

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Matthew Joseph Kacsmaryk

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

United States District Judge for the Northern District of Texas

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

Office: First Liberty Institute
 2001 West Plano Parkway, Suite 1600
 Plano, Texas 75075

Residence: Aledo, Texas

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

1977; Gainesville, 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.

2000 – 2003, University of Texas School of Law; J.D., 2003

1996 – 1999, Abilene Christian University; B.A., 1999

2001, Aristotle University; no degree conferred (semester abroad)

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.

2014 – present
First Liberty Institute
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075
Deputy General Counsel

2013
Southern Methodist University
Meadows School of the Arts
6425 Boaz Lane
Dallas, Texas 75205
Adjunct Professor

2010 – 2013
United States Attorney's Office for the Northern District of Texas
Fort Worth Division
Burnett Plaza, Suite 1700
801 Cherry Street, Unit #4
Fort Worth, Texas 76102
Assistant United States Attorney

2008 – 2010
United States Attorney's Office for the North District of Texas
Dallas Division
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Assistant United States Attorney

2003 – 2008, Summer 2002
Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201
Associate (2003 – 2008)
Summer Associate (Summer 2002)

Summer 2002
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
Summer Associate

Summer 2000 & Summer 2001
The Fillmore Law Firm, LLP
1200 Summit Avenue, Suite 860
Fort Worth, Texas 76102
Summer Associate

Other Affiliations (Uncompensated)

January 2016 – present
Christian Homes & Family Services
1202 Estates Drive
Abilene, Texas 76902
Board of Trustees Member

September 2015 – present
The Red Mass Committee
Roman Catholic Diocese of Fort Worth
1206 Throckmorton Street
Fort Worth, Texas 76102
Planning Committee Member

January 2012 – present
The Federalist Society, Fort Worth Lawyers Chapter
Vice President, Programs Director, Chapter Co-Founder
The Federalist Society, Fort Worth Lawyers Chapter has no physical address.

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 with the Selective Service System upon turning 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.

Attorney General's Award for Excellence in Furthering National Security (2013)

Baker Botts *Opus Justitiae* Award for Outstanding *Pro Bono* Commitment (2005)

University of Texas School of Law – Graduated with Honors (2003); received two Dean's Achievement Awards (Spring 2002, Fall 2001).

Executive Editor, *Texas Review of Law & Politics*

Abilene Christian University – Graduated *summa cum laude* (1999); Dean's Honor Role (1996 – 1999); Trustee Scholarship

Alpha Chi

Pi Sigma Alpha

Fellow, Jack Pope Fellows Program

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.

Dallas Association of Young Lawyers
Member (2004 – 2007)

Dallas Bar Association
Member (2004 – 2008)

Dallas Volunteer Attorney Program
Volunteer (2004 – 2008)

United States Department of Justice, *Combating Religious Discrimination Today*
Employment Discrimination Roundtable (2016)

United States Magistrate Judge Selection Committee, Northern District of Texas
Merit Selection Panel (2015 – 2016)

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.

Texas, 2003

There has been no lapse 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 Court of Appeals for the Fifth Circuit, 2008

United States Court of Appeals for the Ninth Circuit, 2014

United States District Court for the Eastern District of Texas, 2006

United States District Court for the Northern District of Texas, 2003

United States District Court for the Southern District of Texas, 2006

My bar membership in the U.S. District Court for the Southern District of Texas lapsed through nonuse.

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.

Christian Homes & Family Services
Board of Trustees Member (2016 – present)

The Federalist Society, Fort Worth Lawyers Chapter
Vice President and Programs Director (2012 – present)
Chapter Co-Founder (2012)

The Red Mass Committee, Roman Catholic Diocese of Fort Worth
Planning Committee Member (2015 – present)

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

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

12. Published Writings and Public Statements:

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

Defending Conscience Rights at Hacksaw Ridge and in the HHS Cases, First Things, November 4, 2016. Copy Supplied.

Moral Complicity at Court: Who Decides?, Public Discourse, April 6, 2016. Copy Supplied.

The Inequality Act: Weaponizing Same-Sex Marriage, Public Discourse, September 4, 2015. Copy supplied.

The Abolition of Man ... and Woman, National Catholic Register, June 24, 2015. Copy supplied

With Dr. Byron Johnson, *Supreme Court and Holt v. Hobbs: Religion in the Public Square and The Prison Yard*, Fox News, October 8, 2014. Copy supplied.

Letter Writers Sound-Off on March 7 Primary, "Take a Long Look," Abilene Reporter-News, March 3, 2006. Copy supplied.

I served as both an executive and associate editor of the *Texas Review of Law & Politics* from 2001 – 2003. Copies of the volumes that I contributed to as an editor are supplied.

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

None.

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

Comment Letter on Health and Human Services Request for Information Regarding Contraception Coverage (Sept. 20, 2016). Copy supplied.

Comment Letter on Centers for Medicare and Medicaid Services Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (Aug. 12, 2016). Copy supplied.

On April 20, 2016, I participated in a Roundtable sponsored by the Department of Justice entitled "Combating Religious Discrimination Today." The Department of Justice issued a final report entitled *Combating Religious Discrimination Today* in July 2016. A copy of that report is attached.

Letter to Paul Ryan, Speaker of the U.S. House of Reps., and Kevin McCarthy, Majority Leader of the U.S. House of Reps., regarding Russell Amendment to the National Defense Authorization Act for FY 2017 (May 9, 2016). Copy supplied.

Comment Letter on Department of Labor Proposed Regulations on Nondiscrimination and Equal Opportunity Provisions of the Workplace Innovation and Opportunity Act (Mar. 24, 2016). Copy supplied.

Comment Letter on Department of Housing and Urban Development Proposed Regulations Pertaining to Equal Accessing in Accordance with an Individual's General Identity in Community Planning and Development Programs (Jan. 19, 2016). Copy supplied.

Comment Letter on Proposed Office of Civil Rights Regulations on Nondiscrimination in Health Programs and Activities (Nov. 6, 2015). Copy supplied.

Letter to Virginia K. Hoelscher, Chair of Texas Att'y Gen'l Op. Comm., regarding Display of National Motto on Law Enforcement Patrol Vehicles (Oct. 19, 2015). Copy supplied.

Letter to President Barack Obama regarding Department of Justice Office of Legal Counsel 2007 Memorandum on the Religious Freedom Restoration Act (Sept. 10, 2015). Copy supplied.

Texas House of Representatives, Juvenile Justice & Family Issues Committee, Hearing on HB 3864, Testified on Behalf of Client Adoption and Foster Care Agencies — April 15, 2015. I did not submit written testimony or retain a copy of my handwritten notes. A copy of the witness list is supplied.

Letter to the United States Senate regarding Runaway and Homeless Youth and Trafficking Prevention Act Amendments (Mar. 9, 2015). Copy supplied.

Letter to Whitney Independent School District Board of Trustees regarding Students Rights to Form Club (Jan. 13, 2014). Copy supplied.

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

September 13, 2017: Panelist, "Religious Liberty Challenges," University of Dallas, Dallas, Texas. Notes supplied.

September 12, 2017: Moderator, "2017 Supreme Court Roundup: Holy Playgrounds, Disparaging Trademarks, and Facebook Prosecutors," The Federalist Society SMU Law School Students Chapter, Dallas, Texas. Notes supplied.

July 25, 2017: Panelist, "Supreme Court Term in Review," The Federalist Society Houston Lawyers Chapter, Houston, Texas. Notes supplied.

April 6, 2017: Panelist, "Lawyering as a Vocation: Doing Well in Order to Do Good," St. Thomas More Society and American Public Philosophy Institute, Dallas, Texas. Presentation supplied.

February 16, 2017: Extemporaneous Remarks, "The Moral and Cultural Preconditions of a Flourishing Market Economy," American Public Philosophy Institute, Dallas, Texas. I spoke regarding Robert P. George. I have no notes, transcript or recording. The address of the American Public Philosophy Institute is 1845 East Northgate Drive, Irving, Texas 75062.

November 10, 2016: Panelist, "The Future of Religious Liberty under President Trump," The Federalist Society Dallas Lawyers Chapter, Dallas, Texas. Presentation supplied.

August 11, 2016: Panelist, "Supreme Court Review: October Term 2015," the Federalist Society Fort Worth Lawyers Chapter, Fort Worth, Texas. Notes supplied.

April 11, 2016: Speaker, "Title IX Religious Exemption," Heritage Foundation, Washington, D.C. Presentation supplied.

July 9, 2015: Panelist, "Supreme Court Review: October Term 2014," the Federalist Society, Fort Worth Lawyers Chapter, Fort Worth, Texas. Notes supplied.

June 26, 2015: Speaker, "After *Obergefell*: Sexual Liberty and Religious Freedom," Society for Classical Learning, Atlanta Evergreen Marriott Conference Resort, Georgia. Presentation supplied.

February 18, 2015: Panelist, "Creeping Sharia-ism or Free Exercise of Religion: Islamic Law in America," the Federalist Society Orange County Lawyers Chapter, Irvine, California. Presentation supplied.

October 4, 2014: Speaker, "The Next Clash of Absolutes: Religious Liberty and LGBT Sexual Liberty," Missouri Catholic Conference, 2014 Annual Assembly Workshop, Jefferson City, Missouri. Presentation supplied.

July 9, 2014: Speaker, "HHS Contraceptive Mandate: *Hobby Lobby* and Beyond," Christian & Missionary Alliance Webinar, Colorado Springs, Colorado. Presentation supplied.

January 30, 2014: Speaker, 17th Annual Public Advocate Day, Southern Methodist University Dedman School of Law, Dallas, Texas. I have no notes, transcript or recording. The address of the Southern Methodist University Dedman School of Law is 3315 Daniel Avenue, Dallas, Texas 75205.

May 2012: Panelist, "Government Ethics," United States Attorney's Office for the Northern District of Texas, Dallas, Texas. I have no notes, transcripts or recordings. The address for the U.S. Attorney's Office for the Northern District of Texas is 1100 Commerce Street, Suite 300, Dallas Texas 75242.

May 2011: Panelist, "Government Ethics," United States Attorney's Office for the Northern District of Texas, Dallas, Texas. I have no notes, transcripts or recordings. The address for the U.S. Attorney's Office for the Northern District of Texas is 1100 Commerce Street, Suite 300, Dallas Texas 75242.

May 2011: Speaker, "Confrontation, *Crawford*, and Beyond," United States Attorney's Office for the Northern District of Texas, Dallas, Texas. I have no notes, transcripts or recordings. The address for the U.S. Attorney's Office for the Northern District of Texas is 1100 Commerce Street, Suite 300, Dallas Texas 75242.

May 2010: Speaker, "Hearsay After *Crawford v. Washington*," United States Attorney's Office for the Northern District of Texas, Dallas, Texas. I have no notes, transcripts or recordings. The address for the U.S. Attorney's Office for the Northern District of Texas is 1100 Commerce Street, Suite 300, Dallas Texas 75242.

March 1, 2009: Co-Presenter, "*Batson*: Updated Rules for Criminal Trials," United States Attorney's Office for the Northern District of Texas, Dallas, Texas. Presentation supplied.

December 2008: Speaker, "Prosecuting Money Laundering After *United States v. Santos*," I have no notes, transcripts or recordings. The address for the U.S. Attorney's Office for the Northern District of Texas is 1100 Commerce Street, Suite 300, Dallas Texas 75242.

Fall 2002: Presenter, "The Doctrine of Spoliation of Evidence: History, Development, and Analysis," Texas Association of Defense Counsel, 2002 Fall Meeting, Dallas, Texas. Paper presented supplied.

In addition to the foregoing, I gave several additional CLE and Brown Bag presentations at Baker Botts LLP and at the U.S. Attorney's Office for the Northern District of Texas, but did not retain records of these presentations and cannot recall their substance.

- 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.

First Liberty Institute Attorneys Meet with Executive Agency on Draft HHS Contraceptive Mandate Rule, First Liberty Institute (July 24, 2017). Copy supplied.

First Liberty Statement on SCOTUS Decision in Trinity Lutheran v. Comer, First Liberty Institute (June 26, 2017). Copy supplied.

President Trump Signed the Presidential Executive Order Promoting Free Speech and Religious Liberty, Oklahoma Southwest News (May 16, 2017). Copy supplied.

President Trump's Order on Religious Liberty: Will it Truly Help, First Liberty Institute (May 12, 2017). Copy supplied.

Threat to Religious Schools Partially Lifted by Trump Executive Order and Supreme Court Action, First Liberty Institute (Mar. 10, 2017). Copy supplied.

U.S. Commission on Civil Rights Report on Religious Discrimination: Does Christianity Equal Intolerance, World Lutheran News Digest (Oct. 5, 2016). Recording supplied.

The Supreme Court Probably Won't Approve Polygamy. Here's Why, Catholic News Agency (Sept. 22, 2016). Copy supplied.

Parents Beat Back Obama's Transgender Mandate in Texas Schools, The Daily Signal (July 24, 2016). Copy supplied.

Will Mississippi Ruling Against Religion Law Deter Texas Republicans?, Austin American-Statesman (July 1, 2016). Copy supplied.

New Rule Requires Doctors to Treat Trans Patients as Pretend Sex, The Federalist (June 22, 2016). Copy supplied.

After 300 Days and 164 Co-sponsors, Bill to Protect Religious Liberty Stuck in Congress, The Daily Signal (Apr. 12, 2016). Copy supplied.

First Liberty Institute Exposes Obamacare's Continued Religious Liberty Violations in Supreme Court Amicus Brief, First Liberty Institute (Jan. 21, 2016). Copy supplied.

Could Trump's Muslim Ban Threaten Religious Freedom?, Catholic News Agency (Jan. 14, 2016). Copy supplied.

What's at Stake: Will Supreme Court Order Ministries to Violate Their Beliefs on Abortion—or Pay Staggering Fines, First Liberty Institute (Nov. 12, 2015).

A Few States are Protecting Religious Freedom, World Magazine (Sept. 14, 2015). Copy supplied.

Supreme Court Review, Relevant Radio (Sept. 8, 2015). Recording supplied.

Federal Court Grants Injunctive Relief: Christian and Missionary Alliance Ministries Not Forced to Dispense Abortion-Inducing Pill, First Liberty Institute (Feb. 4, 2015). Copy supplied.

First Liberty Institute's Top 12 Advancements in the Fight for Faith, First Liberty Institute (Dec. 29, 2014). Copy supplied.

Chuck Swindoll Ministry Beats Abortion-Pill Mandate, WND Faith (Nov. 15, 2014). Copy supplied.

Federal Court Grants Preliminary Injunction in Pastor Chuck Swindoll and Insight For Living Ministries' Lawsuit Challenging the HHS Abortion Mandate, First Liberty Institute (Nov. 12, 2014). Copy supplied.

Religious Liberty Rules for Federal Contractors, Smart Talk with Trey Graham (July 27, 2014). Recording supplied.

President Obama's Executive Order Forces Faith-Based Contractors to Choose Between Their Jobs and Faith, First Liberty Institute (July 22, 2014). Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

jury trials: _____ %
bench trials: _____ % [total 100%]

civil proceedings: _____ %
criminal proceedings: _____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

15. Public Office, Political Activities and Affiliations:

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

I applied on November 15, 2016 for a position on the Court of Appeals in the Second District of Texas. I was selected as a finalist on December 6, 2016 but was not chosen for the position.

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

I served as an Alternative Delegate to the Republican State Convention in 1996, and I volunteered on the 2004 Election Law Team for the Republican National Lawyers Association. In addition, I have volunteered for the following campaigns:

Phil Gramm for U.S. Senate (1996)
Troy Fraser for Texas Senate (1996)
George W. Bush for Governor (1998)
John Cornyn for Texas Attorney General (1998)
George W. Bush for President (2000, 2004)
John Cornyn for U.S. Senate (2002, 2008, 2014)
Kevin Christian for Texas House of Representatives (2006)
Catharina Haynes for 191st District Court, Dallas (2006)
Greg Abbot for Texas Attorney General (2006, 2010)

Ted Cruz for U.S. Senate (2012)
Greg Abbott for Texas Governor (2014)
Dan Patrick for Texas Lieutenant Governor (2014)
Ted Cruz for President (2016)

My volunteer work at each of these campaigns consisted of phone banking, assisting at campaign rallies, and participating in get-out-the-vote campaigns.

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

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

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

I have not clerked for a judge.

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

I have never practiced law alone.

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

2003 – 2008
Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201
Associate

2008 – 2010
United States Attorney's Office for the North District of Texas
Dallas Division
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Assistant United States Attorney

2010 – 2013
United States Attorney's Office for the Northern District of Texas
Fort Worth Division
Burnett Plaza, Suite 1700
801 Cherry Street, Unit #4
Fort Worth, Texas 76102
Assistant United States Attorney

2014 – present
First Liberty Institute
Deputy General Counsel
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075

- 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 2003 to 2008, I worked in the litigation department of Baker Botts LLP and focused on commercial, constitutional, and intellectual property cases pending in state and federal trial courts. I served as lead associate in international cases arising under Hague Convention treaties; constitutional cases arising under Texas and federal law; intellectual property cases involving trade secrets, copyrights, and patents; and commercial litigation involving catastrophe, fraud, conspiracy, contract, and tort claims.

From 2008 to 2013, I was an Assistant United States Attorney at the United States Attorney's Office for the Northern District of Texas. I worked in the Appellate Division and represented the United States in approximately 85 appeals filed in the United States Court of Appeals for the Fifth Circuit, all of which originated in the Criminal or National Security Divisions. During this time, I briefed and argued cases involving terrorism, fraud, forgery, counterfeiting, firearms, drug-trafficking, child pornography, illegal reentry, sex-trafficking, and violent crime. I also served on two Criminal Division trial teams.

Since 2014, I have served as Deputy General Counsel to First Liberty Institute in Dallas, Texas, a law firm dedicated to protecting religious freedom for all Americans. Since then, I have served as lead counsel in federal trial and appellate matters arising under the First Amendment, RFRA, RLUIPA, and HHS regulations. As the Director of Education Initiatives and the Policy Advisory Team, I have served as lead counsel on amicus briefs filed in the Supreme Court and public comments filed with federal agencies.

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

During my time at Baker Botts, my clients included international, national, state, and local corporations involved in complex civil cases and appeals filed in federal and state courts.

At the United States Attorney's Office, my only client was the United States government, and my practice focused on criminal and national security cases appealed to the U.S. Court of Appeals for the Fifth Circuit.

At First Liberty Institute, my clients have included Catholic, Jewish, Protestant, Evangelical, Muslim, and Native American churches, synagogues, temples, ministries, and schools. I have specialized in cases involving conscience rights arising under federal law.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 75% |
| 2. state courts of record: | 25% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

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

While in the Dallas office of Baker Botts LLP, I served as co-counsel on one bench trial and one jury trial in Texas state courts. While in the United States Attorney's Office for the Northern District of Texas, I served as co-counsel for two jury trials in the Northern District of Texas.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 75% |
| 2. non-jury: | 25% |

- 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.

In the following cases, I prepared or assisted in the preparation for *amici curiae* briefs filed in the Supreme Court:

Holt v. Hobbs, No. 13-6827

Obergefell v. Hodges, Nos. 14-556, 14-562, 14-571, 14-574

Zubik v. Burwell, Nos. 14-1418, 14-1453, 14-1505, 15-35

Stormans, Inc. v. Wiesman, No. 15-862

Knight v. Thompson, No. 15-999

Gloucester County School Board v. G.G., No. 16-273

Advocate Health Care v. Stapleton, Nos. 16-74, 16-86, 16-258

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re Warda* (2005)

Working on a pro bono basis in cooperation with the Dallas Volunteer Attorney Program and Legal Aid of NorthWest Texas, I served as lead attorney in an international adoption arising under the laws of the United States, Texas, Morocco, Hague Adoption Convention, and Hague Service Convention. Working with Baker Botts attorneys in the United Kingdom and Lex Mundi affiliates in France, Morocco, and the United States, the team successfully translated, served, and finalized adoption papers in multiple countries and jurisdictions.

Co-Counsel

Steve Schortgen

K&L Gates LLP

1717 Main Street, Suite 2800

Dallas, Texas 75201

(214) 939-5567

Formerly with Baker Botts LLP

2. *OsteoMed v. Koby Industries*, No. 3:06-CV-1045-K (N.D. Tex. 2006); Hon. Ed Kinkeade.

I served as lead associate on a Baker Botts trial team representing a plaintiff in an intellectual property lawsuit alleging false designation of origin and trade dress infringement under the Lanham Act, “palming and passing off” under Texas law, and miscellaneous other claims. The parties litigated arbitrability issues in the United States District Court, filed claims and counterclaims pursuant to the American Arbitration Association rules, and ultimately settled the lawsuit.

Co-Counsel

Steve Schortgen
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5567
Formerly with Baker Botts LLP

Opposing Counsel

David Anderson
Anderson Law Firm
1001 Fannin Street
Houston, Texas 77002
(713) 655-8400
Formerly with Anderson & Cunningham

3. *Students Witnessing Absolute Truth et al. v. Plano Independent School District*, No. 4:06-CV-119-MHS-DDB (E.D. Tex. 2006); Hon. Michael H. Schneider.

While at Baker Botts, I represented a student-founded and student-led Bible club at Haggard Middle School. The club filed suit against the school under the Equal Access Act, claiming that the school district had impermissibly banned the club from creating a page on the school district’s internet and intranet sites, and received a preliminary injunction. The school district subsequently revised its policy to conform with the Equal Access Act.

Co-Counsel

Van Beckwith
Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6505

Opposing Counsel

Charles Crawford
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4. *Innerwireless, Inc. v. Johnson Controls, Inc.*, No. 3:07-CV-312-M (N.D. Tex. 2007);
Hon. Barbara M.G. Lynn.

I served as lead associate on the Baker Botts team representing Innerwireless in an intellectual property lawsuit against Johnson Controls. Innerwireless alleged a breach of a mutual non-disclosure Agreement, false designation of origin under the Lanham Act, trade dress infringement, violation of the Federal Copyright Act, tortious interference, and civil conspiracy. After litigating Federal Arbitration Act issues in the district court, obtaining discovery of Chinese-language documents pursuant to the American Arbitration Association rules, and deposing Chinese citizen witnesses via telepresence technology, the parties settled the case.

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5. *College Board v. Karen Dillard College Prep*, No. 3:08-CV-0304-L (N.D. Tex. 2008); Hon. Sam A. Lindsay.

I served as lead associate on a Baker Botts litigation team defending Karen Dillard College Prep against the College Board's lawsuit alleging copyright infringement of proprietary testing forms and related intellectual property. The parties filed motions seeking preliminary and injunctive relief before agreeing to an order of settlement that included \$400,000 in free test preparation services for low-income students.

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6. *United States v. Jackson*, 625 F.3d 875 (5th Cir. 2011), *opinion withdrawn and superseded on reh'g*, 636 F.3d 687 (5th Cir. 2011); Hon. E. Grady Jolly; Hon. Harold R. DeMoss; Hon. James L. Dennis.

I represented the United States in this early case testing the Supreme Court's definition of "testimonial" evidence under *Crawford* and *Melendez-Diaz*. Because the Court's initial opinion did not clearly delineate between the two tests, the government filed supplemental briefing and petitioned for rehearing to clarify that the constitutional test for the Confrontation Clause is separate and distinct from the evidentiary test for exceptions to the hearsay rules. The court granted the petition for rehearing, withdrew its previous opinion, and substituted a published opinion "to clarify and further expound that our evidentiary and constitutional analyses are two separate and distinct considerations."

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7. *United States v. Carrion*, 457 F. App'x 405 (5th Cir. 2012); Hon. Carolyn Dineen King; Hon. E Grady Jolly; Hon. Jacques Loeb Wiener.

In a post-*Crawford*, post-*Melendez-Diaz* appeal, defendant challenged the admissibility of prior expert testimony by a consulting toxicologist and frequent expert witness on "sweat patch" drug testing. The defendant argued that his confrontation rights under the Fifth and Sixth Amendments had been violated and called into question the expert's reliability. The government successfully argued and the Court held that a parole revocation proceeding granted a defendant lesser confrontation rights than a criminal trial.

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8. *United States v. McDaniel*, No. 3:08-CR-051-L (N.D. Tex. 2009); Hon. Sam A Lindsay; 436 F. App'x 399 (5th Cir. 2011); Hon. Edith Hollan Jones; Hon. James L. Dennis; Hon. Edith Brown Clement.

I served as trial co-counsel and lead appellate counsel in this criminal case. Defendant was convicted of managing a drug-involved premises, possessing a firearm in furtherance of a drug-involved premises, possessing cocaine with intent to distribute, possessing a firearm in furtherance of a drug-trafficking crime, and distributing an illegal drug the use of which resulted in the death of a student at Southern Methodist University. The Fifth Circuit affirmed the defendant's conviction and sentence of life imprisonment.

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9. *United States v. Aldawsari*, No. 11-MJ-00017-C-BG (N.D. Tex. 2011); Hon. Donald E. Walter; 683 F.3d 660 (5th Cir. 2012); Hon. Patrick E. Higginbotham; Hon. Emilio M. Garza; Hon. Edith Brown Clement; 740 F.3d 1015 (5th Cir. 2014); Hon. Thomas. Morrow Reavley; Hon. W. Eugene Davis; Hon. Stephen Andrew Higginson.

I served as trial co-counsel and lead appellate counsel in this national security case. Defendant was a citizen of Saudi Arabia who immigrated to the United States to study chemical engineering at Texas Tech University but instead dedicated himself to violent jihad and the attempted use of a weapon of mass destruction. Litigation raised a number of issues, including those related to recusal, the imposition of a gag order, and the application of the Foreign Intelligence Surveillance Act. The Fifth Circuit ultimately affirmed defendant's conviction and sentence.

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10. *Insight for Living Ministries v. Burwell*, No. 4:14-CV-675 (E.D. Tex. 2014); Hon. Richard A. Schell.

Christian & Missionary Alliance v Burwell, No. 2:14-CV-580 (M.D. Fla. 2014); Hon. John E. Steele. No. 15-11437 (11th Cir. 2015)

I served as lead counsel for colleges and ministries that sought injunctive relief against U.S. Health and Human Services regulations requiring the provision of contraceptive, abortifacient, and sterilization drugs in violation of their sincere religious beliefs. The district courts granted preliminary injunctive relief pursuant to the Religious Freedom Restoration Act. Plaintiffs recently secured a permanent exemption consistent with the Supreme Court's order in *Zubik v. Burwell* and the recently published Interim Final Rule.

Co-Counsel

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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.)

As an Assistant United States Attorney, I assisted the Appellate Chief in planning and producing the annual Federal Litigation Update for Northern District of Texas federal attorneys – including attorneys affiliated with the Department of Justice, Bureau of Alcohol, Tobacco, and Firearms, and FBI. I was also responsible for multiple CLE presentations on emergent Fifth Circuit or Supreme Court issues affecting federal law enforcement such as *Crawford*, *Santos*, asset forfeiture, and FISA.

As the Director of Education Initiatives for First Liberty and the Programs Director for the Fort Worth Lawyers Chapter of the Federalist Society, I have coordinated with legal scholars and policy institutes to organize, plan, and present dozens of CLE events on timely legal topics.

I have never acted or registered as a lobbyist.

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

From August 2013 to December 2013, I taught a course entitled Free Speech and the First Amendment as an Adjunct Professor at Southern Methodist University, Meadows School of the Arts. I do not have a copy of the syllabus.

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 deferred income arrangements, stock, options, uncompleted contracts or other future benefits which I expect to derive.

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 in the future.

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.

If confirmed, I will recuse in any litigation where I have ever played a role. I will evaluate recusal in cases involving First Liberty Institute and any clients that I represented while at First Liberty Institute. I would also recuse myself in matters involving my family, close friends, and even my own financial interests. Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case-by-case basis and 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.

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

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

During my time at Baker Botts, I maintained an active pro bono docket. In five years, I billed over 700 pro bono hours on behalf of a diverse array of clients, including: a Moroccan immigrant seeking to finalize an international adoption under the Hague Service and Adoption Conventions; a Waxahachie ISD student who was punished for wearing a "John Edwards for President" shirt; a predominantly African-American church in Wichita Falls that was denied a tax-exemption and parsonage exemption; and low-income Dallas residents facing unlawful eviction. In 2005, I received the Baker Botts *Opus Justitiae* Award for Outstanding Commitment to Pro Bono Work.

At First Liberty Institute, all clients are assisted on a pro bono basis, and all money recovered is either returned to the client or retained by the 501(c)(3) non-profit entity to defray court, legal research, or related costs, consistent with best practices for public interest law firms. During my time as Deputy General Counsel, I have assisted hundreds of individual or institutional church, ministry, school, and student clients.

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 February 19, 2017, I submitted my application for consideration to the Federal Judicial Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with members of the Committee in Dallas, Texas on March 3, 2017, and I interviewed with Senators Cornyn and Cruz on April 3, 2017 in Washington, D.C. On May 30, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy of the Department of Justice in Washington, D.C. Since that time, I have been in contact with attorneys from the Office of Legal Policy. On September 7, 2017, the President submitted my nomination 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.