Circuit in any case involving the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

9. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?**

Response: A case involving a Sheriff's policy of not processing handgun purchase permits appears to raise Second Amendment issues. To evaluate the case I would apply appropriate Supreme Court and Third Circuit precedent including *New York State & Rifle Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). Under Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded as a sitting judge and a nominee for District Court from providing an opinion or view on the outcome of such a challenge as such a case may come before me.

10. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: The doctrine of qualified immunity applies where government officials such as law enforcement are acting within the scope of their employment and performing their duties within their discretion. Law enforcement personnel are shielded from liability in suits for damages when in the performance of their duties they do not violate a clearly established statutory or constitutional right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Once the defendant, the government official pleads qualified immunity, the burden then will shift to the plaintiff to establish that the official violated a statutory or constitutional right which is clearly established. *Martin v. City of Newark*, 2018 WL 6828424 (3d Cir. Dec. 28, 2018).

11. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: As a sitting judge and nominee for the United States District Court, I am precluded under Canon 3A(6) of the Code of Conduct for United States Judges from giving opinions or views on matters that could come before me. Any opinions or views I may have are irrelevant in judicial decision making. However, if I have a case involving these issues, I will faithfully and impartially apply all binding precedent of the Supreme Court and the Third Circuit.

12. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my responses to Questions 8 and 9 above.

13. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting judge and a nominee for the United States District Court, it is not my role to provide any opinions or views on the decisions of the Supreme Court. Further, under

Canon 3A(6) of the Code of Conduct for United States Judges, I am precluded from giving any views or opinions on matters that could come before me. However, if I have a case involving these issues, I would keep an open mind and would faithfully and impartially apply binding precedent of the Supreme Court, Third Circuit and Federal Circuit to the facts before me after reviewing all submissions and the record.

14. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Please see my response to Question 13 above.

15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. What experience do you have with copyright law?

Response: Over the course of my 31-year legal career, 24 as a trial lawyer and 7 as a trial judge, to the best of my recollection, I have not handled a case involving copyright law. If I have the honor of being confirmed, I will carefully review all submissions and the record, keep an open mind, do the research to find the applicable binding precedent of the Supreme Court and Third Circuit and faithfully and impartially apply that precedent to the facts before me. I am fully confident that I will be able to handle any case involving copyright law which comes before me.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: Please see response to Question 15a above.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: Please see response to Question 15a above.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: Please see response to Question 15a above.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: In a case where I am required to do statutory interpretation, I first look to the text, the plain language of that statute. If it is clear and unambiguous, I would apply it and my analysis would end there. I would also apply any binding precedent of the Supreme Court and Third Circuit regarding that specific text at issue. If there is ambiguity in the text, I would look to find binding precedent of the Supreme Court and Third Circuit in my research. If there is none, find analogous cases from the Supreme Court and Third Circuit. If none, then persuasive precedent from other circuits and consult the Canons of Statutory Construction. I would only utilize legislative history if I was directed to do so through Supreme Court precedent in interpreting the statute. If so, I would follow that guidance of the Supreme Court in how to utilize legislative history in the interpretation and what legislative history is permissible and not go beyond that. In *City of Chicago v. Envtl. Def. Fund*, 511 U.S. 328 (1994), the Supreme Court noted it is the statute that should be analyzed not the legislative history.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: If I have the honor of being confirmed, I would faithfully apply Supreme Court and Third Circuit precedent to the facts before me to determine whether any advice or analysis of an agency should have any role in any case before me. In looking at the statute, if the statute is clear and unambiguous then my inquiry ceases. I would seek out Supreme Court and Third Circuit cases on point which are binding to ensure my interpretation is correct. However, if the statute is ambiguous I would be guided by Supreme Court precedent as to what if any role the advice and analysis by federal agencies play in my decision making. *Chevron U.S.A, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587 (2022). The Supreme Court in *Christiansen v. Harris County*, 529 U.S. 576 (2000) held that interpretations in opinion letters, policy statements, agency manuals,

and enforcement guidelines "do not warrant *Chevron*-style deference" and are instead "'entitled to respect,' but only to the extent that they are persuasive." *Id.* at 587, citing *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). Deference does apply to an agency's interpretation contained in a regulation, but "only when the language of the regulation is ambiguous." *Id.* at 588, citing *Auer v. Robbins*, 519 U.S. 452 (1997). If under the applicable binding precedent in the case before me, the agency is required to point to "clear congressional authority," I would faithfully follow that binding precedent where the major questions doctrine is applicable.

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: As a sitting judge and nominee for the United States District Court it is not my role to comment or provide opinion on questions of policy. Further, this matter may come before me as a judge and under Canon 3A(6) of the Code of Conduct for United States Judges I am precluded from commenting. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent to the facts before me.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: Please see my response to Question 16a above regarding my approach to statutory interpretation. If confirmed and I had a case involving the DMCA I would interpret that in the same manner as any federal statute. Furthermore, I would apply binding Supreme Court and Third Circuit precedent faithfully and impartially to the facts.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: Please see my response to Question 17a above.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In

some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: I can say that as a judge on the court in which I sit, we as a court do not condone "judge shopping" nor do I subscribe to that practice. There is a system in place through court administration which ensures that this does not occur. I am confident that the United States District Court for the Middle District of Pennsylvania has an even more regulated system as I practiced before this court as a trial lawyer. If confirmed, it would be my practice to continue to discourage "judge shopping" as cases must be decided in a fair and impartial manner by an impartial judge. I will faithfully uphold my Oath of office under 28 U.S.C. Section 453 if confirmed. Moreover, I commit to this Committee that if confirmed that I will never engage in the practice of "forum selling" as I believe it is violative of my Oath of office as a United States District Court Judge.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Please see my response to Question 18a above.

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: Please see my response to Question 18a above.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: Please see my response to Question 18a above.

19. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Please see my response to Question 18 a-d above.

20. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Please see my response to Question 18 a-d above. If confirmed, I would abide by whatever local rules are in place for the United States District Court for the Middle District of Pennsylvania.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Vernon Oliver
Nominee to be United States District Judge for the District of Connecticut

1. **In 2009 you suggested that pretextual stops of minorities by the police contributed to racial disparity in criminal justice system. Do you believe that police unlawfully targeting minorities for enforcement action explains the racial disparity problem? Please explain.**

   Response: In 2009, my testimony to a 2003-2004 report created and disseminated by the Connecticut Commission on Racial and Ethnic Disparities in the Criminal Justice System. That Commission was created by the Connecticut legislature in 2000 and tasked with examining and evaluating data and submitting reports for legislative consideration. I referenced, the 2003-2004 Report, Summary and Recommendations, which included data from the Connecticut Department of Correction, United States Department of Justice, and United States Census Bureau, among other sources. The report contained data and suggestions concerning the exercise of discretion by relevant stakeholders in the criminal justice system.

2. **While you served on the Connecticut Sentencing Commission a number of concerning recommendations emerged.**

   a. **Do you support the commission's recommendation to restore convicted felons' right to vote and to provide assistance in voting from prison?**

      Response: I abstained from the ultimate vote concerning the above-referenced recommendation, even in an advisory capacity, out of concern that the issue of voting rights may come before me as a sitting Connecticut Superior Court Judge and might improperly suggest how I might adjudicate the matter.

      As a sitting state court judge and federal court nominee, I may not comment on cases, controversies or issues that are or may come before the court. See Connecticut Code of Judicial Conduct Rule 2.10. Additionally, if confirmed as a federal judge, I will be bound to abide by the Code of Conduct for United States Judges, Canon 3A(6).

   b. **In 2020 the Commission unanimously supported a proposal to reduce drug-free school zones from 1,500 feet to 200 feet. Why did you support this proposal?**

      Response: The mission of the Commission includes reviewing proposed criminal justice legislation. Its enactment statute states that the Commission shall review criminal justice legislation, as requested, and shall make legislative recommendations concerning criminal justice issues. The practice is for a member or members of the Connecticut General Assembly to first submit a request to the

Commission to review a specific matter. Then, the Commission often forms a working group or subcommittee to research and review the matter and make proposals to the full Commission. Finally, the full Commission membership reviews and approves sending certain proposals to the relevant legislative or judicial committee for debate and consideration, and individual members may vote to advance the proposals, not to advance the proposal, or to abstain from voting.

My vote was in an advisory capacity only, to suggest language that the Connecticut Judiciary Committee might consider, after a multi-factored analysis, discussion and collaboration with my fellow commissioners, presentations by experts in the field, and consideration of public safety concerns, in the event the Committee decided to move forward with the proposal.

c. **You abstained from voting on a proposal to permit sex offenders to petition the court to have their names removed from the registry early. Do you support the proposal?**

Response: I abstained from the vote concerning the above-referenced recommendation, even in an advisory capacity, out of concern that my vote might be seen as a preview as to how I might rule as a judge presiding over the criminal court sex offender registry removal hearing contemplated by the proposal. As a sitting state court judge, I may not comment on cases, controversies or issues that are or may come before the court. See Connecticut Code of Judicial Conduct Rule 2.10. Additionally, if confirmed as a federal judge, I will be bound to abide by the Code of Conduct for United States Judges, Canon 3, A(6), which precludes me from commenting on issues that may come before me.

3. **As a sitting judge, how many criminal cases have you presided over?**

Response: In nearly fifteen years as a Connecticut Superior Court Judge, I have presided over thousands of criminal cases in felony and misdemeanor matters, including criminal jury trials, criminal bench trials, criminal violation of probation hearings, arraignments, and thousands of resolutions via pleas of guilty or no contest by the defendant. I have presided over approximately 300 civil bench trials, approximately 20 criminal and civil jury trials and dozens of criminal and civil evidentiary hearings.

4. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

Response: I disagree strongly with that statement. As a judge for nearly 15 years, I have faithfully and impartially applied precedent of the United States Supreme Court,

Connecticut Supreme Court, and the Connecticut Court of Appeals. If confirmed, I will continue to apply precedent faithfully and impartially.

5. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's stock response was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with this statement or the context in which it was made. If confirmed, I understand that I would follow Supreme Court and Second Circuit precedent. District Court judges are bound to apply the binding precedent of the court above them. As a sitting judge of nearly fifteen years, I have faithfully and impartially applied precedent.

6. **Please define the term "living constitution."**

Response: Black's Law Dictionary (11th ed. 2019) defines "living constitution" as "A constitution whose interpretation and application can vary over time according to changing circumstances and changing social values."

7. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I am unfamiliar with the context in which the statement was made. I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

8. **Under Supreme Court and Second Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: Black's Law Dictionary (11th ed. 2019) defines a "fact" as "1. Something that actually exists; an aspect of reality … Facts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and the holding of opinions. 2. An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation … 3. An evil deed; a crime."

The Federal Rules of Evidence recognize two types of facts: adjudicative facts and legislative facts. See Fed. R. Evid. 201 (Advisory Committee's note to subd. (a)). Adjudicative facts are "simply the facts of the particular case." *Id.* They are established through documentary or testimonial evidence and are typically found by a jury. *Id.* Legislative facts "are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." *Id.* Legislative facts are typically subject to judicial

notice. *Id.* The Supreme Court has not articulated a bright line test to distinguish a factual finding from a legal conclusion and has acknowledged that "the proper characterization as one of fact or law is sometimes slippery," *Thompson v. Keohane*, 516 U.S. 99, 109-10 (1995).

The Second Circuit adopts the logic and embraces the, at times, "slippery" distinction between a factual finding and a legal conclusion in *Parsad v. Greiner*, 337 F.3d 175 (2d Cir. 2003) (Appellate review of findings regarding custody require both inquiries of fact and mixed questions of facts and law).

9. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: The Supreme Court has drawn a distinction between attacks on "the integrity or the competence of the judges," which may subject lawyers to discipline, and criticism of the law or judges' application of the law, which lawyers are free to do. *In re Sawyer*, 360 U.S. 622, 631-33 (1959).

10. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

Response: In my nearly fifteen years as a state court judge, having sentenced many individual defendants, I have considered and applied Connecticut's version of 18 U.S.C. § 3553(a). If confirmed, I will be bound to consider all four primary purposes of sentencing, as outlined in 18 U.S.C. § 3553(a), and the appropriate balance would depend on the facts of the individual case. The statute does not provide that one factor is more important than any other.

11. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I cannot identify a specific Supreme Court decision that exemplifies my judicial philosophy. As a siting judge of nearly fifteen years, allowing the parties a fair hearing on the merits, thorough research on the relevant legal precedent and statutory authority, faithful application of the law to the facts before me, and judicial restraint have become the foundation of my judicial philosophy. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

12. **Please identify a Second Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: I cannot identify a specific Second Circuit decision that exemplifies my judicial philosophy. As a siting judge of nearly fifteen years, allowing the parties a fair hearing on the merits, thorough research on the relevant legal precedent and statutory authority, faithful application of the law to the facts before me, and judicial restraint have become the foundation of my judicial philosophy. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

13. **Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: Title 18, United States Code, Section 1507 states: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt." If called upon to adjudicate a matter involving this statute, I will fairly and impartially apply the law.

14. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: I am not aware of any Second Circuit precedent ruling on the constitutionality of 18 U.S.C. § 1507. However, in *Cox v. Louisiana*, 379 U.S. 559, 562 (1965), the Supreme Court rejected a facial challenge to a similarly worded state statute, explaining that: "A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law." If confirmed as a district judge, I will follow Supreme Court and Second Circuit precedent when analyzing the constitutionality of a statute.

15. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

Response: According to the Supreme Court, "fighting words" are those "personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provide violent reaction." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

16. **What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: The Supreme Court has held that "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence" are Constitutionally unprotected "true threats." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

17. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

    a. **Was *Brown v. Board of Education* correctly decided?**

    Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. However, because *Brown v. Board of Education* presents issues that are unlikely to come before me, I am comfortable sharing my opinion that *Brown v. Board of Education* was correctly decided.

    b. **Was *Loving v. Virginia* correctly decided?**

    Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. However, because *Loving v. Virginia* presents issues that are unlikely to come before me, I am comfortable sharing my opinion that *Loving v. Virginia* was correctly decided.

    c. **Was *Griswold v. Connecticut* correctly decided?**

    Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Griswold v. Connecticut* and all other mandatory authority.

    d. **Was *Roe v. Wade* correctly decided?**

    Response: *Roe v. Wade*, 410 U.S. 113 (1973) was overturned by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2242 (2022). As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Dobbs* and all other mandatory authority.

    e. **Was *Planned Parenthood v. Casey* correctly decided?**

    Response: *Planned Parenthood of Southeaster Pa. v. Casey*, 505 U.S. 833 (1992), was overturned by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2242 (2022). As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Dobbs* and all other mandatory authority.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Gonzales* and all other mandatory authority.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Heller* and all other mandatory authority.

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *McDonald* and all other mandatory authority.

i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Hosanna-Tabor* and all other mandatory authority.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Bruen* and all other mandatory authority.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Dobbs* and all other mandatory authority.

18. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022), the Supreme Court held that individuals possess a "constitutional right to bear arms in public for self-defense." The Court instructed that the proper way to analyze regulations affecting these Second Amendment rights is to first assess if the plain text covers the individual's conduct; if so, the conduct is presumptively protected under the Constitution. *Id.* at 2126. To then justify the restriction, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

19. **Please describe a law or regulation that you oppose as a matter of policy, but believe is constitutional under current Supreme Court and Second Circuit precedent.**

Response: As a sitting state court judge and federal court nominee, I may not comment on cases, controversies or issues that are or may come before the court. See Connecticut Code of Judicial Conduct Rule 2.10. Additionally, if confirmed as a federal judge, I will be bound to abide by the Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I will faithfully and impartially apply all Supreme Court and Second Circuit precedent.

20. **Please describe a law or regulation that you support as a matter of policy, but believe is unconstitutional under current Supreme Court and Second Circuit precedent.**

Response: As a sitting state court judge and federal court nominee, I may not comment on cases, controversies or issues that are or may come before the court. See Connecticut Code of Judicial Conduct Rule 2.10. Additionally, if confirmed as a federal judge, I will be bound to abide by the Code of Conduct for United States Judges, Canon 3A(6).). If confirmed, I will faithfully and impartially apply all Supreme Court and Second Circuit precedent.

21. **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.

22. **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.

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.

b. **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.

23. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

24. **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.

25. **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.

26. **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 January 20, 2023, I applied to the Offices of Senators Blumenthal and Murphy for a federal judicial vacancy in the District of Connecticut. On January 30, 2023, I was contacted and offered an interview with the Connecticut Senators' Advisory Panel. On February 4, 2023, I interviewed with the Senators' Advisory Committee. On February 15, 2023, I interviewed with Senators Blumenthal and Murphy. On March 3, 2023, I was interviewed by attorneys from the White House Counsel's Office. Since March 4, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me.

27. **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.

28. **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.

29. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

30. **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.

31. **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.

32. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On March 3, 2023, I was interviewed by attorneys from the White House Counsel's Office. Since March 4, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 3, 2023, the President announced his intent to nominate me.

33. **Please explain, with particularity, the process whereby you answered these questions.**

Response: On June 14, 2023, I received these questions from the Office of Legal Policy. I drafted my answers and where necessary, reviewed my Senate Judiciary Questionnaire, other publicly available information, and conducted appropriate legal research. I shared my draft with the Office of Legal Policy and received limited feedback that I reviewed and considered before finalizing my answers.

Senate Judiciary Committee
Nominations Hearing
June 7, 2023
Questions for the Record
Senator Amy Klobuchar

Vernon Dion Oliver, nominee to be United States District Court Judge for the District of Connecticut

Over the past 14 years you have presided over 300 bench trials, approximately 20 jury trials, and dozens of evidentiary hearings as a judge on the Connecticut Superior Court. You have also presided over thousands of hearings involving felony and misdemeanor matters.

- **How do you typically approach a new case, or an area of the law that you may be unfamiliar with?**

  Response: As a sitting judge for more than fourteen years, I approach a new area of law or a new case by first immersing myself in the related law, including controlling precedent and relevant statutes. I seek the wisdom of colleagues with substantial experience in the particular area of law and discuss how they have handled similar matters. I then make certain to master the facts of the case before me as contained in the pleadings. Finally, I thoroughly familiarize myself with any disputed issues in the case.

- **How have you worked to ensure that those who appear before you believe that the court reached a fair and just decision, regardless of the outcome?**

  Response: Having presided over matters involving litigants represented by counsel as well as self-represented litigants, I work to ensure the faith of those who come before me by allowing the parties sufficient time to file pleadings and attempt to reach an agreed upon resolution. I also allow the parties to present all relevant and competent evidence. I do not insert my own opinions or personal beliefs into the litigation. I ensure the parties' ability to make their arguments concerning any disputed issues in the case. Finally, I make certain to issue a clear and thorough decision.

Senator Mike Lee
Questions for the Record
Vernon Oliver, Nominee to the United States District Court for the District of Connecticut

1. **How would you describe your judicial philosophy?**

   Response: As a sitting judge of nearly fifteen years, allowing the parties a fair hearing on the merits, thorough research on the relevant legal precedent and statutory authority, faithful application of the law to the facts before me, and judicial restraint have become the foundation of my judicial philosophy.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

   Response: I would first look to the text of the statute and precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit regarding the meaning of the text. If the text is unambiguous, that would end the inquiry. If the text is ambiguous and there is no relevant precedent, I would look to analogous precedent of the United States Supreme Court and the Second Circuit interpreting the same or similar language in other parts of the statute, as well as other sources authorized by the Supreme Court and the Second Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are "more authoritative" sources of legislative history because they "represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation." *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: I would look to Supreme Court and Second Circuit precedent, the plain text of the constitutional provision, and the interpretive methodology used by the Supreme Court and the Second Circuit for that provision.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

   Response: The Supreme Court has held that the text and original meaning of a constitutional provision both play a critical role in interpreting the Constitution. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen,* 142 S. Ct. 2111, 2127-29 (2022); *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

   Response: I would first look to the text of the statute and precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit

regarding the meaning of the text. If the text is unambiguous, that would end the inquiry. If the text is ambiguous and there is no relevant precedent, I would look to analogous precedent of the United States Supreme Court and the Second Circuit interpreting the same or similar language in other parts of the statute, as well as other sources authorized by the Supreme Court and the Second Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are "more authoritative" sources of legislative history because they "represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The Supreme Court has stated that "'Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008)); *see also Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

6. What are the constitutional requirements for standing?

Response: "To demonstrate standing, a litigant must show that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that a favorable decision will likely redress that injury." *Massachusetts v. E.P.A.*, 549 U.S. 497, 498 (2007).

7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: The Constitution gives Congress the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const., art. I, § 8.

8. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: The Supreme Court has held that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise." *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I would look to precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit to determine whether enactment of the law was within the scope of Congress' powers and consistent with the Constitution.

9. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held the Constitution protects unenumerated rights that "are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the rights to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999); to contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to marry, *Loving v. Virginia*, 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

11. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: The Supreme Court held in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), that the Constitution does not protect a right to abortion. It held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. As a sitting judge and judicial nominee, I may not comment on matters that may come before me to avoid the appearance of pre-judging an issue. *See* Connecticut Code of Judicial Conduct and Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will be bound to abide by the Canons of the Code of Conduct for United States Judges and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit.

12. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has held that the Commerce Clause provides Congress the authority to regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) activities that "substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has examined whether a particular group shares "traditional indicia of suspectedness," such as whether it 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." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (citations and internal quotation marks omitted) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)).

14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Supreme Court has noted that "[s]eparation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others.... The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

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 carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit and the plain text of the Constitution, and apply it to the record presented by the parties.

16. What role should empathy play in a judge's consideration of a case?

Response: Judges should decide cases based on the law and the evidence, and not based on personal views or feelings. If I were confirmed as a United States District Judge, I would work to treat all litigants fairly and with respect and courtesy, but my decisions and rulings would be based solely on the applicable law and evidence in a particular case.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both outcomes are equally concerning and are to be avoided.

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 researched the trend referenced in the question and cannot intelligently comment on it. If confirmed as a district judge, I would apply the binding precedent of the United States Supreme Court and the Court of Appeals for the Second Circuit.

19. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review refers to the bedrock principal that it is "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *see also* Black's Law Dictionary (11th ed. 2019) (defining "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp[ecially], the courts' power to invalidate legislative and executive actions as being unconstitutional"). Judicial supremacy is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: The Constitution mandates that all "Senators and Representatives . . . , and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support th[e] Constitution . . . ." U.S. Const. art. VI, cl. 3. The Supreme Court has rejected the argument that "there is no duty on state officials to obey federal court orders resting on th[e Supreme] Court's considered interpretation of the United States Constitution." *Cooper v. Aaron*, 385 U.S. 1, 4 (1958). As a sitting state court judge and a judicial nominee, it would be inappropriate to comment further on whether these obligations conflict and, if so, how an elected official should balance them.

21. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: In Federalist 78, Hamilton described will as the actions of Congress in "prescrib[ing] the [law. The] ... rules by which the duties and rights of every citizen are to be regulated." He further described the court's exercise of its judgment as the "steady, upright and impartial administration of the laws," and that "the courts of justice are to be considered as the bulwarks of the of a limited Constitution against legislative encroachments." The Court's role is limited to interpreting the laws, not making or enforcing them.

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 I am confirmed as a United States District Judge for the District of Connecticut, I will apply the binding precedent of the Supreme Court and the Court of Appeals for the Second Circuit, even if the precedent in question does not seem to be rooted in constitutional text, history, or tradition. It would not be my function to question whether the United States Supreme Court or the United States Second Circuit has properly decided the cases that are binding precedents.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: Black's Law Dictionary (11th ed. 2019) defines the term "equity" as "[f]airness; impartiality; evenhanded dealing." If I were fortunate enough to be confirmed as a United States District Judge, I would work to treat all persons in a fair, impartial, and evenhanded manner without regard to their race, gender, or status.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: According to Black's Law Dictionary (11th ed. 2019), the term "equity" refers to "[f]airness; impartiality; evenhanded dealing" and the term "equality" refers to "[t]he quality, state, or condition of being equal; esp., likeness in power or political status."

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The Fourteenth Amendment provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV, § 1. I am unaware of any United States Supreme Court or Second Circuit precedent considering whether the definition of "equity" cited above constitutes a protected right under the Equal Protection Clause. If confirmed as a district judge, I will faithfully follow United States Supreme Court and Second Circuit precedent in assessing the scope of protections afforded under the Fourteenth Amendment.

27. How do you define "systemic racism?"

Response: "Systemic racism" is defined as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)," Merriam-Webster's Dictionary (2022).

28. How do you define "critical race theory?"

Response: Black's Law Dictionary defines "critical race theory," as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities". Black's Law Dictionary (11th ed. 2019).

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: "Systemic racism" is defined as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)," Merriam-Webster's Dictionary (2022), while "critical race theory" is defined 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)

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Vernon Oliver, nominated to be United States District Judge for the District of Connecticut

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Racial discrimination is unlawful and is proscribed by a variety of statutes and the U.S. Constitution. For example, Title VII of the Civil Rights of 1964 prohibits discrimination in employment on the basis of race, religion, sex and national origin and the Equal Protection Clause of the Fourteenth Amendment prohibits discriminating on the basis of race, among other things.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: The Supreme Court has held the Constitution protects unenumerated fundamental rights that "are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the rights to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999); to contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to marry, *Loving v. Virginia*, 388 U.S. 1 (1967) and Obergefell v. Hodges, 576 U.S. 644 (2015); marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

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: I cannot identify a specific Supreme Court Justice that exemplifies my judicial philosophy. As a siting judge of nearly fifteen years, allowing the parties a fair hearing on the merits, thorough research on the relevant legal precedent and statutory authority, faithful application of the law to the facts before me, and judicial restraint have become the foundation of my judicial philosophy. If confirmed as a district judge, this is the judicial philosophy I will continue to follow.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an 'originalist'?**

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I do not subscribe to a particular label.

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 constitution" as "[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values." Black's Law Dictionary (11th ed. 2019). This dictionary also 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." *Id.* I do not subscribe to a particular label.

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 as a district court judge, I would be bound by Supreme Court and Second Circuit precedent. In the unlikely event that this occurs, I would look to the text and the Supreme Court guidance as to the method of interpreting the text, the role of the provision in the constitutional structure, and any evidence of the original public meaning of the provision. If the original public meaning of the Constitution were clear and resolved the issue, my inquiry would end there. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: In *Ashcroft v. American Civil Liberties Union,* 535 U.S. 564, 574-575 (2002), the United States Supreme Court reviewed certain First Amendment claims under "contemporary community standards" tests.

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: The United Supreme Court explained in *Bruen* that "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle and Pistol v. Bruen*, 142 S. Ct. 2111, 2132 (2022),

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: The Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* is controlling and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Dobbs* and all other mandatory authority.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: The Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* is controlling and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. I will faithfully apply *Bruen* and all other mandatory authority.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: The Supreme Court's ruling in *Brown v. Board of Education* is controlling and binding precedent.

a. **Was it correctly decided?**

Response: As a sitting judge and candidate for the District Court, it is generally impermissible for me to comment on the correctness or lack of correctness of precedent I am duty-bound to follow. However, because *Brown v. Board of Education* presents issues that are unlikely to come before me, I am comfortable sharing my opinion that *Brown v. Board of Education* was correctly decided.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: The Bail Reform Act of 1984, 18 U.S.C. §§3141, et seq., provides for the rebuttable presumption in favor of pretrial detention for certain enumerated drug offenses carrying a sentence of ten years or more, certain crimes involving acts of terrorism, certain crimes of violence, and certain crimes involving minors. Specifically, 18 U.S.C. §3142 (f)(1) lists the offenses or criteria that create a presumption in favor of pre-trial detention.

a. **What are the policy rationales underlying such a presumption?**

Response: As set forth in 18 U.S.C. § 3142(f), the presumption in favor of pretrial detention reflects Congress's determination that defendants accused of the certain crimes present a greater flight risk or danger to the community.

13. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: The free exercise clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) create identifiable limits to what government may impose or require of religious organizations and small businesses operated by observant owners. For example, under RFRA, the federal government may not substantially burden a person's exercise of religion—even through a facially neutral law—unless the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Similarly, under the free exercise clause of the First Amendment, the government may not treat any comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

14. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Under the free exercise clause of the First Amendment and the Religious Freedom Restoration Act (RFRA), the government is not permitted to discriminate against religious organizations or religious people unless the discriminatory law or regulation is narrowly tailored (or, under RFRA, the "least restrictive means") to achieve a compelling governmental interest. See, e.g., *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Strict scrutiny applies to any state law or action that discriminates "based on religious status". *Espinosa v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2257 (2020). The First Amendment imposes a duty on government "not to base laws or regulations on hostility to a religion or religious viewpoints." *Masterpiece Cakeshop*, 138 S. Ct. 1719, 1731 (2018)

15. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: The Supreme Court held that the church and synagogues were entitled to a preliminary injunction because they had "made a strong showing that the challenged restrictions violate the minimum requirement of neutrality to religion." *Roman Catholic*

Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 66 (2020) (internal punctuation omitted). The Supreme Court reached this conclusion, in part, because of evidence that the challenged rules appeared to be targeting Orthodox Jews, as well as evidence that comparable secular activity was not subject to the same restrictions. *Id.* at 66-67. The Supreme Court further concluded that the challenged restrictions, if enforced, would cause irreparable harm in the form of lost First Amendment freedoms. *Id.*

16. **Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom.***

Response: In *Tandon*, the Supreme Court held that government regulations are not neutral and generally applicable if they treat any comparable secular activity more favorably than religious exercise. In such circumstances, the regulation must satisfy strict scrutiny review. *Tandon* held that Covid-19-related restrictions in California did not satisfy this standard because the regulation treated "some comparable secular activities more favorably than at-home religious exercise."

17. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes. *See*, e.g., *Kennedy v. Bremerton*, 142 S. Ct. 2407 (2022) (so holding).

18. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission's initiation of an enforcement action against a cake shop owner who declined for religious reasons to make a wedding cake for a same-sex couple violated the First Amendment. Examining the evidentiary record, the Supreme Court found that the Commission demonstrated "clear and impermissible hostility toward the sincere religious beliefs that motivated [the baker's] objection." *Id.* at 1729.

19. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. An individual's religious belief, if "sincerely held," need not be "logical, consistent and comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981)); see also *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 832-35 (1989). The Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Person Act also include broad language protecting "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." See *Burwell v. Hobby Lobby*, 573 U.S. 682, 695–696 (2014).

a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Please see response to Question 19.

b. **Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: In evaluating religious sincerity, courts cannot consider whether a religious belief is an acceptable view or limitation. Thomas v. Review Board … 450 U.S. 707, 714 (1981).

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am not familiar with the position of the Catholic Church.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), Catholic school teachers sued their employers alleging employment discrimination. The Supreme Court held that the "ministerial exception" protects religious institutions from certain discrimination claims, and that such institutions are permitted to "decide matters of faith and doctrine without government intrusion." *Id.* at 2060 (quoting *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.,* 565 U.S. 171, 186 (2012)). In determining whether a case falls under the ministerial exception, the Court's inquiry looked to the functions performed by the employee in question. The Court found that even though the teachers were not "ministers" the specific role of the teachers was "educating young people in their faith, inculcating its teachings, and training them to live their faith," which the Court concluded was central to the school's mission. *Our Lady of Guadalupe*, 140 S. Ct. at 2064. As such, the ministerial exemption barred the teachers' employment discrimination suits.

21. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.**

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court applied strict scrutiny to the city's policy excluding a Catholic organization from its foster care program on account of the organization's refusal to certify same-sex couples

as foster parents. The Court found the policy was not neutral and generally applicable in light of certain opportunities for exceptions to the policy, granted at the government's discretion. *Id.* at 1879. The Court held that the city's stated interests of maximizing the number of foster families, of protecting the city from liability, and in the equal treatment of foster parents and foster children were not compelling interests that justified burdening the agency's free exercise rights. *Id.* at 1881–82.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: Maine's "nonsectarian" requirement for otherwise generally available tuition assistance payments violated the Free Exercise Clause because a State may not exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits. *Carson v. Makin*, 142 S. Ct. 1987, 1997-98, 2002 (2022).

23. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from governmental reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2433 (2022). In *Bremerton,* A high school football coach, who lost his job after he knelt at midfield after games to offer a quiet personal prayer, brought a § 1983 action against the school district, alleging violations of his rights under the First Amendment's Free Speech and Free Exercise Clauses. The Court held that the school district burdened the coach's rights under the Free Exercise Clause by suspending him for his decision to persist in praying quietly at midfield; the coach engaged in private speech, not government speech attributable to school district, when he uttered prayers quietly at midfield without his players; the school district's burdening of the coach's rights under the Free Exercise and Free Speech Clauses could not be justified on ground his suspension was essential to avoid an Establishment Clause violation; and his private religious exercise was not impermissible government coercion of students to pray.

24. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: The Supreme Court in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), vacated a state court judgment and remanded the case, a Religious Land Use and Institutionalized Persons Act ("RLUIPA") matter, for further consideration in light of *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). Justice Gorsuch concurred to identify issues the state courts "may wish to consider on remand" as to the proper interpretation of RLUIPA. *Id.* at 2430. For example, Justice Gorsuch stated that the state

courts had erred by treating the government's "general interest" in enforcing certain sanitation rules as "'compelling' without reference to the specific application of those rules" to the RLUIPA claimants before the state courts. *Id.* at 2432.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: If confirmed, and confronted with a case that required interpretation of Title 18, United States Code, Section 1507 considering its constitutionality, I would assess the matter based on: the facts before me; the parties' arguments; the governing law, including, as appropriate, *Cox v. Louisiana*, 379 U.S. 559 (1965), which upheld an arguably analogous state statute against a First Amendment challenge.

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

Response: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

27. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: I am not aware of the existence of such trainings that may or may not be offered. If confirmed, I would not support such trainings.

28. **Will you commit that you will not engage in racial discrimination when selecting**

and hiring law clerks and other staff, should you be confirmed?

Response: Yes

29. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: As a judicial nominee, under the Code of Conduct for United States Judges, it would be inappropriate for me to comment on the political decisions or whether such decisions are constitutional. Article II, Section 2, Clause 2 of the Constitution vests the authority to make political appointments with the President of the United States, upon advice and consent of the Senate. If confirmed as a district court judge and a case concerning the constitutionality of a specific appointment came before me, I would faithfully apply binding Supreme Court and Second Circuit precedent.

30. **Is the criminal justice system systemically racist?**

"Systemic racism" is defined as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)," Merriam-Webster's Dictionary (2022).

I have not studied the issue of systemic racism. The issue has not been raised before me during my nearly fifteen-year career as a sitting superior court judge. If confirmed to serve as a United States District Judge, I would ensure that any individual I interact with is treated fairly and with dignity, regardless of their race.

31. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: Whether or not the Supreme Court should be expanded is a question for policymakers to consider. If confirmed as a district court judge, I would faithfully follow binding Supreme Court precedent regardless of its size or any proposal to modify its size.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: My understanding of the original public meaning of the Second Amendment is that articulated by the Supreme Court. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the original public meaning of the Second Amendment guarantees the right of an individual to keep and bear arms in the home for

self-defense. In *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Court concluded that the original public meaning of the Second Amendment also affords the right to keep and bear arms for self-defense outside the home.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *New York State Rifle and Pistol v. Bruen*, 142 S. Ct. 2111, 2126 (2022), the U.S. Supreme Court held that a firearm restriction violates the Second Amendment if the government is unable to demonstrate that its regulation restricting firearms is consistent with this Nation's historical tradition of firearm regulation.

35. **Is the ability to own a firearm a personal civil right?**

Response: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008) that the Second Amendment confers "an individual right to keep and bear arms." Id. at 595. See also *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

36. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that "the constitutional right to bear arms in public for self-defense is not a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 2156 (quoting *McDonald v. City of Chicago*, 561 U.S. 742 (2010)) (internal quotation marks omitted.)

37. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No.

38. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: The Supreme Court has recognized that the executive branch has broad discretion in deciding whether or how to prosecute cases. *See Wayte v. United States*, 470 U.S. 598, 607 (1985); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 248 (1980); *Heckler v. Cheney*, 470 U.S. 821, 831 (1985) (the court held that the decision not to prosecute or enforce, whether through criminal or civil process, is a decision generally committed to an agency's absolute discretion). As a sitting judge and judicial nominee, it would be inappropriate for me to offer an opinion as to how this discretion should be exercised.

39. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Prosecutorial discretion generally refers to the discretion vested in a prosecutor to initiate or not to initiate enforcement proceedings. A substantive administrative rule change is a change to a rule.

40. **Does the President have the authority to abolish the death penalty?**

Response: The federal death penalty is reflected in a statute, Title 18, United States Code, Section 3591, and the President does not have the power to unilaterally abolish federal statutes. The Supreme Court stated in *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) "there is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes."

41. **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 held that the Centers for Disease Control lacked the authority to impose a nationwide moratorium on evictions to protect tenants from COVID-19, and to slow the spread of disease. Finding that petitioners were likely to succeed on the merits of their claim, the Court vacated a stay imposed pending appeal of a district court's nationwide injunction against the imposition of the moratorium. The Court stated "we expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489. Because the relevant statute also lacked any clear authority for a nationwide eviction moratorium, the Court concluded the plaintiffs were "virtually certain to succeed on the merits of the argument that the CDC has exceeded it authority." *Id.* at 2486; 2488-89.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: As a judicial nominee, under the Code of Conduct for United States Judges, it would be inappropriate for me to comment on hypotheticals or issues that could become the subject of litigation. If confirmed as a district court judge, should a case involving this issue come before me, I would fairly and impartially review the facts presented, research the applicable law, and apply any binding Supreme Court and Second Circuit precedent.

43. **As a co-chair of the Connecticut Sentencing Commission, you provided legislative recommendations to the Connecticut General Assembly, including recommendations to grant inmates the ability to vote and to provide certain sex offenders the opportunity to be removed from the sex offender registry early.**

    a. **Did you vote in favor of these measures?**

Response: I did not vote in favor of the above-referenced measures.

b. **Did you support the Sentencing Commission's proposal to reduce the drug-free school zones from 1,500 feet to just 200 feet?**

Response: My vote was in an advisory capacity only, to suggest language that the Connecticut Judiciary Committee might consider, after a multi-factored analysis, discussion and collaboration with my fellow commissioners, presentations by experts in the field, and consideration of public safety concerns in the event the Committee decided to move forward with the proposal.

44. **In your 2009 confirmation hearing before the Connecticut General Assembly Judiciary Committee to be a judge on the Connecticut Superior Court, you argued that racial disparities are present in the criminal justice system.**

a. **Is America a systematically racist country?**

Response: My 2009 testimony in support of my confirmation as a Connecticut Superior Court Judge was limited solely to a 2003-2004 report created and disseminated by the Connecticut Commission on Racial and Ethnic Disparities in the Criminal Justice System. That Commission was created by the Connecticut legislature in 2000 and tasked with examining and evaluating data and submitting reports for legislative consideration. I referenced the 2003-2004 Report, Summary and Recommendations, which included data from the Connecticut Department of Correction, United States Department of Justice, and United States Census Bureau, among other sources. The report contained data and suggestions concerning the exercise of discretion by relevant stakeholders in the criminal justice system.

I have not studied the issue of systemic racism. The issue has not been raised before me during my nearly fifteen-year career as a sitting superior court judge. If confirmed to serve as a United States District Judge, I would ensure that any individual I interact with is treated fairly and with dignity, regardless of their race.

b. **Is Connecticut's criminal justice system systemically racist? If so, please explain how.**

Response: I have not studied the issue of systemic racism. The issue has not been raised before me during my nearly fifteen-year career as a sitting superior court judge. If confirmed to serve as a United States District Judge, I would ensure that any individual I interact with is treated fairly and with dignity, regardless of their race.

c. **Is the federal criminal justice system systemically racist? If so, please explain how.**

Response: I have not studied the issue of systemic racism. The issue has not been raised before me during my nearly fifteen-year career as a sitting superior court judge. If confirmed to serve as a United States District Judge, I would ensure that any individual I interact with is treated fairly and with dignity, regardless of their race.

Senator John Kennedy
Questions for the Record

Vernon Oliver

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a sitting judge of nearly fifteen years, allowing the parties a fair hearing on the merits, thorough research on the relevant legal precedent and statutory authority, faithful application of the law to the facts before me, and judicial restraint have become the foundation of my judicial philosophy.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: As the Supreme Court stated in *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020), "This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.".

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: The Supreme Court has held that some forms of legislative history are more probative of legislative intent than others. In *Garcia v. United States*, 469 U.S. 70, 76 (1984), the Court explained: "In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen in drafting and studying proposed legislation.'" (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969))). If confirmed as a district judge, I would follow the binding precedent of the United States Supreme Court and the Court of Appeals for the Second Circuit.

5. What First Amendment restrictions can the owner of a shopping center place on private property?

Response: In *PruneYard Shopping Center v. Robins*, the Supreme Court upheld a California state constitutional provision requiring a shopping center owner to permit individuals to exercise free speech and petition rights at the shopping center, but also affirmed that the shopping center owner "may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." 447 U.S. 74, 83 (1980). In another case, *Lloyd Corp., Ltd. v. Tanner*, the Court noted that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes." 407 U.S. 551, 569 (1972). If confirmed as a district judge and called upon to address this issue, I would apply all Supreme Court and Second Circuit precedent.

6. Are non-citizens unlawfully present in the United States entitled to a right of privacy?

Response: Generally, non-citizens receive certain constitutional protections when they have come within the territory of the United States and developed substantial connections with this country. *See*, *e.g.*, *Plyler v. Doe*, 457 U.S. 202, 212 (1982) (the provisions of the Fourteenth Amendment "'are universal in their application, to all persons within the territorial jurisdiction....'") (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). If presented with a case involving a non-citizen's claim to a right to privacy, I would apply all Supreme Court and Second Circuit precedent.

7. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

Response: In *United States v. Ramsey*, 431 U.S. 606, 615 (1977), the Supreme Court reiterated that "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *See also United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) (explaining that "the Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior"); *Carroll v. United States*, 267 U.S. 132, 153-154 (1925) (recognizing the distinctions between searches within this country—that require probable cause—and border searches). If presented with a case involving a non-citizen's claim to a right to privacy, I would apply all Supreme Court and Second Circuit precedent.

8. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: I am not aware of Supreme Court or Second Circuit precedent resolving this precise question. In *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228, 2261 (2022), the Supreme Court expressed that its opinion "is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." If confirmed as a district judge, I will faithfully follow Supreme Court and Second Circuit precedent when analyzing the scope of equal protection rights.

9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

a. Do you agree?

Response: In *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022), the court held that there is not a Fourteenth Amendment Due Process-based right to abortion and "return[ed] the issue of abortion to the people's elected representatives." *Id.* at 2244. I would faithfully apply *Dobbs* and all other Supreme Court and Second Circuit precedent. As a sitting state court judge and federal court nominee, I may not comment on an issue that may come before me. See Connecticut Code of Judicial Conduct Rule 2.10 and Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, and if confirmed to serve in the District of Connecticut, I will continue to abide by the Code and to apply precedent. In the event I were confronted with this issue, I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Second Circuit, and apply it to the record before me.

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: No. Lower courts have a duty and an obligation to follow controlling precedent.

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. Lower courts have a duty and an obligation to follow controlling precedent.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: The Supreme Court held that Indiana's law that required voters to present identification in order to cast a ballot was permissible. *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). If confirmed as a district judge, I will faithfully follow Supreme Court and Second Circuit precedent when analyzing voting rights claims.

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022), the Supreme Court held that individuals possess a "constitutional right to bear arms in public for self-defense." The Court instructed that the proper way to analyze regulations affecting these Second Amendment rights is to first assess if the plain text covers the individual's conduct; if so, the conduct is presumptively protected under the Constitution. *Id.* at 2126. To then justify the restriction, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: In *Janus v. AFSCME*, 138 S. Ct. 2448, 2478-2479 (2018), the Supreme Court identified five salient factors to consider when deciding whether to depart from the preferred course of stare decisis: "the quality of reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." The Court stated that "all these reasons" provided the "special justification" for overruling precedent. *Id.* at 2486. Similarly, in *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228, 2265 (2022), the Supreme Court relied on five factors that it concluded weighed strongly in favor of overruling *Roe* and *Casey*: "the nature of their error, the quality of their reasoning, the 'workability of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance." I am unaware of any precedent specifying how many factors must be present to overturn precedent.

b. Is one factor alone ever sufficient?

Response: Please see my response to Question 13a.

14. Please explain the difference between judicial review and judicial supremacy.

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government; esp[ecially], the courts' power to invalidate legislative and executive actions as being unconstitutional." It defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." I would also note that judicial review refers to the foundational principle that it is "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

15. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See*, *e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I am unaware of any Supreme Court or Second Circuit opinion treating the Ninth Amendment differently from other provisions of the Constitution.

16. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: In his concurrence in *McDonald v. City of Chicago*, 561 U.S. 742, 851 n.20 (2010) (citations omitted), Justice Thomas wrote, "[C]ertain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the First Amendment's Establishment Clause, which does not purport to protect individual rights." (internal quotations and citation omitted).

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: The Ninth Amendment expressly references rights enumerated elsewhere in the Constitution. *See* U.S. Const. amend IX ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.")

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: The United States Supreme Court has explained that the original meaning and text play a critical role in interpreting many constitutional provisions, and Founding-era history can be helpful in determining what that original meaning is. *See*, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 47–50 (2004) (Sixth Amendment Confrontation Clause).

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), the Supreme Court defined the meaning of "the people" as used in the Fourth Amendment as those within the territory of the United States who have developed sufficient connections with this country. In *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008), the Supreme Court explained that the meaning of "the people" as used in the Second Amendment refers to "all members of the political community." If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

b. Is the term's meaning consistent in each amendment?

Response: Please see my answer to Question 19a.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Please also see my responses to Questions 6, 7 and 19a. Additionally, the Supreme Court held in *Plyler v. Doe*, 457 U.S. 202, 210 (1982) that: "Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: I understand that the Constitution has a fixed meaning that applies to circumstances beyond those specifically anticipated at the time of adoption. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: The Supreme Court has long held that the Privileges or Immunities Clause of the Fourteenth Amendment "protects only those rights 'which ow[e] their existence to the Federal government, its National character, its Constitution or its laws.'" *McDonald v. Chicago*, 561 U.S. 742, 754 (2010) (quoting *Slaughter-House Cases*, 83 U.S. 36, 79 (1872)).

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: I am not aware of Supreme Court or Second Circuit precedent ruling on this precise question. It would be improper for me to opine on issues that are or may be the subject of litigation before the courts, as doing so might suggest to future litigants that I have pre-judged the issue. If confirmed as a district judge, I will faithfully apply Supreme Court and Second Circuit precedent when interpreting all constitutional provisions.

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: When interpreting the meaning of statutes under *Chevron*, courts apply a two-step test. First, they must decide if the statute's meaning is "unambiguous." If the meaning is clear, the court applies that meaning. But if it is ambiguous, the court must defer to the agency's interpretation so long as it is reasonable. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Supreme Court has clarified that *Chevron* deference does not apply in "extraordinary cases that involve major questions." *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2609 (2022).

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: In *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2609 (2022), the Supreme Court held that "in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us 'reluctant to read into ambiguous statutory text' the delegation claimed to be lurking there." *Id.* (citing *Utility Air v. Environmental Protection Agency*, 573 U.S. 302, 324 (2014)). To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to "clear congressional authorization" for the power it claims. *Id.* The judicial branch must also assess whether agency action is consistent with the Administrative Procedure Act, 5 U.S.C. Section 551, et seq.

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The powers of Congress are enumerated in Article I of the Constitution. However, section 9 of Article I sets forth explicit limits on Congress' power, including, for example, a prohibition on the passage of bills of attainder or ex post facto laws. In *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819), the Supreme Court recognized that under the Necessary and Proper Clause of Article I, Section 8, Congress has implied powers as well that include the authorization to pass all laws "necessary and proper to carry into execution the powers conferred on it." The Constitution also limits Congress' power by granting enumerated powers to the executive and judicial branches in Articles

II and III. The Tenth Amendment reserves for the States powers that the Constitution neither delegates to the United States nor prohibits.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under the Commerce Clause. *United States v. Lopez*, 514 U.S. 549, 558 (1995). They are: (1) "the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted).

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: In *Lopez v. United States*, 514 U.S. 549 (1995), the Supreme Court held that Congress exceeded its authority under the Commerce Clause in enacting a statute criminalizing individual gun possession in a school zone. The Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567.

29. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: The Supreme Court has affirmed the long-standing rule that "the equal protection obligations imposed by the Fifth and the Fourteenth Amendments [are] indistinguishable[.]" *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995).

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: As a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which advises that judges and nominees should not make public comment regarding a matter that may come before them. If confirmed as a district judge and called upon to address this issue, I would faithfully and impartially apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: Please see my answers to Questions 24 and 25.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The Supreme Court has stated: "[W]hile Congress has substantial power under the Constitution to encourage the States to [take an action], the Constitution does not confer upon Congress the ability simply to compel the States to do so." *New York v. United States*, 505 U.S. 144, 149 (1992); *see also Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."). "The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476 (2018). "The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States." *Id.*

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: The Constitution is an enduring document with a fixed meaning that can apply to modern circumstances. See *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). The Supreme Court has stated that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.... The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Atkins v. Virginia*, 536 U.S. 304, 311-312 (2002), citing *Trop v. Dulles*, 356 U.S. 86 (1958).

34. Do you believe the death penalty is constitutional?

Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. *Kennedy v. Louisiana*, 554 U.S. 407, 446, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: As a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

However, Article II of the United States Constitution and *United States v. Nixon*, 418 U.S. 683, 693 (1974), directs that the Executive Branch is granted the discretion and authority to decide whether to prosecute a case.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: As a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which advises that a judge or nominee should not make public comment regarding a matter that may come before them. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

37. What restrictions on First Amendment activities can owners of a private shopping center put on their property?

Response: Please see my response to Question 5.

38. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: As a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

39. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws including state constitutions. U.S. Const. Art. IV, paragraph 2. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. See, e.g., *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Ware v. Hylton*, 3 U.S. (3Dall.) 199 (1796).

The Adequate and Independent State grounds doctrine says that, where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, the federal court lacks jurisdiction if the non-federal ground is independent of the federal ground and adequate to support the judgment. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). The Adequate and Independent State grounds doctrine therefore respects the principles codified by the Supremacy Clause while prohibiting the federal court from assuming jurisdiction when a case has been satisfactorily decided based on state law.

40. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: I am not aware of any Supreme Court or Second Circuit precedent ruling on this precise question. As a district court nominee, I am bound by Canon 3A(6) of the Code of Conduct for United States Judges, which provides that a judge should not make public comment regarding a matter that may come before him as a sitting judge. If confirmed as a district judge and called upon to address this issue, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals for the Second Circuit to the specific facts of the case before me.

41. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: To the best of my knowledge, the Supreme Court has not cited a textual source for the different standards of review for determining whether state laws or regulations violate constitutional rights. Thus, it is decisions of the Supreme Court that provide the sources of the different standards of review.

The strict scrutiny test has its origin in *Sweezy v. New Hampshire*, 354 U.S. 234, 265 (1957) (Frankfurter, J., concurring). The intermediate scrutiny test was first applied to gender discrimination in *Craig v. Boren*, 429 U.S. 190, 197 (1976). Finally, the rational basis test appears to be far older. *See Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

42. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Federal Rule of Civil Procedure 65 controls the issuance of injunctions. The Supreme Court has held that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010).

43. Please answer the following questions regarding your experience in federal court. If the answer is no to any question below, please explain how you are prepared to serve on the federal bench.

a. Have you ever participated in federal litigation?

Response: In my eleven years as a criminal and civil litigator and nearly fifteen years as a Connecticut Superior Court Judge, all litigation in which I have participated has been in Connecticut State courts. However, at nearly every point in my career as a litigator and jurist, I have contemplated, litigated, argued and adjudicated federal constitutional issues, including claims made pursuant to the

Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution in criminal and habeas corpus matters.

b. Have you ever filed a motion or brief in federal court as a counsel of record?

Response: In my eleven years as a criminal and civil litigator and nearly fifteen years as a Connecticut Superior Court Judge, all motions and briefs I have filed have been in Connecticut State courts. However, at nearly every point in my career as a litigator and jurist, I have contemplated, litigated, argued and adjudicated federal constitutional issues, including claims made pursuant to the Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution in criminal and habeas corpus matters.

c. Have you ever participated in oral argument in a federal court?

Response: In my eleven years as a criminal and civil litigator and nearly fifteen years as a Connecticut Superior Court Judge, all oral arguments in which I have participated have been in Connecticut State courts. However, at nearly every point in my career as a litigator and jurist, I have contemplated, litigated, argued and adjudicated federal constitutional issues, including claims made pursuant to the Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution in criminal and habeas corpus matters.

Questions from Senator Thom Tillis
for Vernon Dion Oliver
Nominee to be United States District Judge for the District of Connecticut

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes. As a sitting judge for nearly fifteen years, it is my view that a judge should not let personal views interfere with their responsibility to impartially interpret and apply the law.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary (11th 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, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents."

   No. I do not find judicial activism appropriate. If confirmed as a District Court judge, I will faithfully and impartially cases that come before me, as I have in my nearly fifteen years as a sitting judge.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartially deciding the issues of fact and law before them is both an expectation and an aspiration of a judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No. A judge should rule based on a faithful application of the facts to the law, and never to reach a desired outcome.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes. As a sitting state court judge, I strive to faithfully apply the law to the facts in reaching a decision, without regard to the outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. A judge's personal politics or policy preferences should play no role in their interpretation and application of the law.

7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: I will continue to faithfully apply all controlling legal precedent, including that involving the Second Amendment, if confirmed, as set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court in cases such as *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and the United States Court of Appeals for the Second Circuit, and apply it to the record before me.

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: I carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, and apply it to the record. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). *Pearson* requires that the plaintiff must show that facts make out a violation of a constitutional right and that right was clearly established at the time of defendant's misconduct. *Id.* at 231. Courts may decide "which of the two prongs of the qualified immunity analysis should be addressed first." And if either prong is lacking, qualified immunity must be granted. *Id.* at 236.

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: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety is a question of policy properly addressed by policy makers. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The proper scope of qualified immunity protections for law enforcement is a question of policy properly addressed by policy makers. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

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: As a sitting state court judge and federal court nominee, It would not be appropriate to comment on the correctness of Supreme Court patent eligibility precedent. See Connecticut Code of Judicial Conduct Rule 2.10 and Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve in the District of Connecticut, I will continue to abide by the Code and to apply precedent.

13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a sitting state court judge and federal court nominee It would not be appropriate to comment on the correctness of Supreme Court patent eligibility precedent See Connecticut Code of Judicial Conduct Rule 2.10 and Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve in the District of Connecticut, I will continue to abide by the Code and to apply precedent. I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Second Circuit, and apply it to the record before me.

14. 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: In my nearly fifteen years of experience as a judge and eleven years as an attorney, I have not had the opportunity to work with copyright law.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: In my nearly fifteen years of experience as a judge and eleven years as an attorney, I have not had the opportunity to work 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: In my nearly fifteen years of experience as a judge and eleven years as an attorney, I have not had the opportunity to work with the issue of intermediary liability for online service providers 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: In my nearly fifteen years of experience as a judge and eleven years as an attorney, I have not had the opportunity to work with First Amendment, free speech and intellectual property, including copyright, issues.

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If there is no binding precedent of the United States Supreme Court or the United States Court of Appeals for the Second Circuit, and the text of the statute is ambiguous, courts may consider analogous precedent of the Supreme Court and the Second Circuit interpreting the same or similar language in other parts of the statute,

as well as other sources authorized by the Supreme Court and the Second Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are "more authoritative" sources of legislative history because they "represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984). A court may resort to legislative history "only when necessary to interpret ambiguous text." *Bedrock v. United States*, 541 U.S. 176, 187, fn. 8 (2004).

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: If there is no binding precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit, courts apply the two-step process set forth in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984), for reviewing an agency's interpretation of a statute it administers. If "Congress has directly spoken to the precise question at issue" and its intent is clear, that ends the matter. *Id.* at 842–43. "If Congress has not unambiguously expressed its intent", then courts will defer to an agency's interpretation unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844. An agency's interpretation of its own regulations and administrative rules may also be entitled to deference under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), *Auer v. Robbins*, 519 U.S. 452, 461–463 (1997), and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

Additionally, in *Christensen v. Harris Cnty.*, the Supreme Court held that "Interpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference." *Id.* at 587. Instead, those interpretations are "entitled to respect," but only to the extent that they have the "power to persuade." *Id.*

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: As a sitting state court judge and federal court nominee, I may not comment on matters that may come before me. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, and if confirmed, I will do so.

16. 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: As a sitting state court judge and federal court nominee, I may not comment on matters that may come before me. See Connecticut Code of Judicial Conduct Rule 2.10 and Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve in the District of Connecticut, I will continue to abide by the Code and to apply precedent. I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Second Circuit, and apply it to the record before me.

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: I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve in the District of Connecticut, I will continue to apply binding precedent. In the event I was assigned a case involving opinions that relied upon the then-current state of technology, once that technological landscape has changed, I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Second Circuit, and apply it to the record before me.

17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: As a sitting judge and judicial nominee, I may not comment on matters that may come before me, such as issues regarding venue and motions to transfer venue, in order to avoid the appearance of pre-judging an issue. See Connecticut Code of Judicial Conduct Rule 2.10 and Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of

the United States Supreme Court and the United States Court of Appeals for the Second Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Judges are required to take an oath or affirm that they will "faithfully and impartially discharge and perform" their duties. See 28 U.S.C. § 453. In *Farens v. John Deere*, 494 U.S. 516, 527 (1990), the Supreme Court discussed the "policy against forum-shopping" articulated in *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

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: No

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: I commit to not engage in such conduct.

18. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Whether it is appropriate to inquire whether procedures or rules adopted in a district have biased the administration of justice and encouraged forum shopping is a question of policy. Canon 1 of the Code of Conduct for United States Judges provides that judges "should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved." Paragraph A of Canon 2 provides that judges "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If confirmed, I will be bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit.

19. 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: Whether a local rule that requires all patent cases to be assigned randomly to judges across the district should be implemented to prevent the possibility of judge-shopping is a question for federal judicial administration policy makers. If confirmed, I will be bound to abide by the Code of Conduct for United States Judges and to apply precedent

of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, and if confirmed, I will abide by the Code and apply precedent.

APABA DC
Asian Pacific American Bar Association

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June 6, 2023

The Honorable Charles E. Schumer
Majority Leader
United States Senate
224 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Bldg.
Washington, DC 20510

Re: ***Letter in Support of the Confirmation of the Honorable Loren AliKhan for District Judge of the U.S. District Court for the District of Columbia***

Dear Majority Leader Schumer, Minority Leader McConnell, Chair Durbin, and Ranking Member Graham:

The Asian Pacific American Bar Association of the Greater Washington, D.C. Area, Inc. ("APABA-DC"), a 501(c)(6) organization now in its forty-second year, is the oldest and largest association of Asian Pacific American attorneys in the greater Washington, D.C. area. APABA-DC is pleased to support the confirmation of the Honorable Loren AliKhan, who President Biden has nominated to serve on the U.S. District Court for the District of Columbia.

APABA-DC endorsed Judge AliKhan in 2020, when she successfully sought to become an Associate Judge of the D.C. Court of Appeals, and we also endorsed her when she previously sought to become a District

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Judge on the U.S. District Court for the District of Columbia in 2021. Judge AliKhan's confirmation to this District Court would contribute greatly to the administration of justice in the District of Columbia.

Judge AliKhan's professional qualifications are impressive. Since 2022, she has served as an Associate Judge on the District of Columbia Court of Appeals, the District's highest court authorized to review final orders of the Superior Court of the District of Columbia and contested decisions of District agencies, and to answer questions of law certified by federal and state appellate courts. Prior to joining the bench, Judge AliKhan worked in the District of Columbia Office of the Solicitor General for nine years, including serving as Solicitor General from 2018 to 2022. During her service with that office she handled nearly 3,000 appeals in the D.C. Court of Appeals, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court. She also routinely appeared in the U.S. District Court for the District of Columbia, assisting in a large number of both civil and criminal cases. Beyond her direct appearances, she advised attorneys on all aspects of trial litigation, including discovery, settlement and mediation, and bench and jury trials.

Prior to joining the D.C. government, Judge AliKhan spent several years as a litigator at O'Melveny & Myers in D.C. She began her legal career with clerkships on the U.S. District Court for the Eastern District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit, followed by a Bristow Fellowship at the Office of the Solicitor General, U.S. Department of Justice. As a result of this experience, she has extensive knowledge of federal law and procedure, including specific familiarity with the docket and work of the U.S. District Court for the District of Columbia.

In addition to her substantial litigation experience, Judge AliKhan's work has received public acclaim: in 2019, she received the South Asian Bar Association of Washington D.C.'s Public Sector Trailblazer Award, given to an individual who has "demonstrated sustained excellence in public sector legal work or a specific extraordinary accomplishment in the public sector." And just as Judge AliKhan's career prior to joining the bench earned her recognition for top-quality advocacy, as a judge, she has carried forward with a commitment to justice and equal treatment of all cases and litigants.

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APABA-DC strongly believes that the federal courts should reflect the diversity of the communities they serve and include jurists who are sensitive and responsive to the needs and concerns of the Asian Pacific American community. If confirmed, Judge AliKhan will be the first South Asian woman to serve as a District Judge on the U.S. District Court for the District of Columbia. She also has demonstrated a commitment to service through her involvement in a number of civic, community, and professional organizations – including through her service on the boards of the American Inns of Court, Bard College at Simon's Rock, and the Lawyers' Club of Washington – and has volunteered her time to promote diversity, to help more junior attorneys develop skills, and to provide educational opportunities to young people.

Judge AliKhan has participated in various programs organized by the Asian Pacific American Bar Association Educational Fund ("AEF"), a 501(c)(3) organization established by APABA-DC for charitable and educational activities to benefit diverse law students and attorneys in the nation's capital. Among other efforts, she has participated in the Robert E. Wone Judicial Clerkship & Internship Conference, an annual event organized by AEF to encourage more minority law students to pursue judicial internships and clerkships.

For all of these reasons, we urge the Senate Judiciary Committee and the Senate to confirm Judge AliKhan to become a District Judge of the U.S. District Court for the District of Columbia.

Thank you for your consideration of APABA-DC's comments in support of Judge AliKhan. Please contact us if we can provide further assistance.

Sincerely,

Yifang Zhao
President, 2022-23

Asian Pacific American Bar Association *of the Greater Washington, D.C. Area, Inc.*
ADDRESS Post Office Box 27223, Washington, D.C. 20038-7223 E-MAIL apaba@apaba-dc.org WEBSITE www.apaba-dc.org

May 31, 2023

The Honorable Dick Durbin, Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: *Nomination of Judge Loren L. AliKhan for the U.S. District Court for the District of Columbia*

Dear Chairman Durbin and Ranking Member Graham,

As a bipartisan group of current and former state Solicitors General writing in our personal capacities, we wish to convey our support for Judge Loren L. AliKhan's nomination to serve as a District Judge on the U.S. District Court for the District of Columbia.

We know Judge AliKhan is deeply qualified for this position through our experience serving alongside her when she was the Solicitor General for the District of Columbia. Publicly, the role of state Solicitor General consists most prominently of briefing and arguing cases at the U.S. Supreme Court and in the States' highest courts. Such experience is of course extremely valuable for any jurist, and Judge AliKhan has thereby demonstrated her tremendous intellect and even-keeled temperament, charting a course through challenging issues and sometimes-hostile questioning. But these arguments form only a portion of a Solicitor General's workload. Although the States' respective Solicitor General roles are not identical, state Solicitors General have a broad variety of responsibilities, including, for example, advising the Attorney General on the most significant legal questions the office faces; regularly directing trial divisions on how to handle novel legal issues; ensuring the office is taking consistent positions across all cases, whether affirmative or defensive, and that those positions advance the public interest; and supervising the briefing and argument of cases spanning myriad subject areas in state and federal court. And, most relevantly for us as Judge AliKhan's colleagues, state Solicitors General also lead the office's assessment of whether to write or join multistate amicus briefs and work with counterparts in other States on cases of mutual interest.

In our work together, Judge AliKhan demonstrated the experience, work ethic, brilliance, temperament, and sound judgment that will serve her well as a federal trial judge, just as she has served residents of the District well on the D.C. Court of Appeals. As a result of her work leading appellate advocacy for the District and her work as a judge on the D.C. Court of Appeals, she already possesses a wide-ranging command of the issues litigants in the District bring to court. In addition to her appellate work, she has handled arguments and hearings in trial cases on behalf of the District, so she is sensitive to the need for efficiency and keen judgment in trial practice. Dedicated to advancing the public interest, she ensured that the District became a national leader on many issues, frequently submitting bipartisan multistate amicus briefs to the U.S. Supreme Court

and other courts across the country, including federal district courts. As one example, before leaving her role as Solicitor General to join the D.C. Court of Appeals, Judge AliKhan submitted a brief signed by 39 Attorneys General to the Minnesota Supreme Court in a high-stakes case defending the common-interest doctrine in the context of interstate cooperation among Attorney General's offices—thus advancing the very ability of the States to work together. Throughout this work, Judge AliKhan always produced briefs of the highest caliber, led bipartisan multistate collaborations with utmost professionalism, and acted with impeccably sound judgment.

In sum, we urge the Senate to confirm our superlatively capable and amicable colleague. Although we serve or served as Solicitors General in diverse States and do not always agree as to the correct result in any particular case, we are all confident Judge AliKhan will serve with distinction as a member of the U.S. District Court for the District of Columbia.

Respectfully,

Amit Agarwal
Solicitor General of Florida*

Benjamin Battles
Solicitor General of Vermont*

Trevor Cox
Acting Solicitor General of Virginia*

Elizabeth N. Dewar
State Solicitor of Massachusetts

Edward DuMont
Solicitor General of California*

Tyler Green
Solicitor General of Utah*

Jeremy Feigenbaum
Solicitor General of New Jersey

Benjamin Flowers
Solicitor General of Ohio

Aaron R. Goldstein
State Solicitor of Delaware

Fadwa A. Hammoud
Solicitor General of Michigan*

Michelle Kallen
Solicitor General of Virginia*

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Solicitor General of Colorado*

*Denotes former Solicitor General or State Solicitor.

All titles are listed for identification only.

Bard College

Office of the President

June 5, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Recommendation for Loren L. AliKhan
U.S. District Court for the District of Columbia

Via Electronic Transmission: Senate Judiciary Committee staff and counsels

Dear Chairman Durbin and Ranking Member Grassley:

We write this letter to you to serve as our highest recommendation for Loren L. AliKhan for your consideration for the U.S. District Court for the District of Columbia.

Loren is, simply put, one of the most accomplished alumni/ae to graduate from Bard College at Simon's Rock in the history of the institution, now approaching sixty years of serving highly motivated younger scholars who begin their college studies up to two years earlier than the traditional point in time. In the important Early College movement, for which Bard has set the highest standards of academic rigor, Loren's achievements are exemplary in demonstrating what can be achieved by an Early College graduate.

Loren has, over the course of more than two decades, excelled as a student academically and in leadership roles, and served as a key voice on the Board of Overseers of Bard College at Simon's Rock. As a tenth grade student, in 1999, Loren applied to attend Simon's Rock, stifled by the intellectual environment at her high school, and aspiring to be in "a world of pure education," as she wrote in her application essay. In her very first semester, in the fall of 1999, she made her first foray into the law with the course "Law, Population, Reproductive Rights," taught by faculty member and attorney Barbara Resnick. Loren thrived in the course, and she met an early mentor in Professor Resnick, who would, years later, travel to Washington to see Loren argue her first case before the Supreme Court. During Loren's years at Simon's Rock, Loren's resume reflects so many of the major honors available at the time, including the Robert Maynard Hutchins scholarship for her junior and senior years, the Dean's list consistently, and very high grades, culminating in 4.0 GPAs for each of the last three semesters, when such results were extremely rare at Simon's Rock.

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Bard College

Office of the President

She was also a leader in student voice on campus, with a maturity and command that has only rarely repeated in other students who have succeeded her. It is not enough to say that she was at the top among her peers; she set a standard that in some years no student at Simon's Rock has met.

In 2003, Loren completed her B.A. degree *summa cum laude* in Politics, Law, and Society, culminating in her senior thesis entitled, "Chaining Leviathan: Creating a Space for Humanitarian Intervention," which earned high honors. Her thesis advisor, Professor Peter Cocks, commented, "She took on the pressing, vexing question of humanitarian intervention, a subject not susceptible of easy treatment by either scholars or politicians. She made a case for it with great skill, although, as I think that she would be the first to admit, making a water-tight argument for such complex political-legal issues is something that eludes even the most brilliant, mature scholars." Her ability to tackle complex issues, while also seeing the subtleties within them, distinguished her from even other highly intelligent younger scholars, who can tend to categorize matters too cleanly and naively. In reviewing the narrative comments from her professors—narrative comments are a required and distinguishing feature at Bard campuses—time and again, even as an undergraduate, one can readily see that Loren set the standards in the classes she took.

Loren continued to achieve new positions, at a young age, when she was elected to the Board of Overseers of Bard College at Simon's Rock in 2006, at age 23, following her graduation from the Georgetown University Law Center. As a member of the Board, in addition to her important insights on legal matters, Loren has contributed to Board discussions on many issues that have confronted Simon's Rock in her 17 years on the Board. Though at the time of election much younger than other Board members, Loren is now the senior member of a vocal group of Board members who graduated from the college with distinction in the early 2000s and have risen in their careers in various fields. Despite her busy schedule as a judge, Loren is conscientious in her Board attendance and participation. Her commitment to Simon's Rock, and to the motivated young people who attend, is deep, and comes as no surprise to anyone who knew her as a student two decades ago.

Just as she has set the standard so many times in previous roles, Loren would be exemplary as a federal judge in the U.S. District Court. She would be a tremendous asset to the judicial branch; of this, we have no doubts. Your consideration of Loren's candidacy is deeply appreciated by us, and she will, we know, continue to make her alma mater proud.

Thank you for your time and consideration.

Cordially,

Leon Botstein
President
Bard College

John B. Weinstein
Provost and Vice President
Bard College at Simon's Rock

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GEORGETOWN LAW

William M. Treanor
Dean and Executive Vice President
Paul Regis Dean Leadership Chair

June 1, 2023

Ms. Sarah Bauer
Chief Nominations Counsel
Committee on the Judiciary
United States Senate
Dirksen Senate Office Building
SD-152
Washington, DC 20510

Ms. Katherine Nikas
Staff Director
Committee on the Judiciary
United States Senate
Dirksen Senate Office Building
SD-224
Washington, DC 20510

Dear Ms. Bauer and Ms. Nikas:

On behalf of Georgetown University Law Center, I write in support of the nomination of Judge Loren L. AliKhan to serve as District Judge on the U.S. District Court for the District of Columbia. Judge AliKhan is one of our most distinguished graduates, and she has remained deeply connected and dedicated to the school since her graduation. It has been a privilege to observe her exemplary legal career in public service in the District of Columbia, and she would be a superb federal judge.

Judge AliKhan was an excellent student at Georgetown Law, graduating with high honors and was inducted into the Order of the Coif, among other accomplishments. During law school, she was a member of our Barrister's Council, acted as a research assistant to faculty, and took leadership roles on campus. Since graduating, Judge AliKhan has given back to the Georgetown Law community and has made opportunities for our students and recent graduates. We are proud to have her as part of our alumni community.

Judge AliKhan has committed her career to public service. She began by clerking for the Honorable Louis H. Pollak on the U.S. District Court for the Eastern District of Pennsylvania and the Honorable Thomas L. Ambro on the U.S. Court of Appeals for the Third Circuit. After clerking, she was selected to serve as a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice and as a Temple Bar Scholar in London, England. She has dedicated her career to appellate practice, joining the prestigious firm of O'Melveny and Myers in the Supreme Court and Appellate practice before serving as the Deputy Solicitor General and then Solicitor General for the District of Columbia. At the Solicitor General's Office, she handled or supervised over 2,500 appeals across many areas of law at the District of Columbia

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Court of Appeals and U.S. Court of Appeals for the District of Columbia Circuit. I was proud to support her nomination by President Biden as Associate Judge on the District of Columbia Court of Appeals in 2021. She has also been a member of Georgetown Law's Supreme Court Institute since 2010.

Judge AliKhan has a breadth and depth of knowledge and experience that make her supremely qualified and uniquely positioned to serve with distinction on the U.S. District Court for the District of Columbia. Her commitment to the rule of law and to the highest level of professional standards shines through her work and would be an asset to the court. I urge the Senate to quickly confirm Judge AliKhan.

Sincerely,

William M. Treanor
Dean and Executive Vice President
Paul Regis Dean Leadership Chair

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June 5, 2023

Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
711 Hart Senate Office Building
Washington, D.C. 20510

Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
211 Russell Senate Office Building
Washington, D.C. 20510

Re: Endorsement of Judge Loren AliKhan for Vacancy on the United States District Court for the District of Columbia

Dear Chairman Durbin and Senator Graham:

On behalf of the South Asian Bar Association of Washington, D.C. ("SABA-DC"), we write to express our unequivocal support for the confirmation of Judge Loren AliKhan, Associate Judge of the D.C. Court of Appeals, to fill the current District Judge vacancy on the United States District Court for the District of Columbia ("D.C. District Court"). Based on her extensive personal and professional accomplishments, SABA-DC strongly believes that Judge AliKhan is immensely qualified to join the D.C. District Court.

SABA-DC is a voluntary bar association dedicated to the needs, concerns, and interests of the South Asian legal community in the greater Washington, D.C. area. The organization reaches approximately 1,000 attorneys and jurists of South Asian origin in the D.C. metropolitan area, including Maryland and Virginia. SABA-DC's key objectives are to advance the professional development of South Asian lawyers, increase awareness and dialogue regarding legal issues concerning the South Asian diaspora, and improve access to legal services for the South Asian community in the D.C. metropolitan area. In making our endorsements, we consider a candidate's experience, past accomplishments, demonstrated interest in or commitment to the South Asian community, and broader efforts to improve diversity, equity, and inclusion in the legal profession.

In the 16 months that she has served as Associate Judge for the D.C. Court of Appeals, Judge AliKhan has issued opinions on a range matters, including civil, criminal, administrative, and bar discipline cases. Reflecting her ability to rule based on consensus, all her opinions have been unanimous. Before joining the D.C. Court of Appeals she served as Solicitor General for the District of Columbia and, before that, as Deputy Solicitor General for Civil and Administrative Appeals. In those roles, Judge AliKhan handled 3,000 cases in the District's local and federal trial and appellate courts on a wide range of issues, including administrative law, contract disputes, criminal law, employment issues, family law, the Home Rule Act, torts, tax, workers' compensation, and zoning. These experiences with high profile and complex legal matters demonstrate how uniquely qualified Judge AliKhan is to join the D.C. District Court and preside over its unique, pressing docket. SABA-DC is joined in this request by our parent organization, the South Asian Bar Association of North America ("SABA North America") and the undersigned chapters.

Before Judge AliKhan joined the Office of the Attorney General, she spent several years in private practice, where she focused on complex trial and appellate matters. She also supported several notable *pro bono* matters, including Supreme Court cases on behalf of indigent criminal defendants and *amicus curiae* briefs on behalf of organizations supporting minority communities. Before her time in private practice, Judge AliKhan clerked for the Hon. Louis H. Pollak on the U.S. District Court for the Eastern District of Pennsylvania and the Hon. Thomas L. Ambro on the U.S. Court of Appeals for the Third Circuit. Judge AliKhan's diverse set of experiences and her comprehensive skillset makes her a natural fit for the bench.

In addition to her impeccable professional qualifications, we note that Judge AliKhan's appointment to this position would enhance the diversity of the D.C. District Court bench. Judge AliKhan is a first-generation South Asian American—the daughter of immigrants from Pakistan. As the first lawyer in her family, she is familiar with the trailblazing immigrant experience of so many litigants that appear before the D.C. District Court. In fact, SABA-DC recognized Judge AliKhan as its Public Sector Trailblazer in 2019 for her sustained excellence and accomplishments, which inspire our members and South Asian lawyers throughout the United States. If confirmed, Judge AliKhan will be the first South Asian woman to serve on the D.C. District Court, and we are confident that she will bring her unique perspective as a South Asian woman to the bench to contribute to the Court's goal of increased access to justice.

Finally, we want to specially note Judge AliKhan's service to the SABA-DC community. In December last year, Judge AliKhan presided over a ceremony inducting our new Board into office and delivered remarks for the event. She spoke eloquently about the value of service and diversity

and inclusion. She then stayed for well over an hour to meet with all the new Board members, their friends and families, and other members of the SABA-DC community who attended the ceremony. Given the importance of the evening, her genuine participation made the ceremony extra special for SABA-DC. But truly, it was just one of many examples where Judge AliKhan has unselfishly contributed her time to our community. She has spoken on numerous panels, given opening remarks for a clerkship conference that we co-host annually with other diverse bar organizations in the District of Columbia, formally and informally mentored young attorneys and contributed to our community in countless other ways. Authentic service is sustained, magnanimous, and often unheralded; Judge AliKhan's service to the SABA-DC community has been nothing short of exemplary.

Based on the information highlighted in this letter, combined with the extensive materials you have received regarding her qualifications, SABA-DC strongly and enthusiastically supports Judge AliKhan's confirmation to the D.C. District Court bench.

Sincerely,

Nandu Machiraju, Esq.
Co-Chair, Endorsements Committee

Kirti Suri, Esq.
Co-Chair, Endorsements Committee

cc: Dr. Debodhonyaa Sengupta, Esq., President, SABA-DC
Ravi Kambhampaty, Esq., President-Elect, SABA-DC

Tara M. Raghavan, Esq., President, SABA North America
Charanjit Brahma, Esq., President-Elect, SABA North America

Nandita Ruchandani, Esq., President, SABA-Connecticut

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GEORGETOWN LAW

David C. Vladeck
A.B. Chettle, Jr., Professor of Law

June 1, 2023

The Honorable Richard J. Durbin, Chairman
The Honorable Lindsay Graham, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Appointment of Loren AliKahn to the United States
District Court for the District of Columbia

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee

I write to urge the Committee to recommend that the Senate confirm Judge Loren AliKahn, presently a Judge on the District of Columbia Court of Appeals, to the United States District Court for the District of Columbia. By way of background, I have practiced law in the District of Columbia for forty-seven years, and have taught at Georgetown Law School in one capacity or another since the early 1980s, first as an adjunct and then, beginning in 2002, as a full-time faculty member. I routinely teach classes with one hundred or more students, including federal courts and civil procedure.

It is not hyperbole to say that I have never had a student better or smarter than Ms. AliKhan. My first encounter with Ms. AliKhan was in 2004, when she enrolled in my 120-student federal courts class. I discourage second year students from taking the course; students say it is the law school equivalent of "organic chemistry." The course attracts the top students – law review editors and students who have secured federal court clerkships. I urge students to take the course in their third year, after taking Constitutional law.

Ms. AliKhan was undeterred and took the course as a second year student. Early in the semester, I led a discussion of *Martin v. Hunter's Lessee*, a very difficult case, and I called on several students flummoxed by the questions. Ms. AliKahn was the only student to raise. I asked her to explain why the U.S. Supreme Court had jurisdiction to review the judgment of the Virginia Court of Appeals – then Virginia's highest court. Answering the question required tackling the intricacies of the independent and adequate state ground doctrine. Ms. AliKhan's answer was succinct, clear, and right on the law. I was impressed. Throughout the semester, if the class was stuck on a hard question, I looked to see whether Ms. AliKhan raised her hand because I knew she would have the right answer. Georgetown has a blind grading process and

teachers do not learn the identity of the students until we transmit the grades to the Registrar's office. Among over a hundred exams, only one stood out as extraordinary. I was not surprised to see that it was Ms. AliKhan's exam.

The following year Ms. AliKhan was a student in a litigation clinic I directed. We had recently won an important case under the Individuals with Disabilities Education Act ("IDEA") in the Second Circuit, holding that IDEA's fee-shifting provision authorized courts to reimburse prevailing parents the expert fees that they reasonable incurred in litigation. *Murphy v. Arlington Cent. Sch. Bd. Dist.*, 402 F.3d 322 (2d Cir. 2005). With the government's support, the School Board petitioned for a writ of certiorari, which the Court granted. Ms. AliKhan was a student in my clinic just as we started writing our merits brief. Ms. AliKhan's work on the case was superb; her section of the brief was exceptionally well researched and written. We lost the case, but Justice Breyer's dissent highlighted much of Ms. AliKahn's work. *Arlington Cent. Sch. Bd. Dist. v. Murphy*, 548 U.S. 291, 308 (2006) (Breyer, J. dissenting) (arguing that the majority's ruling was at odds with the statute's language and clear purpose).

I followed Ms. AliKhan's career after her graduation in 2006. She clerked for two remarkable judges – District Judge and twice law school Dean (Yale and the University of Pennsylvania), Lou Pollak, who sat in Philadelphia, and Circuit Judge Thomas Ambro, who sits on the Third Circuit. I recommended Ms. AliKhan for these clerkships, and both Judges were as impressed with Ms. AliKhan as I am. Unfortunately, Judge Pollak is now no longer with us, but I would not be surprised if you hear from Judge Ambro, who holds Ms. AliKhan in high esteem.

I have spent much of my career as a lawyer handling and supervising cases, mostly in federal state courts. To me, the most important attribute for a trial court judge is judicial temperament – the ability to hear out the lawyers, treat them with respect, and as best as is humanly possible, put aside one's emotions and inclinations. In the same way, Judges also have to treat the parties before the court, whether they are global corporations represented by top firms or individuals facing criminal trials represented by public defenders. I have no doubt that Ms. AliKhan, if confirmed, will exemplify those attributes. To be a successful advocate, one needs to be able to see and respect the other side of the argument, as well as one's adversary, and understand the humanity that often underlies litigation.

To be sure, as an appellate Judge, and formerly the Solicitor General of the District of Columbia, Ms. AliKhan's focus has been on appellate practice. That, in my view, is a factor in her favor. For one thing, district court judges must be excellent lawyers. On that score, I think that Ms. AliKhan has proven her worth many times over. Her briefs are, in a word, flawless. They are meticulously written and researched; they persuade, but with logic, not adjectives; and they are scrupulously fair. That is what I expect from a top-notch district judge. She also is a formidable advocate. Having participated in many moot courts for Ms. AliKhan and having watched or listened to several of her arguments in court, her skills as an advocate are first rate. Even under tough and at times skeptical questioning, she remains steadfast, unruffled, and ready to engage without an edge. To understand how skilled an oral advocate Ms. AliKhan is, I would urge you to listen to her argument before the Supreme Court in *Artis v. District of Columbia*, 138 S. Ct. 594 (2018). It was a challenging argument, but Ms. AliKhan rose to the challenge.

Nor would it be accurate to assume that Ms. AliKhan is not experienced in district court litigation. After all, she spent a year working with Judge Lou Pollak, perhaps the most respected trial judge in his time, and a great teacher. As Solicitor General for the District of Columbia, she provided strategic counseling on important matters in the District's trial courts, both civil and criminal, including motions practice, discovery, expert witnesses, settlement and mediation, opening statements and closing arguments, Rule 50, damages, jury instructions, post-trial motions, and whether to appeal adverse decisions.

Let me end with two brief, additional comments. One is that Ms. AliKhan is a born leader. There is a Tom Sawyer-like quality about her. Although fence painting is a chore, once Tom started painting the fence others wanted to join him. Ms. AliKhan has the same magnetic quality. While she was overseeing all of the appellate work for the District of Columbia, other highly talented lawyers, including former Supreme Court clerks, flocked to her office, making it a "go to" place for smart and ambitious lawyers. Her presence has transformed the office. The other point is that Ms. AliKhan has consistently put public service ahead of her pocketbook. She chose to go into public service instead of remaining at a top tier law firm. Her resume attests to her deep commitment to her community, and her work to better the lot of others. That is why Ms. AliKhan comes to work every day. That is one more reason why I think she would be a top-notch District Court judge.

Respectfully,

David C. Vladeck

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May 31, 2023

VIA EMAIL

Ms. Sarah Bauer, Chief Counsel for Nominations
Ms. Katherine Nikas, Staff Director
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Women's Bar Association's Endorsement of Hon. Loren AliKhan for U.S. District Judge, U.S. District Court for the District of Columbia

Dear Ms. Bauer and Ms. Nikas:

On behalf of the Women's Bar Association of the District of Columbia (WBA), I am writing to express our support of Judge Loren AliKhan for U.S. District Judge, U.S. District Court for the District of Columbia.

Our principal goal in endorsing judicial candidates is to ensure the appointment of qualified judges and, consistent with that goal, to increase the number of judges who support the mission of the WBA. We consider, in our recommendations, the candidate's background, level of experience, connection to the District of Columbia, record of public service, a demonstrated commitment to the equality of all litigants, and an attention to women's needs and concerns.

We evaluate each candidate for endorsement by reviewing his or her resume and other supporting documentation, and discussing the candidate's skills and character with references. We ask each person contacted specific questions regarding the candidate's qualifications, integrity, temperament, experience, and commitment to the concepts of equal opportunity and equal justice under law.

Judge AliKhan is a dedicated public servant who currently serves as an Associate Judge on the D.C. Court of Appeals. Prior to that appointment, she was the Solicitor General for the District of Columbia. In that capacity, she oversaw the district's civil, criminal, and administrative appeals before

Women's Bar Association of the District of Columbia
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the D.C. Court of Appeals, the D.C. Circuit, and the U.S. Supreme Court. In her six-and-a-half years with the D.C. Office of the Attorney General, Judge AliKhan worked on over 1,000 cases in the D.C. Court of Appeals on a wide range of issues, including constitutional law, criminal law, family law, employment, tax, torts, workers' compensation, and zoning. This unparalleled breadth of experience makes her uniquely qualified to join the Court.

We endorse Judge AliKhan for her credentials, and also because of her commitment to mentoring women lawyers in the District. She was an invaluable mentor to junior lawyers when she worked at O'Melveny & Myers LLP and a frequent participant in women's leadership events. At the D.C. Office of the Attorney General, Judge AliKhan handled all aspects of the Charles F.C. Ruff Fellowship Program, which recruits a diverse group of recent graduates from area law schools to work in public service. In her time at the helm of the program, she brought over 100 new lawyers into the D.C. Office of the Attorney General. The vast majority of them remain in public service with the District or federal government after the conclusion of their fellowship.

We believe that Judge AliKhan would be an asset to the Court. She has demonstrated commitment to public service and devotion to the District. Her intellect and compassion make her an ideal candidate to serve on the bench.

For these reasons, and the others outlined herein, the WBA is pleased to endorse Judge Loren AliKhan for the position of U.S. District Judge, U.S. District Court for the District of Columbia.

Sincerely,

Candace Beck

Candace Beck
President

cc: Hon. Loren AliKhan

PRESIDENT
RAKIM BROOKS

CHAIR
PAULETTE MEYER

June 6, 2023

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 150 public interest and civil rights organizations, I write to support the confirmation of Susan DeClercq for the United States District Court for the Eastern District of Michigan.

Ms. DeClercq's ties to the Eastern District, as well as her extensive litigation experience, have fully prepared her for serving in this role. Born in Seoul, South Korea, Ms. DeClercq earned her B.A. from the University of Michigan and graduated *magna cum laude* from Wayne State University School of Law. After law school, Ms. DeClercq clerked for Judge Avern Cohn on the U.S. District Court for the Eastern District of Michigan—the very court to which she has been nominated.

Both Ms. DeClercq's commitment to public service and her civil rights work will make her an excellent addition to the federal bench. She spent most of her career enforcing civil rights laws as an Assistant U.S. Attorney for the Eastern District of Michigan, prosecuting unlawful discrimination in the housing, employment, and land use contexts. For example, in *United States v. University of Michigan*, Case No. 2: 15-cv-12582 (E.D. Mich.), a maintenance employee at the University of Michigan alleged that the school violated the Americans with Disabilities Act after refusing to re-assign her to a vacant position she was qualified for after her disability prevented her from performing the essential functions of her original job. Ms. DeClercq and her co-counsel conducted an additional investigation and found evidence of a pattern or practice of discrimination by denying reassignments as reasonable accommodations. This type of civil rights work will bring expertise that has been historically underrepresented on the federal judiciary.

Her hard work and dedication to justice has not gone unnoticed. Between 2010 and 2022, she received the United States Department of Justice Civil Rights Division Commendation Award multiple times. She also received the United States Attorney's Award in 2016. Further, Ms. DeClercq is an active member of her local legal community, serving in numerous leadership positions at the Eastern District of Michigan's Federal Bar Association.

Ms. DeClercq will bring valuable experience to the federal bench. Her professional expertise in addition to her personal experiences and knowledge of immigrant communities will strengthen the court and ensure that it better reflects the community it serves. Notably, if confirmed, Ms. DeClercq will be the first federal judge of East Asian descent in Michigan. Given her exemplary legal talent and qualifications, the Senate should expeditiously confirm Ms. DeClercq to the United States District Court for the Eastern District of Michigan.

Sincerely,

Rakim H.D. Brooks

Rakim Brooks
President, Alliance for Justice

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Please Respond to Lansing Office

June 9, 2022

Re: Susan DeClercq Judicial Nomination

To Whom It May Concern:

I am writing this letter with my full support for the nomination of Susan DeClercq for United States District Court judicial position. I have known Ms. Declercq professionally due to my representation of a client in a lawsuit against the United States Government, *Estate of Clarence Barrien v. United States*. Ms. Declerq was the U.S. District Attorney that was representing the United States in the litigation. Based upon my experience with her, I believe that Ms. DeClercq has the intelligence, legal capabilities, and a tremendous temperament that make her a perfect candidate. I will elaborate on my opinions further below.

The matter that I litigated against Ms. DeClercq was a very long complex case that involved extensive expert witness opinions in the fields of engineering, biomechanics, medicine, and economics. Her actions in that case demonstrated that she is as skilled as any defense attorney I have ever litigated against in my 21 years as a trial lawyer. The myriad of facts in the case was shrouded by a convoluted legal issue as well and Ms. DeClercq was able to ultimately obtain a favorable decision in the Court of Appeals after trial on this matter based upon discovery that she had done during the pendency of the litigation. Ms. DeClercq had command of the facts, knowledge of the laws at issue, and, just as important, she knew the Rules of Evidence inside and out. Although I ultimately lost, it was a very hard-fought case that involved numerous depositions and extensive discovery, which resulted in a trial and ultimately an appeal. I learned during that litigation that Ms. DeClercq's legal abilities were second to none in terms of all the defense attorneys I've ever litigated against, including some of the largest law firms in

the United States. However, despite her tremendous legal abilities, there is more to her that would make Ms. DeClercq a tremendous judicial candidate.

Ms. DeClercq has a very even-keeled and unflappable temperament, which I believe is a necessary asset for our judiciary. One of the things that many defense attorneys in private practice forget is that there are human elements surrounding the litigation in every case. In our matter, I was representing the family who had lost a loved one, and that heavy element was never lost on Ms. DeClercq even though she was the defense attorney. She continuously remained sensitive to the subject and though she zealously represented the United States Government, she never acted in a way that was disrespectful to the Estate and the deceased, which often occurs when dealing with the defense attorneys in private practice. There were many points of contention in this case concerning factual disputes, the actions of my deceased client, evidentiary issues, and legal questions, and Ms. DeClercq demonstrated a temperament that, in my opinion, all attorneys and, in particular, the judiciary should have. She exemplifies what it means for lawyers to conduct themselves in a professional manner but to remain a zealous and fair advocate. There were multiple times when this case very well could have gotten extraordinarily heated resulting in vexatious motions and vengeful gamesmanship. But Ms. Declercq's demeanor was composed and unflappable. She took a very practical approach to solving evidentiary and discovery issues with me which I believe she would bring to the bench.

Throughout this extensive litigation that went on for years, Ms. DeClercq was level-headed and measured while remaining very dedicated to the defense. However, she did so in a way, even during settlement negotiations, that were respectful to the Estate, keeping in mind that a human being had lost their life in a situation that gave rise to this litigation. Oftentimes it is easy for defense attorneys to forget that a family has lost a loved one when conducting settlement negotiations and quickly pointing the finger at the deceased. But in all of her dealings with the Estate throughout discovery and settlement negotiations, she remained courteous and cognizant over the fact that a family was still grieving for their loss. It is rare to find that awareness from your opponent during extensive litigation. I firmly believe that DeClercq's temperament is a perfect fit for the Eastern District of Michigan. She is calm and personable but firm in her convictions, and I believe that litigants would feel heard and respected in her courtroom. At the same time, I believe that attorneys would find professionalism from the bench backed by considerable work ethic which they would find refreshing. Ms. DeClercq's working knowledge of the law and Rules and Evidence, as well as her practical experience as a litigator, will provide an element of respect for the judiciary from the attorneys who will be litigating in her courtroom. Oftentimes as litigators we find that individuals who receive judicial appointments often do not possess a working knowledge of the law or the Rules of Evidence that make them effective jurists. This often

causes the attorneys to suffer a lack of respect for the bench. I firmly believe that with Ms. DeClercq's temperament combined with her legal abilities that the bar would have tremendous respect for her.

In closing, I fully support and recommend Susan DeClercq to be appointed to the Eastern District of Michigan. I think she would be a tremendous asset to the bench. I think she would be a stabilizing force within the legal community for years to come and continue to add to the credibility of the Eastern District of Michigan. I am happy to elaborate on this and answer any questions.

If I had to lose to anybody in litigation, I'm glad it was Ms. DeClercq.

Very truly yours,

SINAS DRAMIS LAW FIRM

Kevin Z. Komar

KZk/eae

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
Suite 1100
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20036

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

June 5, 2023

The Leadership Conference

SUPPORT THE CONFIRMATION OF SUSAN DECLERCQ
TO THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 230 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Susan DeClercq to the U.S. District Court for the Eastern District of Michigan. The Leadership Conference intends to include your position on the confirmation of Ms. DeClercq in our voting record for the 118th Congress.

Ms. DeClercq is dedicated to protecting and advancing equal justice for all and has significant experience enforcing critical civil rights laws — important experience that will greatly benefit the federal bench. Currently, Ms. DeClercq is director and counsel of special investigations at Ford Motor Company. Prior to this, she spent 18 years with the U.S. Attorney's Office for the Eastern District of Michigan, holding numerous positions including assistant U.S. attorney for the civil rights unit and the defensive litigation unit, civil rights unit chief, and civil division chief. She also spent time in private practice as an associate with Skadden, Arps, Slate, Meagher & Flom, LLP. A graduate of the University of Michigan and Wayne State University School of Law, Ms. DeClercq served as law clerk to Judge Avern Cohn on the U.S. District Court for the Eastern District of Michigan. Her experience and exceptional career would be a tremendous asset to the Eastern District of Michigan.

Ms. DeClercq has a vast record of protecting the rights of all Michiganders. She has worked extensively for those who have been discriminated against based on their disability. For example, she successfully brought suit against the University of Michigan for violating the Americans with Disabilities Act (ADA) after the school refused to reasonably accommodate an employee's disability.[1] Her work on this case identified a pattern of discrimination by the university, and she successfully negotiated a settlement that included a change in university policy.[2] In another case, she successfully represented a family who had been denied service at a restaurant because of their children's genetic skin disorder, securing a generous monetary settlement for the family as well as a change in company policy.[3] In addition to her work enforcing the ADA, she also helped enforce a 2003 consent judgment entered against the Detroit Police Department, holding the department accountable after an investigation by the U.S. Department of Justice found ongoing misconduct that included use of excessive force, unlawful detention practices, and poor confinement conditions.[4] Additionally, during her time in private practice, she co-authored an amicus

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[1] *United States v. University of Michigan*, No. 2: 15-cv-12582 (E.D. Mich. 2015).
[2] *Id.*
[3] *United States v. Corral of Westland LLC*, No. 02:13-cv-10717 (E.D. Mich. 2013).
[4] Press Release, *Justice Department Files Consent Decrees Concluding Investigation of Detroit Police Department*, U.S. DEPARTMENT OF JUSTICE (June 12, 2003).

The Leadership Conference

brief in the landmark affirmative action case *Grutter v. Bollinge*r on behalf of members of Congress supporting the race-conscious admissions standards used by the University of Michigan Law School.[5] As this impressive portfolio of work illustrates, Ms. DeClercq has a demonstrated commitment to civil and human rights, and she is extremely qualified to serve on the federal bench.

In addition to the important professional experience she would bring to the court, Ms. DeClercq would bring other vital representation to the federal bench. If confirmed, Ms. DeClercq would become the first federal judge of East Asian descent in Michigan[6] and only the second AAPI woman to be a federal judge in the state's history.[7] Public trust in the judiciary is bolstered when our courts reflect the rich diversity of our country.[8] Different lived experiences, especially from communities who have been excluded from serving on our courts, bring varied perspectives to our federal courts that are crucial to improving judicial decision-making.[9] The confirmation of Ms. DeClercq would be an important step towards ensuring that our federal courts reflect and represent the diversity of our nation.

Ms. DeClercq is an excellent choice for this position, and we strongly urge the Senate to confirm her to the Eastern District of Michigan. If you would like to discuss this matter further, please contact Lena Zwarensteyn, senior director of the fair courts program, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Maya Wiley
President & CEO

Jesselyn McCurdy
Executive Vice President of Government Affairs

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[5] Brief for Representative Richard A. Gephardt, *et al,* as amicus curiae, *Grutter v. Bollinger*, 539 U.S. 306 (2003).
[6] Press Release, *Senators Stabenow and Peters Applaud Nomination of Susan DeClercq to be the United States District Court Judge in the Eastern District of Michigan* (May 3, 2023).
[7] *See Biographical Directory of Article III Federal Judges, 1789-present,* FEDERAL JUDICIAL CENTER (accessed June 2023).
[8] Maya Sen, *Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time*, WIS. L. REV. 367 (2017).
[9] Kate Berry, *Building a Diverse Bench: Selecting Federal Magistrate and Bankruptcy Judges*, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AND AMERICAN BAR ASSOCIATION JUDICIAL DIVISION (2017).

MYERS BRIER KELLY

May 24, 2023

Honorable Richard J. Durbin
Chairman, Committee on the Judiciary United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Lindsey O. Graham
Ranking Member, Committee on the Judiciary United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

I write to express my strong support for the confirmation of Judge Julia K. Munley as a judge on the District Court for the Middle District of Pennsylvania. Judge Munley is exceedingly qualified to serve on the District Court. On our state trial court, Judge Munley has consistently demonstrated that she possesses the intellectual rigor, discipline, integrity, and emotional maturity to be a very effective federal judge. In short, Judge Munley carefully prepares, respects precedent, and she treats litigants and counsel with respect and dignity.

In addition, Judge Munley possesses another distinguishing qualification. Specifically, Judge Munley unfailingly demonstrates that she appreciates that it is a real privilege and honor to serve as a judge. And based on that understanding, Judge Munley naturally embraces her judicial responsibilities with a genuine sense of awe and humility.

I have practiced in the Middle District of Pennsylvania for 35 years. I am confident that Judge Munley will distinguish herself very favorably as a federal judge in the Middle District and beyond. I enthusiastically recommend her without condition.

Please let me know if you have any questions.

Respectfully,

Daniel T. Brier

DTB:cak

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THE HONORABLE THOMAS F. BURKE, JR. (Ret.)
910 Susquehanna Avenue
West Pittston, PA 18643
570-362-8765

May 15, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Judge Julia K. Munley
Judicial Nominee to the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham,

I am pleased to write this letter in support of Judge Julia K. Munley, who has been nominated to the United States District Court for the Middle District of Pennsylvania.

By way of my own background, after completion of my education and military service with the U.S. Army in the Republic of Vietnam, I was engaged in the private practice of law for 25 years and, thereafter, served as a Pennsylvania State Trial Judge in the 11th Judicial District of the Commonwealth of Pennsylvania (Luzerne County) for almost 24 years (including five years as president judge) until my retirement in December of 2021.

It was during the early years of my judicial tenure that I came to know Judge Munley, who appeared before me while representing clients in various civil litigation matters. I had a firsthand opportunity to observe her talents both inside and outside trial settings for the better part of 15 years. Without question, she was a skilled and staunch advocate for her clients. At the same time, Judge Munley always maintained the highest standards of civility in interacting with her adversaries as well as the utmost respect for the Court and the institution of the judiciary. Judge Munley's command of the law, coupled with her interpersonal skills, served her clients' interests very well in a number of cases before me. She showed herself to be a consummate professional who demonstrated superior legal acumen, both intellectually and practically.

I considered it as a natural progression of her legal career when Judge Munley ascended to the Lackawanna County Bench in 2016 by way of her interim appointment and resounding election, thereafter, to a full ten-year term. I always enjoyed my relationship with Judge Munley as a colleague (in a neighboring county), particularly the lengthy chats we would have at the semi-annual state trial judge conferences. It was clear to me that she had quickly adopted the mindset allowing her to switch gears from that of being an advocate to the impartial role of tribunal. Moreover, it was evident that, early on during her judicial tenure, she had worked hard to expand her legal horizons to cover the many diverse areas of law that come before the trial court. I was

duly impressed to see her as a co-presenter at one of the seminars offered at the state conference during her second year on the bench.

In addition to my own favorable impressions of Judge Munley as noted above, I have heard from numerous lawyers who have appeared before her of Judge Munley's competence, knowledge of the law, even-handed demeanor and commitment to the fair and impartial administration of justice. Moreover, it is a consensus view shared by lawyers and fellow jurists alike that Judge Munley's character and integrity are beyond reproach.

I very much appreciate this opportunity to share my thoughts regarding the nomination of Judge Munley for the federal bench and thank you for your consideration of this highly qualified candidate.

Respectfully,

Thomas F. Burke, Jr.

BRIAN J. CALI & ASSOCIATES
ATTORNEYS AT LAW
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Brian J. Cali
ATTORNEY & COUNSELOR AT LAW
FELLOW OF THE AMERICAN ACADEMY
OF MATRIMONIAL LAWYERS
Email: b.cali@brianjcali.com

Marianne M. Stivala, Esquire
Kurt T. Lynott, Esquire
Adrienne Pierangeli, Esquire

May 16, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: JUDGE JULIA K. MUNLEY

Dear Chairman Durbin and Ranking Member Graham:

I write this letter to offer my overwhelming support for the confirmation of Judge Julia Munley as Judge of the United States District Court for the Middle District of Pennsylvania. I applaud President Biden for nominating such an outstanding and competent legal scholar to this position.

I have been a practicing lawyer in Northeastern Pennsylvania for over forty (40) years. My practice is very active, and I appear before several Judges of the various Courts in Northeastern, PA on a regular basis. During my career, I was privileged to be appointed by the Justices of the Supreme Court of Pennsylvania to serve on the Pennsylvania Disciplinary Board for six (6) years and to serve as its chairman.

I first met Judge Munley soon after her graduation from Law School. She was introduced to me by her Father, the former Judge James Munley (Judge of Middle District of Pennsylvania and the Court of Common Pleas of Lackawanna County) who I knew, admired and had the deepest respect for.

In her early years of practice, I would see her on occasion and started recognizing her talent as a lawyer when she began working for a local firm in Scranton in 2001. Paths crossed in our community on Non-Profit Boards which provide for the less fortunate and homeless and in the Courtroom representing individual clients. I had

the privilege of watching her professional career blossom. She is passionate about everything she does.

She was a fierce advocate for her clients, always prepared, and a learned student of the Law. There was never a doubt of her intellect and her integrity.

In 2016 she was appointed to the Court of Common Pleas of Lackawanna County, assigned to the Civil side of the Court with an emphasis in the Family Court Division. This is a very busy Court with the Judges having extensive calendars every day. This is where I appeared before Judge Munley several times a week from the beginning of her tenure to today. I have litigated over a hundred cases in her Courtroom. She is always prepared and is recognized for her work ethic, which is second to none. From the first day she began her Judicial career she maintained command of the Courtroom.

Judge Munley treats all lawyers, parties and witnesses with the utmost respect. She provides the opportunity for pro-se litigants to be heard and guides them appropriately so that their concerns are addressed. Often in the Family Court, emotions run high and controlling the process so everyone is heard is very difficult. One of Judge Munley's outstanding attributes is patience and her willingness to listen. She spends the time necessary while making the ultimate decisions which, although difficult, must be made.

Judge Munley is above reproach. She is a person of the highest moral integrity. All decisions are based on the law and the appropriate relationship to the facts. Without question she is an intellectually independent thinker, always analyzing what is presented before making decisions.

I, along with many of the lawyers that appear before her, are regularly impressed at the practical wisdom she brings to very difficult cases. She thinks long and hard to frame a result which is thoughtful, correct, and serves the best interest of all involved.

She is an advocate for children who often are in the crossfire of the cases she presides over. She is their constant protector.

The opinion I express is not just my own. She is recognized by all who appear before her as fair, smart and thoughtful. Her reputation is that of an outstanding jurist who is always respectful and kind. However, while addressing difficult circumstances, she does so with sternness and consistency focusing on the result supported by the law and arriving at the appropriate result.

Judge Julia Munley will be an outstanding Judge of the Middle District of Pennsylvania. She will bring to the Court a commitment to Justice with humility and intellect. She is compassionate but stern and consistent in her decisions. Judge Munley is a student of law, always listening and continually willing to learn.

I proudly without hesitation support Judge Julia Munley as Judge of the Middle District of Pennsylvania. The only sadness I, like many other lawyers will have, is that the Lackawanna County Court will be losing a truly outstanding Jurist.

She will be missed.

Sincerely,

Brian J. Cali, Esquire

BJC/mp

VIA EMAIL ONLY

COMMONWEALTH OF PENNSYLVANIA
45TH JUDICIAL DISTRICT

TRISH CORBETT
PRESIDENT JUDGE

May 18, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: The Honorable Julia K. Munley
Judicial Nominee to the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham:

I write with the utmost regard and sincerity in support of the nomination of Julia K. Munley to the United States District Court for the Middle District of Pennsylvania. Judge Munley's legal knowledge and qualifications are exemplary. She is a motivated and accomplished member of the Lackawanna County Court of Common Pleas.

In 1997, I was the first woman elected to the Lackawanna County bench, and I served with Judge Munley's distinguished father, the late Honorable James M. Munley, until he was confirmed as Judge in the Middle District Court himself. During that year, he mentored me, and I was particularly grateful for the opportunity to mentor Judge Munley when the Pennsylvania Senate confirmed her nomination to the Lackawanna County bench, making her the third female jurist in our county in 2016.

As the Administrative Family Court Judge at the time, I worked closely with Judge Munley as she presided over a variety of custody, divorce, protection from abuse, dependency, and domestic relations matters. Though her background is primarily in civil litigation, I observed that Judge Munley immersed herself in family law, eagerly accepting all matters assigned to her. She fairly and competently worked with families in crisis, listening to the parties and exacting equity in every case before her.

TRISH CORBETT
JUDGE

JUDGES CHAMBERS
SCRANTON, PA 18503

Further, to address a recurring pattern of child support arrears, combat the opioid epidemic, and ensure a sustainable community, Judge Munley developed the Lackawanna County Support Diversion Program. She collaborates with domestic relations officers and intervention services, providing participants with immediate access to drug and alcohol treatment, mental health counseling, education resources, and employment opportunities. While maintaining a full docket, Judge Munley meets individually with participants on a weekly basis, encouraging accountability and genuinely assisting them in building a stronger future for them and their families. Graduates of Judge Munley's program avoid a six-month jail sentence, achieve sobriety, and exhibit financial stability. To that end, the program has significantly reduced arrears as well as successfully collected and distributed thousands of dollars in child support.

Impressed with Judge Munley's dedication to the judiciary, her calendar management, and cognizant of her wealth of knowledge and familiarity with civil litigation, one of my first acts as President Judge was to ask Judge Munley to assist with our civil docket in 2021. To say she flourishes here is an understatement. She presides over complex personal injury and medical malpractice cases, regularly conducting settlement and pretrial conferences, proficiently moving cases to completion.

Judge Munley is a profoundly competent and an impartial jurist. I am confident that Lackawanna County's loss will be the Middle District's gain. I believe Judge Munley embodies a balance of compassion, integrity, intelligence, and fidelity that will positively impact the Middle District. For all these reasons, I proudly support the nomination of my esteemed colleague, Judge Julia K. Munley as a United States District Court Judge for the Middle District of Pennsylvania.

Thank you for taking the time to consider this resounding endorsement for this highly qualified candidate.

Respectfully,

Trish Corbett
President Judge

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Durbin and Senator Graham,

I am pleased to recommend Judge Julia Kathleen Munley for for the position of United States District Judge for the Middle District of Pennsylvania. After many years as a successful practicing attorney, Judge Munley has served with distinction as a member of the Court of Common Pleas Pleas in Lackawanna County, Pennsylvania.

I have had the pleasure and privilege of knowing Judge Munley for more than twenty-five years, both in a personal and professional capacity.

Julia Munley is a highly respected community leader with an extraordinarily outgoing, vivacious personality, who has a kind word and a smile for everyone she encounters, regardless of their station in life. As a member of the Board of Directors and Past President of St. Francis of Assisi Kitchen in Scranton, she goes beyond the administrative and policy making functions of a board member, taking a direct and hands-on approach by regularly participating in serving hot meals to the less fortunate members of our community, who rely on the Kitchen for their only nutritious meal of the day.

She is a sincere, engaging and dynamic woman who is generous in her support of a myriad of charitable, cultural and educational entities in Northeastern Pennsylvania, as well as state and national organizations. She devotes time and energy, working hard for the success of every endeavor she undertakes

Judge Munley served several terms as a member of the Board of Directors of the Lackawanna Heritage Valley State and National Heritage Area (LHVA). LHVA is based in Scranton, and it encompasses the watershed of the Lackawanna River in Lackawanna, Susquehanna, Wayne and Luzerne counties. It supports and coordinates a diverse array of projects that preserve, promote, interpret and enhance the historic, cultural and natural resources of Northeastern Pennsylvania. I served as Executive Director of LHVA from 2004 until my retirement in 2017, during which time Julia served as Chair of the Board for several years.

Judge Munley oversaw a host of projects during her tenure as Board Chair. Notable among them was the planning and development of the Lackawanna River Heritage Trail system along forty miles of the Lackawanna River. In order to acquire funding and to facilitate construction of the trail, it was necessary to acquire property rights to the proposed footprint along the river. Much of the designated footprint was on abandoned rail property, thus requiring complicated title searches among multiple parties.

Judge Munley's legal knowledge and expertise were critical to the process of acquiring rights of way in order to build the trail. She was able to understand, articulate, and elucidate viewpoints during discussions and negotiations with stakeholders, always exhibiting respect and empathy for competing interests. She was adept at resolving differences, proposing mutually beneficial compromises and solutions to accomplish the desired results for all parties

I am pleased to report that today, several years later, most of the Lackawanna River Heritage Trail has been completed, and it is a major health, wellness and recreational asset, generating millions of dollars to the local economy annually.

For the past several decades, Judge Munley has been a mentor to scores of young people, offering professional support, and employment assistance, not only to aspiring lawyers, but also for others in need of guidance and encouragement to attain their personal goals. She is a role model for her colleagues to do the same, advocating on the topic to women's groups and other organizations.

Judge Munley comes naturally to the role of mentorship, having been mentored herself by her accomplished and loving parents. Her late father, Judge James M. Munley, was a distinguished and widely respected jurist for the Middle District of Pennsylvania. Her mother, Kathleen P Munley, Ph.D., is a brilliant historian and a college professor. Judge Julia Munley was nurtured to help others, as well as to pursue excellence and lifelong learning.

Judge Julia Kathleen Munley is open minded, courteous, compassionate, perceptive, and intellectually curious, with unquestioned integrity and high ethical standards. As a Judge, she is noted for fairness, firmness and impartiality, always ruling with strict adherence to the law. She will make an excellent Judge for the Middle District of Pennsylvania.

Thank you for your kind consideration.

Very truly yours,

Natalie Gelb

May 11, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

We strongly support the nomination of Julia Kathleen Munley as a United States District Judge for the Middle District of Pennsylvania. We are members of the community development network organizations that provide programs and investments to promote the economic health of our region and our populace.

Our partners and programs span the entire community, including the many elements of business, government, and education – to provide the resources that enable opportunities for our residents to achieve the dignity of family-sustaining career paths.

Through a range of community-based interactions Judge Munley has demonstrated that she has the skills and character to serve our nation well as a United States District Judge for the Middle District of Pennsylvania. We believe Judge Munley will serve the Middle District with the same balanced temperament, intellect, wisdom, and empathy that has characterized her service as our Lackawanna County Court judge.

Judge Munley has a wonderful personality. She consistently impresses those who come before the court with her even temperament. The respect she shows for all is invaluable in fairly resolving difficult problems among litigants.

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Known for a tremendous work ethic, she uses her considerable knowledge and superb education to address all of the issues that come before her bench.

We have had the great pleasure of knowing Judge Munley as the Burke family babysitter. We have watched her grow up. We know her family and we know the ethics and morals she was raised with. She has maintained those important values as a judge.

We know Judge Munley and her lifetime of responsible care for family, friends, and community. Judge Munley has served in leadership positions at Saint Francis of Assisi Kitchen, the Lackawanna Valley Heritage Valley Authority, Lackawanna College and Goodwill Industries. She is past president of the Association of Women Lawyers and has long served as a volunteer lawyer for the Hope Clinic in Luzerne County.

The nomination of Julia K. Munley to serve as a United States District Judge in the Middle District of Pennsylvania is a fitting recognition of her outstanding service in our Lackawanna County Court. It also recognizes her lifetime of service to our community. We feel the Middle District of Pennsylvania would be enriched and greatly served by the elevation of Judge Munley to the federal bench.

Sincerely,

Austin J. Burke
Former Secretary
PA Department of Economic
and Community Development

Robert F. Durkin
President
Greater Scranton
Chamber of Commerce

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

May 25th, 2023

Dear Honorable Richard Durbin,

It is a pleasure and privilege to write this letter of support for Judge Julia Munley. I have known Judge Julia both personally and professionally for nearly three decades. I have witnessed our Northeastern Pennsylvania (NEPA) community become inspired, energized and elevated by Julia's servant leadership and example.

Julia was born into a strong faith and family-filled home. Her values are deep-rooted and time-tested: integrity, humility, honesty, courage! On a personal level, I have witnessed these attributes come alive in leadership roles in community organizations, in education and in personal interactions. Julia is gentle but firm, collaborative but not controlling. *I personally believe Julia was born for this purpose…to be Judge Julia Munley, U.S. District Judge for the Middle District of Pennsylvania.*

Professionally, as the Executive Director for 20+ years of the Children's Advocacy Center of NEPA, A Child Abuse Center serving seven counties, I interfaced with Judge Julia on many levels…the challenge of growing a child abuse intervention center, the obstacles to overcome in convening a multidisciplinary team of the DA's Offices, Law Enforcement, Children and Youth, a Medical Team, a Forensic Interview Team, Trauma Counselors… we could not have done it without the advice, unwavering support and networking of Julia Munley and … in the most delightful example of participation, Julia ran in the 5K/10K Moonlight Run annual fundraisers for many years! Judge Julia is passionate about improving the lives of men, women and children in the world around us; couple that passion with prudence, love of the law and wisdom - *the prophetic outcome should be that Judge Julia Munley should serve as a U.S. District Judge for the Middle District of Pennsylvania.*

Respectfully Yours,

Mary Ann LaPorta

Former Executive Director of Children's Advocacy Center of Northeastern Pennsylvania

A Child Abuse Intervention Center

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LACKAWANNA BAR ASSOCIATION

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J. TIMOTHY HINTON, JR, ESQ., *PRESIDENT ELECT*
LORI A. BARRETT, ESQ., *VICE PRESIDENT*
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LAWRENCE A. DURKIN, ESQ., *TREASURER*
MICHAEL F. COSGROVE, ESQ., *EX-OFFICIO*
LEE ANN MUNLEY, *EXECUTIVE DIRECTOR*

May 17, 2023

Via Email

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Endorsement of the Honorable Judge Julia Munley, Nominee for District Judge on the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham:

It is a distinct honor and privilege as President of the Lackawanna Bar Association to submit this letter in strong and enthusiastic support of Judge Julia Munley's nomination and confirmation for the U.S. District Court for the Middle District of Pennsylvania.

Judge Munley served as a law clerk to the Honorable Stephen McEwen, Jr. of the Pennsylvania Superior Court. In private practice as a trial attorney she was certified in civil trial and pre-trial advocacy by the National Board of Trial Advocacy, and had the highest, preeminent peer-review rating with Martindale-Hubbell – an AV Rated Attorney.

Judge Munley was a Fellow with the trial lawyer honorary society of the Litigation Counsel of America, an invitation-only society representing less than one-half of one percent of American lawyers selected after evaluation for effectiveness and accomplishment in litigation, along with ethical reputation.

Judge Munley has been recognized by Trial Lawyers Care and the Association of Trial Lawyers of America, Boston, Massachusetts, for her commitment in successfully representing, *pro bono*, a victim of the World Trade Center disaster before the September 11th Compensation Fund.

In the community, Judge Munley served as president and currently is a member of the Board of Directors of St. Francis of Assisi Kitchen, and served as chair and was a member of the Board of Directors of Lackawanna Heritage Valley Authority. Judge Munley also served as a member of the Board of Trustees of Lackawanna College and of the Board of Directors of Goodwill Industries. She is past president of The Association of Women Lawyers of Lackawanna County.

Thus, Judge Munley is the perfect nominee. A person of high moral character, she has a reputation in the legal community, forged from years of practice as a private attorney, and in sitting as a Judge for the Lackawanna County Court of Common Pleas, for being honest, intelligent, legally astute and hardworking all the while being down to earth and approachable.

Her skill sets include a professional demeanor balanced with a temperament of treating all parties who appear in her courtroom, non-lawyers and lawyers alike, with respect. Judge Munley creates a level playing field by consistently demonstrating a willingness to listen and weigh both sides of an argument before objectively applying the law. Plus, these exemplary qualifications are further enhanced by her unwavering commitment to fairness, impartiality, and equal justice for all.

To summarize, Judge Munley has earned the highest grades possible for professionalism, legal acumen and ethical standards. I know she has all the qualities to make for an excellent federal judge, she will be an outstanding addition to the federal bench.

Thus, I am proud as the President of the Lackawanna Bar Association to support her nomination and urge a swift confirmation.

Very truly yours,

John C. Mascelli

John C. Mascelli, Esquire
President, Lackawanna Bar Association

County of Lackawanna, Pennsylvania
Public Defender of Lackawanna County

Lawrence J. Moran, Esq., Chief Public Defender
Joseph P. Kalinowski, Esq., First Assistant Public Defender
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Daniel B. Lipson, Esq.
Curt M. Parkins, Esq.
Jeffrey J. Poplawsky, Esq.
C.J. Rotteveel, Esq.
Sandra M. Stepkovitch, Esq.
William D. Thompson, Esq.
Robert C. Trichilo, Esq.
Douglas J. Vanston, Esq.

May 23, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: ***The Hon. Julia Kathleen Munley,***
Judicial Nominee to the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham:

I write in strong and enthusiastic support of Judge Julia Kathleen Munley's nomination to the United States District Court for the Middle District of Pennsylvania.

I have known Judge Munley all of her life. We share the same, small hometown of Archbald, Pa. Her family and mine were neighbors for decades. She developed a distinguished academic record in college and law school. Prior to ascending the state court bench, she was a highly accomplished and skilled civil litigator in the state and federal courts of Northeastern Pennsylvania. Representing countless grievously injured and innocent victims of wrongdoing, her recovery of substantial economic justice for her clients is well documented.

However, it has been in my capacity as the Chief Public Defender for Lackawanna County, based in Scranton, Pa, from which I have had the opportunity to witness, firsthand, Judge Munley's exemplary professional competence, integrity, and judicial temperament. Her reputation for fairness, balance and equity is beyond reproach. As public defenders we represent our most vulnerable population— poor people accused of crimes and facing loss of liberty.

The primary but limited exposure the public defenders have to Judge Munley is in criminal contempt of court proceedings. Typically, these arise from situations in which child custody determinations must be made. Often, they also involve matters in which folks have sought the court's protection from a severely abusive or dangerous environment enveloping a

family. Tensions are high among the parties. Circumstances are fraught emotionally. People trapped in such conflicts face a judicial fiat which implicates the loss of a child, loss of a safe home, or loss of liberty itself for the litigant. Such participants are often poor, vulnerable, marginalized, frustrated, and confused. Unfortunately, a party, on rare occasions, can overreact with anger and defiance when receiving an adverse ruling from the court. Such behavior sparks a finding of criminal contempt forcing the court to consider a period of incarceration or hefty fines for the outburst.

However, it is in the midst of such isolated but perilous circumstances, even after Judge Munley perhaps endured the hurling of disrespectful words and gestures, that the brilliance of Judge Munley's mind and temperament pierces the darkness. Here the judge employs equanimity to dispel the bedlam. Scrupulous in her conviction that the rule of law is preserved and respected, she responds not out of retribution but, rather, often in displays of compassion and humanity. First, she ensures the boisterous individual has legal counsel for the contempt hearing to safeguard one's constitutional rights of due process. She calls me and I dispatch an assistant public defender to counsel the defendant in lock up awaiting a prompt hearing on the contempt charge.
At this point, as the judge would insist, the individual is counseled to reflect on their aberrational conduct and to demonstrate remorse for it and genuine respect for the law, at that moment personified by the judge. Assuming a proper display is made the person finds reciprocity in a calm, logical and compassionate judicial demeanor, and the contempt sanction is invariably lifted. Lesson learned. The sanctity of the law and the person's liberty rights are guaranteed.

Judge Munley presides thoughtfully, respectfully, and with utmost care over matters which impact people's lives. Our cases are about real people. Judge Munley brings sensitivity and grace to her courtroom. She treats everyone with civility and decorum— lawyers, victims, defendants, law enforcement officers, and witnesses alike. Judge Munley understands that each human being has intrinsic value and deserves respect.

What makes Judge Julia Munley extraordinary is this. In the exercise of the awesome power of her judicial duties she brings a humanity and humility which personifies fairness and decency. These qualities would make Judge Munley an excellent United States District Court Judge for the Middle District of Pennsylvania.

I am confident Judge Munley will approach each case which comes before her fairly, without bias, and with deepest respect for the rule of law. Judge Munley's patience, compassion, integrity, and dedication to fairness indisputably demonstrates she possesses the requisite judicial temperament. She will be an outstanding addition to the United States District Court for the Middle District of Pennsylvania. I wholeheartedly and without reservation endorse her nomination and confirmation.

Respectfully submitted,

Lawrence J. Moran, Esquire

OLIVER PRICE & RHODES
Attorneys at Law

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Travis M. Eckersley
John M. Price
Katherine M. Kennedy
Of Counsel
Paul D. Horger

May 25, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Sent via email to:
Chestnut, Brendan (Judiciary-Republican) (Brendan_Chestnut@judiciary-rep.senate.gov);
Sarah Bauer (Judiciary-Democrat) (Sarah_Bauer@judiciary-dem.senate.gov)

RE: Julia Munley for Judge

Dear Senators:

The purpose of this letter is to offer my comments relative to the appointment of Honorable Julia Munley of the Lackawanna County Court of Common Pleas to the United States District Court for the Middle District of Pennsylvania.

I have been a member of the Bar in Lackawanna County, Pennsylvania for almost 50 years and have worked with Judge Munley in various capacities for almost 30 years. One case, which occurred when Judge Munley was a young lawyer, involved a very complex arbitration arising out of a school construction project. I served as the arbitrator, and Judge Munley represented one of the parties. She was very well prepared on both the facts and law of the case and was an excellent advocate for her client's position. I knew right then that she would have a great career in the legal profession.

On a number of occasions, I was engaged with Judge Munley when she was practicing law. Again, I always found her to be well prepared and knowledgeable and a very worthy adversary. She always conducted herself to a very high level of professionalism.

In recent years, I've had a number of occasions to appear before Judge Munley in the Court of Common Pleas. She was always well prepared for the proceedings, conducted herself with great decorum and treated witnesses and litigants before her with great respect. Judge Munley has an outstanding judicial temperament. She is fair, impartial and committed to equal justice for all. Judge Munley has demonstrated both the legal and administrative ability that's required of a United States District Judge.

I have known Judge Munley's family for well over half a century. In fact, I had lunch with her father and uncle, both military veterans, the day before I entered the United States Air Force in March of 1968. The Munleys have always been a family of the highest quality and integrity and Judge Munley is no exception to this rule. She clearly has the outstanding character required of a judge in these difficult times.

Based on my extensive experience with Judge Munley as set forth above, I am happy to wholeheartedly endorse her for a position on the United States District Court for the Middle District of Pennsylvania.

Very truly yours,

OLIVER, PRICE & RHODES

Joseph A. O'Brien, Esq.

CC: Adam Fountaine (Casey) (Adam_Fountaine@casey.senate.gov)
Regina Brennan (Casey) (Regina_Brennan@casey.senate.gov)
Jason Smith (Fetterman) (Jason_Smith@fetterman.senate.gov)

May 10, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham,

I write to express support for the confirmation of Lackawanna County Common Pleas Court Judge Julia K. Munley as a judge on the United States District Court for the Middle District of Pennsylvania. She is a respected member of the legal community and is an inspired choice for the court.

As a 34-year employee with the U.S. Marshals Service and one who held every field rank within the Agency, I have served, protected, and worked with many Judges from the District, Circuit and Supreme Court. The Federal Courts is the last stop for most citizens, and it is important that they have a fair and impartial opportunity to have their cases addressed. I have protected many prosecutions to include, USA v Timothy McVeigh, USA v General Noriega, and USA v Ramzi Yousef to name a few, and in executing those duties I have witnessed the knowledge, communication skills, directness, and yes compassion necessary for the judiciary to have the respect of all parties. Judge Munley has all those attributes and more.

She has the respect of her peers, the law enforcement profession, and the community in which she serves. Judge Munley is a brilliant, careful, and talented jurist with impressive professional credentials and a strong commitment to fairness, equal justice, and the rule of law. I had the honor of working with her father, former United States District Court Judge for the Middle District of Pennsylvania, James M. Munley. He was a brilliant Judge with the wit and sense of humor necessary at times to deescalate tense moments within Court proceedings. Julia also possesses that unique skill so rarely seen.

Judge Munley's confirmation will add a perspective to help address the pressing need for a greater range of professional and personal experiences on the federal bench in general. And that perspective will also benefit the Middle District of Pennsylvania.

She will be an outstanding member of the federal bench and I offer my full, complete, and highest recommendation.

Should you have any questions or wish to talk, I can be reached at 570-840-1889.

Sincerely,

Martin J. Pane
United States Marshal, Middle District of Pennsylvania, (2011- 2022)

May 10, 2023

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: The Honorable Julia K. Munley Judicial Nominee to the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham,

We are representatives of Labor Unions who write to you with enthusiastic support for the confirmation of Julia K. Munley as a judge on the United States District Court for the Middle District of Pennsylvania. As an esteemed Common Pleas Court Judge and a valued member of the legal community, Judge Munley would be an asset to the court.

Judge Munley's background, experience, and qualifications speak for themselves. Starting in 1987 with her Bachelor of Arts Degree from Marywood University to her completion of her Juris Doctorate from Dickinson School of Law. Judge Munley started her career as a law clerk to Judge McEwen of the Pennsylvania Supreme Court, then moving on as an associate with Masterson, Braunfeld, Maguire & Brown before moving onto an associate position at Mazzoni & Karam Law. Judge Munley then moved onto Munley Law, becoming a board-certified trial lawyer and partner before being appointed by Pennsylvania Governor Tom Wolf as Judge, of the Court of Common Pleas in 2016, where she was subsequently elected to a full 10-year term in 2017.

Judge Munley upholds the law and hands out justice equally and has always conducted herself with the upmost professionalism and with a deep-rooted commitment to justice, fairness, and order. Judge Munley has always been fair and impartial and ensures that victims and the less fortunate have a full and fair opportunity to be heard when they come before her just as she does with every party. She has spent her entire career representing the working people from the region including organized labor. All these qualities make her an exceptional Judge.

Thank you for taking the time to consider our reasons for enthusiastically supporting Julia Munley's confirmation to the Federal bench and it is a privilege for us to place our names on this letter. We appreciate your hard work and leadership in the vital Senate process.

Sincerely,

Drew Simpson
Regional Manager
Eastern Atlantic States Regional Council of Carpenters

Pat Dolan
President of the Scranton Building & Construction Trades

Warren Faust
President of the Northeast Building & Construction Trades

William Cockerill
Treasurer Greater Scranton Labor Council

Chris Murphy
President AFSCME Local 2327

Rick Schraeder
Business Manager IBEW Local 81 (retired)

Jack McNulty
Business Manager IBEW Local 81 (retired)

State of Connecticut

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JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
PUBLIC HEALTH COMMITTEE

June 5, 2023

Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Vernon Oliver
Letter of Support for the application for a seat on the Federal District Court

Dear Chairman Durbin and Ranking Member Graham,

It is my privilege to write in strong support of Judge Vernon Oliver's appointment as a United States District Court Judge for the District of Connecticut. It is without hesitation that I encourage you to confirm his nomination.

Judge Oliver has an extensive background that makes him uniquely qualified for this appointment. A product of Connecticut public schools, he went on to receive both his undergraduate and law degree from the University of Connecticut. His legal career was grounded in public service even before he took the bench in the Connecticut Superior Court, first as an Assistant State's Attorney and later as an Assistant Attorney General. While at the Connecticut Attorney General's office, he successfully handled both complex and emotional matters in the Child Protection Bureau.

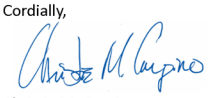
I met Judge Oliver during my tenure on the Judiciary Committee here in Hartford. As a practicing attorney, I was impressed by the way he handled himself before the committee. His breadth of knowledge in both criminal and civil law, as well as the diversity of his judicial assignments, makes him uniquely qualified to be appointed to the federal bench.

Judge Oliver is respected as a smart, detail oriented, and fair jurist among my fellow members of the bar. He has a reputation for bringing a deep understanding of the law to the matters before him, for listening in earnest to the arguments presented, and for offering well-reasoned decisions. He treats everyone with courtesy.

It is without hesitation that I recommend Judge Oliver for one final reason. It is his temperament. While it is important to know the law, it is critical to administer justice in a fair and equitable manner. As a constituent I've had the opportunity to engage with Judge Oliver outside of the courtroom and witnessed how he treats others firsthand. Whether it be a community clean up on a Saturday morning, or providing guidance to a legal colleague over coffee, Vernon Oliver has the demeanor one could only hope all jurists possess. He is smart, deliberate, and fair. All qualities a judge should exemplify.

I urge you to confirm Judge Oliver's nomination to the bench in the United States District Court for the District of Connecticut.

Cordially,



Christie M. Carpino
Connecticut State Representative

cc: Senator Richard Blumenthal
Senator Chris Murphy
Congressman John Larson
Governor Ned Lamont
Majority Leader Matthew Ritter
Minority Leader Vincent Candelora

2023-2024
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CRAWFORD
George W. Crawford Black Bar Association

June 5, 2023

The Honorable Richard J. Durbin Chairman,
Committee on the Judiciary United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham Ranking Member,
Committee on the Judiciary United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: *Letter of Support for the Nomination of Hon. Judge Vernon D. Oliver to be United States District Judge of the District of Connecticut*

Dear Chairman Durbin and Ranking Member Graham:

The George W. Crawford Black Bar Association ("Crawford") submits this letter in support of The Honorable Vernon D. Oliver's judicial nomination to be United States District Judge of the District of Connecticut. As set forth more fully below, Crawford submits that Judge Oliver has excelled as a Superior Court Judge and would serve with distinction as a Judge of the District Court.

Judge Oliver has served as a Superior Court Judge for approximately fourteen years, presiding over both civil and criminal matters. His experience as a trial judge, administrative judge, and a presiding judge make him the best choice for the District Court. His work throughout various locations in Connecticut has given him experience with the many diverse populations in this state.

He also continues to serve the legal community with activities outside the courtroom. He is the Chair of the Wiretap Panel, serves on the Connecticut Sentencing Commission, and the Committee on Judicial Ethics. Judge Oliver also presents on Juvenile and Criminal Law to colleagues at the Connecticut Judges' Institute and has testified on Habeas Corpus reform.

Prior to his appointment to the bench, he worked as an Assistant Attorney General with the Connecticut Office of the Attorney General. He worked as a Connecticut state prosecutor with the State of Connecticut Division of Criminal Justice at the Office of the Chief State's Attorney. Judge Oliver also practiced with Monstream & May LLP.

He is well regarded in the legal community as a wonderful person and a fair judge. For all attorneys, Judge Oliver is the mentor and advisor to know. He is inquisitive, the steady calm, and is the quintessential of judicial temperament. Within judicial proceeding, Judge Oliver is well known for listening to parties, not being quick to judge, and being compassionate. He is the Jurist people in proceedings want on their case. He commands the respect of the courtroom and knows how to move cases. His rulings are clear and fair. Those who appear before him come out knowing they have been heard. His decisions are well reasoned and thoughtful. Put simply, he is a phenomenal judge.

Crawford believes that Judge Oliver's experience and wisdom will make him an asset to the U.S. District Court. He is held in the highest regards. I thank you for your consideration of Judge Vernon D. Oliver and your service on the committee.

Sincerely,

/s/ Aza G. Mosley

Aza G. Mosley, Esq.
President, George W. Crawford
Black Bar Association

Dear Chairman Durbin and Ranking Member Grassley:

We write to endorse the nomination of Superior Court Judge Vernon Oliver of the State of Connecticut to be a United States District Judge for the District of Connecticut.

Many of us have appeared before Judge Oliver on countless occasions. We have litigated trials, motions and/or civil post-conviction cases before Judge Oliver. We are a healthy mixture of Republicans, Democrats, Independents, prosecutors, and criminal defense lawyers. Many of us have also been present in Court awaiting our cases to be called while Judge Oliver is presiding and have observed firsthand his demeanor, rulings and careful thought process. Judge Oliver exhibits an exceptionally keen legal mind that distinguishes him from other good Judges. He does not make decisions without having detailed knowledge of both side's arguments, and exercises all of the factors we expect a neutral magistrate to employ. His rulings, both oral and written, are always logical and well-reasoned even when we disagree with his ultimate conclusions. No one has ever questioned his ethics, professionalism, or demeanor. He treats all counsel, parties and witnesses with the utmost respect and the patience of Job. He is committed to the fair and impartial administration of justice.

With his decades of trial experience including as an associate in a private firm, an Assistant State's Attorney, an Assistant Attorney General, and, since 2009, a Superior Court Judge, Judge Oliver is extremely qualified for the position of United States District Judge. He is currently the Administrative Judge for the Middlesex Judicial District and co-chair of the Connecticut Sentencing Commission. Judge Oliver has also chaired the Committee on Judicial Ethics and has served on the State Wiretap Panel. He held a leadership role in Connecticut's Office of the Attorney General Child Protection unit from 2004 to 2009. Prior to joining the Office of the Attorney General, Judge Oliver was an assistant state's attorney in the Connecticut Division of Criminal Justice. Before turning his career to public service, he was an associate at the Glastonbury, CT law firm Montstream & May LLP. We note that this rich breadth of experience means that he has handled civil cases as an attorney, not just as a Judge.

Judge Oliver was raised in Bridgeport, Connecticut by his parents and enjoyed the love and support of twelve other siblings. He did well in school and attended the University of Connecticut where he majored in political science. Judge Oliver then enrolled in the University of Connecticut School Of Law, where he was a semi-finalist in the in the 1995 Alva P. Loiselle Moot Court Competition and participated in the 1997 Nova Southeastern National Moot Court Competition.. Judge Oliver was also a member of the Moot Court Board and the Black Law Students Association.

While Judge Oliver's resume is impressive, his character is equally impressive. The judicial temperament and intellect that Judge Oliver displays on the bench carries over to his private life. He is a devoted family man to his wife and two children. Those fortunate to call him a friend know that he can always be counted upon for understanding and support.

The signatories below sincerely hope that Chairman Durbin, Ranking Member Grassley, and the entirety of the Judicial Selection Committee agree with our assessment and support of

Judge Vernon D. Oliver and appoint him to the position of United States Federal Judge for the District of Connecticut.

Sincerely,

John L. DeMattia
J. Patten Brown III
Dennis P. McMahon
William J. Watson Seth
R. Garbarsky Brett. J.
Salafia
Mary Eschuk
Melissa L. Streeto
Maureen Platt
Anne F. Mahoney Craig
Nowak
David Clifton
Susan M. Campbell
Angela R. Macchiarulo
Erin Stack
Lou Luba
Jacqueline M. Fitzgerald
Michael Proto Matthew
C. Gedansky Charles
Johnson Michael W.
Riley Jennifer W.
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Kutzner Elizabeth
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Bonnie Bentley Jonathan
Knight Joseph S.
Danielowski Terence D.
Mariani Jr. Michael
Riley
Frank J. Riccio III Prof.
Timothy Everett Laura
Hawk-Allen Kelly
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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Jones Day
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Chicago, Illinois 60606
acwilliams@jonesday.com

June 6, 2023

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Loren L. AliKhan to the United States District Court for the District of Columbia

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Loren L. AliKhan, who has been nominated by the President to the United States District Court for the District of Columbia. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A substantial majority of the Standing Committee determined that Judge AliKhan is **"Well Qualified,"** and a minority is of the opinion that she is **"Qualified"** to serve on the United States District Court for the District of Columbia. One member of the Standing Committee has recused themself from voting. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge Loren L. AliKhan (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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Vincent Chang
vchang@wmd-law.com
(212) 382-3300

STAFF COUNSEL
Denise A. Cardman
Denise.Cardman@Americanbar.org

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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Jones Day
110 North Wacker Drive, Suite 4800
Chicago, Illinois 60606
acwilliams@jonesday.com

June 6, 2023

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Susan K. DeClercq to the United States District Court for the Eastern District of Michigan

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Susan K. DeClercq, who has been nominated by the President to the United States District Court for the Eastern District of Michigan. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Ms. DeClercq is **"Qualified"** to serve on the United States District Court for the Eastern District of Michigan. The Standing Committee's rating means that, under our guidelines, Ms. DeClercq satisfies the Standing Committee's very high standards with respect to integrity, professional competence, and judicial temperament and is qualified to perform all the duties and responsibilities required of a federal judge.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Susan K. DeClercq (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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FIFTH CIRCUIT
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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June 6, 2023

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Julie Kathleen Munley to the United States District Court for the Middle District of Pennsylvania

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Julie Kathleen Munley, who has been nominated by the President to the United States District Court for the Middle District of Pennsylvania. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Munley is **"Well Qualified"** to serve on the United States District Court for the Middle District of Pennsylvania.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee
on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge Julie Kathleen Munley (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

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Standing Committee on the Federal Judiciary

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June 6, 2023

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Email
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Judge Vernon D. Oliver to the United States District Court for the District of Connecticut

Dear Chairman Durbin and Ranking Member Graham:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Vernon D. Oliver, who has been nominated by the President to the United States District Court for the District of Connecticut. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Oliver is **"Well Qualified"** to serve on the United States District Court for the District of Connecticut.

Very truly yours,

Hon. Ann Claire Williams (Ret.)
Chair, Standing Committee on the Federal Judiciary

cc: Stuart F. Delery, Assistant to the President and Counsel to the President (via email)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Judge Vernon D. Oliver (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
CHAIR, HIGHWAYS AND TRANSIT
AVIATION
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
WATER RESOURCES AND THE ENVIRONMENT

COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEES
CIVIL RIGHTS AND CIVIL LIBERTIES
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton
Senate Committee on the Judiciary
Hearing on Judge Loren AliKhan

June 7, 2023

Chairman Durbin and Ranking Member Graham, I appreciate the opportunity to submit this statement in strong support of the nomination of Judge Loren AliKhan for the United States District Court for the District of Columbia. I am especially pleased that President Biden has given me senatorial courtesy for judges on the U.S. District Court for D.C., among other federal positions in D.C. I recommended Judge AliKhan to the president for this vacancy.

Judge AliKhan is a *summa cum laude* graduate of Bard College at Simon's Rock and a *magna cum laude* graduate of the Georgetown University Law School, where she was Executive Editor of *The Georgetown Law Journal* and a member of the Order of the Coif. She clerked for Judge Louis Pollak of the U.S. District Court for the Eastern District of Pennsylvania and Judge Thomas Ambro of the U.S. Court of Appeals for the Third Circuit.

Following her clerkships, Judge AliKhan served as a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice. She next served as an Associate and Counsel at O'Melveney & Meyers, where, among other duties, she wrote briefs in complex cases before the U.S. Supreme Court and other courts.

Judge AliKhan next served as Deputy Solicitor General and then Solicitor General in the Office of the Attorney General for D.C., overseeing D.C.'s appellate litigation. Last year, Judge AliKhan was confirmed by the Senate to be an Associate Judge on the D.C. Court of Appeals.

Judge AliKhan has clearly demonstrated that she possesses all the necessary qualities to be a federal district court judge, including intelligence, temperament and integrity. Judge AliKhan would be the first South Asian woman on this court and the only active Asian American and Pacific Islander on this court.

Again, thank you for allowing me to submit this statement in support of Judge AliKhan.

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