

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Mark Howard Cohen

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

United States District Judge for the Northern District of Georgia

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.

Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308

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

1955; Miami Beach, Florida

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.

1976 – 1979, Emory University School of Law; J.D., 1979

1972 – 1976, Emory University; B.A. (*magna cum laude*), 1976

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.

1999 – present  
Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
Partner (2001 – present)  
Of Counsel (1999 – 2000)

1995 – 1999  
Office of the Governor  
State of Georgia  
201 State Capitol  
Atlanta, Georgia 30334  
Executive Secretary (1998 – 1999)  
Executive Counsel (1995 – 1998)

January – August 1995  
Office of State Administrative Hearings  
230 Peachtree Street, N.W., Suite 850  
Atlanta, Georgia 30303  
Chief State Administrative Law Judge

August – December 1994  
University of Arizona  
Office of the General Counsel  
103 Administration Building  
1401 East University Boulevard  
Tucson, Arizona 85721  
University Attorney

1981 – 1994  
Office of the Attorney General  
State of Georgia  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334  
Senior Assistant Attorney General (1989 – 1994)  
Assistant Attorney General (1982 – 1989)  
Staff Assistant Attorney General (1981 – 1982)

1979 – 1981  
Chambers of the Honorable Joel M. Feldman  
United States Magistrate Court  
Northern District of Georgia  
75 Spring Street, S.E.  
Atlanta, Georgia 30303  
Law Clerk

May 1978 – June 1979  
T. Brian Glass  
(Now practicing as Overbeck & Glass)  
121 Linden Avenue, Suite 107  
Atlanta, Georgia 30308  
Research Assistant

October 1977 – May 1978  
Alston, Miller & Gaines  
(Now practicing as Alston & Bird LLP)  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Research Assistant

June – August 1977  
Garland, Nuckolls, Kadish & Martin  
(Firm no longer in operation)  
Atlanta, Georgia  
Research Assistant

Other Affiliations (Uncompensated):

2003 – 2011  
AMIKids of Georgia, Inc. (formerly Georgia Wilderness Institute)  
1360 Peachtree Street, N.E.  
Suite 1200  
Atlanta, Georgia 30309  
Board of Trustees (2003 – 2011)  
Vice-Chair (2008 – 2010)

2003 – 2009  
Emory Public Interest Committee  
Emory University School of Law  
Office of Career Services  
1301 Clifton Road  
Atlanta, Georgia 30322  
Advisory Board

1999 – 2003  
Georgia World Congress Center Authority  
285 Andrew Young International Boulevard, N.W.  
Atlanta, Georgia 30313  
Board of Governors

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 United States Military. I registered for the Selective Service upon turning age 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.

Lawyers Foundation of Georgia Fellow (2007 – present)

Selected as a “Super Lawyer” by *Law & Politics* and *Atlanta Magazine* for excellence in Government Law (2004 – present)

AV-Rated, Martindale-Hubbell (Highest Ranking for Legal Ability and Ethical Standards) (1995 – present)

Recognized by *Georgia Trend Magazine* as a member of Georgia’s “Legal Elite” in Appellate Law (2012)

Recognized in *The Best Lawyers in America* in Administrative/Regulatory Law (2007 – present) and Government Relations Law (2011)

Resolution of Commendation, State Bar of Georgia, for advancement of justice in Georgia and support of the State Bar of Georgia (1998)

Resolution of Commendation, Georgia House of Representatives, for legal assistance to the House during legislative and congressional redistricting (HR 1286) (1992)

Resolution of Commendation, Georgia State Senate, for legal assistance to the Senate during legislative and congressional redistricting (SR 619) (1992)

Honorary License to Practice Pharmacy, Georgia State Board of Pharmacy (1989)

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

American Bar Association (2013)

Georgia Judicial Nominating Commission

Executive Counsel for Governor Zell Miller (1995 – 1999)

Northern District of Georgia Magistrate Judge Selection Panels  
(2001 – 2008)

Senator Saxby Chambliss' Judicial and United States Attorney Selection Panel  
Representative for Senator Zell Miller (2003 – 2005)

State Bar of Georgia (1979 – present)

10. **Bar and Court Admission:**

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

Georgia, 1979  
Arizona, 1992 (inactive)

There have been no lapses in membership although as indicated, my membership in Arizona is inactive.

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

Supreme Court of the United States, 1983  
United States Court of Appeals for the Eleventh Circuit, 1981  
United States District Court for the Middle District of Georgia, 1982  
United States District Court for the Northern District of Georgia, 1979  
United States District Court for the Southern District of Georgia, 1989  
Supreme Court of Georgia, 1979  
Georgia Court of Appeals, 1979  
Superior Courts of Georgia, 1979

With respect to the Eleventh Circuit Court of Appeals, my membership lapsed during my service as Executive Counsel and was re-activated in May 2001 after I joined Troutman Sanders and paid the renewal fee. There were no other lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

AMIKids Georgia, Inc. (2003 – 2011)  
Board of Trustees (2003 – 2011)  
Vice-Chair (2008 – 2010)

Bleckley Inn of Court (1998 – present)

Emory Public Interest Committee (2003 – 2009)  
Advisory Board

Georgia World Congress Center Authority (1999 – 2003)  
Board of Governors

Gridiron Secret Society (2002 – present)  
Honorary Member

Lawyers Club of Atlanta (1984 – present)

Lawyers Foundation of Georgia, Fellow (2007 – present)

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

The Gridiron Secret Society is a campus fraternal society at the University of Georgia that has no female members. Otherwise, to the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*The Work-Product Doctrine in Government Litigation and Its Application to Open Records Laws*, Government Attorneys Seminar, Institute of Continuing Legal Education in Georgia (Apr. 2006). Copy supplied.

*Ethics and Professionalism: Considerations for Lawyer Lobbyists in Georgia*, Troutman Sanders LLP (Jan. 2006). Copy supplied.

*The Georgia Regional Transportation Authority: Governor Barnes' Prescription for Traffic and Pollution Control*, Regional Transportation Seminar, Institute of Continuing Legal Education in Georgia (Oct. 1999). Copy supplied.

With David C. Will, *Administrative Law*, 51 Mercer L. Rev. 103 (1999). Copy supplied.

*Letter to the Editor*, The Atlanta Journal-Constitution (April 14, 1999). Copy supplied.

*Letter to Roger Ebert, Film Critic*, Chicago Sun-Times (June 28, 1998). Copy supplied.

*Disciplinary Procedures Before the State Examining Boards*, Institute for Continuing Legal Education (Spring 1989). Copy supplied.

With Stephanie B. Manis, *Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine*, 40 Mercer L. Rev. 1 (1988). Copy supplied.

With Stephanie B. Manis, *Administrative Law*, 39 Mercer L. Rev. 43 (1987). Copy supplied.

With Stephanie B. Manis, *Administrative Law*, 38 Mercer L. Rev. 17 (1986). 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.

I do not recall preparing or contributing to any such reports, memoranda, or policy statements and I am unable to identify any copies of such materials through a diligent search of my records and Internet databases.

- 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.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other communications relating, in whole or in part, to matters of public policy or legal interpretation that I have provided to public bodies or public officials (that do not fall under the attorney-client privilege) that I have been unable to recall or identify.

January 19, 2000: Speech on ethics requirements for the Georgia State Senate, delivered to a majority of its members. I have no notes, transcript, or recording from that presentation, but press coverage is supplied.

During my tenure with the Georgia Attorney General's office, I drafted a number of official and unofficial opinions on various areas of the law to public officials. Those opinions are enumerated below:

April 11, 1994 (1994 Op. Att'y. Gen. Ga. 94-16). Copy supplied.

March 7, 1994 (1994 Op. Att'y Gen. Ga. 94-9). Copy supplied.

January 21, 1994 (1994 Op. Att'y Gen. Ga. U94-2). Copy supplied.

January 19, 1994 (1994 Op. Att'y Gen. Ga. 94-3). Copy supplied.

December 15, 1993 (1993 Op. Att'y Gen. Ga. 93-27). Copy supplied.

September 30, 1993 (1993 Op. Att'y Gen. Ga. 93-24). Copy supplied.

September 20, 1993 (1993 Op. Att'y Gen. Ga. U93-8) Copy supplied.

September 2, 1993 (1993 Op. Att'y Gen. Ga. 93-21). Copy supplied.

September 1, 1993 (1993 Op. Att'y Gen. Ga. U93-7). Copy supplied.

March 11, 1993 (1993 Op. Att'y Gen. Ga. U93-2). Copy supplied.

November 4, 1992 (1992 Op. Att'y Gen. Ga. U92-18). Copy supplied.

October 7, 1992 (1992 Op. Att'y Gen. Ga. 92-27). Copy supplied.

October 2, 1992 (1992 Op. Att'y Gen. Ga. 92-26). Copy supplied.

August 19, 1992 (1992 Op. Att'y Gen. Ga. 92-21). Copy supplied.

August 13, 1992 (1992 Op. Att'y Gen. Ga. U92-13). Copy supplied.



August 5, 1992 (1992 Op. Att’y. Gen. Ga. 92-16). Copy supplied.

July 16, 1992 (1992 Op. Att’y Gen. Ga. 92-12). Copy supplied.

June 26, 1992 (1992 Op. Att’y Gen. Ga. 92-11). Copy supplied.

June 18, 1991 (1991 Op. Att’y Gen. Ga. 91-16). Copy supplied.

February 14, 1991 (1991 Op. Att’y Gen. Ga. U91-4). Copy supplied.

February 27, 1990 (1990 Op. Att’y Gen. Ga. U90-6). Copy supplied.

May 18, 1989 (1989 Op. Att’y Gen. Ga. U89-13). Copy supplied.

June 13, 1988 (1988 Op. Att’y Gen. Ga. U88-18). Copy supplied.

May 10, 1988 (1988 Op. Att’y Gen. Ga. 88-9). Copy supplied.

March 14, 1988 (1988 Op. Att’y Gen. Ga. U88-11). Copy supplied.

January 19, 1988 (1988 Op. Att’y Gen. Ga. U88-3). Copy supplied.

June 25, 1986 (1986 Op. Att’y Gen. Ga. 86-28). Copy supplied.

July 17, 1985 (1985 Op. Att’y Gen. Ga. U85-31). Copy supplied.

July 3, 1985 (1985 Op. Att’y Gen. Ga. U85-30). Copy supplied.

December 17, 1984 (1984 Op. Att’y Gen. Ga. U84-52). Copy supplied.

October 30, 1984 (1984 Op. Att’y Gen. Ga. U84-46). Copy supplied.

October 24, 1984 (1984 Op. Att’y Gen. Ga. U84-44). Copy supplied.

August 19, 1984 (1984 Op. Att’y Gen. Ga. U84-34). Copy supplied.

January 9, 1984 (1984 Op. Att’y Gen. Ga. 84-2). Copy supplied.

September 23, 1983 (1983 Op. Att’y Gen. Ga. 83-64). Copy supplied.

July 27, 1983 (1983 Op. Att’y Gen. Ga. U83-48). Copy supplied.

July 22, 1983 (1983 Op. Att’y Gen. Ga. 83-50). Copy supplied.

April 22, 1983 (1983 Op. Att’y Gen. Ga. 83-27). Copy supplied.

February 18, 1983 (1983 Op. Att’y Gen. Ga. U83-8). Copy supplied.

June 24, 1985: Speech on Ethics made to Certified Public Managers, State of Georgia. A copy of my remarks is 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.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other speeches or talks I have given that I have been unable to recall or identify.

March 1, 2013: Panelist, “Georgia Appellate Practice,” Institute of Continuing Legal Education, Appellate Practice Section, State Bar of Georgia, Atlanta, Georgia. I participated in a panel discussion with judges of Georgia’s appellate courts concerning keys to an effective appellate oral argument. I have no notes, transcript, or recording from that discussion, which was a portion of a day-long continuing legal education seminar on appellate practice in Georgia. The address of the Institute of Continuing Legal Education in Georgia is Post Office Box 1885, Athens, Georgia 30603.

November 14, 2012, October 13, 2011, October 14, 2010, November 12, 2009: Guest Speaker, Election Law classes taught by Professor Michael Kang at Emory University School of Law, Atlanta, Georgia. I discussed my experience in handling voting rights and election law cases. I have no notes, transcript, or recording from these discussions. The address of Emory University School of Law is Gambrell Hall, 1301 Clifton Road, Atlanta, Georgia 30322.

November 8, 2012: Panelist, “The Impetus and Impact of *Kenny A. v. Perdue*,” Atlanta Bar Association, Public Interest Law Section, Atlanta, Georgia. I participated in a panel discussion concerning the litigation and settlement of the *Kenny A. v. Perdue* case. I have no notes, transcript, or recording from that discussion. The address of the Atlanta Bar Association is 229 Peachtree Street, NE, Suite 400, Atlanta, Georgia 30303.

January 28, 2011 & February 1, 2008: Instructor, Kessler-Eidson Trial Techniques Program for Emory University School of Law on the topics of direct and cross-examination. The materials for the students are prepared by the law school, and no

written materials were prepared by me or my colleagues. For a review of the program, see: <http://www.law.emory.edu/academics/academic-programs/trial-techniques.html>. The address for Emory University School of Law is Gambrell Hall, 1301 Clifton Road, NE, Atlanta, Georgia 30322.

January 27, 2007: Panelist, "Dollar and the Dome: Finding Justice; A Fred Friendly Discussion of the Process and Current Issues in Funding Georgia's Judicial System," Georgia Bar Media and Judiciary Conference. I participated in a panel discussion concerning the budgetary and political issues involved in funding the state's indigent defense system, which was a portion of a day-long symposium sponsored by law firms, university organizations, free speech groups, and news organizations to support the Georgia First Amendment Foundation. I have no notes, transcript, or recording from that discussion, but press coverage is supplied. The address of the Georgia First Amendment Foundation is 150 East Ponce de Leon Avenue, Suite 350, Decatur, Georgia 30030.

April 7, 2006: Speaker, "The Work-Product Doctrine in Government Litigation and Its Application to Open Records Laws," Government Attorneys Seminar, Institute of Continuing Legal Education in Georgia, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

January 5, 2006: Speaker, "Ethics and Professionalism: Considerations for Lawyer Lobbyists in Georgia," Troutman Sanders LLP, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

October 21, 1999: Speaker, "The Georgia Regional Transportation Authority: Governor Barnes' Prescription for Traffic and Pollution Control," Regional Transportation Seminar, Institute of Continuing Legal Education in Georgia, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

October 5, 1995: Speaker, "So You Want to Be a Judge," Institute for Continuing Legal Education, Atlanta, Georgia. I discussed the procedure for applying to fill a vacancy on the trial and appellate courts of Georgia. I have no notes, transcript, or recording from that presentation. The address of the Institute for Continuing Legal Education in Georgia is Post Office Box 1885, Athens, Georgia 30603.

Spring 1989: Speaker, "Disciplinary Procedures Before the State Examining Boards," Institute for Continuing Legal Education, Atlanta, Georgia. A copy of the written materials on which the discussion was based is supplied in response to Question 12a.

- 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.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other instances when I gave an interview with a newspaper, magazine, or radio or television station that I have been unable to recall or identify.

R. Robin McDonald, "Judge Denies \$5.9M Bonus," *Daily Report*, July 21, 2011. Copy supplied.

Dorie Turner, "Huckaby Takes on New Challenge as Ga. Chancellor [with correction]," *The Associated Press*, May 15, 2011. Copy supplied.

Kathleen Baydala Joyner, "SAAG Costs Stay Consistent," *Daily Report*, April 27, 2011. Copy supplied.

R. Robin McDonald, "On the Rise: Joshua B. Belinfante," *Daily Report*, August 16, 2010. Copy supplied.

Meredith Hobbs, "Summer Classes Pared Down," *Daily Report*, June 7, 2010. Copy supplied.

Greg Land, "Chief Judge Has Need for Speed," *Daily Report*, May 6, 2010. Copy supplied.

Greg Land, Tony Mauro, and Marcia Coyle, "U.S. Justices Toss \$4.5M Bonus," *Daily Report*, April 22, 2010. Copy supplied.

James Salzer and Cameron McWhirter, "Baker, Perdue Get Noticed," *The Atlanta Journal-Constitution*, March 28, 2010. Copy supplied.

James Salzer and Cameron McWhirter, "AG's Donors Find Work From State," *The Atlanta Journal-Constitution*, June 21, 2009. Copy supplied.

Andy Miller, "Blue Cross Must Pay \$12 Million More," *The Atlanta Journal-Constitution*, December 5, 2008. Copy supplied.

Greg Land, "Manis Says 'It's Time' to Step Down," *Daily Report*, September 14, 2007. Copy supplied.

Tim Bentley, "Pie in the Sky," *Daily Report*, May 29, 2007. Copy supplied.

Andy Peters, "State Spent \$36.6M for Outside Legal Help," *Daily Report*, January 10, 2007. Copy supplied.

Alyson M. Palmer, "Tough Race, Tougher Tactics," *Daily Report*, December 20, 2006. Copy supplied.

Alyson M. Palmer, "Hunstein's Campaign Looks to Pay Off Debt," *Daily Report*, November 13, 2006. Copy supplied.

Alyson M. Palmer and Andy Peters, "Big Buy for Hunstein Starts Air War," *Daily Report*, October 16, 2006. Copy supplied.

Andy Peters and Alyson M. Palmer, "Business Lobby Takes Aim at Three Justices of High Court," *Daily Report*, June 20, 2006. Copy supplied.

Andy Peters, "AG Has Money, But Opponent Has the GOP," *Daily Report*, May 22, 2006. Copy supplied.

Andy Peters, "Governor Taps New Executive Counsel," *Daily Report*, September 1, 2005. Copy supplied.

In July 2005, WSB-TV in Atlanta broadcast a report concerning allegations that former Governor Zell Miller misused funds from the Governor's "Mansion account" during his tenure. I was interviewed on camera as Governor Miller's former Executive Counsel by then WSB-TV reporter Dale Cardwell. I do not have a clip from that interview but I have supplied a copy of the print version of the televised report from the WSB-TV website.

Greg Bluestein, "AG Gets Cold Shoulder in Vetting Legislation," *Daily Report*, April 25, 2005. Copy supplied.

"Sorrow Shadows Courthouse," *Daily Report*, March 14, 2005. Copy supplied.

Jonathan Ringel, "Attorney General Emerged Victorious From *Perdue v. Baker* Power Struggle," *Daily Report*, December 29, 2003. Copy supplied.

Untitled, *Enrollment Management Report*, October 1, 2001. Copy supplied.

Sara Hebel, "U. of Georgia Settles Affirmative-Action Suit," *The Chronicle of Higher Education*, February 16, 2001. Copy supplied.

Bill Rankin, "UGA Keeps Eye on Court Appeal in Settling Claim, School Will Pay \$55,000, Admit Two White Students, But More Lawsuits May Be Coming, Lee Parks Says," *The Atlanta Journal-Constitution*, February 7, 2001. Copy supplied.

Bill Rankin, "UGA Settles Lawsuit Over Admissions, Deal Won't Alter Acceptance Policies," *The Atlanta Journal-Constitution*, February 6, 2001. Copy supplied.

Marcia Coyle, "Supreme Court May Revisit *Bakke* Landmark," *Fulton County Daily Report*, January 18, 2001. Copy supplied.

James Salzer, "UGA's Black Enrollment Percentage Same as '99," *The Atlanta Journal-Constitution*, November 23, 2000. Copy supplied.

"UGA Admissions Suit Widened; Students Affected By Race, Gender Policy Can Join Action, Judge Rules," *The Florida Times-Union*, November 17, 1999. Copy supplied.

"Gingrich Says He Has No Plans to Run for Office in Next Few Years," *The Associated Press*, December 31, 1998. Copy supplied.

Peter Mantius, "Miller to Set Election for Gingrich Seat," *The Atlanta Journal-Constitution*, December 3, 1998. Copy supplied.

Bert Roughton, Jr., "2 Businessmen With Ties to Miller Face Ethics Probe Complaint Against Union County Officials Forces Governor to Call Hearing," *The Atlanta Journal-Constitution*, April 4, 1998. Copy supplied.

"Public Lists of Parolees Seldom Used Miller Proposal Shifts Responsibility From Citizens to GBI and Sheriffs to Publicize Offenders' Residences," *The Atlanta Journal-Constitution*, January 31, 1997. Copy supplied.

"Fumes Kill Man Working on Truck," *The Augusta Chronicle*, November 7, 1995. Copy supplied.

Christy Harrison, "American Indians Decry Marketing of Mayan Skulls," *The Atlanta Journal-Constitution*, September 21, 1993. Copy supplied.

Steve Harvey, "House Districts Rejected Again; Scramble on to Avoid Special Session," *The Atlanta Journal-Constitution*, March 30, 1992. Copy supplied.

Rhonda Cook, "Redistricters Face Tight Deadlines; But Feds Said They Rushed the 1<sup>st</sup> Time," *The Atlanta Journal-Constitution*, January 23, 1992. Copy supplied.

Charles Walston, "Data Sought on Metro, S. Ga. Districts," *The Atlanta Journal-Constitution*, November 27, 1991. Copy supplied.

Margaret Usdansky, "Doctor Involved in Surgery After Vote to Suspend License Not Informed of Board Action for 7 Weeks," *The Atlanta Journal-Constitution*, May 12, 1990. Copy supplied.

Richard Greer, "Hapeville Council Ends Policy on Signing For Public Records," *The Atlanta Journal-Constitution*, April 4, 1990. Copy supplied.

Rhonda Cook, "Vet Accused of Abusing Animals Cancels Warrant Against Witness," *The Atlanta Journal-Constitution*, March 29, 1990. Copy supplied.

Steve Harvey, "Hapeville's Records Policy Called Violation of Law," *The Atlanta Journal-Constitution*, March 16, 1990. Copy supplied.

I also recall that approximately three to five years ago, I was interviewed by a reporter at my local Kroger grocery store on a Sunday on the topic of Georgia's prohibition of Sunday sales of wine. I was informed by others that a portion of that interview was broadcast sometime that week on National Public Radio. I never heard the clip. I have searched the NPR website and other Internet databases and have been unable to locate the clip.

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.

In January 1995, I was appointed by then-Governor Zell Miller to serve as the state's first Chief State Administrative Law Judge, who serves as the head of the Office of State Administrative Hearings in Georgia, the state agency created by the Georgia General Assembly to preside over the majority of state administrative hearings. I held that position until August 1995, at which time then-Governor Miller appointed me as his Executive Counsel. During the period of my service, my main duties were to obtain a budget appropriation from the Georgia General Assembly, secure office space, and employ a staff. Once the agency was operational, I was able to preside over fewer than ten cases before I was appointed as Executive Counsel to Governor Miller.

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

Because a majority of the decisions issued by the Office of State Administrative Hearings are initial decisions that are then subject to review by the agency, there were no decisions that went to "verdict" or "judgment" in the same manner as those in state or federal courts.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

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

At the time of my tenure as Chief State Administrative Law Judge, the decisions of the Office of State Administrative Hearings were unreported.

- 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).

I held the position of Chief State Administrative Law Judge for seven months, and I issued approximately 15 decisions, none of which were published. Virtually all of my orders were based on forms and contained no substantive legal or factual analysis, such as a summary affirmance of an action taken by the Department of Public Safety to revoke a state-issued driver's license. I have included information on the sole written, unpublished decision I issued during my brief term that contained any significant legal or factual analysis.

*Barry Reid v. Bert Hardin*, Docket No. OSAH-OCA-95-1. Decision supplied.

This case involved a self-employed home repair and improvement service technician who took money from consumers, but failed to make repairs and improvements for a number of those consumers, some of whom were very elderly. After a full-day hearing, I found that many of the activities constituted violations of the Georgia Fair Business and Practices Act, and recommended that the Respondent be fined the maximum amount because the preponderance of the evidence established that the violations were intentional and egregious.

The attorneys for Complainant Reid were John S. Smith, III, 1518 Cervantes Place, The Villages, Florida 32159, (352) 575-2001, and Walter V. Landow, 3437 Lee Road, Shaker Heights, Ohio 44120, (216) 421-0578. The Respondent was pro se. The case was not reported, but a copy of my decision is supplied.

- 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.

At the time of my service in the Office of State Administrative Hearings, none of the decisions were published. Aside from the decision in *Reid v. Hardin*, all other orders that I signed during my short tenure as Chief State Administrative Law Judge were perfunctory and contained no substantive legal or factual analysis.

*Reid v. Hardin*, Docket No. OSAH-OCA-95-1. Decision supplied in 13c.

The attorneys for Complainant Reid were John S. Smith, III, 1518 Cervantes Place, The Villages, Florida 32159, (352) 575-2001, and Walter V. Landow, 3437



Lee Road, Shaker Heights, Ohio 44120, (216) 421-0578. The Respondent was pro se.

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

None.

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

None.

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

At the time of my service with the Office of State Administrative Hearings, all of the decisions were unpublished and stored either in that office's files or in the files of the agency for which the hearing was conducted.

- 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.

None.

- 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.

None.

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.

During the short period of time that I served as Chief State Administrative Law Judge for the Office of State Administrative Hearings, no motions were filed requesting my or any other Administrative Law Judge's recusal in any matter and I did not have to assess the necessity or propriety of recusal in any case for which I presided. When the agency modified its procedural rules after my departure, a rule was adopted providing for those situations when an Administrative Law Judge should be recused from hearing a case.

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

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

I served as an appointed member of the Board of Governors for the Georgia World Congress Center Authority from 1999 to 2003. I was appointed to that position by then-Governor Zell Miller and confirmed by the Georgia State Senate.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have served as the Treasurer for the Committee to Re-Elect Justice Carol Hunstein to the Supreme Court of Georgia from approximately 2001 until the present date. In her re-election campaign in 2006, I served as one of her campaign managers.

I have served as Treasurer for the following election committees: Committee to Keep Judge Wes Taylor on the State Court of Fulton County since January 2011, Committee to Keep Judge Cynthia Wright on the Superior Court of Fulton County from approximately 2004 to the present, Committee to Re-Elect Judge Brenda Hill Cole to the State Court of Fulton County from approximately 2001 to 2012,

and Committee to Re-Elect Judge Stephanie B. Manis on the Superior Court of Fulton County from approximately 2004 to 2007. All of those incumbent Georgia Superior and State Court judges ran unopposed, and my duties were limited to receiving contributions, depositing them in the appropriate campaign account, and filing the required campaign contribution disclosure reports.

I served on the transition team for Attorney General-elect Sam Olens from November 2010 through January 2011.

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 1979 to 1981, I served as law clerk to United States Magistrate Joel M. Feldman for the Northern District of Georgia.

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

I have never practiced alone.

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

1981 – 1994

Office of the Attorney General

State of Georgia

40 Capitol Square, S.W.

Atlanta, Georgia 30334

Senior Assistant Attorney General (1989 – 1994)

Assistant Attorney General (1982 – 1989)

Staff Assistant Attorney General (1981 – 1982)

1994

University of Arizona

Office of the General Counsel

103 Administration Building

1401 East University Boulevard

Tucson, Arizona 85721

University Attorney

1995 – 1999

Office of the Governor  
State of Georgia  
201 State Capitol  
Atlanta, Georgia 30334  
Executive Secretary (1998 – 1999)  
Executive Counsel (1995 – 1998)

1999 – present  
Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
Partner (2001 – present)  
Of Counsel (1999 – 2001)

- 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. I have been appointed by the Supreme Court of Georgia to serve as a Special Master in a disciplinary proceeding brought by the State Bar of Georgia against a licensed attorney.

b. Describe:

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

In 1981, I began my 13-year career with the Georgia Attorney General's office. I was initially assigned to represent a number of state agencies in federal and state litigation and provide them with general legal advice. I appeared in federal and state trial courts and made arguments in appellate courts. I also began a practice of advising public officials on ethics and conflicts of interest issues as well as open meetings and open records requirements, which continued throughout my tenure with the Attorney General's office.

In 1984, I was promoted to an assistant division director position, both supervising other attorneys and representing a number of professional licensing boards and administrative agencies. I participated in hundreds of hearings before administrative law judges concerning matters involving potential disciplinary action against physicians, pharmacists, nurses, and other health care professional and nonprofessional licensees. Many of those hearings involved issues relating to alleged malpractice and criminal

activities. I also handled all of the appeals from those decisions to the applicable Georgia court.

In 1989, I was again promoted to lead the office's Government Operations Division where, among other clients, I represented the Office of the Secretary of State and the Board of Regents of the University System of Georgia. I handled many high profile litigation matters in both state and federal courts, advised and assisted the Georgia General Assembly during redistricting, and developed an expertise in election and education law. In addition, I represented all elected state judges in their official capacities and coordinated legal advice involving municipal and county officials.

In 1994, I served as counsel to the University of Arizona, representing the Schools of Medicine, Nursing, and Pharmacy. I prepared contracts, responded to discovery and open records requests, defended University employees in depositions, and advised administration and faculty on their legal responsibilities with respect to issues concerning education law.

After my services as the first Chief State Administrative Law Judge to manage the Office of State Administrative Hearings, Governor Miller appointed me as his Executive Counsel in 1995. In addition to providing legal advice to the Governor, I coordinated legal services for state government, drafted the Governor's annual legislative package, worked with members of the Georgia General Assembly, and supervised the work of the Judicial Nominating Commission. I served in that position until 1998, when I became Governor Miller's Executive Secretary, or Chief of Staff, for his final year in office.

In January 1999, I joined the Atlanta office of Troutman Sanders LLP. In my litigation practice, I have represented both governmental entities and private clients in federal and state litigation, both trial and appellate, involving constitutional, civil rights, voting rights, health care, and election matters. In my regulatory practice, I have advised clients on issues relating to contract procurement, health care, professional and industrial licensing, open records and open meetings laws, and lobbying and ethics requirements. I also assisted clients in developing legislation and strategies to assist in creating or expanding government contracting opportunities.

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

When I worked for the Georgia Attorney General's Office, my client was the State of Georgia and a large number of state agencies and public officials. I represented the State of Georgia and its agencies and officials in state and federal trial and appellate litigation. These agencies included

the Georgia Department of Human Resources, the Georgia Department of Family and Children Services, the Georgia Division of Children and Youth (now known as the Department of Juvenile Justice), the Georgia Department of Medical Assistance (now known as the Georgia Department of Community Health), Georgia's Professional Licensing Boards, the Georgia Board of Regents, and the Georgia Secretary of State. I also provided advice to county and municipal governments as well as candidates and elected officials who sought advice on election-related issues.

During my years as Executive Counsel and Executive Secretary, my client was Governor Zell Miller. In my capacity as Executive Counsel, I provided legal advice to the Governor and his staff as well as advice to state agencies and public officials.

Since joining Troutman Sanders LLP 15 years ago, I have represented a broad range of both private and public clients. The private clients have included corporate entities (both large and small), small business owners, and health care professionals and groups. The public clients have included the State of Georgia and the City of Atlanta. I provide advice on complex issues, draft agreements, and engage in both civil and administrative litigation on behalf of these clients.

- 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.

During my tenure with the Georgia Attorney General's Office from 1981 to 1994 and Troutman Sanders LLP since 1999, I have appeared frequently in court. During the period when I was counsel to the University of Arizona, and later Executive Counsel and Executive Secretary to Governor Miller, I did not appear in court.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 65% |
| 2. state courts of record:  | 20% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 15% |

- ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried at least 75 cases to verdict, judgment, or final decision in courts of record, including cases before administrative law judges in trial-like proceedings. I tried 65 cases as sole counsel, eight as chief counsel, and two as associate counsel.

i. What percentage of these trials were:

- |              |      |
|--------------|------|
| 1. jury:     | 0%   |
| 2. non-jury: | 100% |

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

*Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010) (petition for writ of certiorari, 2009 WL 245095; merits brief, 2009 WL 1817043; reply brief, 2009 WL 3043975; argument transcript, 2009 WL 3293870).

*NAACP v. Billups*, 129 S. Ct. 2770 (2009) (opposition to certiorari, 2009 WL 1279196) (cert. denied)).

*Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) (amicus brief, 2007 WL 42198483).

*Georgia v. Ashcroft*, 539 U.S. 461 (2003) (merits brief, 2003 WL 554486; reply brief, 2003 WL 1945491).

*Cox v. Larios*, 542 U.S. 947 (2004) (Jurisdictional Statement, 2004 WL 882937; Reply Brief Opposing the Motion to Affirm, 2004 WL 1211528).

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:

- the date of representation;
- 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. *Kenny A., et al. v. Perdue, et al.*, No. 1:02-CV-1686-MHS, United States District Court, Northern District of Georgia, Hon. Marvin H. Shoob; June 2002 – present.

I was the lead attorney for the Governor and other state officials in defense of a class action lawsuit that alleged systemic deficiencies in the foster care system in metropolitan Atlanta. After an expedited period of discovery and a four-day hearing on a motion for a preliminary injunction, the district court found deficiencies in the operation of two emergency shelters but denied the motion based upon the state's promise to close the shelters the following year. After the state's subsequent motion for summary judgment was denied, the court ordered the parties into mediation, which resolved all substantive issues by the adoption of a Consent Decree for system-wide reforms, many of which have made a positive change in the lives of foster children. However, the parties could not agree on the amount of attorneys' fees to be awarded to plaintiffs. The district court awarded attorneys' fees in the amount of \$10.5 million, which included a \$4.5 million enhancement for quality of representation. *Kenny A. v. Perdue*, 454 F. Supp. 2d 1260 (N.D. Ga. 2006). On appeal, the Eleventh Circuit affirmed the award, including the enhancement, 532 F.3d 1209 (11th Cir. 2008), and denied rehearing en banc, 547 F.3d 1319 (11th Cir. 2009). I prepared a petition for writ of certiorari challenging the enhancement, which was granted by the United States Supreme Court. On behalf of the state petitioners, I argued the case before the Supreme Court, which subsequently reversed the district court's order enhancing the attorneys' fees award. *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010). I have continued to represent the State of Georgia and work closely with plaintiffs' counsel during the implementation of the Consent Decree.

Counsel for the *Kenny A.* Plaintiffs:

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Children's Rights  
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Counsel for the *Kenny A.* Plaintiffs for the Supreme Court portion of the case:

Paul D. Clement  
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(202) 234-0090.

Counsel for the Solicitor General in support of Perdue's petition in the Supreme Court:

Pratik A. Shah  
Akin Gump LLP  
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2. *United States v. State of Georgia*, No. 1:10-CV-249-CAP, and *United States v. State of Georgia*, No. 1:09-CV-119-CAP, United States District Court, Northern District of Georgia; Hon. Charles A. Pannell, January 2010 – present.

A complaint was filed by the United States Attorney General in 2009 alleging that the State of Georgia violated the Civil Rights of Institutionalized Persons Act (CRIPA) due to conditions in Georgia's state mental health institutions. A settlement agreement was immediately entered between the parties outlining a sweeping series of reforms for these facilities. One year later, the United States Attorney General filed a second complaint alleging that the State of Georgia's treatment of mental illness and mental retardation in its hospitals violated the Americans with Disabilities Act (ADA). I was retained as lead counsel for the State of Georgia in defense of the ADA complaint and to represent the state's interests during the implementation of the CRIPA settlement agreement. Following expedited discovery in the ADA case, the parties entered into a comprehensive settlement agreement before the trial of the ADA case was to begin. The landmark ADA agreement provides for additional services for persons with developmental disabilities so they may be served in the community as opposed to a hospital setting, and many additional services for persons with mental illness. I continue to represent state officials during the implementation of both CRIPA and ADA agreements and work closely with attorneys at the U.S. Department of Justice.

Co-Counsel:

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RobbinsFreed  
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Atlanta, GA 30309  
(678) 701-9381

Counsel for the United States:

Mary R. Bohan  
Timothy D. Mygatt  
Judith C. Preston  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(212) 514-6255

3. *Georgia v. Ashcroft*, No. 01-2111, United States District Court, District of Columbia (three-judge court), Hon. Harry T. Edwards, Hon. Emmet G. Sullivan, Honorable Louis F. Oberdorfer, October 2001 – June 2003.

This was a declaratory judgment action filed under Section 5 of the Voting Rights Act in the United States District Court for the District of Columbia to obtain preclearance of Georgia's congressional and legislative redistricting plans enacted following the 2000 decennial census. I was co-counsel for the State of Georgia. In all of the redistricting plans, the State "unpacked" the most heavily concentrated majority minority districts to create more "influence" districts. The U.S. Department of Justice made various objections to the reapportionment plans. There was an expedited period of discovery during which I participated in dozens of depositions. Following a four-day trial, the three-judge court precleared the State House and congressional redistricting plans, but denied preclearance for the State Senate Plan. *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (three-judge panel). I then assisted in the preparation of briefs filed on appeal to the United States Supreme Court. On appeal, the United States Supreme Court vacated the district court's opinion, concluding that the trial court failed to consider all factors relevant to preclearance when it rejected the State Senate Plan. *Georgia v. Ashcroft*, 539 U.S. 461 (2003).

Co-counsel:

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(202) 552-2000

Counsel for Intervenors:

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Anne W. Lewis  
Strickland Brockington Lewis LLP  
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(678) 347-2200

M. Laughlin McDonald  
ACLU Foundation, Inc.  
230 Peachtree Street, N.W.  
Atlanta, GA 30303  
(404) 523-2721

4. *Larios, et al. v. Cox, et al.*, No. 1:03-CV-693-CAP, United States District Court, Northern District of Georgia (three-judge court), Hon. Stanley Marcus, Hon. Charles A. Pannell, Hon. William C. O'Kelley, June 2003 – June 2004.

A group of plaintiffs challenged Georgia's legislative and congressional redistricting plans based on a violation of the Equal Protection Clause. I was co-counsel for the Georgia defendants. I participated in an expedited period of discovery and in a four-day bench trial conducted by the three-judge district court. The court held the legislature had systematically under-populated districts in Democratic areas of the state while it overpopulated districts in Republican areas of the state, resulting in a violation of the one-person, one-vote principle. *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (three-judge panel). I helped draft

the brief on appeal to the United States Supreme Court, which summarily affirmed. *Cox v. Larios*, 542 U.S. 947 (2004).

Co-Counsel:

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Dennis R. Dunn  
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Counsel for Sara Larios, *et al.*:

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Anne W. Lewis  
Strickland Brockington Lewis LLP  
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Atlanta, GA 30309  
(678) 347-2200

E. Mark Braden  
Baker Hostetler  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 861-1504

5. *Johnson, et al. v. Board of Regents, et al.*, Nos. 499CV169, 499CV181, United States District Court, Southern District of Georgia, Hon. B. Avant Edenfield, August 1999 – August 2001.

These were constitutional challenges to the University of Georgia's undergraduate admissions program in which points were awarded for gender and race in order to increase diversity. I was lead counsel for the Board of Regents and all state defendants. After an extensive discovery period, I prepared a motion for summary judgment on behalf of the state defendants. The district court ruled in favor of the plaintiffs' summary judgment motion, *Johnson v. Bd. of Regents*, 106 F. Supp. 2d 1362 (S.D. Ga. 2000). I argued the case on appeal in the Eleventh Circuit Court of Appeals, which upheld the decision of the trial court, 263 F.3d 1234 (11th Cir. 2001). The case was thereafter settled.

Co-Counsel:

Michael D. Kaufman  
Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, GA 30308  
(404) 885-3313

Alfred L. Evans  
Senior Assistant Attorney General  
Deceased

Rodney K. Strong  
Griffin & Strong  
235 Peachtree Street, N.E., Suite 400  
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Counsel for Jennifer Johnson, *et al.*:

Lee Parks  
Parks, Chesin & Walbert, P.C.  
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(404) 873-8000

Counsel for Intervenors:

Theodore M. Shaw  
Fulbright & Jaworski  
666 Fifth Avenue  
New York, NY 10103  
(212) 318-3000

6. *Cerulean Companies, Inc. v. Tiller, et al.*, Supreme Court of Georgia, 271 Ga. 65 (1999).

In May 1996, Blue Cross and Blue Shield of Georgia (BCBS) filed a petition with the Georgia Insurance Commissioner to convert from a non-profit company to a for-profit company, Cerulean Companies, Inc. As a part of the plan for conversion, BCBS policy holders were offered shares of Cerulean stock, which over half of the eligible subscribers accepted. The transaction was approved without an assessment of the plan's charitable trust obligations. After a lawsuit was filed by consumer organizations to challenge the conversion, a settlement agreement was approved providing for the transfer of funds to a charitable

foundation. In July 1998, BCBS/Cerulean announced that it was merging with WellPoint Health Networks, Inc. (WellPoint). I was co-counsel for WellPoint during the merger proceedings. A second lawsuit was then filed by certain BCBS policyholders who either made no response or rejected the offer of Cerulean stock, contending that they should receive either cash or WellPoint stock in the merger. I served as co-counsel for WellPoint as amicus curiae in the trial court and on appeal. After the policy holders received a favorable ruling in the trial court, the case was appealed to the Supreme Court of Georgia. I drafted a brief in the Supreme Court of Georgia urging that the case be reversed for failure to exhaust administrative remedies. On May 3, 1999, the Supreme Court of Georgia adopted the position taken in our amicus brief and held that the plaintiffs should have first filed an administrative action before the Commissioner of Insurance. The litigation was ultimately settled and WellPoint's acquisition of BCBS/Cerulean was completed.

Co-counsel:

Norman L. Underwood  
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David E. Hudson  
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801 Broad Street, Seventh Floor  
Augusta, GA 30901  
(706) 722-4481

Counsel for Blue Cross and Blue Shield of Georgia, Inc.:

Charles A. Mathis, Jr.  
Deceased

7. *Golden v. Georgia Bureau of Investigation*, Georgia State Personnel Board, 1986 – 1990.

I was counsel for the Georgia Bureau of Investigation (GBI) in a five-day evidentiary hearing to defend the termination of a senior GBI agent for misconduct in the line of duty. Because some GBI agents supported the personnel action and others did not, direct and cross-examination of the witnesses was extremely challenging. I conducted all of the examinations of witnesses and prepared the required briefs. The State Personnel Board upheld the termination as did the Georgia Court of Appeals. *Golden v. Ga. Bureau of Investigation*, 198 Ga. App. 115, 400 S.E.2d 668 (1990).

Counsel for Don Golden:

William A. Morrison  
Jones, Morrison & Womack  
230 Peachtree Street, N.E., Suite 1250  
Atlanta, GA 30303  
(404) 658-1670

8. *Foster v. Georgia Board of Chiropractic Examiners*, Superior Court of Fulton County, Hon. Isaac Jenrette, 1985 – 1987.

I was counsel for the Georgia Board of Chiropractic Examiners. This case began as an administrative hearing to consider the imposition of disciplinary sanctions against a licensed chiropractor who dispensed certain nutritional substances to his patients. The administrative law judge ruled that the chiropractor was prescribing drugs and exceeded the scope of his license to practice. The case was appealed all the way to the Supreme Court of Georgia, and the chiropractor challenged the constitutionality of the Georgia chiropractic statute. At the time, the issue of the scope of chiropractic practice was being debated nationally. After representing the state licensing board at the administrative evidentiary hearing, I prepared all of the briefs filed on appeal. The Supreme Court of Georgia rejected the constitutional challenge and sustained the disciplinary sanction. *Foster v. Ga. Bd. of Chiropractic Examiners*, 257 Ga. 409, 359 S.E.2d 877 (1987).

Counsel for Foster:

Charles M. Cork, III  
P.O. Box 1041  
Macon, GA 31202  
(478) 742-0204

Counsel for Amicus Curiae Georgia Chiropractic Association:

Demetrius Mazacoufa  
1110 East Rock Springs Road  
Atlanta, GA, 30306  
(404) 870-0082

9. *Georgia Department of Medical Assistance v. Allgood*, No. 40894, Superior Court of Richmond County, Georgia, Hon. William M. Fleming, Jr., 1983 – 1984.  
*Georgia Department of Medical Assistance v. Parham*, No. 41021, Superior Court of Baldwin County, Georgia, Hon. Hugh P. Thompson (now Justice, Supreme Court of Georgia), 1983 – 1984.  
*Georgia Department of Medical Assistance v. Athon*, No. 41117, Superior Court of Rockdale County, 1983 – 1984.

Three separate complaints were filed by the Georgia state agency that administered Medicaid payments to challenge the receipt of such payments by members of the state legislature or their spouses who owned nursing homes in Georgia, based on an alleged violation of their constitutional duty of loyalty and conflict of interest laws. I represented the State agency in each case in bench trials that occurred in three different locations. All trial courts ruled in the legislators' favor, and those decisions were upheld by the Supreme Court of Georgia. *Ga. Dep't of Medical Assistance v. Allgood*, 253 Ga. 370, 320 S.E.2d 155 (1984).

Counsel for Thomas Allgood:

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(706) 722-4481

Counsel for Bobby Parham:

T. Dorsey Yawn  
(no current business address available)

Counsel for Troy Athon:

A.R. Barksdale  
Deceased



10. *Crowder v. Ginn*, Supreme Court of Georgia, 248 Ga. 824 (1982).

This Georgia superior court case originated as a lawsuit over a damage claim resulting from a motor vehicle accident involving a Georgia resident who subsequently became a resident of another state before personal service was perfected on him. The trial court quashed service of process upon the out-of-state resident. When the case came before the Supreme Court of Georgia, I filed an amicus curiae brief on behalf of the State of Georgia asking the Court to adopt the rule of long-arm jurisdiction contained in the U.S. Supreme Court's *International Shoe Co. v. Washington* decision, in which due process permits jurisdiction over a nonresident who has minimum contacts in the state where the court is trying the case. This would require the Georgia Supreme Court to overrule its decision relying on the U.S. Supreme Court's earlier *Pennoyer v. Neff* ruling. The Georgia Supreme Court adopted the position taken in my amicus brief, making this the first time the *International Shoe* doctrine was applied in Georgia.

Counsel for Crowder:

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Reynolds, Horne & Survant  
P.O. Box 26610  
Macon, GA 31221  
(478) 405-0300

Counsel for Ginn:

Hendley V. Napier  
Deceased

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.)

I was a member of the legal team at my firm retained to represent the Fulton-DeKalb Hospital Authority in 2007 when Grady Memorial Hospital, one of the largest public hospitals in the United States and the only Level One trauma center within a 100-mile radius of Atlanta, was facing a financial crisis. A task force composed of many of Atlanta's leading business leaders studied the management of Grady and concluded that the Grady Health System should be restructured into a new nonprofit corporation. We advised the existing Hospital Authority concerning the legal issues involved in the restructuring, and worked with business leaders and community groups to facilitate the restructuring process. A number of foundations pledged hundreds of millions of dollars to

save Grady's operations. While the system continues to face challenges, the work that went into the restructuring of Grady helped save a system vital to the indigent health care system in Atlanta.

When I was Executive Counsel to Governor Miller, the State faced an investigation into the conditions of its juvenile justice system by the U.S. Department of Justice, which could have resulted in massive litigation and a federal takeover of the system. Along with attorneys from the Georgia Attorney General's office and the Department of Justice, I helped negotiate a landmark settlement agreement in 1998 during Governor Miller's last year in office to provide for the monitoring of state actions designed to cure the overcrowded conditions, inmate abuse, poor medical care, and mental health treatment that then existed in state juvenile detention facilities. Federal oversight ended in 2009.

When I was a Senior Assistant Attorney General for the Georgia Attorney General's office, I was the lead attorney who worked with the Georgia General Assembly during the 1991 to 1992 reapportionment of Georgia's legislative and congressional districts. I was the main contact with the Department of Justice during this process, which led to a number of redistricting plans and eventually major litigation, concluding with the cases of *Miller v. Johnson*, 515 U.S. 900 (1995), and *Abrams v. Johnson*, 521 U.S. 74 (1997).

Between 2001 and 2002, I performed lobbying activities at the state level for the following clients of my law firm: Blue Cross and Blue Shield of Georgia, Elan Motor Sports Technologies, the Georgia Electronic Commerce Association, eMotion Mobility LLC, and the Georgia Premium Tax Legislative Group. My activities were limited to reviewing and drafting legislation for these organizations and discussing proposed legislation with members of the Georgia General Assembly.

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

None.

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

None. If nominated and confirmed, I would leave Troutman Sanders LLP, and I would cease to be entitled to any further income from the firm.

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.

I have no plans, commitments, or agreements to pursue outside employment if confirmed.

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.

I would recuse myself from any case of which I gained knowledge while a partner at Troutman Sanders LLP. In addition, in order to avoid even the appearance of impropriety, I would recuse myself for at least two years from hearing any case in which an attorney from Troutman Sanders LLP is representing a party, as recommended by the Committee on Codes of Conduct Advisory Opinion No. 24. Should any other actual or potential conflict arise, I would consult all applicable statutes, rules, policies, procedures, case authority, and the Code of Conduct for United States Judges.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will abide by the Code of Conduct for United States Judges and all applicable statutes, rules, policies, procedures, and case authority related to avoiding or resolving actual or potential conflicts of interest, erring on the side of recusal to avoid any appearance of impropriety.

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.

For a number of years while I have been in private practice, I have assisted indigent persons in defense of eviction proceedings initiated against them by landlords in Fulton County, Georgia, through the Eviction Defense Program managed by the Atlanta Volunteer Lawyers Foundation in partnership with the Atlanta Legal Aid Society.

In addition, I spent a significant portion of time in my private practice as a member of the Board of Trustees of AMIKids Georgia, Inc. (formerly known as the Georgia Wilderness Institute), a non-profit organization that, at the time of my service, oversaw the operation of three privately run Georgia residential facilities for juvenile offenders. These facilities provide education, training, and activities for juveniles who have been adjudicated as delinquent as an alternative to their commitment to a state youth correctional facility.

Finally, I served for six years in private practice as a member of the advisory board for the Emory University School of Law’s Public Interest Committee, known as EPIC. EPIC is a student organization which raises funds through private contributions to fund grants to students to enable them to work at nonprofit organizations and government agencies practicing public interest law.

During my years in practice in the public sector as a member of the Georgia Attorney General’s office, as the Chief State Administrative Law Judge, and as Executive Counsel and Executive Secretary to Governor Miller, there were prohibitions on my representing indigent clients. Nevertheless, particularly in my capacity as an Assistant Attorney General for the State of Georgia, I often provided assistance and direction to Georgia citizens who had issues concerning open records and open meetings laws and had difficulties in resolving complaints with state and local agencies.

**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.

During the summer of 2011, I was contacted by a member of United States Senator Saxby Chambliss’ staff to inquire about my interest in being considered by the President to serve in the federal judiciary. Since October 6, 2011, I have been in contact with an official from the White House Counsel’s Office, including a meeting in Washington, D.C. on October 11, 2011, to discuss my interest. Since

November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 9, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. On January 6, 2014, the President submitted my renomination 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.

AFFIDAVIT

I, Mark Howard Cohen, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

1/3/2014

(DATE)

Mark Howard Cohen

(NAME)

Joyce L. Swift

(NOTARY)

