

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Douglas Russell Cole

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

United States District Court Judge for the Southern District of Ohio

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.

Douglas R. Cole
Organ Cole LLP
1330 Dublin Road
Columbus, Ohio 43215

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

1964; Janesville, Wisconsin

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.

1990 – 1993, The University of Chicago Law School; J.D., 1993

1985 – 1988, University of Wisconsin-Madison, College of Engineering; B.S.E.E., 1988

1982 – 1985, Ripon College; B.A. (mathematics and physics), 1986

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.

2011 – present
Organ Cole

1330 Dublin Road
Columbus, Ohio 43215
Partner

2006 – 2011
Jones Day
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215
Partner

2003 – 2006
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
State Solicitor of Ohio

2000 – 2003
Ohio State University – Moritz College of Law
55 West 12th Avenue
Columbus, Ohio 43210
Assistant Professor of Law

1998 – 2000
Zeiger & Carpenter
41 South High Street
Suite 1600
Columbus, Ohio 43215
Of Counsel

1997 – 1998
University of Oklahoma, College of Law
300 West Timberdell Road
Norman, Oklahoma 73019
Visiting Assistant Professor of Law.

1994 – 1997
Kirkland & Ellis
300 North LaSalle
Chicago, Illinois 60654
Associate

1993 – 1994
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois
Law Clerk to the Honorable Frank H. Easterbrook

1992 – 1993
Kirkland & Ellis
300 North LaSalle
Chicago, Illinois 60654
Summer Associate and Law Clerk

1988 – 1990
E-Systems
1200 South Jupiter Road
Garland, Texas 75043
Systems Engineer

1987 – 1988
The Computer Store
5956 Odana Road
Madison, Wisconsin 53719
Part-time computer sales and service
(Name of business and address are to the best of my recollection. The business is no longer in operation.)

1987
IBM
5901 Broken Sound Parkway Northwest
Boca Raton, Florida 33487
Co-operative education engineering intern
(Address is to the best of my recollection.)

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 registered for selective service when I turned 18.

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. (Listed in reverse chronological order.)

Fellow – American Academy of Appellate Lawyers (2018)

Ohio Supreme Court – Best brief award (2017)

Selected for inclusion in *Ohio SuperLawyers* (2012 – 2019)

Article, *E-Proxies for Sale? Corporate Vote-Buying in the Internet Age*, selected for republication in *Corporate Practice Commentator* (2002)

Professors Who Go Above and Beyond – University of Oklahoma (1998)

University of Chicago Law School

High Honors (1993)

Order of the Coif (1993)

John M. Olin Fellow in Law and Economics (1991 – 1993)

Member, University of Chicago Law Review (1991 – 1993)

University of Wisconsin College of Engineering

Honors (1988)

Ripon College

Summa cum laude (1986)

Phi Beta Kappa (1986)

Distinguished Honors Scholar (1982)

National Merit Scholarship – Semifinalist (1982)

John Edwards High School

Salutatorian (1982)

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 Academy of Appellate Lawyers (2017 – present)

Columbus Bar Association (1999 – present)

Franklin County Chapter of American Inns of Court (1999 – 2005 (approximate))

Secretary (2002 – 2004)

Illinois Bar Association (1994 – 1998 (approximate))

Ohio Constitutional Modernization Commission (2012 – 2017)

Chair of Committee on Finance, Taxation and Economic Development (2012 – 2017)

Ohio State Bar Association (1999 – present)

Board of Editors for OSBA monthly magazine (2002 – 2006) (approximate)

Task Force on Legal Education (2008 – 2009)

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.

Ohio, 1999
Illinois, 1994

After joining the Ohio bar, I took retired status in Illinois in 2008 because I no longer needed to practice law in the state. 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, 2003
United States Court of Appeals for the Sixth Circuit, 1999
United States Court of Appeals for the Seventh Circuit, 1994
United States Court of Appeals for the Eighth Circuit, 2018
United States Court of Appeals for the Eleventh Circuit, 2007
United States Court of Appeals for the Federal Circuit, 2007
United States District Court for the Northern District of Illinois, 1994
United States District Court for the Northern District of Ohio, 2013
United States District Court for the Southern District of Ohio, 1999
Supreme Court of Illinois, 1994 (retired)
Supreme Court of Ohio, 1999

I am not aware of any lapses in the memberships above, other than my retirement from the Illinois bar, discussed in response to Question 10(a).

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.

Swim and Racquet Club (2010 – present)
Member, Board of Trustees (2017 – 2018)

The Upper Arlington Stand Project, Board Member (2015 – 2016)

- 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 response to 11a above 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 practices.

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.

Docket Watch: Electronic Classroom of Tomorrow v. Ohio Department of Education, August 30, 2018. Copy supplied.

With Gregory A. Castanias, Jennifer L. Swize, Vaishali Udupa, and Tiffany D. Lipscomb-Jackson, *2010 Patent Law Decisions of the Federal Circuit: The Advent of "The Rader Court,"* 60 Am. U. L. Rev. 845 (2011). Copy supplied.

With J. Bruce McDonald, *Dr. Miles Receives its Coup de Grace*, Jones Day Antitrust Commentary, July 2007. Copy supplied.

Arakaki, et al. v. Lingle, et al.: *The Ninth Circuit Takes A New Stand On Standing Post-Cuno*, Jones Day State Tax Return, June 2007 (subsequently republished in Corporate Business Taxation Monthly). Copy supplied.

With Gregory A. Castanias and Stephen J. Goodman, *Another Change in U.S. Patent Law: U.S. Supreme Court Rules That Patent Licensees May Seek Declaratory Judgments in Patent-License Cases Without First Breaching The License*, Jones Day Commentary, January 2007. Copy supplied.

E-Proxies for Sale? Corporate Vote-Buying in the Internet Age, 76 U. Wash. L. Rev. 793 (2001) (subsequently republished in Corporate Practice Commentator). 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.

The OSBA Legal Education Task Force Final Report (Dec. 2009). Copy 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.

Letter to Sens. Grassley and Feinstein, *Nomination of Chad Readler for the United States Court of Appeals for the Sixth Circuit* (September 4, 2018). Copy supplied.

Letter to Sens. Grassley and Feinstein, *Nomination of Eric Murphy for the United States Court of Appeals for the Sixth Circuit* (August 2, 2018). Copy supplied.

I was a member of the Ohio Constitutional Modernization Commission, and was the Chair of the Finance, Taxation and Economic Development committee. The Commission issued reports and recommendations regarding potential changes to the Ohio Constitution. As a member of the Commission, I voted on those recommendations. All of the final reports and recommendations are available at: <http://www.ocmc.ohio.gov/ocmc/reports>.

- 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.

December 5, 2018: Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. Recording supplied.

September 24, 2018: Guest lecturer, Appellate Advocacy Class, University of Cincinnati College of Law, Cincinnati, Ohio. I have no notes, transcript, or recording. I discussed appellate advocacy techniques in a class taught by Justice DeWine of the Ohio Supreme Court. The address of the University of Cincinnati College of Law is 2540 Clifton Avenue, Cincinnati, Ohio 45221.

July 19, 2018: Guest lecturer, Comparative Dispute Resolution, The University of Oxford – the Ohio State University Summer Law Program, St. Anne's College,

Oxford, UK. I have no notes, transcript, or recording. I discussed practical aspects of mediation for business lawyers. The address of St. Anne's College is 56 Woodstock Road, Oxford OX2 6HS, UK.

April 6, 2018: Moderator, *Analyzing Ohio's Judicial System & the Ohio Supreme Court*, 2018 Ohio Lawyers Chapters Conference, Federalist Society, Columbus, Ohio. Video available at: <https://fedsoc.org/conferences/2018-ohio-lawyers-chapters-conference#agenda-item-analyzing-ohio-s-judicial-system-and-the-ohio-supreme-court>.

December 18, 2017: Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. Recording supplied.

December 14, 2016: Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. Recording supplied.

September 16, 2016: Presenter, *Ohio Supreme Court Year in Review*, Annual Conference, Ohio State Judicial College, Columbus, Ohio. I have no notes, transcript, or recording, but am supplying presentation materials jointly prepared by the presenters. The address of the Ohio State Judicial College is 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431.

December 3, 2015: Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. I have no notes, transcript, or recording, but am supplying presentation materials. I discussed Ohio Supreme Court decisions from the previous year. The address of the Ohio State Bar Association is 1700 Lake Shore Drive, Columbus, Ohio 43204.

September 4, 2015: Presenter, *Ohio Supreme Court Year in Review*, Annual Conference, Ohio State Judicial College, Columbus, Ohio. I have no notes, transcript, or recording, but am supplying presentation materials jointly prepared by the presenters. The address of the Ohio State Judicial College is 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431.

March 3, 2015: Guest lecturer, Legal Writing, Ohio State University, Moritz College of Law. I have no notes, transcript, or recording, but am supplying presentation materials. I discussed legal writing techniques. The address of the Moritz College of Law is 55 West 12th Avenue, Columbus, Ohio 43210. (I also appeared as a guest lecturer on legal writing on previous occasions at The Moritz College of Law, but do not have records of when that was. I have no notes, transcripts or recording, nor any other materials from those earlier presentations, although they would have been generally similar to the presentation materials that I did provide as noted above.)

December 15, 2014: Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. I have no notes, transcript, or recording, but am supplying presentation materials. I discussed Ohio Supreme Court decisions from the previous year. The address of the Ohio State Bar Association is 1700 Lake Shore Drive Columbus, Ohio 43204.

December 2010 – 2013 (approximate): Panelist, *Ohio Supreme Court Year in Review*, Ohio State Bar Association, Columbus, Ohio. I have no notes, transcript, or recording. I discussed Ohio Supreme Court decisions from the previous year. The address of the Ohio State Bar Association is 1700 Lake Shore Drive, Columbus, Ohio 43204.

2010: Presenter, *Third Annual Supreme Court Term Review*, American Constitution Society, Columbus Lawyer Chapter. I have no notes, transcript, or recording. I discussed the Supreme Court's recent term. The address of the American Constitution Society is 1899 L Street, NW, Suite 200, Washington, DC 20036.

January 23, 2009: Participant, *Symposium on The Rise of Appellate Litigators and State Solicitors General*, University of Texas School of Law, Austin, Texas. Transcript supplied.

October 6, 2008: Moderator, *The Presidency and the Courts*, Cincinnati Lawyers Chapter, Federalist Society, Cincinnati, Ohio. I have no notes, transcript, or recording. I moderated a panel on *Interpreting the Constitution: The Founders and Today*. The address of the Federalist Society is 1776 I Street, NW, Suite 300, Washington, DC 20006.

October 11, 2007: Speaker, *The Role of the State Attorney General*, Cleveland Lawyers Chapter of the Federalist Society, Cleveland, Ohio. I have no notes, transcript, or recording. I discussed the role of state attorneys general. The address of the Federalist Society is 1776 I Street, NW, Suite 300, Washington, DC 20006.

Spring 2006 – 2015 (approximate): Presenter, *U.S. Supreme Court Year in Review*, Franklin Inn – American Inns of Court, Columbus, Ohio. I have no notes, transcript, or recording. I discussed the previous Supreme Court term. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314.

October 2005: Panelist, *The Legacies of Chief Justice Rehnquist and Justice Sandra Day O'Connor*, Columbus Lawyers Chapter Federalist Society Luncheon, Columbus, Ohio. I have no notes, transcript, or recording. I spoke about the legacies of Chief Justice William Rehnquist and Justice Sandra Day O'Connor. The address of the Federalist Society is 1776 I Street, NW, Suite 300, Washington, DC 20006.

2004: Presenter, *U.S. Supreme Court Preview and Review*, Columbus Lawyers Chapter Federalist Society Luncheon. I have no notes, transcript, or recording. I discussed the upcoming Supreme Court term. The address of the Federalist Society is 1776 I Street, NW, Suite 300, Washington, DC 20006.

2002 (approx.): Panelist, *Lessons From Enron*, a panel discussion at the Moritz College of Law, Columbus, Ohio. Video supplied.

August 2002: Panelist, *A Crisis in Corporate America?*, a panel discussion at the Moritz College of Law, The Ohio State University, Columbus, Ohio. I have no notes, transcript, or recording. The panel discussed whether the issues that had arisen at Enron were indicative of broader problems in corporate America. The address of the Moritz College of Law, The Ohio State University, is 55 West 12th Avenue, Columbus, Ohio, 43210.

September 2002: Presenter, *The New Corporate Governance Initiatives: Some Preliminary Thoughts*, Meeting of the American Society of Corporate Secretaries, Cincinnati, Ohio. I have no notes, transcript, or recording. The talk focused on some of the regulatory reforms that were being undertaken in response to issues that had arisen at Enron. The address of the American Society of Corporate Secretaries (now known as the Society for Corporate Governance) is 52 Vanderbilt Avenue, Suite 903, New York, New York 10017.

June 2002, Rossen Bar Review Instructor on Business Associations. I have no notes, transcript, or recording. Moreover, I believe Rossen Bar Review is out of business.

- 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.

Radio interview regarding Ohio Attorney General Race, WOSU, Oct. 23, 2018. Recording available at <http://radio.wosu.org/post/ohio-attorney-generals-race#stream/0>.

ECOT v. Ohio Dept. of Educ., Post-argument interview, Feb. 2, 2018. Recording available at: <https://www.youtube.com/watch?v=aFP0xjPGW9Q>.

Ohio Justices: Ex-Cedar Fair official not entitled to job, The Toledo Blade (Ohio), Sept. 9, 2014. Copy supplied.

SCOTUS hears local free speech case Tuesday, USA Today, Apr. 20, 2014. Copy supplied.

ProgressOhio v. JobsOhio, Post-argument interview, Nov. 6, 2013. Recording available at: https://www.youtube.com/watch?v=LF_h5hAifKk.

Your schools: Magistrate raps board on closed meetings, Columbus Dispatch, Mar. 1, 2013. Copy supplied.

Former Jones Day Partner and Ohio Solicitor Joins Litigation Boutique, PRWeb, Nov. 10, 2011. Copy supplied.

Judge's fix of mistaken sentence could send ex-soldier to prison, The Montgomery Adviser (Alabama), Aug. 30, 2008. Copy supplied.

Iraq veteran waits for courts to decide fate, The Mobile Register (Alabama), Feb. 13, 2008. Copy supplied.

Finding 11-Day Sentence Not Too Little but Too Late, The New York Times, Feb. 12, 2008. Copy supplied.

Douglas R. Cole Joins Jones Day Columbus Office, Jones Day Press Release, Nov. 13, 2006. Copy supplied.

Supreme Court Ruling: Tax breaks can be used to attract companies, The Columbus Dispatch (Ohio), May 16, 2006. Copy supplied.

Economic Incentives Safe: Court Kills Challenge to Ohio Auto Plant Help, The Bond Buyer, May 16, 2006. Copy supplied.

Court's Alliances Could Alter Views: Internal dynamics intrigue Ohio solicitors, The Columbus Dispatch (Ohio), Oct. 5, 2005. Copy supplied.

Deadline erased by justices in Richey case: Briton to stay put on Ohio's death row, The Toledo Blade (Ohio), July 28, 2005. Copy supplied.

U.S. Supreme Court Ruling: State's Method of Placing Inmates is "Permissible", The Columbus Dispatch (Ohio), June 14, 2005. Copy supplied.

Court Upholds Ohio Policy on Violent Inmates: Justices Slam Racial Bias in Juries, The Pittsburgh Post-Gazette (Pennsylvania), June 14, 2005. Copy supplied.

High Court Reinstates Murder Conviction, The Columbus Dispatch (Ohio), June 14, 2005. Copy supplied.

Court says inmates may challenge prison assignments, The Associated Press State & Local Wire, June 13, 2005. Copy supplied.

Ohio readies fight for tax incentives: High court will be asked to take case, The Louisville Courier-Journal (Kentucky), June 12, 2005. Copy supplied.

Getting religion in prison, The Toledo Blade (Ohio), June 7, 2005. Copy supplied.

Inmates Win Religion Suit: Supreme Court Says Prisons Must Accommodate Religions So Long As Security Not Hurt, The Raymond Times Dispatch (Virginia), June 1, 2005. Copy supplied. (AP article also printed elsewhere.)

Court Upholds Law on Prisoners' Religious Rights, The Boston Globe, June 1, 2005. Copy supplied.

High court to rule on local death row case, The Zanesville Times-Recorder (Ohio), Apr. 26, 2005. Copy supplied.

Moritz Law Faculty, Students Prepare for U.S. Supreme Court Argument, Law Record, Autumn 2004. Copy supplied.

6th Circuit Overturns Abortion Ruling: State's 2000 ban on "partial-birth" method ruled legal by judges, The Columbus Dispatch (Ohio), Dec. 18, 2003. Copy supplied.

Supreme Court to Weigh Fourth Amendment Claims in Baltimore County Case, Capital News Service (Maryland), Oct. 31, 2003. Copy supplied. Also available at: <https://cnsmaryland.org/2003/10/31/supreme-court-to-weigh-fourth-amendment-claims-in-baltimore-county-case/>

Court to hear challenge to concealed weapons ban, The Columbus Dispatch (Ohio), Apr. 14, 2003. Copy supplied.

Northrop Sues on Ohio Takeover Laws, Associated Press Online, Mar. 5, 2002. 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.

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, approximately what percent were:

jury trials: _____%

bench trials: _____% [total 100%]

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 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 (3) 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.

State Solicitor of Ohio (2003 – 2006), Columbus, Ohio; appointed in January 2003 by Ohio Attorney General Jim Petro.

Commissioner, Ohio Constitutional Modernization Commission (2012 – 2017); Columbus, Ohio; appointed by the Ohio General Assembly.

- 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.

Republican State Judicial Screening Committee (2006)

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 1993 to 1994, I clerked for the Honorable Frank H. Easterbrook, United States Court of Appeals for the Seventh Judicial Circuit.

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

I have not 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 – 1997

Kirkland & Ellis

150 East Randolph Street

Chicago, Illinois 60601

(now located at 300 North LaSalle Street, Chicago, Illinois 60654)

Associate

1998 – 2000

Zeiger & Carpenter

41 South High Street

Suite 1600

Columbus, Ohio 43215

Of Counsel

2003 – 2006

Office of Ohio Attorney General Jim Petro

30 East Broad Street

Suite 1770

Columbus, Ohio 43215

State Solicitor

2006 – 2011

Jones Day

325 John H. McConnell Boulevard

Suite 600

Columbus, Ohio 43215

Partner

2011 – Present

Organ Cole (formerly known as Organ Cole + Stock)

1330 Dublin Road

Columbus, Ohio 43125

(formerly at 1335 Dublin Road, Suite 104D, Columbus, Ohio 43215)

Partner

- 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.

Mediator, *Jupiter-Ohio, Inc. v. Wilson, et al.*, Case No. 12 CVH (Franklin County, Ohio). This was a commercial leasing dispute.

Mediator in business dispute in Columbus, Ohio (because this was a pre-filing mediation, I have an obligation to preserve the confidentiality of the disputants and the nature of the dispute).

Mediator, *Alfred S. DeLeon v. Hest Technologies, Inc.*, Case No. 13CV-11-12181 (Franklin County, Ohio). This was a business dispute between co-owners of a business entity.

b. Describe:

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

When in private practice, my practice has been focused exclusively on litigation. At Kirkland & Ellis (1994 – 1997), the central focus was intellectual property litigation (mostly patent litigation), with some general business litigation. At Zeiger & Carpenter (1998 – 2000), my focus was general business litigation. While the State Solicitor of Ohio (2003 – 2006), my practice was focused almost exclusively on appellate litigation, including in the areas of constitutional law, habeas corpus (collateral federal review of state criminal proceedings), statutory interpretation, administrative law, and other forms of governmental litigation. At Jones Day (2006 – 2011), my practice was focused on general business litigation, including, but not limited to, appeals and intellectual property law. At Organ Cole (2011 – present), my practice has focused on general business litigation at both the trial and appellate level, including work on both the plaintiff and defendant side, along with governmental/regulatory work, including acting as special counsel to the Ohio Attorney General representing various state agencies, and representing Uber in disputes with municipal or state regulatory authorities across the country.

During my stints in academia, my job responsibilities were typical for those of a law professor, including teaching, research/writing, and service activities such as advising law student groups, or university service. While at Oklahoma (1997 – 1998), my wife and I jointly received a student award for “Professors Who Go Above and Beyond.” While at Ohio State (2000 – 2002), my service included participating on the Ohio State University Finance Committee.

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

My typical clients in private practice are businesses, who I often represent in connection with regulatory matters. For example, I represented ProMedica Health System in connection with a challenge by the FTC to a hospital merger in Toledo, and in a coverage dispute with its insurer. I have represented Uber in matters involving municipal or state regulators in jurisdictions across the country. I also represented Cedar Fair in a dispute with its former Chief Operating Officer involving the permissible scope of judicial review of an arbitral decision. I have also represented JobsOhio, a non-profit economic development entity in connection with a constitutional challenge to the statute that created JobsOhio. While in private practice, I have also represented various governmental entities as a special assistant attorney general. Examples of this would include representing the Ohio Department of Education in a constitutional challenge to a new academic distress commission statute, and more recently in a dispute involving funding for the Electronic Classroom of Tomorrow (ECOT); representing the Bureau of Workers Compensation in a challenge to an administrative decision to exclude a vendor from participation as a managed care organization; and the Petroleum Underground Storage Tank Release Compensation Board in a variety of lawsuits against major oil companies seeking to recover payments that the Board made to them.

As the State Solicitor of Ohio, my clients included the State of Ohio, state agencies, and state officers and employees. The State Solicitor position focuses on appellate advocacy, but covers many different substantive legal areas. On the civil side, I litigated cases involving, for example; antitrust, administrative law, constitutional law, and voting and election law. The Attorney General's Office defends against federal habeas petitions. While civil in nature, these petitions often raise criminal-procedure questions. In addition, the office regularly assists county prosecutors in criminal appeals in the Ohio Supreme Court, including preparing, filing, and arguing amicus briefs supporting prosecutors.

- 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.

Apart from a few corporate assignments early on at Kirkland, 100% of my practice has focused on litigation and litigation strategy.

While a litigator at Kirkland, I appeared in court with some frequency, but as I was very junior, I did not have lead responsibility for those appearances. For example, in the two years that I was there, I was part of the trial team for a two-week jury trial in a patent matter in the United States District Court for the District of Delaware, and also appeared in court in other patent actions.

While at Zeiger & Carpenter, I was involved in various matters pending at the Franklin County Court of Common Pleas, as well as in the United States District Court for the Southern District of Ohio, but other attorneys had lead responsibility for those matters.

During my time as the State Solicitor, I appeared frequently in the Ohio Supreme Court (approximately twenty arguments), the United States Court of Appeals for the Sixth Circuit (2-3 arguments), and the United States Supreme Court, where I argued five cases and second-chaired the Attorney General at a sixth. I had lead responsibility for all of those representations, as well as oversight responsibility for every brief or petition that the State filed in the Ohio Supreme Court or the United States Supreme Court during my tenure there.

During my time at Jones Day, my practice was more typical of litigation in large law firms, in that I did not appear in court with great frequency, although I did argue two cases in the Ohio Supreme Court (one of which was pro bono), and also argued a pro bono matter in the United States District Court for the Southern District of Alabama.

Since starting a firm with some colleagues in 2011, I appear in court frequently, including personally appearing in one or more matters in each of the following courts: (1) the Franklin County Court of Common Pleas (multiple); (2) the Cuyahoga County Court of Common Pleas (jury trial in major breach of contract action); (3) the Erie County Court of Common Pleas; (4) the Tenth District Court of Appeals (multiple); (5) the Third District Court of Appeals (appeal in \$5 million breach of contract action); (6) the Fifth District Court of Appeals; (7) the Eighth District Court of Appeals; (8) the Ohio Supreme Court (multiple, including defending against a challenge to the constitutionality of JobsOhio, representing Cedar Fair in dispute with former chief operating officer, representing the Ohio Department of Education against ECOT, and representing a tort victim); (9) the United States District Court for Southern District of Ohio (multiple); (10) the United States District Court for the Northern District of Ohio; (11) the United States District Court for the Eastern District of Missouri; (12) the United States District Court for the Western District of Wisconsin; (13) the United States Court of Appeals for the Sixth Circuit (multiple); (14) state trial court in Anchorage, Alaska; (15) state trial court in Tampa, Florida; (16) state trial court in Orlando, Florida; and (17) a matter in the Commonwealth Court of Appeals in Pennsylvania. Moreover, I had lead responsibility for the representations in all but two of the cases referenced above. In addition to those courts in which I have personally appeared, I also had lead brief writing and strategic responsibility on behalf of Uber for various matters pending in state and federal court in Nevada, and an appeal in the United States Court of Appeals for the Eighth Circuit.

i. Indicate the percentage of your practice in:

1. federal courts: 30% (approx.)

2. state courts of record: 55% (approx.)
3. other courts: 0%
4. administrative agencies: 15% (approx.)

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.

In addition to my many appellate matters, I have tried eleven cases to judgment (including matters that went to decision on motions seeking a preliminary injunction) in trial court, and two matters to final decision before administrative hearing officers. Three of the eleven trial court cases were tried to jury verdict. In one of the matters, I was co-lead counsel with my partner, Shawn Organ. In the other two, I was a member of the trial team, but did not have lead responsibility. On all of the remaining matters, I was lead counsel.

i. What percentage of these trials were:

1. jury: 10%
2. non-jury: 90%

- 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 been counsel of record in eight matters that went to decision in the United States Supreme Court. In addition to the matters that went to decision, I was counsel of record for multiple petitions for certiorari, or oppositions to petitions for certiorari in the Court. I have also prepared multiple amicus briefs on behalf of petitioners and/or respondents, at the cert stage and at the merits stage. As described below, I am supplying copies of all briefs, starting with the eight matters that went to decision.

Matters that went to decision in the United States Supreme Court:

DaimlerChrysler Corp. v. Cuno, et al., 547 U.S. 332, 126 S. Ct. 1854 (2006) (No. 04-1704). Certiorari petition, reply in support of certiorari, brief of petitioner, reply brief, and oral argument transcript supplied.

Bradshaw v. Richey, 546 U.S. 74, 126 S. Ct. 602 (2005) (No. 05-101) (per curiam). Certiorari petition and reply in support of certiorari supplied.

Cutter v. Wilkinson, 544 U.S. 709, 125 S. Ct. 2113 (2005) (No. 03-9877).
Opposition to certiorari, respondent's brief, and oral argument transcript supplied.

Bradshaw v. Stumpf, 545 U.S. 175, 125 S. Ct. 2398 (2005) (No. 04-637).
Certiorari petition, reply in support of certiorari, brief of petitioner, reply brief,
and oral argument transcript supplied.

Wilkinson v. Austin, 545 U.S. 209, 125 S. Ct. 2384 (2005) (No. 04-495).
Certiorari petition, reply in support of certiorari, brief of petitioner and reply brief
supplied.

Wilkinson v. Dotson, 544 U.S. 74, 125 S. Ct. 1242 (2005) (No. 03-287). Certiorari
petition, reply in support of certiorari, brief of petitioner, reply brief, and oral
argument transcript supplied.

City of Littleton v. Z-J Gifts D-4, LLC, 541 U.S. 774, 124 S. Ct. 2219 (2004) (No.
02-1609) (appeared as amicus in support of Petitioner). Merits amicus brief and
oral argument transcript supplied.

Mitchell v. Esparza, 540 U.S. 12, 124 S. Ct. 7 (2003) (No. 02-1369) (per curiam).
Certiorari petition and reply in support of certiorari supplied.

Matters in which I filed petitions or amicus briefs but did not otherwise appear at
the Court in connection with the matter:

Cincinnati SMSA v. PUCO, No. 02-1711 (2002). Opposition to certiorari. Copy
supplied.

DeRolph v. State ex rel. State of Ohio, No. 03-245, 2003 U.S. S. Ct. Briefs Lexis
1369 (2003). Opposition to certiorari. Copy supplied.

Foubert v. Lyons, No. 03-1622 (2003). Amicus brief in support of petition for
certiorari. Copy supplied.

Illinois v. Lidster, No. 02-1060, 2003 U.S. S. Ct. Briefs Lexis 1160 (2003).
Amicus brief in support of petition for certiorari. Copy supplied.

Illinois v. Lidster, No. 02-1060, 2003 U.S. S. Ct. Briefs Lexis 558 (2003).
Amicus brief in support of petitioner at merits stage. Copy supplied.

Maryland v. Pringle, No. 02-809, 2003 U.S. S. Ct. Briefs 1386 (2003). Amicus
brief in support of petition for certiorari. Copy supplied.

Maryland v. Pringle, No. 02-809, 2003 U.S. S. Ct. Briefs Lexis 512 (2003).
Amicus brief in support of petitioner at merits stage. Copy supplied.

Murphy v. Univ. of Cincinnati, No. 03-999 (2004). Opposition to certiorari. Copy supplied.

Spirko v. Bradshaw, No. 03-8043 (2005). Opposition to certiorari. Copy supplied.

Tennessee Student Assistance Corp. v. Hood, No. 02-1606, 2003 U.S. S. Ct. Briefs Lexis 1529 (2003). Amicus brief in support of petition for certiorari. Copy supplied.

Tennessee Student Assistance Corp. v. Hood, No. 02-1606, 2003 U.S. S. Ct. Briefs Lexis 944 (2003). Amicus brief in support of petitioner at merits stage. Copy supplied.

Benner v. Coyle, No. 04-10659 (2005). Opposition to certiorari. Copy supplied. (The copy supplied is unsigned. I could not locate a signed copy. To the best of my knowledge, the copy supplied is identical to the filed copy.)

Blankenship v. Blackwell, No. 04-A-321 (2004). Brief in Response to Petitioners' Application for Stay and Injunction. Copy supplied. (The copy supplied is unsigned. I could not locate a signed copy. To the best of my knowledge, the copy supplied is identical to the filed copy.)

Granholm v. Heald, No. 03-1116, 2004 WL 530965 (2004). Amicus brief in support of petition for certiorari. Copy supplied.

Granholm v. Heald, No. 03-1116, 2004 U.S. S. Ct. Briefs Lexis 460 (2004). Amicus brief in support of petitioner at merits stage. Copy supplied.

Huffman v. Frazier, No. 03-1382 (2004). Petition for certiorari. Copy supplied.

Huffman v. Frazier, No. 03-1382 (2004). Reply in support of petition for certiorari. Copy supplied.

Nelson v. Campbell, No. 03-6821, 2004 U.S. S. Ct. Briefs Lexis 249 (2004). Amicus brief in support of respondent at merits stage. Copy supplied.

Biros v. Bagley, No. 05-11394 (2005). Opposition to certiorari. Copy supplied. (The copy supplied is unsigned. I could not locate a signed copy. To the best of my knowledge, the copy supplied is identical to the filed copy.)

Arnett v. Jackson, No. 05-5160 (2005). Opposition to certiorari. Copy supplied. (The copy supplied is unsigned. I could not locate a signed copy. To the best of my knowledge, the copy supplied is identical to the filed copy.)

Central Virginia Community College v. Katz, No. 04-885, 2005 U.S. S. Ct. Briefs Lexis 406 (2005). Amicus brief in support of petitioners at merits stage. Copy supplied.

Hill v. Mitchell, No. 05-6535 (2005). Opposition to certiorari. Copy supplied.

Hoevenaar v. Lazaroff, No. 05-11756 (2005). Opposition to certiorari. Copy supplied.

Latham v. Office of the Attorney General of Ohio, No. 05-002, 2005 U.S. S. Ct. Briefs Lexis 2786 (2005). Opposition to certiorari. Copy supplied.

Houk v. Lott, No. 05-962 (2006). Petition for certiorari. Copy supplied.

Houk v. Lott, No. 05-962 (2006). Reply in support of petition for certiorari. Copy supplied.

Houk v. White, No. 06-128 (2006). Petition for certiorari. Copy supplied.

Houk v. White, No. 06-128 (2006). Reply in support of petition for certiorari. Copy supplied.

Lawrence v. Blackwell, No. 05-1089, 2006 U.S. S. Ct. Briefs Lexis 1517 (2006). Opposition to certiorari. Copy supplied.

Lopez v. Wilson, No. 05-8475, 2006 U.S. S. Ct. Briefs Lexis 3863 (2006). Opposition to certiorari. Copy supplied.

Touvell v. Ohio Dep't of Mental Retardation and Developmental Disabilities, No. 05-752, 2006 U.S. S. Ct. Briefs Lexis 977 (2006). Opposition to certiorari. Copy supplied.

Macy's Department Stores v. City & County of San Francisco, No. 06-1360, 2007 U.S. S. Ct. Briefs Lexis 900 (2007). Petition for certiorari. Copy supplied.

Macy's Department Stores v. City & County of San Francisco, No. 06-1360, 2007 U.S. S. Ct. Briefs Lexis 895 (2007). Reply in support of petition for certiorari. Copy supplied.

McKenna v. Oliver, No. 07-38, 2007 U.S. S. Ct. Briefs 3317 (2007). Opposition to certiorari. Copy supplied.

Columbia Gas Transmission Corp. v. Levin, No. 07-1554, 2008 U.S. S. Ct. Briefs Lexis 2067 (2008). Petition for certiorari. Copy supplied.

Columbia Gas Transmission Corp. v. Levin, No. 07-1554, 2008 U.S. S. Ct. Briefs

Lexis 2071 (2008). Reply in support of petition for certiorari. Copy supplied.

Lett v. United States, No. 07-1042, 2008 U.S. S. Ct. Briefs Lexis 4039 (2008). Petition for certiorari. Copy supplied.

Lett v. United States, No. 07-1042, 2008 U.S. S. Ct. Briefs Lexis 4041 (2008). Reply in support of petition for certiorari. Copy supplied.

Lett v. United States, No. 07-1042, 2008 U.S. S. Ct. Briefs Lexis 4042 (2008). Supplemental brief in support of petition for certiorari. Copy supplied.

DirecTV Inc. v. Levin, No. 10-1322, 2011 U.S. S. Ct. Briefs Lexis 3250 (2011). Amicus brief in support of petition for certiorari. Copy supplied.

National Ass'n of Optometrists & Opticians v. Harris, No. 12-461, 2012 U.S. S. Ct. Briefs Lexis 4747 (2012). Amicus brief in support of petition for certiorari. Copy supplied.

ProMedica Health Sys. v. FTC, No. 14-762, 2014 U.S. S. Ct. Briefs Lexis 4597 (2014). Petition for certiorari. Copy supplied.

ProMedica Health Sys. v. FTC, No. 14-762, 2015 U.S. S. Ct. Briefs Lexis 1441 (2014). Reply in support of petition for certiorari. Copy supplied.

DirecTV LLC and Dish Network v. Mass. Dep't of Revenue, Nos. 14-1499 and 14-1524, 2015 U.S. S. Ct. Briefs Lexis 2487 (2015). Amicus brief in support of petition for certiorari. Copy supplied.

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) *Cutter v. Wilkinson*, 544 U.S. 709 (2005) (U.S.S.C.)

I represented the State of Ohio in an action in the United States Supreme

Court in which the State was seeking to invalidate the Religious Land Use and Institutionalized Persons Act on constitutional grounds. The Court ultimately ruled against the State, but in doing so adopted a new definition of “strict scrutiny” in the prison context that makes it easier for prison wardens to justify decisions declining prisoner requests for religious accommodations where those requests present legitimate safety concerns. The dates of my representation were approximately 2004 to 2005.

Opposing counsel:

Professor David Goldberger
Ohio State University—Moritz College of Law
55 West 12th Avenue
Columbus, Ohio 43215
(614) 292-1536

Paul Clement (then U.S. Solicitor General)
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005-5793
(202) 879-5000

- (2) *Cuno v. Daimler Chrysler*, 547 U.S. 332 (2006) (U.S.S.C.)

I represented the State of Ohio in an action in the United States Supreme Court in which the plaintiff alleged that providing state tax incentives for in-state economic investment violates the dormant Commerce Clause. The State ultimately prevailed in the Supreme Court, but did so on standing grounds. As a result, the Court did not reach the underlying merits issue. The dates of my representation were approximately 2005 to 2006.

Opposing Counsel:

Professor Peter Enrich
Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115
(617) 373-5094

Co-Counsel:

Theodore Olson
Gibson Dunn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

(202) 955-8668

- (3) *Hillsborough County PTC v. Uber Technologies*, Case No. 15-CA-3097
(Circuit Court, Hillsborough County, Florida), Judge Huey

I represented Uber in Tampa, Florida in an action in which the Hillsborough County Public Transportation Commission was seeking to prevent Uber from operating in the County. The PTC brought a motion for preliminary injunction. The parties had a full day evidentiary hearing. The court ruled against the PTC, meaning that Uber was able to continue operating. The parties have since negotiated an agreement that ended the litigation, and allowed Uber to continue operating there. The dates of my representation were approximately 2015 to 2017.

Opposing counsel (lead):

Brad Kimbro
Holland & Knight
100 North Tampa Street
Suite 4100
Tampa, Florida 33602
(813) 227-6660

- (4) *Electronic Classroom of Tomorrow v. Ohio Department of Education*,
Ohio Supreme Court Case No. 2017-0913
Tenth District: Judges Luper-Schuster, Tyack and Dorrian, 2017-Ohio-
5607
Court of Common Pleas: Judge Jennifer French
(and related cases)

I represented the Ohio Department of Education in a web of litigation that grew out of the Department's efforts to conduct a full-time equivalency review of the records of the Electronic Classroom of Tomorrow ("ECOT"), an online community school. The purpose of the review is to determine whether the school has been funded appropriately during the preceding academic year. ECOT filed suit challenging the procedures that the Department intended to use for the 2015-16 FTE review. ECOT sought injunctive relief. After an evidentiary hearing, the Department prevailed in the trial court. On appeal, the Department prevailed in the Tenth District. The Ohio Supreme Court accepted review, but affirmed the Tenth District decision in favor of the Department.

I also represented the Department in a related administrative challenge by ECOT regarding the funding decision that the Department reached in connection with the FTE review process. That matter was originally heard by a hearing officer in the Department, and then affirmed by the State

Board of Education. ECOT subsequently filed for mandamus review in the Ohio Supreme Court (which was denied) and brought a Chapter 119 challenge in common pleas court (which that court dismissed). ECOT appealed the dismissal of the Chapter 119 appeal. ECOT originally prevailed on its appeal in the Tenth District, but the Department filed a petition for rehearing, which the Tenth District granted, reversing the prior panel opinion. ECOT has since filed a petition for rehearing challenging the new decision, which is yet to be fully briefed. I also represented the Department in a similar challenge by ECOT to the 2016–17 FTE funding decision. The Department prevailed before the administrative hearing officer in that action, as well, and that matter is now on Chapter 119 appeal to the Franklin County Court of Common Pleas.

The dates of the representations described above were approximately 2016 to 2019.

Opposing Counsel:

Marion Little
Chris Hogan
Zeiger, Tigges & Little
41 South High Street
3500 Huntington Center
Columbus, Ohio 43215
(614) 365-9900

JB Hadden
Murray, Murphy, Moul & Basil
1114 Dublin Road
Columbus, Ohio 43215
(614) 488-0400

- (5) *ProgressOhio.org, Inc., et al. v. JobsOhio, et al.*, 2014-Ohio-2382
Franklin County Court of Common Pleas: Judge Beatty
Tenth District: Judges Sadler, Tyack and Dorrian
Ohio Supreme Court

I represented JobsOhio in an action brought by ProgressOhio challenging the constitutionality of the statute that created the non-profit entity. According to the plaintiff, the statute violated Article VIII, Section 6 of the Ohio Constitution, which prevents the State from “lending its aid and credit” to private entities, and also other constitutional provisions. We were able to secure dismissal of the action in the court of common pleas on standing grounds. We likewise prevailed on that theory in the Tenth District and in the Ohio Supreme Court, which accepted the case for review, but affirmed the decisions below. The dates of my representation

were approximately 2011 to 2015.

Co-Counsel:

Aneca Lasley
Squire Patton Boggs
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 362-2830

Opposing Counsel:

Victoria Ullmann (lower courts)
1135 Bryden Road
Columbus, Ohio 43205
(614) 253-2692

Maurice Thompson (Ohio Sup. Ct.)
1851 Center for Constitutional Law
122 East Main Street
Columbus, Ohio 43215
(614) 340-9817

- (6) *Cedar Fair L.P. v. Falfas*, 2014-Ohio-3943 (Ohio Supreme Court)
Erie County Court (remand): Judge Binette, Magistrate Bechtel

I represented Cedar Fair in this dispute with its former Chief Operating Officer. The parties disputed whether he had resigned or been terminated, which impacted the benefits to which he was entitled under his employment agreement. The agreement contained an arbitration provision, and thus the parties arbitrated the dispute. The arbitrator found that the COO had been terminated, rather than resigning, but ordered relief that was not available under the plain language of the contract. Cedar Fair challenged the decision in Erie County Court of Common Pleas, and the court overturned the result. The Sixth District, however, reinstated the result. Cedar Fair then retained me to challenge that decision in the Ohio Supreme Court. I sought and obtained discretionary review in that Court, which then overturned the appeals court decision. In doing so, the Court explicated the scope of the courts' power to overturn arbitral awards. I also represented Cedar Fair on remand in the trial court, and was able to secure a favorable result. The dates of my representation were approximately 2013 to 2015.

Opposing Counsel:

Richard Panza
Wickens Herzer Panza
35765 Chester Road
Avon, Ohio 44011
(440) 695-8055

- (7) *ProMedica Health Sys. v. FTC*, 749 F.3d 559 (6th Cir. 2014)
Judges Kethledge, White and Stranch

I represented ProMedica in connection with an appeal to the Sixth Circuit of an FTC decision requiring ProMedica to unwind its acquisition of St. Luke's Hospital in Toledo. This was an important case, as it was one of the first fully litigated matters involving the unilateral effects theory. Under this theory, the anticompetitive effect does not arise directly from the market shares of the merging entities, but rather from the closeness of the substitutability between their goods (i.e., would a significant portion of consumers consider one entity's products to be the next-best substitute for the other entity's products). We argued that, in such cases, the market shares should not create a rebuttable presumption of harm, as they do in coordinated effects cases. The Sixth Circuit ultimately rejected that argument and upheld the FTC decision. The United States Supreme Court declined review. The dates of my representation were approximately 2011 to 2015.

Co-Counsel:

Stephen Wu
McDermott Will
444 West Lake Street
Chicago, Illinois 60606-0029
(312) 984-2180

Paul Clement (at U.S.S.C. stage)
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005-5793
(202) 879-5000

Opposing Counsel:

Michele Arington
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 383-6722

- (8) *Youngstown City School District Bd. of Educ., et al, v. Ohio Dept. of Educ.*, Case No. 15CVH08-7311
Franklin County Court of Common Pleas: Judge Jennifer French
Tenth District: Judges Brown, Brunner, and Sadler
Ohio Supreme Court, Case No. 2018-1131.

I represented the Ohio Department of Education in a challenge by the Youngstown City School Board, the Youngstown teachers' union, and the union for the staff, in which the plaintiffs were seeking a declaration that H.B. 70, which amended the statutes creating the academic distress commission, were unconstitutional for a variety of reasons. The plaintiffs sought a preliminary injunction preventing the statute from taking effect. After a two-day evidentiary hearing, the Franklin County Court of Common Pleas ruled in favor of ODE, rejecting the request for a preliminary injunction. Plaintiffs appealed the decision, but the Tenth District dismissed the appeal for lack of a final appealable order. On remand, the common pleas court entered judgment in the Department's favor, rejecting the challenges to the statute. Plaintiffs appealed to the Tenth District, which affirmed the trial court. The plaintiffs then appealed to the Ohio Supreme Court, which accepted the case for review. I represented the Department at the jurisdictional memorandum stage, but the Ohio Attorney General's Office has elected to handle the merits stage internally. The dates of my representation were approximately 2015 to 2019.

Opposing counsel:

Martin S. Hume
City of Youngstown Law Department
26 South Phelps Street, 4th Floor
Youngstown, Ohio 44503
(330) 742-8874

James E. Roberts
Roth, Blair, Roberts, Strasfeld & Lodge
100 East Federal Street, Suite 600
Youngstown, Ohio 44503
(330) 744-5211

R. Sean Grayson
6800 North High Street
Worthington, Ohio 43085
(614) 841-1918

Ira J. Mirkin
Charles Oldfield

Green, Haines, Sgambati, Co., LPA
100 Federal Plaza East, Suite 800
Youngstown, Ohio 44501
(330) 743-5101

- (9) *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, Case No. CV02-483526 (Cuyahoga Cty. Common Pleas),
Judge Peter J. Corrigan

I was a member of a team of attorneys who represented a class of Ford medium- and heavy-duty truck dealers in an action alleging that Ford had violated the terms of the dealer agreement, resulting in damages measuring in the hundreds of millions of dollars for the class. Before I became involved, the court had entered summary judgment for the class, but the Eighth District Court of Appeals overturned that decision. I represented the class in the Ohio Supreme Court, which declined review, resulting in a new trial. On retrial, we presented nearly two weeks of evidence. The jury ultimately found in Ford's favor, but the trial court entered JNOV. On appeal, however, the Eighth District reversed the JNOV. The Ohio Supreme Court again declined to review the case. The dates of my representation were approximately 2012 to 2015.

Opposing counsel:

James Feeney
Dykema Gossett
39577 Woodward Avenue
Suite 300
Bloomfield Hills, Michigan 48304
(248) 203-0841

Irene Keyse-Walker
Tucker Ellis
925 Euclid Avenue
Suite 1150
Cleveland, Ohio 44115
(216) 696-3982

Co-Counsel:

James Lowe
Lowe Eklund Wakefield
1660 West 2nd Street
Suite 610
Cleveland, Ohio 44113
(216) 781-2600

Robert M. Foote
Foote Mielke Chavez O'Neil
10 West State Street
Suite 200
Geneva, Illinois 60134
(630) 232-7450

- (10) *U.S. v. Lett*, Case No. 05-266-CR-003-WHS (S.D. Alabama)
Judge Steele

I represented Patrick Lett in a pro bono capacity in connection with his sentencing on federal drug charges. Mr. Lett was an enlisted man in the army, who served in the Middle East. After he was honorably discharged, he made some poor choices, and as a result was involved with a distant family member in the drug trade for a roughly six-week period of time. He voluntarily extricated himself from the situation, and re-enlisted. Unbeknownst to him, police officers had been conducting a sting during the time he was involved. Some months later, as he was preparing to ship out to the Middle East again, he was arrested. He pled guilty. At his first sentencing hearing (before I was involved), his fitness reports showed he was an outstanding soldier, and his commanding officer testified to the same effect. The Judge sentenced him to 11 days time served, and thus released him. The United States appealed to the Eleventh Circuit, which reversed the Judge, finding that there was a five-year mandatory minimum. I became involved in seeking en banc review, and, when that was unsuccessful, U.S. Supreme Court review. The Court did not accept the case. I represented Mr. Lett on remand, however, and successfully argued that the Judge had authority, based on recently decided cases, to once again impose the same sentence. I also put on witnesses describing Mr. Lett's character and conduct during the past two years. Based on the evidence and argument, the district court once again imposed the same sentence. The U.S. Attorney did not appeal. The dates of my representation were approximately 2008 to 2009.

Opposing Counsel:

Steven Butler
Then with the U.S. Attorney's Office
Current contact information unknown

Co-Counsel:

Professor Douglas Berman
Ohio State University – Moritz College of Law
55 Southwest 12th Avenue

Columbus, Ohio 43215
(614) 688-8690

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 the cases set forth above, my most significant legal activities would include: (1) serving as a law professor at the Ohio State University – Moritz College of Law and the University of Oklahoma College of Law; while a professor, I taught classes in Contracts, Business Associations, Patents, and Law & Economics; (2) serving on the Ohio Constitutional Modernization Commission, where I chaired the Finance and Economic Development Committee and served on other committees; (3) in my capacity as State Solicitor, I sat on a seven-member board of managers who set the legal policies and strategies for the Ohio Attorney General’s Office across subject-matter areas, and I also managed the Antitrust Section and the Opinions Section; (4) serving on the Ohio State Bar Association Legal Education Task Force; (5) serving on the Ohio State Bar Association Board of Editors (which selected articles for and edited the Bar Association magazine); and (6) in addition to my litigation activities described, I am also involved in alternative dispute resolution, and have acted as a mediator in three business disputes. I have never served 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.

Contracts

Ohio State University, Moritz College of Law 2000 – 2002
University of Oklahoma College of Law 1997 – 1998

Subject Matter: This was a typical first-year contracts law course. It provided an overview of contract formation, breach, enforcement, and remedies. I no longer have a syllabus or any materials from this course.

Business Associations

Ohio State University, Moritz College of Law 2000 – 2002
University of Oklahoma College of Law 1997 – 1998

Subject matter: This course was an upper-level course that provided an introduction to the various forms of business associations recognized at law: corporations, partnerships, limited partnerships, and LLCs. The course discussed how to form such

entities, and the duties, obligations, and authorities of the various participants in such entities. I no longer have a syllabus or any materials from this course.

Law & Economics

Ohio State University, Moritz College of Law 2000 – 2002

University of Oklahoma College of Law 1997 – 1998

Subject matter: This course was an upper-level course that provided an introduction to the theory of law & economics. The theory of law & economics seeks to apply microeconomic principles to the analysis of legal rules and legal systems. I no longer have a syllabus or any materials from this course.

Patent Law

Ohio State University, Moritz College of Law 2012

Subject matter: This course was an upper-level course that provided an introduction to patent law. It included a discussion of the process by which patents are obtained, as well as consideration of the patent statute and court cases addressing various topics under those statutes (e.g., novelty, non-obviousness, etc.), as well as causes of action and remedies for infringement. I no longer have a syllabus or any materials from this course.

Legal Writing

Ohio State University, Moritz College of Law Spring 2002

Subject matter: This course was a second-semester, first-year course that provided an introduction to legal writing. Topics included how to prepare a legal memorandum, how to draft a brief, tips for making writing more persuasive, and issues of that nature. I no longer have a syllabus or any materials from this course.

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 am a participant in the Jones Day partner retirement plan, from which I should receive a modest monthly benefit upon reaching retirement age. Beyond that, I am currently involved in some contingency fee matters that have yet to resolve. I would anticipate participating in any fees ultimately earned in such matters if allowed by, and to the extent consistent with, judicial ethics rules.

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.

No.

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 submitted to the Senate, I will file my mandated Financial Disclosure Report and provide a copy to this Committee.

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.

Cases most likely to raise conflict questions would be those related to my current clients, matters in which my current law firm is representing a party, or perhaps matters in which Ohio State University is a party (as my wife is on the faculty there). If confirmed, to determine whether I would need to recuse for matters involving current clients, I would consult 28 U.S.C. § 455(a) & (b)(3) and Canon 3C of the Code of Judicial Conduct for United States Judges. I would also consult any judicial decisions or Judicial Conference opinions addressing similar factual circumstances as those raised in the particular case. I will evaluate any other real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case-by-case basis and take appropriate action, including recusal where necessary.

- 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 follow the practices, policies and procedures established by the Court relating to recusal. I will carefully review 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 other laws, rules, or practices governing recusal.

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.

As noted above, while at Jones Day, I undertook a pro bono representation of Patrick Lett, an Army veteran who was convicted of a drug-related felony, in the United States Court of Appeals for the Eleventh Circuit, and on remand in the Southern District of Alabama. I was ultimately able to secure a sentence of time served for him. The matter involved significant work over a substantial period of time, including preparing a petition for rehearing, a petition for certiorari, and handling an evidentiary hearing on remand.

In addition, I represented an inmate named pro bono in a matter before the Ohio Supreme Court. *See* Case No. 2006-1608. This involved drafting two briefs and arguing the matter. I also reviewed and edited a brief for an associate who had undertaken a pro bono Sixth Circuit representation.

While at Kirkland & Ellis, I undertook two pro bono representations of persons charged by the federal government with felonies.

More recently, I have supervised associates at our firm in connection with a pro bono representation of a former colleague and a pro bono representation of a prisoner who has a pending habeas action. I also recently represented pro bono a family friend who was subject to a collection action. This representation involved drafting and filing a motion to dismiss, which was granted.

I have also provided pro bono legal services in connection with drafting amicus briefs at the United States Supreme Court. These include: (1) Brief of Amici Curiae Constitutional Law Professors, in *National Association of Optometrists & Opticians, et al. v. Kamala D. Harris (in her official capacity), et al.*, Case No. 12-461 (U.S.S.C.); (2) Brief Amici Curiae of Forty-Seven Constitutional Law Professors, in *DirecTV, et al. v. Mass. Dept. of Rev.*, Case Nos. 14-1499 and 14-1524 (U.S.S.C.); and (3) Brief of Amici Curiae Constitutional Law Professors, in *DirecTV, Inc and Echostar Satellite, LLC v. Levin*, No. 10-1322 (U.S.S.C.).

In addition to legal representation, I undertook service on the Ohio Constitutional Modernization Commission on a pro bono basis, which involved substantial work over a five-year period. I also served pro bono on the Ohio State Bar Association Legal Education Task Force, which involved significant activities over the span of a year.

Outside of work, I provided legal assistance in forming the Stand Project, a drug-abuse awareness group aimed at high-school students. I also have been active in coaching in various youth sports leagues.

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.

Ohio has a bipartisan Judicial Screening Commission that is comprised of members appointed by Senator Portman and Senator Brown. I had applied previously for a judgeship in the Southern District of Ohio during the spring of 2017. The then-current Screening Commission interviewed me on August 23, 2017. After the interview with the commission, I interviewed with Senator Portman's staff on September 6, 2017. I subsequently interviewed with Senator Portman on September 15, 2017. I also had various telephone contacts with Senator Brown's staff, but no formal interview. In connection with the process, I also interviewed at the White House Counsel's Office on September 22, 2017 (certain employees from the DOJ Office of Legal Policy were also present at that interview).

The Senators appointed a new bipartisan Judicial Screening Commission for a new Southern District opening in the Summer of 2018. I interviewed with that Commission on August 30, 2018. I subsequently interviewed with Senator Portman and staff members on September 19, 2018. Since then, I have been in regular contact with attorneys from the White House Counsel's Office and the Department of Justice's Office of Legal Policy. On May 3, 2019, 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

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	440	926	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule	4	829	436	Notes payable to relatives			
Unlisted securities (LLC, est. value of 50% share)		400	000	Notes payable to others			
Accounts and notes receivable:		80	000	Accounts and bills due			
Due from relatives and friends		80	000	Unpaid income tax (est.)			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule			
Real estate owned -- see schedule	1	920	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
Organ Cole Capital Account (est.)		400	000				
				Total liabilities			0
				Net Worth	9	120	362
Total Assets	9	120	362	Total liabilities and net worth	9	120	362
				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions? (My firm is a counterclaim defendant in a collection matter against a former client.)	Yes		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities

Vanguard 2030 Fund	\$1,179,757
TIAA CREF	
OSU ARP #1 CREF Growth R3	48,229
OSU ARP #1 CREF Equity Index R3	110,859
OSU ARP #1 REF Global Equities R3	21,815
OSU ARP #2 CREF Stock R3	704,834
OSU ARP #2 CREF Growth R3	921,030
OSU 403(b) TDA CREF Growth R3	497,243
OSU 403(b) TDA CREF Equity Index R3	442,310
OSU 457(b) CREF Stock R3	117,699
OSU 457(b) CREF Growth R3	160,076
OSU 457(b) CREF Global Equities R3	71,997
OSU 457(b) TIAA Real Estate	63,637
Oklahoma 403(b) CREF Stock R3	3,072
Oklahoma 403(b) CREF Global Equities R3	5,078
Oklahoma 403(b) CREF Bond Market R3	2,084
USAA Aggressive Growth	13,326
USAA International	23,752
USAA S&P 500	38,472
Oppenheimer Global A	19,751
Hartford Capital Appreciation HLS IB	25,680
Hartford Midcap HLS IB	33,657
Invesco American Franchise Fund Class A	26,284
Arbitrage FDS Class R	4,617
JP Morgan Mid Cap Value Fund CL A	21,702
MFS Value Fund A	25,691
American Airlines Group Inc	17,120
General Motors Company	19,225
Sarepta Therapeutics Inc.	51,948
JPMorgan US Treasury Plus Money Market Fund	158,491
Total Listed Securities	\$ 4,829,436

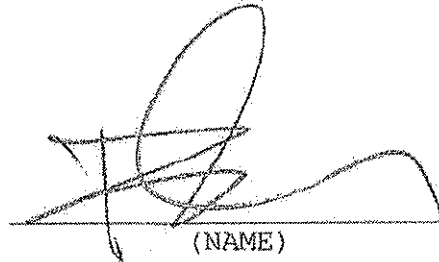
Real Estate Owned

Personal Residence	\$1,750,000
Vacation Condominium	170,000
Total Real Estate Owned	\$1,920,000

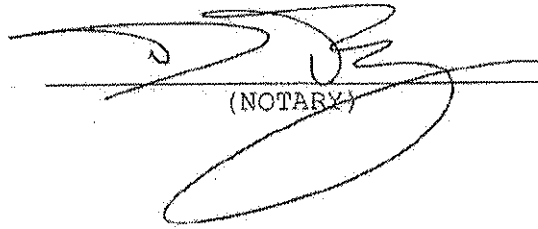
AFFIDAVIT

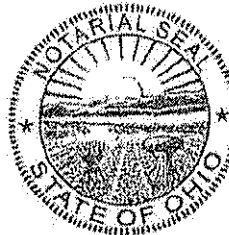
I, Douglas R. Cole, do
swear that the information provided in this statement is, to the
best of my knowledge, true and accurate.

April 30, 2019
(DATE)


(NAME)

State of Ohio...
County of Franklin


(NOTARY)



David Jerome Twombly, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.