

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Peter Joseph Phipps

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

Circuit Judge, United States Court of Appeals for the Third Circuit

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.

Joseph F. Weis, Jr. United States Courthouse
700 Grant Street, Suite 8270
Pittsburgh, Pennsylvania 15219

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

1973; Dyess Air Force Base, Abilene, Texas

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.

1995 – 1998, Stanford Law School; J.D. 1998

1991 – 1995, University of Dayton; B.S. (Physics), B.A. (History) 1995

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

2018 – present
United States District Court for the Western District of Pennsylvania
Joseph F. Weis, Jr. U.S. Courthouse
700 Grant Street, Suite 8270

Pittsburgh, Pennsylvania 15219
District Judge

2014 – present
Duquesne University School of Law
Hanley Hall
600 Forbes Avenue
Pittsburgh, Pennsylvania 15282
Adjunct Professor

2003 – 2018
United States Department of Justice
Civil Division, Federal Programs Branch
950 Pennsylvania Avenue, NW
Washington, DC 20530
Senior Trial Counsel (2011 – 2018)
Senior Counsel (2009 – 2011)
Trial Attorney (2003 – 2009)

2001 – 2002
Honorable R. Guy Cole, Jr.
United States Court of Appeals for the Sixth Circuit
United States Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215
Law Clerk

1998 – 2001
Jones Day
325 John H. McConnell Boulevard, Suite 600
Columbus, Ohio 43215
Associate

Summer 1997
Taft, Stettinius & Hollister
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Summer Associate

Summer 1997 & Summer 1996
Jones Day
325 John H. McConnell Boulevard, Suite 600
Columbus, Ohio 43215
Summer Associate

Fall 1997

Santa Clara County
District Attorney's Office
70 West Hedding Street, West Wing
San Jose, California 95110
Legal Extern

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 the selective service.

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

Top Secret Security Clearance (2004 – 2018)

Special Commendation, Department of Justice, Civil Division (2006, 2010, 2012)

The Attorney General's Distinguished Service Award (2005)

Distinguished Service Certificate, U.S. Court of Appeals for the Sixth Circuit (2003)

Stanford Law School

Managing Editor of the Stanford Law & Policy Review (1997 – 1998)

University of Dayton

Summa cum laude graduation (1995)

Outstanding Senior Majoring in Physics (1995)

Donatelli Award, College of Arts and Science, for the humanities senior with the strongest record in elective science courses (1995)

Winner, national collegiate essay competition for a paper, *The Anti-Slavery Attitudes and Activities of the Courts, the Abolitionists, and the People of Southwest Ohio 1835-1861* (1995)

Recipient of an undergraduate research grant from the National Science Foundation to work at the molecular beam epitaxy laboratory at the University of Notre Dame (1994)

Full Tuition Scholarship (1991 – 1995)

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

Akron Bar Association (2016 – 2017)

Allegheny County Bar Association (2013 – present)

American Bar Association (1998 – 1999, 2007 – 2008, 2012) (to the best of my recollection)

Columbus Bar Association (1998 – 2001)

DC Bar Association (2007 – present)

Administrative Law and Agency Practice Community (2015 – 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.

Ohio, 1998

District of Columbia, 2007

Pennsylvania, 2012

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, 2017

United States Court of Appeals for the First Circuit, 2012

United States Court of Appeals for the Third Circuit, 2013

United States Court of Appeals for the Sixth Circuit, 2002

United States Court of Appeals for the Tenth Circuit, 2004

United States District Court for the District of Columbia, 2011

United States District Court for the Southern District of Ohio, 1999

United States District Court for the Western District of Pennsylvania, 2013

United States District Court for the Western District of Washington, 2006

(contingent on federal employment).

To the best of my knowledge, there have been no lapses in my membership to any of these courts.

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.

John Carroll Society of Washington, DC (2010 – 2013)
Scorer for High School Essay Competition (2010 – 2011)

Knights of Columbus (2011 – present)

Ohio State Society (2010 – 2012)

Pennsylvania State Society (2013)

St. Thomas More Society of Pittsburgh (2012 – present)

West Virginia State Society (2006 – 2013)

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

The Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

The Anti-Slavery Attitudes and Activities of the Courts, the Abolitionists, and the People of Southwest Ohio 1835-1861, in *The E.C. Barksdale Memorial Essays in History*, Chandler C. Jackson, ed., 1993 – 1994. 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 am not aware of any materials responsive to this request.

- 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.

April 25, 2018: I testified at my confirmation before the Judiciary Committee of the United States Senate to be a United States District Judge for the Western District of Pennsylvania. I also answered Questions for the Record presented to me by Senators Whitehouse, Booker, and Harris. Video of the hearing is available at <https://www.judiciary.senate.gov/meetings/04/25/2018/nominations>. My answers to the questions for the record 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.

April 25, 2019: Speaker, Take Your Child to Work Day, U.S. District Court for the Western District of Pennsylvania, Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. I spoke about the structure of the courtroom. The address of the U.S. District Court for the Western District of Pennsylvania is 700 Grant Street, Pittsburgh, Pennsylvania 15219.

April 17, 2019: Speaker, group of approximately a dozen students and one faculty member from Waynesburg University during their visit to the courthouse, U.S. District Court for the Western District of Pennsylvania, Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. I spoke about the role of federal courts and state courts. The address of the U.S. District Court for the

Western District of Pennsylvania is 700 Grant Street, Pittsburgh, Pennsylvania 15219.

December 18, 2018: Speaker, Investiture, U.S. District Court for the Western District of Pennsylvania, Pittsburgh, Pennsylvania. Notes and transcript supplied.

December 14, 2018: Panel Speaker, "Judges' Roundtable," 30th Annual Federal Practice Program, Academy of Trial Lawyers of Allegheny County, Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. I spoke on a panel with other judges about current issues of importance to the bench and bar. The address of the Academy of Trial Lawyers of Allegheny County is Post Office Box 14744, Pittsburgh, Pennsylvania 15234.

August 18, 2016: Speaker, "An Approach to Preparing Fact Witnesses for Deposition Testimony," Presentation and Webinar, Office of the Solicitor, U.S. Department of the Interior, Washington, DC. I have no notes, transcript, or recording. The address is Department of the Interior, 1849 C Street NW, Washington, DC 20240. Copy of the handout supplied.

April 10, 2014: Panelist, "The Federal Practice: Meet Attorneys of the DOJ/AUSA," University of Pittsburgh Law School. I have no notes, transcripts, or recordings. The address is University of Pittsburgh School of Law, 3900 Forbes Avenue, Pittsburgh, Pennsylvania 15260. Announcement supplied.

August 13, 2012: Moderator, panel discussion regarding discovery motions, National Advocacy Center, Columbia, SC. I have no notes, transcripts, or recordings. The address is National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina 29201.

August 13, 2012: Speaker, "Requests for Admission," National Advocacy Center, Columbia, South Carolina. Presentation with annotated notes supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Chris Foreman, *With 15 Years of Dept. of Justice Experience, Judge Phipps Joins Western District of PA*, Lawyers Journal, Nov. 23, 2018. Copy supplied.

In the Spring of 1996, while in law school, I was selected at random for a biographical interview by the Stanford Daily Newspaper. Copy of article attached.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed,

and a description of the jurisdiction of each such court.

I have served as a District Judge for the Western District of Pennsylvania since October 23, 2018.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 1

- i. Of these, approximately what percent were:

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

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

Scott v. Anheuser-Busch InBev LLC, Case No. 2:18-cv-1231, ECF No. 25 (W.D. Pa. Apr. 5, 2019).

Hoffman v. Midland Funding, LLC, Case No. 2:19-cv-176, 2019 WL 1359291 (W.D. Pa. Mar. 26, 2019).

Brown v. Stevens, Case No. 2:19-cv-122, ECF No. 3 (W.D. Pa. Mar. 19, 2019).

Gallagher v. Corelogic Flood Servs., LLC, Case No. 2:18-cv-727, ECF No. 51 (W.D. Pa. Mar. 18, 2019).

C.J. Hughes Constr. Co. v. EQM Gathering OPCO, LLC, 358 F. Supp. 3d 486, Case No. 2:18-cv-168 (W.D. Pa. Feb. 14, 2019).

Koppers, Inc. v. Wombles, Case No. 2:19-cv-106, ECF No. 14 (W.D. Pa. Feb. 12, 2019).

Parks v. SCI-Camp Hill, Case No. 2:18-cv-1205, 2019 WL 211099 (W.D. Pa. Jan. 16, 2019).

Peters v. Univ. of Pittsburgh, Case No. 2:18-cv-732, 2019 WL 109402 (W.D. Pa. Jan. 4, 2019).

- 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).

1. *Brownfield v. Zangla*, Case No. 2:16-cv-1678 (W.D. Pa.).

This case involves allegations against two police officers for use of excessive force in answering a domestic disturbance call. I heard oral argument on defendants' motion for summary judgment, and at a later status conference, I provided an explanation for granting the summary judgment motion in part and denying it in part. Order supplied.

Plaintiff's Counsel

Charity Grimm Krupa
Post Office Box 622
Smithfield, Pennsylvania 15478
(724) 569-9608

Defendants' Counsel

Michael E. Kennedy
Office of Pennsylvania Attorney General
Civil Litigation
1251 Waterfront Place
Pittsburgh, Pennsylvania 15222
(412) 565-7495

2. *Powers v. Norfolk Southern Ry. Co.*, Case No. 2:17-cv-648 (W.D. Pa.).

This case was brought under the Federal Employers Liability Act by an employee who was injured in the course of his railroad employment. After a four-day trial, the jury returned a verdict of approximately \$125,000 for the plaintiff. Judgment supplied.

Plaintiff's Counsel

Samuel J. Rosenthal
Barish Rosenthal
1845 Walnut Street, Suite 2350
Philadelphia, Pennsylvania 19103
(215) 923-8900

Defendant's Counsel

J. Lawson Johnston
Janet K. Meub
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, Pennsylvania 15222
(412) 392-5483

3. *Pristas v. Esper*, Case No. 2:17-cv-1056 (W.D. Pa.).

This civil rights suit against two police officers arose out of a disputed repossession of personal property. I heard oral argument on defendants' motion to dismiss, and at a later status conference, I provided an explanation for granting defendants' unopposed motion for summary judgment. Judgment supplied.

Plaintiff's Counsel

Mark D. Nolfi
1424 Laurel Drive
Sewickley, Pennsylvania 15143
(412) 418-5898

Defendants' Counsel

Allison N. Genard
Marshall, Dennehey, Warner, Coleman & Goggin
Union Trust Building
501 Grant Street, Suite 700
Pittsburgh, Pennsylvania 15219
(412) 803-3475

4. *Peters v. Univ. of Pittsburgh*, Case No. 2:18-cv-732, 2019 WL 109402 (W.D. Pa. Jan. 4, 2019).

This case arose out of a university's decision to terminate the employment contract with its head wrestling coach. I heard oral argument on the motion to dismiss and several motions to seal or unseal, and I later resolved those through written opinion.

Plaintiff's Counsel

John Stember
Maureen Davidson-Welling
Stember Cohn & Davidson-Welling, LLC
The Hartley Rose Building
425 First Avenue, 7th Floor
Pittsburgh, Pennsylvania 15219
(412) 338-1445

Defendant's Counsel

Jonathan D. Marcus
Jeremy D. Engle
Marcus & Shapira LLP
301 Grant Street
One Oxford Center, 35th Floor
Pittsburgh, Pennsylvania 15219

(412) 338-5236

5. *Lee v. Trinity Area Sch. Dist.*, Case No. 2:18-cv-951 (W.D. Pa.).

In this case, plaintiff, a school principal, sued a school district regarding its adoption of a revised compensation plan, which plaintiff claimed violated several of her constitutional rights. I heard oral argument on the motion to dismiss, and the parties settled this dispute through mediation. Hearing Memo supplied.

Plaintiff's Counsel

John E. Egers, Jr.
Julian Law Firm
71 North Main Street
Washington, Pennsylvania 15301
(723) 228-1860

Defendant's Counsel

Susan T. Roberts
Peacock, Keller & Ecker
70 East Beau Street
Washington, Pennsylvania 15301
(724) 222-4520

6. *RDP Techs. v. Chemco Sys., L.P.*, Case No. 2:18-cv-1161 (W.D. Pa.).

This case involves claims of patent infringement, misappropriations of trade secrets, and unjust enrichment – all related to a lime slaking system. I held an initial case management conference, heard oral argument on a motion for a more definite statement, and resolved that motion as well as a discovery dispute. Order supplied.

Plaintiff's Counsel

Aaron R. Krauss
Cozen O'Connor
One Liberty Place, Suite 2800
1650 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-4181

Jesse R. Loffler
Cozen O'Connor
One Oxford Centre
301 Grant Street, 41st Floor
Pittsburgh, Pennsylvania 15219
(412) 620-6493

Defendant's Counsel

Thomas R. Goots
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939

John D. Goetz
Douglas Baker
Matthew W. Johnson
Jones Day
500 Grant Street
Suite 4500
Pittsburgh, Pennsylvania 15219
(412) 391-9546

7. *Blankenship v. Dominion Energy Transmission, Inc.*, Case No. 2:18-cv-1208 (W.D. Pa.).

Plaintiffs in this ERISA case seek continuation of retirees' medical benefits after the expiration of a collective bargaining agreement. I heard oral argument on defendants' motion to dismiss. Hearing Memo supplied.

Plaintiffs' Counsel

Samuel J. Pasquarelli
Sherrard, German and Kelly
535 Smithfield Street
Suite 300
Pittsburgh, Pennsylvania 15222
(412) 355-0200

Defendants' Counsel

Bernard J. Bobber
Ogleetree, Deakins, Nash, Smoak & Stewart, P.C.
1243 North 10th Street
Suite 210
Milwaukee, Wisconsin 53205
(414) 239-6411

8. *Null v. McCalmont Twp.*, Case No. 2:18-cv-1314 (W.D. Pa.).

After plaintiff was denied a religious exemption and fined for violating code for using rough cut lumber to make improvements to his homestead, he sued a township, several municipal officers, two state-court judges, and a solicitor,

alleging violations of several constitutional rights. I heard oral argument on defendants' motions to dismiss. Order supplied.

Plaintiff's Counsel

Kurt D. Mitchell
KDM Law Firm PLLC
106 South Armenia Avenue
Tampa, Florida 33609
(941) 465-9253

Defendants' Counsel

Anthony J. Rash
Dickie, McCamey & Chilcote
Two PPG Place
Suite 400
Pittsburgh, Pennsylvania 15222
(412) 281-7272

Allen P. Page
Dennis J. Roman
Marshall, Dennehey, Warner, Coleman & Goggin
Union Trust Building
501 Grant Street, Suite 700
Pittsburgh, Pennsylvania 15219
412-803-1145

Samuel H. Simon
Matthew J. Lautman
Robert H C Ralston
Houston Harbaugh
401 Liberty Avenue
22nd Floor, Three Gateway Center
Pittsburgh, Pennsylvania 15222
(412) 281-5060

Caroline Liebenguth
Administrative Office of Pennsylvania Courts
Frick Building
437 Grant Street, Suite 416
Pittsburgh, Pennsylvania 15219
(412) 565-5032

9. *NVR, Inc. v. Majestic Hills, LLC*, Case No. 2:18-cv-1335 (W.D. Pa.).

This dispute relates to a landslide that rendered several recently constructed homes uninhabitable. I held an initial case management conference, heard

oral argument on defendants' motions to dismiss, and ruled on those motions.
Order supplied.

Plaintiff's Counsel

Kathleen A. Gallagher
Russell D. Giancola
Porter Wright Morris & Arthur LLP
6 PPG Place
Third Floor
Pittsburgh, Pennsylvania 15222
(412) 235-1487

Defendants' Counsel

Thomas P. McGinnis
Karin M. Romano
Thomas E. Zumpella
Thomas, Thomas & Hafer, LLP
525 William Penn Place
37th Floor, Suite 3750
Pittsburgh, Pennsylvania 15219
(412) 697-7403

Christine D. Steere
Deasey, Mahoney & Valentini, Ltd.
103 Chesley Drive
Suite 100
Media, Pennsylvania 19063
(610) 892-2732

Henri Marcel
John P. Morgenstern
Deasey, Mahoney & Valentini, Ltd.
1601 Market Street
Suite 3400
Philadelphia, Pennsylvania 19103
(215) 587-9400

Robert A. Arcovio
Stephen P. Plonski
Margolis Edelstein
535 Smithfield Street
Suite 1100
Pittsburgh, Pennsylvania 15222
(412) 281-4256

John C. Brzustowicz

Marjorie A. Marotta
Brzustowicz & Marotta, PC
4160 Washington Road
Suite 208
McMurray, Pennsylvania 15317
(724) 942-3789

10. *DOXA Grp. AG v. Allomet Corp.*, Case No. 2:18-cv-1613 (W.D. Pa.).

This is a dispute over loan non-repayment. I heard oral argument on defendant's motion to dismiss on *forum non conveniens* grounds and subsequently denied that motion. Order supplied.

Plaintiff's Counsel

Joel H. Rosner
Tarter Krinsky & Drogin LLP
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-1187

Defendant's Counsel

Steven B. Silverman
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center, 9th Floor
Pittsburgh, Pennsylvania 15222
(412) 253-8818

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

1. *Scott v. Anheuser-Busch InBev LLC*, Case No. 2:18-cv-1231, ECF No. 25 (W.D. Pa. Apr. 5, 2019) – Memorandum Opinion and Order Granting Motion to Dismiss.

Plaintiff's Counsel

Thomas M. Scott (*pro se*)
2209 Elliot Creek Road
Christiansburg, Virginia 24073

Defendants' Counsel

Adam Fischer
United States Attorney's Office
Western District of Pennsylvania
700 Grant Street, Suite 4000

Pittsburgh, Pennsylvania 15219
(412) 894-7343

John R. O'Keefe, Jr.
Justin M. Tuskan
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield Street, Suite 800
Pittsburgh, Pennsylvania 15222
(412) 918-1199

2. *Hoffman v. Midland Funding, LLC*, Case No. 19-cv-176, 2019 WL 1359291 (W.D. Pa. Mar. 26, 2019) – Memorandum Opinion and Order Granting Motion to Dismiss and Remanding to State Court.

Plaintiff's Counsel

Brian J. Fenters
Joshua P. Ward
The Law Firm of Fenters Ward
201 S. Highland Avenue, Suite 201
Pittsburgh, Pennsylvania 15206
(412) 545-3016

Defendant's Counsel

Danielle M. Vugrinovich
Marshall, Dennehey, Warner, Coleman & Goggin
Union Trust Building, Suite 700
501 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 803 11-88

3. *Brown v. Stevens*, Case No. 2:19-cv-122, ECF No. 3 (W.D. Pa. Mar. 19, 2019) – Memorandum Opinion and Order Remanding Case to State Court and Denying Request for Temporary Restraining Order.

Plaintiff's Counsel

Shirell Brown (*pro se*)
102 Fieldstone Circle
Glenshaw, Pennsylvania 15116

Defendant's Counsel

Dora Stevens (*pro se*)
1607 State Avenue, Apartment 3
Coraopolis, Pennsylvania 15108
(412) 334-2492

4. *Gallagher v. Corelogic Flood Servs., LLC*, Case No. 2:18-cv-727, ECF No.

51 (W.D. Pa. Mar. 18, 2019) – Memorandum Opinion and Order Granting Motion to Remand to State Court.

Plaintiffs' Counsel

John W. Eddy
Eddy Law Office
80 East Main Street
Uniontown, Pennsylvania 15401
(724) 439-2674

John D. Eddy
Eddy, DeLuca, Gravina & Townsend
564 Forbes Avenue
Manor Build Penthouse
Pittsburgh, Pennsylvania 15219
(412) 281-5336

Defendant's Counsel

John R. Gotaskie, Jr.
Fox Rothschild LLP
BNY Mellow Center
500 Grant Street, Suite 2500
Pittsburgh, Pennsylvania 15219
(412) 391-1334

5. *C.J. Hughes Constr. Co. v. EQM Gathering OPCO, LLC*, 358 F. Supp. 3d 486, Case No. 2:18-cv-168 (W.D. Pa. Feb. 14, 2019) – Memorandum Opinion and Order Granting Motion to Withdraw or Amend Admissions.

Plaintiff's Counsel

Brian G. Corgan
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street Northeast, Suite 2800
Atlanta, Georgia 30309
(404) 815-6217

Michael A. Metcalfe
Lund Metcalfe, LLC
1900 Main Street, Suite 253
Canonsburg, Pennsylvania 15317
(724) 230-4902

Defendant's Counsel

Gary P. Hunt
Tucker Arensberg
1500 One PPG Place

Pittsburgh, Pennsylvania 15222
(412) 566-1212

6. *Koppers, Inc. v. Wombles*, Case No. 2:19-cv-106, ECF No. 14 (W.D. Pa. Feb. 12, 2019) – Memorandum Opinion and Order Denying Motion for TRO.

Plaintiff's Counsel

Brian T. Must
Joshua D. Baker
Rachel D. Felton
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield Street
Suite 800
Pittsburgh, Pennsylvania 15222
(412) 918-1100

Defendant's Counsel

Jennifer Keadle Mason
Lisa R. Whisler
Dinsmore & Shohl LLP
1300 Six PPG Place
Pittsburgh, Pennsylvania 15222
(412) 230-8997

7. *Parks v. SCI-Camp Hill*, Case No. 2:18-cv-1205, 2019 WL 211099 (W.D. Pa. Jan. 16, 2019) – Memorandum Opinion and Order Adopting Report and Recommendation.

Plaintiff's Counsel

Jordan M. Parks (*pro se*)
SCI-Camp Hill (Prison)
Post Office Box 8837
2500 Lisburn Road
Camp Hill, Pennsylvania 17001

Defendant's Counsel

No counsel had entered an appearance before the case was transferred to another district.

8. *Peters v. Univ. of Pittsburgh*, 2:18-cv-732, 2019 WL 109402 (W.D. Pa. Jan. 4, 2019). Memorandum Opinion and Order on Motion for Judgment on the Pleadings and Motions to Seal / Unseal.

Plaintiff's Counsel

John Stember
Maureen Davidson-Welling

Stember Cohn & Davidson-Welling
The Hartley Rose Building
425 First Avenue, 7th Floor
Pittsburgh, Pennsylvania 15219
(412) 338-1445

Defendant's Counsel

Jonathan D. Marcus
Jeremy D. Engle
Marcus & Shapira
301 Grant Street
One Oxford Center, 35th Floor
Pittsburgh, Pennsylvania 15219
(412) 338-5236

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

None.

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

None.

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

Approximately 13% of my opinions have been published. The remaining written opinions are unpublished, and those are filed and stored electronically on the Western District of Pennsylvania case management system (many of which are available on Westlaw). I have also decided issues and motions from the bench, and those have been transcribed by a court reporter.

- 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.

Peters v. Univ. of Pittsburgh, 2:18-cv-732, 2019 WL 109402 (W.D. Pa. Jan. 4, 2019).

- i. Provide citations to all cases in which you sat by designation on a federal

court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

No litigant has requested my recusal, nor have I recused myself *sua sponte*. The Western District of Pennsylvania has a pre-screening process to avoid case assignments with a judicial conflict. I have identified five entities for pre-screening, which include my wife's employer and institutions with which I have a financial account.

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

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

I have not held any public office. I have not been an unsuccessful candidate for elected office or an unsuccessful nominee for public office.

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

responsibilities.

I have not been a member of, or held office in, any political party, election committee or political campaign. To the best of my recollection, in approximately 2001, I distributed leaflets door-to-door for a couple of hours on a weekend for Stu Harris for Columbus City Council. To the best of my recollection, in approximately 2000, I distributed leaflets door-to-door for a couple of hours on a weekend for Geoff Smith for Ohio State Representative.

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 2002 to 2003, I served as a law clerk to the Honorable R. Guy Cole, Jr., Circuit Judge on the United States Court of Appeals for the Sixth Circuit.

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

I have not practiced law alone.

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

1998 – 2001

Jones, Day

325 John H. McConnell Boulevard, Suite 600

Columbus, Ohio 43215

Associate

2003 – 2018

United States Department of Justice

Civil Division, Federal Programs Branch

950 Pennsylvania Avenue, NW

Washington, DC 20530

Trial Attorney (2003 – 2009)

Senior Counsel (2009 – 2011)

Senior Trial Counsel (2011 – 2018)

From 2012 to 2018, I worked in an office at the United States Attorney's Office for the Western District of Pennsylvania, 700 Grant Street, Suite

4000, Pittsburgh, Pennsylvania 15219.

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 1998 to 2001, as an associate at Jones Day, the focus of my practice was on corporate civil litigation involving cases in federal and state courts at the trial and appellate levels. I provided legal assistance in connection with a significant jury trial, oversaw the resolution of hundreds of proofs of claims in a bankruptcy proceeding, served and responded to written discovery, took depositions, prepared pleadings, motions, and briefs, and engaged in occasional client counseling.

My practice at the Federal Programs Branch from 2003 until 2018 focused primarily on defending the constitutionality and administration of federal statutes, regulations, and programs against challenges brought in federal courts throughout the nation. Several of my cases involved pure questions of law and/or appellate issues, and it was common for me to brief and engage in oral argument on those matters. A number of my cases also required substantial factual investigation and development. In those instances, I engaged in all facets of pretrial and trial practice, including fact and expert depositions, written discovery, motion practice, opening and closing statements, direct examination, and cross examination. I also counseled client agencies on the litigation risks associated with proposed rules, regulations, policies, and agency decisions.

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

From 1998 to 2001, in private practice at Jones Day, my clients were typically corporations engaged in civil litigation.

From 2003 to 2018, at the Federal Programs Branch, my clients were federal agencies and officials. I did not specialize in any particular area of the law, but my practice required a solid grounding in administrative law, constitutional law, evidence, and federal civil procedure.

- 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.

The near entirety of my practice involved litigation or related to litigation.

From 1998 to 2001, in private practice at Jones Day, I focused on civil litigation in state and federal courts. I appeared in court infrequently.

From 2003 to 2018, at Federal Programs, I focused on civil litigation in federal courts. I appeared in court frequently.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 95% |
| 2. state courts of record: | 5% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

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

I served as counsel of record in three civil trials (lasting four weeks, three weeks, and two weeks). In two of the trials – both in *Thompson v. Department of Housing and Urban Development*, No. 95-309 (D. Md.) (Garbis, J.), one in the liability phase, the other in the remedy phase – I served as associate counsel with responsibilities for an opening statement and for the direct and cross examination of several lay and expert witnesses, including two former Deputy Assistant HUD Secretaries. At the third trial, in *Witt v. United States Air Force*, No. 06-5195 (W.D. Wash.) (Leighton, J.), I served as lead counsel for a trial team of four lawyers and five support staff. I presented the opening and closing statements, and I conducted the direct and cross examinations of several lay and expert witnesses, including the plaintiff and a Lieutenant General who was the Chief of the Air Force Reserves.

As an associate at Jones Day, I provided substantial assistance to the counsel of record during a jury trial in *Iron Workers Local Union No. 17 Insurance Fund v. Philip Morris, Inc.*, No. 1:97-cv-1422 (N.D. Ohio) (Gwin, J.).

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 drafted briefs on the constitutionality of the Professional and Amateur Sports Protection Act and its applicability to New Jersey's efforts to legalize sports wagering. Those briefs include an opposition to certiorari petitions in *Christie v. NCAA*, Nos. 13-967, 13-979, and 13-980 (available at 2014 WL 1989100), as well as an opposition to certiorari petitions and an amicus brief in *Christie v. NCAA*, Nos. 16-476 and 16-477 (available at 2017 WL 2275823 and 2017 WL 4805228).

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. *Thompson v. HUD*, No. 95-309 (D. Md.) (Garbis, J.) (Grimm, J.).

This class action by African-American public housing residents was prompted by the demolition of several high-rise public housing projects in Baltimore in 1995. As counsel of record, I defended HUD and other federal defendants against claims of racial discrimination in the administration of federal housing programs. My initial responsibilities related to pretrial discovery, depositions and motion practice. During the trials, I assumed responsibilities for approximately twenty lay witness examinations, seven expert witness examinations, and an opening statement. After the conclusion of two trials, which reduced the liability of the federal defendants, I worked with senior leadership at HUD to negotiate a settlement of this long-standing case.

I worked on this case from 2003 until 2013.

The following citations pertain to the case during my involvement in the litigation: 2006 WL 581260 (D. Md. Jan. 10, 2006); 348 F. Supp. 2d 398 (D. Md. 2005); 2004 WL 1058100 (D. Md. Jan. 29, 2004); and 219 F.R.D. 93 (D. Md. 2003).

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Judry Subar (formerly at the Federal Programs Branch)
No current contact information.

2. *Cavanaugh v. Saul*, No. 03-111 (D.D.C.) (Kessler, J.) (Robinson, M.J.).

This class action was brought by one of the most numerous classes ever: the three-million-plus participants and beneficiaries in the Thrift Savings Plan ("TSP"), which is the federally-operated, defined-contribution, retirement savings plan for federal employees. The complaint alleged that due to political motives, certain board members, the Executive Director, and the General Counsel breached fiduciary duties in managing the TSP. As counsel of record, I represented those six defendants in their individual and official capacities, and I defended several of their depositions, as well as the deposition of a former White House Official, the President's Deputy Assistant, during which I preserved the presidential communications privilege. I also briefed and argued several discovery motions, often involving novel issues, such as the conditions under which the attorney-client privilege and the work-product doctrine are subject to fiduciary

exceptions. I negotiated a settlement in which the case was dismissed for an attorney's fees payment.

I worked on this case from 2003 until 2010. The following citations pertain to the case: 2007 WL 1601743 (D.D.C. June 4, 2007) and 233 F.R.D. 21 (D.D.C. 2005).

Plaintiffs' Counsel

Hon. Roger Mehle (formerly at the Mehle Law Firm)
No current contact information.

Co-Counsel for Defendants

Rachel Hines (formerly at the Federal Programs Branch, moved abroad)
No current contact information

3. *Merida Delgado v. Ashcroft*, No. 04-32 (W.D. Okla.) (Leonard, J.); No. 04-6309 (10th Cir.) (Henry, J.; Anderson, J.; Tymkovich, J.).

This case challenged the Attorney General's determination that a foreign national who had associations with Zacarias Moussaoui before September 11, 2001, should not receive flight training in the United States for certain airplanes (those with a maximum certificated takeoff weight of 12,500 pounds or more). As counsel of record, I represented the Attorney General in his official capacity. The plaintiff alleged several constitutional violations, and I obtained the dismissal of this case in district court and the affirmance of that dismissal on appeal.

I worked on this case from 2004 until 2005. The following citation pertains to the case: 428 F.3d 916 (10th Cir. 2005).

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4. *Witt v. United States Air Force*, No. 06-5195 (W.D. Wash.) (Leighton, J.).

In this case, a flight nurse was honorably discharged from the Air Force Reserves for "homosexual conduct." She challenged the constitutionality of the military's former "Don't Ask, Don't Tell" statute and implementing regulations. As counsel of record for the Air Force, I defeated a preliminary injunction motion and successfully moved to dismiss the case. After a partial reversal on appeal and remand, I oversaw all discovery and the depositions of several lay and expert witnesses. As lead counsel at trial, I gave the opening and closing statements, conducted the direct examination of the Commander of the Air Force Reserves (a lieutenant general), and cross-examined several witnesses, including the plaintiff herself. After the Air Force appealed a partially adverse trial

judgment, I worked with senior officials to negotiate a settlement, which was completed shortly before the policy was statutorily repealed.

I worked on this case from 2006 through 2012. The following citations pertain to the case during my involvement in the district court litigation: 2012 WL 1747974 (W.D. Wash. May 16, 2012); 739 F. Supp. 2d 1308 (W.D. Wash. 2010); 2010 WL 3814010 (W.D. Wash. Sept. 24, 2010); 2010 WL 3522519 (W.D. Wash. Sept. 7, 2010); and 444 F. Supp. 2d 1138 (W.D. Wash. 2006). The Ninth Circuit also issued opinions in this case on two occasions: 548 F.3d 1264 (9th Cir. 2008); and 527 F.3d 806 (9th Cir. 2008).

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5. *United States v. Prime Time Int'l*, No. 12-910 (D.D.C.) (Lamberth, J.) (Roberts, J.), consolidated with *Prime Time Int'l v. Vilsack*, No. 06-1077 (D.D.C.).

These consolidated cases originated with a challenge by a cigar manufacturer to the United States Department of Agriculture's method for calculating approximately \$1 billion in aggregate annual assessments from manufacturers and importers of tobacco products under the Tobacco Transition Payment Program. The cigar manufacturer claimed that USDA's method for calculating each manufacturer and importer's assessment was inconsistent with multiple statutory directives. As counsel of record, I

represented the USDA and the United States in successfully defending the USDA's calculation method for the assessments and in obtaining a judgment of over \$11 million (plus unpaid assessments and interest valued at several million dollars) against the cigar manufacturer.

I worked on these related cases from 2006 until 2013. The following citations pertain to the district court litigation that I handled: 930 F. Supp. 2d 240 (D.D.C. 2013) and 601 F. Supp. 2d 307 (D.D.C. 2009). The citations to the appellate opinions are 753 F.3d 1339 (D.C. Cir. 2015), and 599 F.3d 678 (D.C. Cir. 2010).

Plaintiff's Counsel

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Reed Rubinstein (formerly at Dinsmore)
Office of Associate Attorney General
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Washington, DC 20530
(202) 514-2000

6. *Kelley v. FBI*, No. 13-825 (D.D.C.) (A. Jackson, J.).

This civil suit originated from alleged leaks of information regarding an affair between former CIA Director General David Petraeus and Paula Broadwell. Through several news cycles, major media outlets identified Jill Kelley as having reported a cyberstalking incident that led to the discovery of the Petraeus-Broadwell affair, and the media also reported that Jill Kelley had exchanged a high number of emails with Marine General John Allen. Jill Kelley and her husband, Scott Kelley, subsequently filed a fourteen-count invasion of privacy lawsuit against the FBI, the Department of Defense, the State Department, and federal officials, including Leon Panetta, in their individual capacities. As counsel of record for the defendants, I successfully argued for dismissal of thirteen of the fourteen counts, including claims under the Privacy Act and the Electronic Communications Privacy Act as well as state law tort claims and *Bivens* claims. In discovery, I personally counseled the Secretary of Homeland Security and successfully engaged in motion practice to prevent him from testifying at deposition, and I defended the depositions of several high-level officials, including Leon Panetta, General John Allen, and the former Pentagon Press Secretary. In March 2015, plaintiffs voluntarily dismissed their remaining claim.

I worked on this case from June 2013 until March 2016. The following citation pertains to the case: 67 F. Supp. 3d 240 (D.D.C. 2014).

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Guy Neal (formerly at Sidley Austin, no longer practicing law)

Co-Counsel for the FBI, the Department of Defense, and the Department of State

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7. *NCAA v. Christie*, Nos. 3:12-4947, 3:14-6450 (D.N.J.) (Shipp, J.); Nos. 13-1713, -1714, -1715 (3d Cir.) (Fuentes, J.; Fisher, J.; Vanaskie, J.); Nos. 14-4546, -4568, -4569 (3d Cir.) (Rendell, J.; Fuentes, J.; Barry, J.) (subsequently *en banc*); Nos. 13-967, -979, 980, Nos. 16-476, -477 (U.S.).

These related cases were initiated by the National Collegiate Athletic Association and four professional sports leagues, the National Football League, the National Basketball Association, the National Hockey League, and Major League Baseball, to enjoin the State of New Jersey from legalizing gambling on sporting events as prohibited by the Professional and Amateur Sports Protection Act of 1992 ("PASPA").

In the initial litigation, the State of New Jersey argued that PASPA was unconstitutional, specifically that PASPA violated the Tenth Amendment's commandeering prohibition, that it offended principles of state sovereignty, and that it was an impermissible exercise of the Commerce Power. As counsel of record, I represented the United States, which intervened in the case to defend PASPA's constitutionality, which the District Court upheld. On appeal to the Third Circuit, I briefed the constitutionality of PASPA, which was sustained. I also drafted an opposition to certiorari petitions, and the United States

Supreme Court did not grant certiorari.

In subsequent related litigation, New Jersey sought to allow sports betting through a partial repeal of its prohibitions on sports wagering. As counsel of record, I briefed and argued in District Court the Third Circuit for the position that New Jersey's efforts remained PASPA non-compliant. Both courts agreed with that result, which was reaffirmed on *en banc* review. Before the Supreme Court, I drafted two briefs: an opposition to the certiorari petitions, and an amicus brief at the merits stage.

I worked on this litigation from 2012 until May 2018. The following citations pertain to the litigation during my involvement in the litigation. First Challenge: 134 S. Ct. 286 (2014); 730 F.3d 209 (3d Cir. 2013); 926 F. Supp. 2d 551 (D.N.J. 2013); Second Challenge: 138 S. Ct. 1461 (2018); 137 S. Ct. 2326, 2327 (2017); 832 F.3d 389 (3d Cir. 2016) (*en banc*); 799 F.3d 259 (3d Cir. 2015); 61 F. Supp. 3d 488 (D.N.J. 2014).

Plaintiffs' Counsel

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8. *Miami-Luken, Inc. v. U.S. Dep't of Justice*, No. 17-3614 (6th Cir.).

This case was collateral to another case I handled, both related to an administrative adjudication in which the United States Drug Enforcement Administration (“DEA”) sought to revoke the registration of a distributor of controlled substances for illegally distributing millions of dosage units of oxycodone. As part of that administrative action, the distributor requested, and the Administrative Law Judge issued, a subpoena for discovery of certain information in DEA’s possession. DEA refused to comply with that subpoena because, as averred by the DEA’s Chief of Operations, if discovery were permitted in these types of administrative proceedings, it would “significantly compromise DEA’s efforts to combat diversion and ultimately pose an enhanced public health and safety risk.” The distributor commenced this action to enforce the subpoena in federal court, and I successfully defeated a challenge to the Administrator’s order quashing the subpoena.

I worked on this case from 2017 until August 2018. The following citations pertain to the case: 900 F.3d 738 (6th Cir. 2018).

Counsel for Miami-Luken, Inc.

Richard H. Blake
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9. *American Civil Liberties Union of Northern California v. Hargan*, No. 16-3539 (N.D.

Cal.) (Beeler, M.J.).

This case involved a constitutional challenge to grants provided by the Department of Health and Human Services to faith-based organizations to provide for care and services to unaccompanied alien children and to victims of foreign human trafficking. Certain grantees, for religious reasons, did not use grant funds for abortion or contraception, and the ACLU sought injunctive relief on the theory that such a 'conscience clause' violated the Establishment Clause. As counsel of record for HHS, I managed the case through discovery and successfully defended the constitutionality of the grants at summary judgment.

I worked on this case from 2016 until October 2018. The following citations pertain to the case: 2018 WL 4945321 (N.D. Cal. Oct. 11, 2018); 2017 WL 4551492 (N.D. Cal. Oct. 11, 2017); 2017 WL 1540606 (N.D. Cal. Apr. 28, 2017); 2017 WL 492833 (N.D. Cal. Feb. 7, 2017); 2016 WL 6962871 (N.D. Cal. Nov. 29, 2016).

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10. *Project on Predatory Student Lending of the Legal Svcs. Ctr. of Harvard Law School v. U.S. Dep't of Justice*, No. 2:17-cv-00210 (W.D. Pa.) (Fischer, J.).

This case was collateral to a lawsuit under the False Claims Act, *United States ex rel. Washington v. Educ. Mgmt. LLC*, No. 2:07-cv-461 (W.D. Pa.), a case that settled for approximately \$95.5 million. During the course of discovery in that case, the defendant, EDMC, produced terabytes of data – approximately 145 million pages of documents – to the United States. Plaintiff in this case submitted requests under the Freedom of Information Act (“FOIA”) for the materials received by the United States in discovery in the EDMC litigation. As counsel of record, I successfully defended the non-production of the requested documents under FOIA, a position that implicated the novel issue of whether documents produced by a private party to a federal agency in civil discovery constitute “agency records” subject to disclosure under FOIA.

I worked on this case from 2017 until October 2018. The following citations pertain to the case: 325 F. Supp. 3d 638 (W.D. Pa. 2018).

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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.)

My most significant legal activities involved litigation or the preparation for litigation --

ranging from pre-suit client counseling to discovery, oral argument, trial, and appeal. My cases commonly involved complex or novel questions of administrative or constitutional law. For instance, I was entrusted with defending federal statutes, regulations, programs, and policies against constitutional challenges. I also personally defended several heads of federal agencies when they were sued in their individual capacities.

I have not performed lobbying activities.

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.

I have taught a three credit-hour administrative law survey course at Duquesne University School of Law in Spring 2014, Fall 2014, Spring 2016, Spring 2017, and Spring 2018. I am currently teaching Administrative Law for the Spring 2019 semester. A copy of each syllabus supplied.

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

I have no arrangements to receive deferred income or other future benefits from previous business relationships professional services, firm memberships, former employers, clients or customers.

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 am teaching Administrative Law at Duquesne University School of Law for the Spring 2019 semester. I do not have any other plans, commitments, or agreements to pursue outside employment.

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.

If a potential conflict of interest were to arise, I would apply conflict rules and ethical standards to assess whether a recusal is required or would be beneficial to the integrity of the judiciary. For instance, I would recuse myself from any case in which I have participated as an attorney. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel 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.

I would carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From approximately 2004 until 2008, I was actively involved with several pro bono matters related to landlord-tenant disputes in Washington, DC. This work involved intake assessments, initial client counseling, representation of clients, and the supervision of other pro bono attorneys' efforts. I estimate that I worked over one hundred hours on such projects. In addition, before law school, I taught English at a rural Honduran high school for two terms; that school was established by a Franciscan priest, originally from Kansas, and from time to time, I helped him, such as by assisting him in receiving reimbursement for medical expenses under his health insurance policy.

I have also volunteered at the University of Pittsburgh Law School to serve as a judge for the moot court competition in 2015 and 2016 and as a judge for the mock trial competition in 2016.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 17, 2019, I was contacted by the White House Counsel's Office to inquire whether I would be interested in interviewing for a vacancy on the Third Circuit. I responded affirmatively and provided a copy of my resume. I interviewed with attorneys from the White House Counsel's Office and from the Department of Justice Office of Legal Policy on January 28, 2019. On February 26, 2019, I was contacted by the White House Counsel's Office to inform me that I was a potential nominee for the position. During that intervening time period, I communicated members of Senator Pat Toomey's staff, and on March 13, 2019, I met with Senator Bob Casey Jr. and members of his staff. Subsequently, I communicated with the Office of Legal Policy in the preparation of my answers to this questionnaire and the completion of other related materials. On May 3, 2019, President Trump 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		14	280	Notes payable to banks-secured (auto)		3	152
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		1	049	Notes payable to relatives		69	750
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		9	880
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		290	724
Real estate owned – see schedule		383	594	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		23	800	Thrift Savings Plan Loans		28	976
Cash value-life insurance		4	523				
Other assets itemize:							
Federal Thrift Savings Plan		225	144				
				Total liabilities		416	585
				Net Worth		235	805
Total Assets		652	390	Total liabilities and net worth		652	390
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		14	103	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Vanguard Federal Money Market Fund	\$1049
Total Listed Securities	<u>\$1049</u>

Real Estate Owned

Personal Residence	\$381,000
Total Real Estate Owned	<u>\$381,000</u>

Real Estate Mortgages Payable

Personal Residence – Mortgage	\$290,704
Total Real Estate Mortgages Payable	<u>\$290,704</u>

AFFIDAVIT

I, Peter J. Phipps, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

April 9, 2019
(DATE)

Pet J Phipps
(NAME)

Patricia L. Fitzgerald
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Patricia L. Fitzgerald, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 13, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES