

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Daniel Joe Powell Calabretta (2014 – present)
Daniel Joe Powell

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

United States District Judge for the Eastern District of California

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 of California
County of Sacramento
Juvenile Courthouse
9605 Kiefer Boulevard
Department 90
Sacramento, California 95827

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

1978; Union City, Tennessee

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.

2000 – 2003, The University of Chicago Law School; J.D. (*magna cum laude*), 2003

1996 – 2000, Princeton University; A.B. (*summa cum laude*), 2000

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.

2019 – present

Superior Court of California, County of Sacramento
9605 Kiefer Boulevard
Department 90
Sacramento, California 95827
Presiding Judge of the Juvenile Court (2022 – present)
Superior Court Judge (2019 – 2022)

2013 – 2019
Office of the Governor
1201 O Street
Sacramento, California 95814
Deputy Legal Affairs Secretary

2008 – 2013
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
Deputy Attorney General

2005 – 2008
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Associate

2004 – 2005
United States Supreme Court
1 First Street, Northeast
Washington, DC 20543
Law Clerk to Justice John Paul Stevens

2003 – 2004
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103
Law Clerk to Judge William A. Fletcher

Summer 2002
Hogan and Hartson (now Hogan Lovells)
555 Thirteenth Street, Northwest
Washington, DC 20004
Summer Associate

Summer 2001
Proskauer Rose LLP

11 Times Square
New York, New York 10036
Summer Associate

In the summer of 2000, I briefly worked at a temp agency based in Chicago, Illinois as a paralegal. I do not remember the name of the temp agency despite my best efforts to investigate the agency it might have been.

Other Affiliations (Uncompensated):

2019
Parkside Community Church
5700 South Land Park Avenue
Sacramento, California 95822
Secretary, Church Council

2012 – 2013
Golden Gate Performing Arts, Inc. d/b/a San Francisco Gay Men's Chorus
170 Valencia Street
San Francisco, California 94103
Board member (2012)
Secretary of the Board (2013)

2009 – 2010
Bay Area Lawyers for Individual Freedom
P.O. Box 193383
San Francisco, California 94119
Board Member

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.

University of Chicago Law School
Magna cum laude (2003)
Order of the Coif (2003)
Ann Watson Barber Outstanding Service Award (2003)
University of Chicago Law Review, Topics and Comments Editor (2002 – 2003)
Merck-Microsoft-Pfizer Student Fellowship (2002)

Bell, Boyd, & Lloyd Award for Excellence in First Year Appellate Brief Writing (2001)

Princeton University

Summa cum laude (2000)

Phi Beta Kappa (2000)

University Center for Human Values Senior Thesis Prize (2000)

Spirit of Princeton Award (2000)

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.

Child Welfare Council, Member (2022 – present)

Mental Health Services Act Steering Committee, ex officio member (2022 – present)

Juvenile Justice Coordinating Council Subcommittee, ex officio member (2022 – present)

Sacramento County Bar Association (2019 – present)

Anthony M. Kennedy American Inns of Court, Member (2015 – present)

SacLegal, Member (2013 – present)

Bay Area Lawyers for Individual Freedom (2006 – 2013)

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.

California, 2004

I was automatically placed on inactive (judge) status when I took my judicial oath in 2019. Otherwise, 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.

United States Supreme Court, 2009

United States Court of Appeals for the Fourth Circuit, 2011

United States Court of Appeals for the Ninth Circuit, 2004

United States District Court for the Central District of California, 2005

United States District Court for the Eastern District of California, 2006
United States District Court for the Northern District of California, 2005
United States District Court for the Southern District of California, 2005

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.

Golden Gate Performing Arts, Inc., d/b/a San Francisco Gay Men's Chorus
Singing Member (2007 – 2013)
Board of Directors (2011 – 2013)

- 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.

Like many choruses, including those in the LGBT choral movement, the San Francisco Gay Men's Chorus (SFGMC) was limited to one gender, although it has recently changed its membership to allow anyone to join who can sing a tenor or bass part. SFGMC has always been an equal opportunity employer, however, and has employed women at all levels of the organization, including the Conductor and Artistic Director. SFGMC recruits and encourages women to join the Board of Directors and to serve in leadership positions on the Board of Directors.

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.

Reflections on the Life and Career of Justice John Paul Stevens, Sacramento Lawyer (Sept./Oct. 2019). Copy supplied.

With J. Bleich & M. Friedland, *Justice John Paul Stevens, A Maverick, Liberal, Libertarian, Conservative Statesman on the Court*, Oregon State Bar Bulletin, Vol. 67, Issue 11 (Oct. 2007). Copy supplied.

With J. Zinsmeister, *Key Developments in the Law 2006*, Litigation Review (June 2007). Copy supplied.

With J. Bleich & M. Friedland, *The New Chief*, Oregon State Bar Bulletin, Vol. 66, Issue 2 (Nov. 2005). Copy supplied.

Comment, Using the False Claims Act as a Basis for Institutional Review Board Liability, 69 U. Chi. L. Rev. 1399 (2002). Copy supplied.

Singer of the Year: A Balanced Look at the Controversy, Nassau Weekly (Nov. 19, 1998). 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.

Letter from Juvenile Court Judges to Governor Gavin Newsom and Members of the Legislature, May 10, 2022. Copy supplied.

Letter from Daniel J. Calabretta to Hon. Ami Bera, M.D., Apr. 14, 2022. 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.

June 16, 2022: Panelist, John Paul Stevens 2022 Summer Fellowship: How to Be an Effective Advocate, John Paul Stevens Foundation, virtual event. The panel was about how to be an effective advocate, and I discussed the qualities I look for in attorneys who appear before me and described a few experiences as an attorney. I have no notes, transcript, or recording. The address for the John Paul Stevens Foundation is 3 Embarcadero Center, 10th Floor, San Francisco, CA 94111

January 19, 2021: Moderator and Participant, "I Solemnly Swear..." Anthony M. Kennedy American Inns of Court, Sacramento, California. Materials supplied.

June 1, 2020: Speaker, Lavender Graduation, SacLegal, virtual event. The event was for members of SacLegal who had recently graduated law school, and I spoke about the importance of the legal profession. I have no notes, transcript, or recording. The address for SacLegal is 1017 L Street, Number 515, Sacramento, California 95814

November 5, 2019: Speaker, SacLegal's Seventh Annual Founders' Award, SacLegal, Sacramento, California. I introduced California Supreme Court Justice Joshua Groban, the recipient of that year's award. I have no notes, transcript, or recording. The address for SacLegal is 1017 L Street, Number 515, Sacramento, California 95814

September 17, 2019: Moderator and Participant, "Family Ties That Bind," Anthony M. Kennedy American Inn of Court, Sacramento, California. Materials supplied.

January 16, 2018: Moderator and Participant, "The Best Little Courthouse in Davis," Anthony M. Kennedy American Inn of Court, Sacramento, California. Materials supplied.

April 18, 2017: Participant, "Mediation Ethics and Confidentiality," Anthony M. Kennedy American Inn of Court, Sacramento, California. Materials supplied.

June 2013 (specific date unknown): Presenter, Proposition 8. I gave a presentation along with Supervising Deputy Attorney General Tamar Pachter regarding the litigation over Proposition 8 at the federal building in San Francisco. I have no notes, transcript, or recording. I do not recall the name of the sponsoring organization.

2009 (specific date unknown): Panelist, University of California, Hastings College of the Law, San Francisco, California. I spoke with opposing counsel in *Haskell v. Harris*, a case in which the American Civil Liberties Union challenged California's law requiring collection of DNA of individuals arrested for a felony, and which formed the basis for the first year legal research and writing class. I

have no notes, transcript, or recording. The address for the University of California, Hastings College of the Law is 200 McAllister Street, San Francisco, California 94102.

March 6, 2009: Speaker, Bay Area Lawyers for Individual Freedom's Annual Dinner, Bay Area Lawyers for Individual Freedom, San Francisco, California. As the Dinner Chair, I provided remarks at the start and conclusion of the event. I have no notes, transcript, or recording. The address for Bay Area Lawyers for Individual Freedom is P.O. Box 193383, San Francisco, California 94119.

- 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.

2012: I participated in an interview with a PBS affiliate about the Affordable Care Act in my capacity as a Deputy Attorney General. Despite my best efforts I have been unable to locate a copy of the interview, such that a clip or transcript of the interview is unavailable.

Bob Egelko, *Court affirms domestic partner rights*, S.F. Chron. (Oct. 3, 2007). 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 January 2019 I have served as Superior Court Judge for the County of Sacramento. I was appointed by Governor Jerry Brown to a vacancy and then reelected in November 2020 to a full six-year term that began on January 4, 2021. The Superior Court is a trial court of general jurisdiction.

I have been assigned to the Juvenile Court for the entire time of my judgeship. The Juvenile Court is a court of limited jurisdiction, hearing cases under California Welfare and Institutions Code section 300 (dependency) and section 602 (juvenile justice). I was in a juvenile dependency assignment until March 2022, at which time I was appointed as the Presiding Judge of the Juvenile Court. In my dependency assignment, the cases I handled involve allegations of child abuse and neglect brought against parents by the Sacramento County Department of Child, Family, and Adult Services. My orders generally encompass: (a) detaining and removing children from their parents' custody where there is substantial risk to the children's physical or emotional safety; (b) ordering family reunification services to provide parents with the tools needed to overcome the issues that led to removal; (c) adjudicating issues of child placement and parental visitation while children are in the foster care system; (d) terminating parental rights where reunification is not possible; and/or (e) approving adoptions or legal guardianships in appropriate circumstances. As the Presiding Judge, I supervise judges in juvenile

dependency and juvenile justice, sit on various committees by designation, and hear cases in both dependency and juvenile justice.

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

I have presided over approximately 200 trials. Our judges are assigned to a family for the entirety of their case, which may involve more than one trial as the case progresses (for example, a parent may request a trial regarding jurisdiction and subsequently a trial regarding a hearing to terminate her parental rights).

- i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

- ii. Of these cases, approximately what percent were:

civil proceedings:	100%
criminal proceedings:	0%

(Although juvenile trials are a hybrid, I believe they are best described as civil in nature.)

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

I have not written any published opinions. The vast majority of my decisions are issued orally, and any written decisions are confidential, and therefore unavailable on legal databases.

- 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).

Under California law, orders and case files in dependency proceedings are confidential except in narrow circumstances, so as to ensure the protection of minors. *See* Cal. Welf & Inst. Code § 827. For this reason, I am unable to provide the requested specifics concerning the matters I have adjudicated as a Superior Court Judge.

- 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.

Under California law, orders and case files in dependency proceedings are confidential except in narrow circumstances, so as to ensure the protection of minors. *See* Cal. Welf & Inst. Code § 827. For this reason, I am unable to provide the requested specifics concerning the matters I have adjudicated as a Superior Court Judge.

- e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, after a review of my files and a search of available legal databases, I have not presided over any case 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.

Two of my decisions have been conditionally reversed in unpublished opinions. Both decisions concerned the failure to properly investigate possible Native American ancestry pursuant to the Indian Child Welfare Act and California Welfare and Institutions Code section 224.2(e)(2). In both cases, the Court of Appeal conditionally set aside an order terminating parental rights pursuant to section 366.26 and ordered me to allow for further investigation of Native American ancestry. If after that investigation, I concluded the Indian Child Welfare Act did not apply, I was authorized to reinstate my order terminating parental rights. In both cases, after further investigation by the Department on remand, the Indian Child Welfare Act was found not to apply and my prior orders terminating parental rights were reinstated.

Under California law, orders and case files in dependency proceedings are confidential except in narrow circumstances, so as to ensure the protection of minors. *See* Cal. Welf & Inst. Code § 827. For this reason, I am unable to provide the specific decisions discussed above.

- 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 do not write opinions in the overwhelming majority of my dependency cases. Most matters are disposed of through findings on the record or with minute orders generated by court staff. In the rare instances I do write an opinion, that opinion is unpublished and is maintained in the court file. These files are confidential, however. *See* Cal. Welf. & Inst. Code § 827.

- 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 have not authored any significant opinions on any federal or state constitutional issues.

- 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 never 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.

As a Superior Court Judge, I assess the necessity and appropriateness of recusal by applying the test laid out in California Civil Procedure Code § 170.1; I have never found it necessary to recuse myself from any case. California also has an "automatic" recusal process by which parties can recuse a judge, without specifying a reason, at the commencement of an action. *See* Cal. Civ. Proc. Code § 170.6. I estimate that that has happened three or four times.

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.

I have not held any public office other than a judicial 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.

None.

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 John Paul Stevens of the United States Supreme Court from 2004 to 2005.

I served as a law clerk to the Honorable William A Fletcher of the United States Court of Appeals for the Ninth Circuit from 2003 to 2004.

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

I have not 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;

2005 – 2008
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Associate

2008 – 2013
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue
Suite 11000

San Francisco, California 94102
Deputy Attorney General

2013 – 2019
Office of the Governor
1201 O Street
Sacramento, California 95814
Deputy Legal Affairs Secretary

2019 – present
Superior Court of California, County of Sacramento
9605 Kiefer Boulevard
Department 90
Sacramento, California 95827
Judge (2019 – 2022)
Presiding Judge of the Juvenile Court (2022 – present)

- 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.

After graduating from law school in 2003, I clerked for the Honorable William A. Fletcher of the United States Court of Appeals for the Ninth Circuit. I then clerked for the Honorable John Paul Stevens of the United States Supreme Court. At the conclusion of my clerkships, I joined Munger, Tolles & Olson LLP as a litigation associate. As an associate I conducted legal research, reviewed documents, and assisted in the preparation of briefs. The clients I represented were largely in the telecommunications industry and other law firms.

In 2008, I began serving as a Deputy Attorney General in the Government Law Section in the California Department of Justice. My primary focus was defending litigation brought against the Attorney General and other constitutional officers. Typically, this litigation was focused on defending state law against constitutional challenges both in the trial courts and the courts of appeal. In state courts, that most often took the form of petitions for writ of mandate, while in federal court the issues were most often decided on Rule 12(b)(6) motions. I also performed advice work for the Attorney General and other state agencies, vetted nominations for the

California Courts of Appeal and the California Supreme Court on behalf of the Commission on Judicial Appointments, and drafted titles and summaries for proposed initiative measures.

In 2013, I began working in the Office of Governor Edmund G. Brown Jr. as a Deputy Legal Affairs Secretary. I primarily advised individuals in the Governor's Office, including the Appointments Secretary and Legislative Affairs Secretary and their deputies, as well as other policy officials in the Governor's Office. I was responsible for providing ethics advice for officials in the Governor's Office and assisted individuals in meeting their financial reporting obligations under California's Fair Political Practices Act. Finally, I worked closely with the California Office of Emergency Services whenever the Governor was asked to declare a state of emergency, request federal disaster assistance, or issue executive orders in response to a state of emergency.

On January 4, 2019, I began my service as a California Superior Court Judge for the County of Sacramento and have been assigned to the Juvenile Court for the entirety of my judgeship. Until 2022 I heard cases in juvenile dependency concerning allegations of child abuse and neglect. Since March 2022 I have served as the Presiding Judge of the Juvenile Court, in which capacity I supervise judges in juvenile dependency and juvenile justice, sit on various committees by designation, and hear cases in both dependency and juvenile justice.

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

While a litigation associate and Munger, Tolles & Olson LLP I mostly represented corporate clients in civil litigation, as well as law firms accused of committing legal malpractice.

As a Deputy Attorney General I represented the State of California and its constitutional officers in challenges to the constitutionality of state law and the actions of state officials.

As a Deputy Legal Affairs Secretary, I worked on issues of statewide importance that required the Governor's input or action.

- 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.

As a litigation associate at Munger, Tolles & Olson 100 percent of my practice was in litigation, and I appeared in court occasionally. As a Deputy Attorney General, approximately 75 percent of my practice was in litigation, and I appeared

in state and federal courts frequently. As a Deputy Legal Affairs Secretary, approximately 5 percent of my practice was in litigation, and I did not appear in court at all.

i. Indicate the percentage of your practice in:

1. federal courts: 40%
2. state courts of record: 60%
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.

My work in the Attorney General's Office, where I did most of the litigation in my career, were cases that were resolved as a matter of law. I do not believe any were tried to a verdict in the traditional sense, but I argued approximately 45 to 50 dispositive motions.

i. What percentage of these trials were:

1. jury: _____%
2. non-jury: _____%

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 have not argued before the Supreme Court of the United States, but I have appeared as counsel in the following cases:

Hollingsworth v. Perry, 570 U.S. 693 (2013) (brief for the State of California as amicus curiae in support of respondents, 2013 WL 769329).

National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012) (brief of California et al. as amici curiae in support of respondents on severability, 2012 WL 293712).

Brown v. Entertainment Merchants Association, 564 U.S. 786 (2011) (brief for petitioner, 2010 WL 2787546; reply brief for petitioner, 2010 WL 4034925).

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. Proposition 8 Litigation: (*Perry v. Schwarzenegger/Hollingsworth v. Perry*), 790 F. Supp. 2d 1119 (N.D. Cal. 2011); 52 Cal.4th 1116 (2011) (answering certified question from the United States Court of Appeals for the Ninth Circuit); 671 F.3d 1052 (9th Cir. 2012), *rev'd*, 570 U.S. 698 (2013); *Hollingsworth v. O'Connell*, Case No. S211990 (Cal. Sup. Ct. 2013)

This case involved a challenge to California's Proposition 8, which amended the California Constitution to prohibit the marriage of same-sex individuals. I was not involved at the trial stage, during which the district court granted a permanent injunction prohibiting state and local officials from enforcing Proposition 8 after finding that it was unconstitutional. The state and local officials declined to appeal that decision, which was instead appealed by the proponents of Proposition 8. I represented the Governor, Attorney General, and other state officials as counsel of record in subsequent proceedings in the Ninth Circuit, the California Supreme Court, and the United States Supreme Court, where the state officials participated as amici. Ultimately, the United States Supreme Court decided that the proponents of Proposition 8 lacked standing to appeal the trial court's permanent injunction prohibiting officials from enforcing Proposition 8. After the Director of the Department of Public Health issued guidance requiring all counties to issue marriage licenses to same-sex couples, I defended that decision in the California Supreme Court as lead counsel in *Hollingsworth v. O'Connell*. Separate from the merits, I also represented California in opposing a motion to vacate the judgment on the basis that the trial judge, Judge Walker, had a conflict of interest due to his sexual orientation.

Dates of representation: 2011 – 2013

Judges:

Honorable Vaughn Walker
United States District Court for the Northern District of California

Honorable Stephen Reinhardt, Michael D. Hawkins, N. Randy Smith
United States Court of Appeals for the Ninth Circuit

Honorable Tani. G. Cantil-Sakauye, Joyce L. Kennard, Marvin R. Baxter, Katherine M. Werdeger, Ming W. Chin, Carol A. Corrigan, Goodwin H. Liu
California Supreme Court

Honorable John Roberts, Antonin Scalia, Clarence Thomas, Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer, Samuel A. Alito, Jr., Sonia Sotomayor, and Elena Kagan
United States Supreme Court

Counsel for Intervenors, Proponents of Proposition 8:

Charles Cooper
Cooper & Kirk PLLC
1523 New Hampshire Avenue, Northwest
Washington, DC 20036
(202) 220-9600

Andrew P. Pugno
8261 Greenback Lane, Suite 200
Fair Oaks, CA 95628
(916) 608-3065

Counsel for Plaintiffs Perry et al.

Ted Olson
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, Northwest
Washington, DC 20036
(202) 955-8668

Counsel for Plaintiffs City and County of San Francisco

Justice Therese Stewart
350 McAllister Street
San Francisco, CA 94102

2. *Haskell v. Harris*, 677 F.Supp.2d 1187 (N.D. Cal. 2009), *aff'd*, 669 F.3d 1049 (9th Cir. 2012) and 745 F.3d 1269 (9th Cir. 2014) (en banc)

This case involved a challenge to Proposition 69, which required the collection of a DNA sample from individuals arrested for a felony. I represented the State as lead counsel in opposing a request for a preliminary injunction in the district court and defended the district court's denial of the injunction in the Ninth Circuit, including in en banc proceedings. The Ninth Circuit ultimately affirmed the district court's decision.

Dates of representation: 2009 – 2013

Judges

Honorable Judge Charles Breyer
United States District Court for the Northern District of California

Honorable Milan D. Smith, and William A. Fletcher
United States Court of Appeals for the Ninth Circuit
Senior District Judge James Dale Todd, sitting by designation

Opposing Counsel:

Michael T. Risher
2081 Center Street, No. 154
Berkeley, CA 94704
(510) 689-1657

Co-counsel:

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California Department of Justice, Office of the Attorney General
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San Francisco, CA 94102
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3. *Weingarten Realty Investors v. Chiang*, 212 Cal. App. 4th 163 (2012)

Under California law, property such as bank accounts and securities that has been unclaimed for a particular amount of time is deposited with the Controller. If the owner of the property subsequently comes forward and claims the property, the state Controller returns the property after verifying the claim of ownership. This case involved whether the assignee of unclaimed property, rather than the original owner, had standing to claim that property from the Controller. The trial court granted the plaintiff's motion for summary judgment, which the Court of Appeal upheld. I represented the state in both the trial court and the court of appeal by drafting the briefs and arguing the matter in the respective courts.

Dates of representation: 2011 – 2013

Judges:

Honorable Lisa Foster
Superior Court of California, County of San Diego

Honorable James A. McIntyre, Gilbert Nares, and Terry B. O'Rourke
California Court of Appeal for the Fourth Appellate District, Division One

Opposing Counsel

Roberta Robinson
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707 Broadway Suite 1750

San Diego, CA 92101
(619) 398-3358

4. *California School Boards Association v. State of California*, Case No. CGC-11-514689 (S.F. Super. Ct. 2012)

This case involved a challenge to the calculation used by the Legislature to appropriate funds for K-14 education in the 2011-2012 Budget Act under Proposition 98, which generally requires the Legislature to set aside a specific percentage of General Fund revenues for K-14 education. Specifically, the Legislature excluded a specific tax increase from the General Fund and instead directed it to a special fund, with the result that the amount set aside for K-14 education was less than it would have been had the increased revenues been deposited in the General Fund. The trial court denied the petition for a writ of mandate, essentially dismissing the case. The court of appeal dismissed the case as moot following the passage in November 2012 of Proposition 30, which enacted a constitutional amendment expressly excluding these tax revenues from the General Fund. I briefed and argued the case in the trial court and briefed the issue of mootness in the court of appeal.

Dates of representation: 2011 – 2012

Judges:

Honorable Harold Kahn
Superior Court of California, County of San Francisco

Honorable Stuart R. Pollak, Peter J. Siggins, and Martin J. Jenkins
California Court of Appeal for the First Appellate District, Division 3

Opposing Counsel:

Deborah Caplan
Olson, Hagel, & Fishburn, L.L.P.
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Sacramento, CA 95814
(916) 442-2952

5. *Natural Resources Defense Council v. Chiang*, Case No. RG11586419 (Alameda Super. Ct. 2012)

This case involved the Legislature's decision to transfer gas consumption taxes, initially intended to fund low-income assistance programs, to the General Fund to be used for other purposes. Petitioners argued the transfer violated state law by not being utilized for the purposes identified in the initial legislation establishing the tax. Petitioners also argued that the legislation making the change to the gas consumption tax violated the single subject rule requiring that each piece of legislation embrace only one subject, and

the reenactment rule, which requires that the legislature reenact the entire section of a statute being amended. I wrote the brief on behalf of the State and argued the matter in the trial court, which ruled that the transfer violated state law and granted the petition for a writ of mandate prohibiting the Controller from transferring the challenged funds to the General Fund. The State did not appeal.

Dates of representation: 2011 – 2012

Judge:

Honorable Frank Roesch
Superior Court of California, County of Alameda

Opposing Counsel:

Selena Kyle
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 651-7906

6. *Connerly v. State of California*, 34-2011-80000966-CU-WM-GDS (Sacramento Super. Ct. 2012)

This case involved a challenge to California’s Citizen Redistricting Commission under Proposition 209 (Cal. Const., art. II, sec. 31 [“The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”])). The statute establishing the Redistricting Commission provided that after the first eight members of the Commission were selected by the State Auditor by random draw, the final six members were to be chosen in a manner to ensure the commission reflects the state’s diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity. I briefed and argued the case in the trial court and began drafting the appellate brief before I left the Attorney General’s Office. The trial court sustained a demurrer without leave to amend, and the court of appeal ultimately reversed the trial court’s decision and remanded for further proceedings.

Dates of representation: 2011 – 2013

Judge:

Honorable Michael P. Kenny
Superior Court of California, County of Sacramento

Opposing Counsel

Meriem Hubbard and Joshua Thompson

Pacific Legal Foundation
National Litigation Center, 930 G Street
Sacramento, CA 95814
(916) 419-7111

7. *Tomra Pacific, Inc. v. Chiang*, 199 Cal. App. 4th 463 (2011)

This case involved a challenge to the loan of funds from the Recycling Fund. Plaintiffs argued that the legislature's loan violated the single subject rule (Cal. Const., art. IV, § 9), which requires that each piece of legislation embrace only one subject. Plaintiffs also argued that the fees were in actuality taxes that were required to be approved by a two-thirds vote of the legislature (Cal. Const., art. XIII A, § 3). I litigated the matter before both the trial court, which rejected the petition for a writ of mandate (akin to granting a motion to dismiss), and the court of appeal, which affirmed the trial court's decision in favor of the State.

Dates of representation: 2009 – 2011

Judges:

Honorable David Hunter
Superior Court of California, County of Alameda

Honorable Patricia K. Sepulveda, Timothy A. Reardon, and Maria P. Rivera
California Court of Appeal for the First Appellate District

Opposing Counsel:

Richard Martland
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
1415 L Street, Suite 1200
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(916) 446-6752

Steven L. Mayer
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
(415) 471-3163

8. *Alviso v. Sonoma Cnty. Sheriff's Dep't*, 186 Cal. App. 4th 198 (2010)

This was a class action complaint for declaratory, injunctive, and monetary relief that challenged the State's statutory scheme governing the impound of vehicles under the Fourth Amendment and the Equal Protection and Due Process Clauses. Plaintiff alleged that California's requirement that a vehicle be impounded for 30 days for drivers who

were suspended for some, but not all, Vehicle Code violations violated equal protection. Plaintiff further alleged that the 30-day impound without a warrant, court order, or post-seizure judicial review violated the unlawful seizure provisions of the federal and state constitutions, and that the administrative review offered by statute was insufficient to cure the constitutional defect. The trial court entered judgment in favor of the State, which was affirmed on appeal. I prepared the briefing and argued the case in both the trial court and the court of appeal.

Dates of representation: 2008 – 2010

Judges:

Honorable Mark Tansil
Superior Court of California, County of Sonoma

Honorable Peter J. Siggins, William R. McGuiness, and Martin J. Jenkins
California Court of Appeal for the First Appellate District, Division Three

Opposing Counsel:

Mark Clausen
3116 Albany Circle
Davis, CA 95618
(707) 235-3663

9. *Shaw v. Chiang*, 175 Cal. App. 4th 577 (2009)

This case involved a challenge to the legislature’s use of a particular type of gasoline tax revenue, called “spillover revenue,” for certain purposes such as loan repayment. Historically, this spillover revenue had been deposited in a Public Transportation Account, which by voter initiative was limited to certain uses regarding public transit. The California Legislature amended the statute so that a portion of the spillover revenue was instead transferred into a different account, which did not contain the same restrictions. Plaintiffs argued the legislation was an improper amendment to an initiative statute. Plaintiffs further challenged the Legislature’s appropriation from the Public Transportation Account as not furthering public transit, again in violation of the initiative statute. I was not trial counsel, but I defended the trial court’s decision to uphold the Legislature’s actions in part, and appealed the trial court’s decision to invalidate them in part. The court of appeal reversed the superior court to the extent it upheld the appropriation. On remand, I filed a motion to limit the scope of the judgment to ensure it did not require the Legislature to make specific appropriations, which generally violates separation of powers principles under California law.

Dates of representation: 2008 – 2011

Judges:

Hon. Jack Sapunor
Superior Court of California, County of Sacramento

Hon. Tani Cantil-Sakauye, George Nicholson, and Vance W. Raye
California Court of Appeal for the Third Appellate District

Opposing Counsel

Richard Martland
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
(916) 446-6752

10. *Plata v. Schwarzenegger*, 3:01-cv-01351-TEH (N.D. Cal. Oct. 27, 2009), 560 F.3d 976 (9th Cir. 2010).

This case involved a constitutional challenge to California's provision of medical care to prisoners as violating the Eighth Amendment, which ultimately resulted in a court-appointed receiver overseeing medical care provided to inmates in the custody of the California Department of Corrections and Rehabilitation. I represented the California State Controller, who had been joined in the action in the context of contempt proceedings brought by the receiver after the State refused to provide approximately \$8 billion in bond funding to build new medical facilities. As an intermediate step short of contempt, the district court ordered the state to pay \$250 million toward these facilities. I represented the Controller in the Ninth Circuit, which granted a stay of the district court's decision, but which ultimately denied a petition for a writ of mandate and dismissed the appeal.

Judges:

Honorable Thelton E. Henderson
United States District Court for the Northern District of California

Honorable Mary M. Schroeder, William C. Canby, and Michael D. Hawkins
United States Court of Appeals for the Ninth Circuit

Opposing Counsel (on the contempt motion):

James J. Brosnahan
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 95814
(415) 268-7189

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 Deputy Legal Affairs Secretary, a significant amount of my work involved advice to policymakers that did not involve litigation. I primarily advised individuals in the Governor's Office, including the Appointments Secretary and Legislative Affairs Secretary and their deputies, as well as other policy officials in the Governor's Office. I was responsible for providing ethics advice for officials in the Governor's Office and assisted individuals in meeting their financial reporting obligations under California's Fair Political Practices Act. Finally, I worked closely with the California Office of Emergency Services whenever the Governor was asked to declare a state of emergency, request federal disaster assistance, or issue executive orders in response to a state of emergency.

As the Presiding Judge of the Juvenile Court, I am responsible for working with our justice partners to ensure the effective operation of the Juvenile Court. As part of that role, I chair the Dependency Standing Committee and the Juvenile Justice Standing Committee. I also chair the Juvenile Justice Trauma Response Workgroup, which oversees the Juvenile Trauma Response Court over which I preside. I also chair the Expert Panel Committee, which is responsible for approving and overseeing court-appointed experts who evaluate the competency of a minor to stand trial where a doubt has been declared as to their competence, as well as for experts who are required by state law to evaluate youth who have been found to have committed the offense of lewd and lascivious conduct of a child under the age of 14 years. I also sit on Sacramento County's Mental Health Services Act Steering Committee, which recommends to the Sacramento County Board of Supervisors how to use certain state mental health funds. I am also a member of a subcommittee of the Juvenile Justice Coordinating Counsel which recommends to the Board of Supervisors how to allocate funds to develop and operate a Secure Track facility for the youth who have been found to have committed the most serious crimes. Finally, I serve on the Child Welfare Council, a state advisory body that addresses the needs of children in the child welfare system.

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.

Direct Democracy in California
University of California, Davis School of Law
2021, 2022

Direct Democracy in California
Lincoln Law School
2022

This course explores the powers of initiative, referendum, and recall in California law. We examine how these mechanisms work and study some of the most consequential initiatives in California history, focusing on the initiatives themselves, challenges to them, and how they have impacted law, public policy, and politics in California. We examine the impact of the recall power on executive and judicial branch officials. Finally, we consider whether these tools of direct democracy have functioned as intended and explore whether they can be improved upon. Syllabi 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.

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.

My only obligation is to teach Direct Democracy in California at the University of California, Davis School of Law during the Fall 2022 semester.

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).

See attached Financial Disclosure 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.

None.

- 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 as a district court judge, I would resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

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.

While the great majority of my career has been in public service, during my time in private practice I represented Equality California in several matters, including in litigation supporting the constitutionality of a statute allowing domestic partners to take advantage of a tax benefit in the transfer of real property to the same extent as married couples. *See Strong v. State Board of Education*, 155 Cal. App. 4th 1182 (2007). I also represented the Bay Area Lawyers for Individual Freedom, San Francisco's LGBT bar association, as well as numerous other bar associations, as amici in *In re Marriage Cases*, 43 Cal. 4th 757 (2008), 143 Cal. App. 4th 873 (2006). Although I did not represent third parties pro bono while working for the State of California, I was active in local bar associations as well as in the Anthony M. Kennedy American Inns of Court.

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 February 2021, I submitted an application to be a United States District Judge for the Eastern District of California to the Selection Committees of Senators Dianne Feinstein and Alex Padilla. I was interviewed by members of Senator Padilla's committee in December 2021. I was interviewed by members of Senator Feinstein's committee in January 2022 and in March 2022. On April 28,

2022, I interviewed with a member of Senator Padilla's committee. On May 18, 2022, I interviewed with attorneys from the White House Counsel's Office. Since May 21, 2022, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 1, 2022, my nomination was submitted to the Senate.

- 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.