

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Jonathan Franklin Mitchell

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

Chair, Administrative Conference of the United States

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.

I currently have three office addresses:

(1) Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305

(2) Scott PLLC
508 West 14th Street
Austin, Texas 78701

(3) 500 SE Everett Mall Way #B216
Everett, Washington 98208

My residence is Everett, Washington

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

September 2, 1976
Upland, Pennsylvania

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.

J.D., University of Chicago Law School, 2001 (attended 1998–2001)
B.A., Wheaton College, 1998 (attended 1994–1998)

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.

Stanford Law School
Visiting Professor of Law, 2015–present
559 Nathan Abbott Way
Stanford, CA 94305

Scott, PLLC
Senior Counsel, 2017–present
508 West 14th Street
Austin, Texas 78701

Trump for America, Inc., Presidential Transition Team
Volunteer Attorney, 2016–2017
Washington, DC

James Otis Law Group LLC
Senior Counsel, 2016–2017
12977 North Forty Drive, Suite 214
St. Louis, Missouri 63141

Hoover Institution
Visiting Fellow, 2015–2016
434 Galvez Mall
Stanford, CA 94305

University of Texas at Austin School of Law
Searle Visiting Professor of Law, Spring 2015
727 East Dean Keeton Street
Austin, Texas 78705

State of Texas
Solicitor General, 2010–2015
209 West 14th Street
P.O. Box 12548
Austin, Texas 78711-2548

University of Texas at Austin School of Law
Adjunct Professor, 2011–2014
727 East Dean Keeton Street
Austin, Texas 78705

George Mason University School of Law
Assistant Professor of Law, 2008–2010
3301 Fairfax Drive
Arlington, VA 22201

University of Chicago Law School
Visiting Assistant Professor, 2006–2008
1111 E. 60th Street
Chicago, IL 60637

Georgetown University Law Center
Visiting Researcher, 2006
600 New Jersey Avenue NW
Washington, DC 20001
Office of Legal Counsel, U.S. Department of Justice
Attorney-Adviser, 2003–2006
950 Pennsylvania Avenue NW
Washington, DC 20543

Hon. Antonin Scalia, Supreme Court of the United States
Law Clerk, 2002–2003
One First Street, NE
Washington, DC 20543

Hon. J. Michael Luttig, U.S. Court of Appeals for the Fourth Circuit
Law Clerk, 2001–2002
Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

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 have 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.

During my time as Solicitor General of Texas, two of the briefs that I authored received a Best Brief Award from the National Association of Attorneys General.

The 2014 Best Brief Award went to the brief for the petitioners that our office filed in *Utility Air Regulatory Group v. EPA*, No. 12-1146.

The 2012 Best Brief Award went to the brief for the respondents that our office filed in *Gonzalez v. Thaler*, No. 10-895.

Our office also received a Best Brief Award from the National Association of Attorneys General in 2011 and 2013, but the brief that received the 2013 Best Brief Award was authored and signed by my deputy Andrew S. Oldham, and the brief that received the 2011 Best Brief Award was filed before I become Solicitor General.

In 2013, I received the Lee Lieberman Otis Award from the University of Chicago Law School's chapter of the Federalist Society

I graduated from the University of Chicago Law School with high honors and Order of the Coif.

I served as Articles Editor of the University of Chicago Law Review from 2000–2001, and as a staff member from 1999–2000.

I was awarded a Humane Studies Fellowship from the Institute for Humane Studies in 2000 and 2001.

I was awarded a Bradley Foundation Governance Fellowship from the Bradley Foundation in 2000 and 2001.

I was awarded the Joseph Henry Beale Prize for Legal Research and Writing from the University of Chicago Law School in 1999.

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.

I am a member of the Washington State Bar Association.

In 2016, I served as a member of the Practitioners' Reading Group for the American Bar Association's Standing Committee on the Federal Judiciary, evaluating the qualifications of U.S. Supreme Court nominee Merrick Garland.

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.

Washington	admitted 2017
Texas	admitted 2010
District of Columbia	admitted 2006
Pennsylvania	admitted 2003

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.

Supreme Court of the United States	admitted 5/12/2008
U.S. Court of Appeals for the D.C. Circuit	admitted 5/16/2011
U.S. Court of Appeals for the Third Circuit	admitted 8/22/2012
U.S. Court of Appeals for the Fifth Circuit	admitted 12/8/2010
U.S. District Court for the Northern District of Texas	admitted 12/21/2010
U.S. District Court for the Southern District of Texas	admitted 12/2010
U.S. District Court for the Eastern District of Texas	admitted 12/6/2010
U.S. District Court for the Western District of Texas	admitted 2/10/2011

My admission to S.D. Tex. lapsed sometime in 2015 when I chose not to renew my membership there. I remain admitted to practice in the other courts listed above.

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.

I have been a member of the Federalist Society for Law and Public Policy Studies since I started law school in 1998.

I served as President of the University of Chicago Law School chapter of the Federalist Society from 2000–2001.

I have also been a member of the faculty division of the Federalist Society since 2006.

- b. 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.

None of these organizations discriminate on the basis of race, sex, religion, or national origin.

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.

My published academic writing appears below:

The Writ-of-Erasure Fallacy,
104 Va. L. Rev. ____ (2018) (forthcoming)
Remembering the Boss,
84 U. Chi. L. Rev. ____ (2017) (forthcoming)
Judicial Review and the Future of Federalism,
49 Ariz. St. L.J. 1091 (2017)
Textualism and the Fourteenth Amendment,
69 Stan. L. Rev. 1237 (2017)
Capital Punishment and the Courts,
120 Harv. L. Rev. Forum 269 (2017)
Stare Decisis and Constitutional Text,
110 Mich. L. Rev. 1 (2011)
Reconsidering Murdock: State-Law Reversals as Constitutional Avoidance,
77 U. Chi. L. Rev. 1335 (2010)

Legislating Clear-Statement Regimes in National-Security Law,
43 Ga. L. Rev. 1059 (2009)
Apprendi's Domain,
2006 Sup. Ct. Rev. 297 (2006)
Can a Right of First Refusal Be Assigned?,
68 U. Chi. L. Rev. 985 (2001)

For the two forthcoming articles mentioned above, I do not yet have final published copies, but I will provide them to the committee as soon as they appear in print.

I also wrote a short essay called "Federalism and State Attorneys General," which appears only on the Internet, published on September 22, 2016. It is available at <http://www.libertylawsite.org/liberty-forum/federalism-and-state-attorneys-general/>

I also wrote two short invited response pieces that were published online in the University of Chicago Law Review Legal Workshop, a now-defunct online adjunct to the University of Chicago Law Review. Those pieces are entitled "Modernization, Moderation, and Political Minorities: A Response to Professor Strauss," and "The Perils of Over-Constitutionalizing the Law: A Reply to Professor Epstein."

- 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 have attached the report that I submitted to the ABA's Standing Committee on the Judiciary, evaluating the qualifications of Supreme Court nominee Merrick Garland.

- 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.

None.

- 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.

The following is a list of speeches or talks that I have delivered:

University of Virginia Law School Faculty Workshop
Charlottesville, VA

“The Writ-of-Erasure Fallacy”

September 22, 2017

My talk was based on my upcoming article, *The Writ-of-Erasure Fallacy*, which will appear in the *Virginia Law Review* in 2018. I will provide a copy to the committee when it is published. Because the talk was based on one of my articles, I did not prepare notes or scripted remarks for that event.

University of Virginia Law School Federalist Society
Charlottesville, VA

“Textualism and the Fourteenth Amendment”

September 21, 2017

My talk was based on the article that appears in the *Stanford Law Review*, *Textualism and the Fourteenth Amendment*, 69 *Stan. L. Rev.* 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Columbia Law School Federalist Society
New York, NY

“The Writ-of-Erasure Fallacy”

September 20, 2017

My talk was based on my upcoming article, *The Writ-of-Erasure Fallacy*, which will appear in the *Virginia Law Review* in 2018. I will provide a copy to the committee when it is published. Because the talk was based on one of my articles, I did not prepare notes or scripted remarks for that event.

American Bar Association Section of Litigation, Annual Conference
Hyatt Regency Embarcadero, San Francisco, CA

“President Trump and the Courts: The First 100 Days”

May 3, 2017

I served as a panelist alongside Pam Karlan, Harold Koh, Alberto Gonzales, and Donald Verrilli. This was a Q&A so I did not prepare any remarks or notes for this event.

Stanford Law School American Constitution Society, Fed Soc, and OutLaw
Stanford Law School, Stanford CA

“An Auer in the Bathroom: Pamela Karlan & Jonathan Mitchell Discuss
Gloucester County School Board v. G.G.”

April 12, 2017

I served as a panelist alongside Pam Karlan, moderated by Jeff Fisher, and all three of us discussed the litigation in *Gloucester County School Board v. G.G.* I spoke extemporaneously so I do not have prepared remarks or notes from this event.

Texas Tech Law School Federalist Society

Lubbock, TX

“Textualism and the Fourteenth Amendment”

April 4, 2017

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Fed Soc 2017 Annual Faculty Conference

Parc 55 Hilton San Francisco, CA

“The Writ-of-Erasure Fallacy”

January 5, 2017

My talk was based on my upcoming article, *The Writ-of-Erasure Fallacy*, which will appear in the Virginia Law Review in 2018. I will provide a copy to the committee when it is published. Because the talk was based on one of my articles, I did not prepare notes or scripted remarks for that event.

New York University Classical Liberal Institute

New York, NY

“Judicial Review and the Future of Federalism”

November 11, 2017

My talk was based on my upcoming article, *Judicial Review and the Future of Federalism*, which will appear in print in 2017. I will provide a copy to the committee when it is published. Because the talk was based on one of my articles, I did not prepare notes or scripted remarks for that event.

Columbia Law School Federalist Society

New York, NY

“Textualism and the Fourteenth Amendment”

November 10, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

NYU Law School Federalist Society

New York, NY

“Textualism and the Fourteenth Amendment”

November 10, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Northwestern Law School Federalist Society

Chicago, IL

“Textualism and the Fourteenth Amendment”

September 26, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I

have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Federalist Society Junior Scholars Colloquium

Loews Annapolis Hotel Annapolis, MD

“Textualism and the Fourteenth Amendment”

June 18, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Duke Law School Faculty Workshop

Durham, NC

“Textualism and the Fourteenth Amendment”

June 15, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Stanford Law School Faculty Workshop

Stanford, CA

“Textualism and the Fourteenth Amendment”

June 1, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law School Federalist Society

Chicago, IL

“The Writ-of-Erasure Fallacy”

May 2, 2016

My talk was based on my upcoming article, *The Writ-of-Erasure Fallacy*, which will appear in the Virginia Law Review in 2018. I will provide a copy to the committee when it is published. Because the talk was based on one of my articles, I did not prepare notes or scripted remarks for that event.

University of California at Berkeley Law School Federalist Society

Berkeley, CA

“Justice Scalia’s Legacy”

April 21, 2016

I spoke on a panel alongside Michael Ramsey, John Eastman, and Kristin Linsley Myles. My remarks were based on the article that will appear later this year in the University of Chicago Law Review, *Remembering the Boss*, 84 U. Chi. L. Rev. ____ (2017) (forthcoming). I will provide the article to the committee when it is published. Because the talk was based on one of my articles, I did not prepare a separate set of notes or prepared remarks from that event.

The event was broadcast on C-SPAN. It can be viewed at:

<http://www.c-span.org/video/?407589-1/justice-scalias-legacy&start=774>

University of Utah Law School Federalist Society

Salt Lake City, UT

“Justice Scalia’s Legacy”

April 13, 2016

I participated on a panel alongside Paul Cassell, John Fee, and Michael Ramsey. My remarks were based on the article that will appear later this year in the University of Chicago Law Review, *Remembering the Boss*, 84 U. Chi. L. Rev. ____ (2017) (forthcoming). I will provide the article to the committee when it is published. Because the talk was based on one of my articles, I did not prepare a separate set of notes or prepared remarks from that event.

University of Houston Law School Federalist Society

Houston, TX

“Textualism and the Fourteenth Amendment”

April 5, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Texas Law School Federalist Society

Austin, TX

“Textualism and the Fourteenth Amendment”

April 4, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Stanford Law School Federalist Society

Stanford, CA

“Textualism and the Fourteenth Amendment”

March 3, 2016

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Stanford Constitutional Law Center

Stanford, CA

“Immigration at the Supreme Court: The States vs. Obama”

March 1, 2016

I spoke about the *United States v. Texas* litigation that was pending at the Supreme Court. I do not have notes or prepared remarks from that event.

Stanford Law School Federalist Society

Stanford, CA

“The Constitutional Power of Lower Court Judges to Disregard Supreme Court Precedent”

February 25, 2016

I spoke as a commentator in response to a talk delivered by Professor Michael Stokes Paulsen. Because I was there only to respond to Professor Paulsen's remarks, I did not prepare notes or scripted remarks for this event.

Vanderbilt Law School Federalist Society

Nashville, TN

"Textualism and the Fourteenth Amendment"

November 13, 2015

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Stanford Supreme Court Clinic

Stanford, CA

October 16, 2015

I was invited to speak to students in the clinic about my recent oral argument at the Court in *Campbell-Ewald v. Gomez*. I did not prepare notes or scripted remarks for this event.

Georgetown University Law Center Federalist Society

Washington, DC

"Textualism and the Fourteenth Amendment"

October 15, 2015

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law School Federalist Society

Chicago, IL

"Textualism and the Fourteenth Amendment"

October 6, 2015

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Pennsylvania Law School Federalist Society

Philadelphia, PA

"Textualism and the Fourteenth Amendment"

October 1, 2015

My talk was based on the article that appears in the Stanford Law Review, *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Gilder Lehrman Foundation

Stanford, CA

"The Supreme Court in U.S. History"

July 29, 2015

I was invited by Larry Kramer to speak to his class of high-school history teachers about briefing and arguing cases at the Supreme Court. I did not prepare notes or remarks for this event.

Dallas Federalist Society

Dallas, TX

“Textualism and the Fourteenth Amendment”

April 10, 2015

My talk was based on the article that appears in the *Stanford Law Review*, *Textualism and the Fourteenth Amendment*, 69 *Stan. L. Rev.* 1237 (2017), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

William & Mary Law School

Williamsburg, VA

February 27, 2015

I was invited by Professor Neal Devins to speak to his class about my time as state solicitor general of Texas. This event was structured as a Q&A, so I did not prepare notes or remarks for this event.

Grove City College

Grove City, PA

February 19, 2015

I gave a lecture at Grove City College on the institutional role of the U.S. and state solicitors general. I do not have a copy of my notes or prepared remarks for this event.

Stanford Law School Federalist Society

Stanford, CA

“Stare Decisis and Constitutional Text”

February 5, 2015

My talk was based on the article that appears in the *Michigan Law Review*, *Stare Decisis and Constitutional Text*, 110 *Mich. L. Rev.* 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of California at Berkeley Law School Federalist Society

Berkeley, CA

“The Highs and Lows of Government Lawyering”

February 4, 2015

I spoke on the institutional role of the U.S. and state solicitors general. I do not have a copy of my notes or prepared remarks for this event.

University of Pennsylvania Law School Federalist Society

Philadelphia, PA

“The Highs and Lows of Government Lawyering”

December 2, 2014

I spoke on the institutional role of the U.S. and state solicitors general. I do not have a copy of my notes or prepared remarks for this event.

Villanova Law School Federalist Society

Villanova, PA

“Stare Decisis and Constitutional Text”

December 1, 2014

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law School Federalist Society

Chicago, IL

“Stare Decisis and Constitutional Text”

October 22, 2014

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Yale Law School Federalist Society

New Haven, CT

“The Highs and Lows of Government Lawyering”

October 1, 2014

I spoke on a panel with Connecticut Solicitor General Greg D’Auria and Yale Law Professor Abbe Gluck. I spoke on the institutional role of the U.S. and state solicitors general. I do not have a copy of my notes or prepared remarks for this event.

Harvard Law School Federalist Society & Jewish Law Students

Cambridge, MA

“*Zivotofsky v. Kerry*”

September 30, 2014

I gave a talk on the *Zivotofsky v. Kerry* case that was being argued at the Supreme Court that term. I do not have a copy of my notes or prepared remarks for this event.

Tarrant County Federalist Society

Fort Worth, TX

“Stare Decisis and Constitutional Text”

July 17, 2014

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Dallas Federalist Society

Dallas, TX

“Stare Decisis and Constitutional Text”

April 1, 2014

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have

provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Houston Federalist Society

Houston, TX

“Stare Decisis and Constitutional Text”

March 25, 2014

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Harvard Law School Federalist Society

Cambridge, MA

“State Law and the Supreme Court”

March 25, 2014

My talk was based on the article that appears in the University of Chicago Law Review, *Reconsidering Murdock: State-Law Reversals as Constitutional Avoidance*, 77 U. Chi. L. Rev. 1335 (2010), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Pennsylvania Journal of Constitutional Law Symposium

Philadelphia, PA

“Fisher and the Future”

January 24, 2014

I spoke on a panel alongside Kermit Roosevelt, Amy Wax, and Vinay Harpalani, discussing the Supreme Court’s ruling in *Fisher v. University of Texas* (2013). I do not have a copy of any notes or prepared remarks from this event.

Georgetown University Law Center Federalist Society

Washington, DC

“The Highs and Lows of Government Lawyering”

October 25, 2013

I spoke on the institutional role of the U.S. and state solicitors general. I also spoke more specifically about what it’s like to work in a state solicitor general’s office. I do not have a copy of my notes or prepared remarks for this event.

Duke Law School Federalist Society

Durham, NC

“The Highs and Lows of Government Lawyering”

October 24, 2013

I spoke on the institutional role of the U.S. and state solicitors general. I also spoke more specifically about what it’s like to work in a state solicitor general’s office. I do not have a copy of my notes or prepared remarks for this event.

University of Chicago Law School Federalist Society

Chicago, IL

“State Law and the Supreme Court”

October 7, 2013

My talk was based on the article that appears in the University of Chicago Law Review, *Reconsidering Murdock: State-Law Reversals as Constitutional Avoidance*, 77 U. Chi. L. Rev. 1335 (2010), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law School Federalist Society
Chicago, IL
Remarks upon receiving the Lee Lieberman Otis Award
April 2, 2013

The University of Chicago Law School chapter of the Federalist Society honored me as the 2013 recipient of the Lee Lieberman Otis Award, given every year to an alumnus or alumna of the Law School. The award was presented in a ceremony in which I made some brief remarks. I could not find the notes that I had prepared for that talk.

Federalist Society Annual Student Symposium
Austin, TX
Environmental and Property Law Panel
March 2, 2013

I moderated a panel comprising Richard Epstein, Jeremy Rabkin, Lynn Blais, and John Evecherria. I made some brief remarks introducing the speakers and during the Q&A session. I did not prepare any notes or scripted remarks for this events.

Stanford Law School Federalist Society
Stanford, CA
“Stare Decisis and Constitutional Text”
February 8, 2013

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Pennsylvania Journal of Constitutional Law Symposium
Philadelphia, PA
“The Subjects of the Constitution”
January 25, 2013

I spoke on a panel alongside Richard H. Fallon, Misha Tseytlin, and Matthew Adler, discussing “The Subjects of the Constitution,” an article written by Professor Nicholas Quinn Rosenkranz. My remarks were largely positive although I did note a few areas of disagreement between me and Professor Rosenkranz. I cannot find the notes that I prepared for this event.

University of Pennsylvania Law School Federalist Society
Philadelphia, PA
“Stare Decisis and Constitutional Text”
January 24, 2013

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

George Mason University Law School Commencement
Fairfax, VA
Commencement Address
May 19, 2012

I delivered the commencement speech for GMU's law-school graduation. I have included a copy of the remarks that I prepared and used as the basis for the speech.

Austin Federalist Society
Austin, TX
March 9, 2012

I spoke to the Austin Federalist Society about the institutional role of the U.S. and state solicitors general. I also spoke more specifically about the work and pending litigation in the Texas SG's office. I do not have notes or prepared remarks for this event.

Harvard Law School Federalist Society
Cambridge, MA
"Stare Decisis and Constitutional Text"
January 31, 2012

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

Boston College Law School Federalist Society
Newton, MA
"Stare Decisis and Constitutional Text"
January 30, 2012

My talk was based on the article that appears in the Michigan Law Review, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law School Federalist Society
Chicago, IL
"The Supreme Court's October Term 2011"
October 11, 2011

I spoke about the Supreme Court's upcoming term. I do not have a copy of my notes or prepared remarks for this event.

Austin Bar Association
Austin, TX
Sometime during the spring or summer of 2011

I spoke to the Austin Bar Association about the institutional role of the U.S. and state solicitors general. I also spoke more specifically about the work and pending litigation in the Texas SG's office. I do not have notes or prepared remarks for this event. I also cannot remember the date of this event, but it was sometime in 2011.

University of Chicago Law School Federalist Society
Chicago, IL
“State Law and the Supreme Court”
May 13, 2010

My talk was based on the article that appears in the University of Chicago Law Review, *Reconsidering Murdock: State-Law Reversals as Constitutional Avoidance*, 77 U. Chi. L. Rev. 1335 (2010), which I have provided to the committee. Because the talk was based on one of my articles, I did not prepare a separate set of notes or scripted remarks for that event.

University of Chicago Law Review
Chicago, IL
May 12, 2010

I spoke to the board and staff members of the University of Chicago Law Review about publishing scholarship and working the law-review editors from the standpoint of a faculty author. I could not find any notes that I had prepared for this event.

University of Chicago Law School Christian Legal Society
Chicago, IL
“Text and Torture”
May 6, 2008

I discussed the laws governing torture and coercive interrogation, and provided some analysis of the recently released “Evangelical Declaration Against Torture.” The talk was given as part of a “Text and Truth” series sponsored by CLS. I do not have notes or prepared remarks for this event.

- 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.

On March 3, 2016, I appeared on NPR’s On Point to discuss the Supreme Court’s term. I do not have a transcript of the interview, but the audio of the interview is available at <http://www.wbur.org/onpoint/2016/03/03/scalia-scotus-abortion-texas>

On March 11, 2015, I was interviewed over the phone by NPR’s Nina Totenberg about *Walker v. Sons of Confederate Veterans*, a Supreme Court case about whether the State of Texas was required to issue a specialty license plate adorned with the confederate battle flag. I do not have a transcript of the interview. Ms. Totenberg used a few small clips from that interview in a broadcast in June when the Court’s decision was announced. It is available at: <http://www.npr.org/sections/thetwo-way/2015/06/18/415462597/high-court-rules-specialty-license-plates-constitute-government-speech>

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I served as Solicitor General of the State of Texas from December 2010 through January 2015. This was an appointed office, and I was appointed by Attorney General Greg Abbott.

I have never sought elected office, and I have not been previously nominated for a Senate-confirmed 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 advised Senator Rubio's campaign for President during the 2016 primary on legal and judiciary matters on a volunteer basis. My involvement with the campaign lasted from November 2015 through March 2016, and I did not have a title. Professor Nicholas Quinn Rosenkranz was the formal adviser to Senator Rubio's campaign for legal and judiciary matters, and I assisted Professor Rosenkranz with his work.

Other than that, I have had no involvement with any political party, election committee, or other political campaign.

14. **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;
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - 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.
 - 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.

Hon. J. Michael Luttig, U.S. Court of Appeals for the Fourth Circuit
Law Clerk, 2001–2002
Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

Hon. Antonin Scalia, Supreme Court of the United States
Law Clerk, 2002–2003
One First Street, NE
Washington, DC 20543

Office of Legal Counsel, U.S. Department of Justice
Attorney-Adviser, 2003–2006
950 Pennsylvania Avenue NW
Washington, DC 20543

Georgetown University Law Center
Visiting Researcher, 2006
600 New Jersey Avenue NW
Washington, DC 20001

University of Chicago Law School
Visiting Assistant Professor, 2006–2008
1111 E. 60th Street
Chicago, IL 60637

George Mason University School of Law
Assistant Professor of Law, 2008–2010
3301 Fairfax Drive
Arlington, VA 22201

State of Texas
Solicitor General, 2010–2015
209 West 14th Street
P.O. Box 12548
Austin, Texas 78711-2548

University of Texas at Austin School of Law
Adjunct Professor, 2010–2014
727 East Dean Keeton Street
Austin, Texas 78705

University of Texas at Austin School of Law
Searle Visiting Professor of Law, Spring 2015
727 East Dean Keeton Street
Austin, Texas 78705

Hoover Institution
Visiting Fellow, 2015–2016
434 Galvez Mall
Stanford, CA 94305

Stanford Law School
Visiting Professor of Law, 2015–present
559 Nathan Abbott Way
Stanford, CA 94305

James Otis Law Group LLC
Senior Counsel, 2016–2017
12977 North Forty Drive, Suite 214
St. Louis, Missouri 63141

Trump for America, Inc., Presidential Transition Team
Volunteer Attorney, 2016–2017
Washington, DC

Scott, PLLC
Senior Counsel, 2017–present
508 West 14th Street
Austin, Texas 78701

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I have spent most of my legal career in government or academia, and I have moved back and forth between the two.

After graduating from law school in 2001, I spent four-and-a-half years in government: two years as a judicial law clerk, and then two-and-a-half years working as an Attorney-Adviser in the Office of Legal Counsel for the U.S. Department of Justice (August 2003–January 2006). During my time in OLC, I argued three different immigration cases in the federal courts of appeals. But most of my work in OLC was advisory and did not involve practice or litigation.

I left DOJ in January 2006 and spent almost five years in academia. I was a visiting researcher at Georgetown from January 2006 through June 2006. Then the University of Chicago Law School offered me a position as a visiting assistant professor, which I held from June 2006 through July 2008. Then I accepted a tenure-track assistant professor of law position at George Mason University, which I held from July 2008 through December 2010.

During this 2006–2010 stint in academia, I published four articles: *Apprendi's Domain*, 2006 Sup. Ct. Rev. 297; *Legislating Clear-Statement Regimes in National-Security Law*, 43 Ga. L. Rev. 1059 (2009); *Reconsidering Murdock: State-Law Reversals as Constitutional Avoidance*, 77 U. Chi. L. Rev. 1335 (2010); and *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011).

During the summer of 2010 I was offered the job of Solicitor General of Texas. I accepted the offer and started the job on December 9, 2010. I held the position until January 2015. During my time as SG I argued three cases in the Supreme Court of the United States and 14 cases in the U.S. Court of Appeals for the Fifth Circuit. I also wrote over 100 briefs, which were filed in both appellate and trial courts. My client in all of these cases was either the State of Texas or Texas government agencies or officials.

Upon leaving the Texas Solicitor General's office I returned to academia. I was the Searle Visiting Professor of Law at the University of Texas Law School from January 2015 – May 2015. On June 1, 2015, I started a one-year fellowship at the Hoover Institution and I have been a visiting professor of law at Stanford Law School from June 2015 until now.

Since I returned to academia in 2015, I have written the following articles: *Textualism and the Fourteenth Amendment*, 69 Stan. L. Rev. 1237 (2017); *Capital Punishment and the Courts*, 120 Harv. L. Rev. Forum 269 (2017); *Judicial Review and the Future of Federalism*, 49 Ariz. St. L.J. 1091 (2017); *Remembering the Boss*, 84 U. Chi. L. Rev. ____ (2017) (forthcoming); and *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. ____ (2018) (forthcoming).

During this second and current stint in academia I have also maintained a significant law practice on the side. I briefed and argued *Campbell–Ewald Co. v. Gomez*, No. 14-857, at the Supreme Court of the United States in October 2015. I represented the class-action plaintiff in that case, and we successfully argued at the Supreme Court that an unaccepted offer of relief from the defendant does not render the case moot. I also represented the State of Mississippi in a lawsuit challenging its conscience-protection law, and I briefed and argued the case in the Fifth Circuit. *See Barber v. Bryant*, 860 F.3d 345 (5th Cir. 2017). And I am representing a group of property owners in Texas who claim that their school districts illegally raised property taxes.

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

During my time as Texas Solicitor General (2010–15), my typical clients were state agencies and state government officials. Since leaving the state SG’s office, I have represented a variety of clients.

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

All of my law practice has been in litigation. I appeared in court frequently during the periods of time that I have practiced law.

- i. Indicate the percentage of your practice in:

- 1. federal courts;

90%

- 2. state courts of record;

10%

- 3. other courts;

0%

- 4. administrative agencies

0%

ii. Indicate the percentage of your practice in:

1. civil proceedings;

100%

Note: I handled a large amount of habeas and post-conviction litigation during my time as Texas SG, which is considered civil even though it involves criminals and criminal law.

2. criminal proceedings.

0% (not including the habeas and post-conviction cases that I handled during my time as Texas SG)

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.

Three. I served as lead counsel in all three cases.

i. What percentage of these trials were:

1. jury;
2. non-jury.

All three cases were non-jury bench trials.

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

I have argued four cases before the Supreme Court of the United States. Those cases are, in reverse chronological order:

1. *Campbell–Ewald Co. v. Gomez*, No. 14-857 (October 14, 2015)
2. *Utility Air Regulatory Group v. EPA*, No. 12-1146 (February 24, 2014)
3. *EPA v. EME Homer City Generation*, No. 12-1182 (December 10, 2013)
4. *Gonzalez v. Thaler*, No. 10-895 (November 2, 2011)

I have written and submitted briefs on the merits in six Supreme Court cases that proceeded to oral argument. Those cases are, in reverse chronological order:

1. *Campbell–Ewald Co. v. Gomez*, No. 14-857
2. *Walker v. Texas Division, Sons of Confederate Generals*, No. 14-144
3. *Texas Dep't of Housing and Community Affairs v. ICP*, No. 13-1371
4. *Utility Air Regulatory Group v. EPA*, No. 12-1146
5. *EPA v. EME Homer City Generation*, No. 12-1182
6. *Gonzalez v. Thaler*, No. 10-895

I have written and submitted amicus briefs in 12 Supreme Court cases that proceeded to oral argument. Those cases are, in reverse chronological order:

1. *Whole Woman's Health v. Hellerstedt*, No. 15-274
2. *Armstrong v. Exceptional Child Center*, No. 14-15
3. *Zivotofsky v. Kerry*, No. 13-628
4. *Shelby County v. Holder*, No. 12-96
5. *Alleyne v. United States*, No. 11-9335
6. *Delia v. E.M.A.*, No. 12-98
7. *Greene v. Fisher*, No. 10-637
8. *Vasquez v. United States*, No. 11-199
9. *Messerschmidt v. Millender*, No. 10-704
10. *Turner v. Rogers*, No. 10-10
11. *Polar Tankers, Inc. v. City of Valdez*, No. 08-310
12. *Oregon v. Ice*, No. 07-901

I have written and submitted three petitions for writ of certiorari at the Supreme Court, all of which were granted. Those cases are, in reverse chronological order:

1. *Walker v. Texas Division, Sons of Confederate Generals*, No. 14-144
2. *Texas Dep't of Housing and Community Affairs v. ICP*, No. 13-1371
3. *Texas v. EPA*, No. 12-1269

I have written and submitted one petition-stage amicus brief at the Supreme Court in *Armstrong v. Exceptional Child Center*, No. 14-15, on behalf of a coalition of States urging the Court to grant certiorari.

I have written and submitted five briefs in opposition to certiorari at the Supreme Court in the following cases:

1. *Barber v. Bryant*, No. 17-547
2. *Turner v. Pidgeon*, No. 17-424
3. *Fisher v. University of Texas*, No. 11-345
4. *Mathis v. Thaler*, No. 10-855
5. *Foster v. Texas*, No. 10-8317

Finally, I have written and filed briefs in the following emergency proceedings at the Supreme Court:

1. *Veasey v. Perry*, Nos. 14A393, 14A402, 14A404
2. *Whole Woman's Health v. Lakey*, No. 14A365
3. *Planned Parenthood v. Abbott*, No. 13A452

15. **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) *Campbell–Ewald Co. v. Gomez*, Supreme Court of the United States

Docket No.: 14-857

Judges: Roberts, C.J., Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, JJ.

Citation: 136 S. Ct. 663 (2016)

Dates of representation: June 2015 – January 2016

Lead counsel for the petitioner:

Gregory G. Garre
Latham & Watkins LLP
555 11th Street, NW
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Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Co-counsel for the respondent:

Myles McGuire
Evan M. Meyers
McGuire Law, P.C.
55 West Wacker Drive 9th Floor
Chicago, IL 60601
(312) 893-7002

Michael J. McMorrow
McMorrow Law, P.C.
One North LaSalle Street 44th Floor
Chicago, IL 60602
(213) 265-0708

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street NW
Washington, D.C. 20009
(202) 588-1000

David C. Parisi
Suzanne Havens
Beckman Parisi & Havens LLP
212 Marine Street, Unit 100
Santa Monica, CA 90405
(818) 990-1299

Summary of the case: The Supreme Court granted certiorari to decide two issues: (1) Whether an unaccepted settlement offer or an unaccepted offer of judgment moots a plaintiff's case, and (2) Whether a federal contractor is entitled to "derivative sovereign immunity" for violating the Telephone Consumer Protection Act when it acted in a manner that violated both the federal statute and the government's explicit instructions.

I was retained to brief and argue this case in the Supreme Court after the justices granted certiorari. I represented the plaintiff (respondent in SCOTUS) and argued that: (1) an unaccepted settlement offer does not moot a plaintiff's case, and (2) The defendants in this case were not entitled to derivative sovereign immunity.

I wrote the respondent's brief and presented oral argument at the Supreme Court.

The Supreme Court, per Justice Ginsburg, agreed with us 6–3 on the first question, and they agreed with us without dissent on the second question.

Final Disposition: The case was remanded to the district court and it settled.

(2) *Utility Air Regulatory Group v. EPA*, Supreme Court of the United States
Docket No.: 12-1146
Judges: Roberts, C.J., Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor,
Kagan, JJ.
Citation: 134 S. Ct. 2427 (2014)
Dates of representation: June 2011 – June 2014

Lead counsel for the industry petitioners:

Peter D. Keisler
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
pkeisler@sidley.com

Co-counsel for the state petitioners:

Andrew S. Oldham
Michael P. Murphy
James P. Sullivan
Douglas D. Geysler
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1695

Lead counsel for respondent EPA:

Donald B. Verrilli Jr.
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Summary of the case: The Supreme Court granted certiorari to decide whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

As state solicitor general, I wrote the brief on behalf of a coalition of States challenging EPA's regulations of stationary-source greenhouse-gas emissions. I also presented oral argument at the Supreme Court, sharing time with Peter Keisler, the lead lawyer for the industry petitioners. I also briefed and argued the case when it was in the D.C. Circuit.

Final Disposition: The Supreme Court held, per Justice Scalia in a 5–4 vote, that the Clean Air Act neither compels nor permits EPA to adopt an interpretation of the Act requiring a source to obtain a PSD or Title V permit on the sole basis of its potential greenhouse-gas emissions.

(3) *EPA v. EME Homer City Generation*, Supreme Court of the United States
Docket No.: 12-1182
Judges: Roberts, C.J., Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor,
Kagan, JJ.
Citation: 134 S. Ct. 1584 (2014)
Dates of representation: November 2012 – June 2013

Lead counsel for petitioner EPA:
Donald B. Verrilli Jr.
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Lead counsel for industry respondents:
Peter D. Keisler
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
pkeisler@sidley.com

Co-counsel for state respondents:
Andrew S. Oldham
Bill Davis
Evan S. Greene
Richard B. Farrer
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1695

Summary of the case: The Supreme Court granted certiorari in this case to resolve a challenge to EPA's cross-state air-pollution rule.

As state solicitor general, I wrote the brief on behalf of a coalition of States challenging EPA's cross-state air-pollution rule. I also presented oral argument at the Supreme Court, sharing time with Peter Keisler, the lead lawyer for the industry respondents.

Final Disposition: The Supreme Court held, per Justice Ginsburg in a 6–2 vote, that EPA's cross-state air-pollution rule was lawful.

(4) *Gonzalez v. Thaler*, Supreme Court of the United States

Docket No.: 10-895

Judges: Roberts, C.J., Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, JJ.

Citation: 132 S. Ct. 641 (2012)

Dates of representation: June 2011 – January 2012

Lead counsel for petitioner:

Patricia A. Millett

Akin, Gump, Strauss, Hauer & Feld LLP

1333 New Hampshire Ave., NW

Washington, DC 20036

(202) 887-4000

pmillett@akingump.com

Co-counsel for respondent:

James P. Sullivan

Arthur C. D'Andrea

P.O. Box 12548 (MC 059)

Austin, Texas 78711-2548

(512) 936-1695

Summary of the case: The Supreme Court granted certiorari in this case to resolve two questions: (1) Is 28 U.S.C. § 2253(c)(3) a jurisdictional requisite for allowing an appeal in a habeas corpus case? (2) Was the habeas petitioner's application for a writ of habeas corpus out of time under 28 U.S.C. § 2244(d)(1) due to "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review"?

As state solicitor general, I wrote the State's brief and presented oral argument at the Supreme Court.

Final Disposition: The Supreme Court ruled that 28 U.S.C. § 2253(c)(3) was not jurisdictional in an 8–1 vote, but they adopted our construction of 28 U.S.C. § 2244(d)(1) without dissent.

(5) *Barber v. Bryant*, U.S. Court of Appeals for the Fifth Circuit
Docket No.: 16-60477 & 16-60478 (consolidated)
Judges: Smith, Elrod, and Haynes, JJ.
Citation: 860 F.3d 345 (5th Cir. 2017)
Dates of representation: August 2016 – present

Co-counsel for defendants-appellants:
D. John Sauer
James Otis Law Group, LLC
12977 North Forty Drive, Suite 214
St. Louis, MO 63141
(314) 682-6067

Drew L. Snyder
Office of Governor Phil Bryant
P.O. Box 139
Jackson, Mississippi 39205

Kevin H. Theriot
Alliance Defending Freedom
15100 North 90th Street
Scottsdale, Arizona 85260

Lead counsel for Barber plaintiffs:
Robert B. McDuff
McDuff & Byrd
767 North Congress Street
Jackson, MS 39202
(601) 969-0802
rbm@mcdufflaw.com

Lead counsel for CSE plaintiffs:
Roberta A. Kaplan
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
rkaplan@paulweiss.com

Summary of the case: Mississippi enacted a conscience-protection law prohibits the government of Mississippi from penalizing or discriminating against persons or religious organizations who decline to participate in same-sex marriage ceremonies and other activities that violate their deeply held religious convictions or secular conscientious beliefs. The plaintiffs in this case are challenging this Mississippi law under the Establishment clause and under the Equal Protection clause. The district court entered a preliminary injunction against the law, and the State has appealed.

I represented the State of Mississippi in its appeal. I wrote the State's opening and reply briefs on appeal, and I presented oral argument at the Fifth Circuit on April 3, 2017.

Final Disposition: The Fifth Circuit unanimously ruled in our favor and held that the plaintiffs lacked Article III standing to challenge Mississippi's law. The plaintiffs are currently seeking certiorari at the Supreme Court.

(6) *Planned Parenthood v. Abbott*, U.S. Court of Appeals for the Fifth Circuit
Docket No.: 13-51008
Judges: Jones, Elrod, and Haynes, JJ.
Citation: 748 F.3d 583 (5th Cir. 2014)
Dates of representation: October 2013 – October 2014

Co-counsel for defendants-appellants:

Adam W. Aston
Andrew S. Oldham
Arthur C. D'Andrea
Beth Klusmann
Philip A. Lionberger
Michael P. Murphy
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1695

Lead counsel for plaintiffs-appellees:

Janet Crepps
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600

Summary of the case: Texas enacted a law that required abortion-performing physicians to hold hospital-admitting privileges and that required drug-induced abortions to be performed in accordance with the FDA-approved protocol. The plaintiffs challenged these provisions as unconstitutional and won an injunction in the district court. The State appealed. As state solicitor general, I wrote the State's brief and argued the appeal in the Fifth Circuit.

Final Disposition: The Fifth Circuit panel upheld the State's law against constitutional challenge. The plaintiffs unsuccessfully sought rehearing en banc, and they did not seek certiorari at the Supreme Court. The Supreme Court's subsequent opinion in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), undercut much of the Fifth Circuit's holding and reasoning in this case.

(7) *Whole Woman's Health v. Cole*, U.S. Court of Appeals for the Fifth Circuit
Docket No.: 14-50928
Judges: Prado, Elrod, and Haynes, JJ.
Citation: 790 F.3d 563 (5th Cir. 2015)
Dates of representation: March 2014–January 2015

Co-counsel for defendants-appellants:

Jimmy Blacklock
Beth Klusmann
Michael P. Murphy
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1695

Lead counsel for plaintiffs-appellees:

Stephanie Toti
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600

Summary of the case: Texas enacted a law that required abortion-performing physicians to hold hospital-admitting privileges and that required abortions to be performed in ambulatory surgical centers. The plaintiffs challenged these provisions as unconstitutional and won an injunction in the district court. The State appealed. As state solicitor general, I wrote the State's brief and argued the appeal in the Fifth Circuit.

Final Disposition: The Fifth Circuit panel held that the plaintiffs' claims were barred by res judicata and, in the alternative upheld the State's law against constitutional challenge on the merits. The Supreme Court later reversed the Fifth Circuit in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

(8) *The Aransas Project v. Shaw*, U.S. Court of Appeals for the Fifth Circuit
Docket No.: 13-40317
Judges: Jones, Smith, Garza, JJ.
Citation: 775 F.3d 641 (5th Cir. 2014)
Dates of representation: March 2013 – January 2015

Co-counsel for defendants-appellants:

James P. Sullivan
Evan S. Greene
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1695

Lead counsel for plaintiffs-appellees:

James B. Blackburn Jr.
Blackburn Carter, P.C.
4709 Austin Street
Houston, Texas 77004
(713) 524-1012

Summary of the case: After the deaths of some whooping cranes (an endangered species) The Aransas Project sued the Texas Commission on Environmental Quality (“TCEQ”), seeking an injunction prohibiting TCEQ from issuing new permits to withdraw water from rivers that feed the estuary where the cranes make their winter home. The district court granted the injunction and the State appealed. As state solicitor general, I wrote the State’s brief and argued the appeal in the Fifth Circuit.

Final Disposition: The Fifth Circuit unanimously reversed the district court and vacated the injunction. The plaintiffs unsuccessfully sought rehearing en banc and unsuccessfully sought certiorari.

(9) *Sons of Confederate Veterans v. Vandergriff*, U.S. Court of Appeals for the Fifth Circuit

Docket No.: 13-50411

Judges: Smith, Prado, Elrod, JJ.

Citation: 759 F.3d 388 (5th Cir. 2014)

Dates of representation: January 2013 – January 2015

Lead counsel for plaintiffs-appellants:

R. James George Jr.

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Co-counsel for defendants-appellees:

Adam W. Aston

Andrew S. Oldham

Bill Davis

Evan S. Greene

P.O. Box 12548 (MC 059)

Austin, Texas 78711-2548

(512) 936-1695

Summary of the case: The Sons of Confederate Veterans asked the state of Texas to issue a specialty license plate adorned with the confederate battle flag. The state refused and the SCV sued, claiming that the State had violated the First Amendment. The district court rejected this claim, but the SCV appealed to the Fifth Circuit. As state solicitor general, I wrote the State's brief and argued the appeal in the Fifth Circuit.

Final Disposition: The Fifth Circuit, in a 2-1 vote, reversed the district court and held that the State must issue the disputed license plate. The state petitioned for certiorari in the U.S. Supreme Court, where I wrote the State's cert petition and opening brief on the merits. The Supreme Court reversed the Fifth Circuit's ruling in a 5-4 vote.

(10) *Davis v. Abbott*, U.S. Court of Appeals for the Fifth Circuit
Docket No.: 14-50042
Judges: Jones, Stewart, Higginson, JJ.
Citation: 781 F.3d 207 (5th Cir. 2015)
Dates of representation: January 2014 – January 2015

Co-counsel for defendants-appellants:
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Lead counsel for plaintiffs-appellees:
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Summary of the case: A three-judge district court awarded former state Senator Wendy Davis attorneys' fees in her redistricting lawsuit against the State, and the State appealed this fee award to the Fifth Circuit. As state solicitor general, I wrote the State's brief and argued the appeal in the Fifth Circuit.

Final Disposition: The Fifth Circuit unanimously reversed the fee award. The plaintiffs unsuccessfully sought certiorari.

16. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed any lobbying activities for anyone.

17. **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.

Federal Habeas Corpus	Stanford Law School, Fall 2016
Advanced Legal Writing	Stanford Law School, Spring 2016
Advanced Legal Writing	University of Texas Law School, Spring 2015
Federal Habeas Corpus	University of Texas Law School, Fall 2014
Federal Habeas Corpus	University of Texas Law School, Spring 2014
Federal Habeas Corpus	University of Texas Law School, Spring 2013

Federal Habeas Corpus	University of Texas Law School, Spring 2012
Federal Habeas Corpus	George Mason University, Fall 2010
Civil Procedure	George Mason University, Spring 2010
Administrative Law	George Mason University, Spring 2010
Federal Habeas Corpus	George Mason University, Fall 2009
Civil Procedure	George Mason University, Spring 2009
Administrative Law	George Mason University, Spring 2009
Federal Habeas Corpus	George Mason University, Fall 2008
Civil Procedure II	University of Chicago Law School, Spring 2008
Federal Habeas Corpus	University of Chicago Law School, Spring 2008
Administrative Law	University of Chicago Law School, Autumn 2007
National Security Law	University of Chicago Law School, Winter 2007
Administrative Law	University of Chicago Law School, Autumn 2006

Course descriptions for each of the classes that I taught follow:

Federal Habeas Corpus: This course covers the history of the Great Writ and the evolution of the scope of federal habeas corpus review and relief; the Suspension Clause; habeas review in capital cases including stays of execution; alternatives to habeas review; state post-conviction proceedings; the Antiterrorism and Effective Death Penalty Act (AEDPA); and jurisdictional issues in both the trial and appellate courts. The course will be valuable to students seeking federal judicial clerkships as well as those interested in prosecutorial work or post-conviction representation.

Advanced Legal Writing: This course will improve one's writing skills and develop the habits needed to become an effective and powerful legal writer. We will study advanced grammar and usage, typography, pronunciations, classical rhetoric, drafting and editing, and examples of great legal writing. The class will emphasize appellate litigation and appellate brief writing, and should be useful to students seeking appellate-court clerkships at any level.

Civil Procedure: This course covered the law of pleading, discovery, summary judgment, the Seventh Amendment, subject-matter jurisdiction, personal jurisdiction, issue and claim preclusion, the Erie doctrine, and class-action litigation.

Administrative Law: This course covers the law of administrative agencies, including constitutional separation of powers and the law of the Administrative Procedure Act.

National Security Law: This is an advanced constitutional law class that covered war powers and separation-of-powers issues, treaty making, and post-9/11 legal issues.

I have provided a syllabus for each of the courses I have taught, but I could not find my syllabus for National Security Law (taught at Chicago in 2007).

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

None.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **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).

I have attached my financial disclosure report to answer this question.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any potential conflicts of interest that might arise.

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

If a potential conflict of interest arises, I will seek counsel from the Office of Government Ethics on how to proceed and I will follow their instructions and advice.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

During my time in government service (2001–2006, 2010–2015), I was not permitted to practice law outside my job or represent clients other than the governmental entities that employed me. This precluded the possibility of pro bono work.

While in academia (2006–2010, 2015–present), I wrote a Supreme Court amicus brief *pro bono* in *Oregon v. Ice*, No. 07-901, which defended the constitutionality of a prison

sentence imposed on a defendant who had sexually abused on 11-year-old girl. The Supreme Court upheld the constitutionality of the sentence.

I also wrote a Ninth Circuit amicus brief *pro bono* in *Chamber of Commerce v. City of Seattle*, No. 17-35640, in support of an antitrust challenge to a Seattle ordinance that would facilitate the formation of a driver's cartel that would hurt customers of Uber and Lyft and other ride-referral services by forcing them to pay higher prices.