

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Andrew Stephen Oldham

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

United States Court of Appeals Judge for the Fifth Circuit

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

Office of the Governor of Texas
1100 San Jacinto Boulevard, Fourth Floor
Austin, Texas 78701

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

1978; Richmond, Virginia

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.

2002 – 2005, Harvard Law School; Juris Doctor (*magna cum laude*), 2005

2001 – 2002, University of Cambridge; Master of Philosophy (first class, with distinction), 2002

1997 – 2001, University of Virginia; Bachelor of Arts (with highest honors), 2001

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.

2015 – present
State of Texas, Office of the Governor

1100 San Jacinto Boulevard, Fourth Floor
Austin, Texas 78701
General Counsel (2018 – present)
Acting General Counsel (2017)
Deputy General Counsel (2015 – 2017)

2012 – 2015
State of Texas, Office of the Attorney General
209 West 14th Street, Seventh Floor
Austin, Texas 78701
Deputy Solicitor General

2009 – 2012
Kellogg Hansen Todd Figel & Frederick PLLC
[formerly Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC]
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Associate

2008 – 2009
Honorable Samuel A. Alito, Jr.
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
Law Clerk

2006 – 2008
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney-Adviser

2005 – 2006
Honorable David B. Sentelle
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Law Clerk

2003 – 2005
Professor Louis Kaplow
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

2004 – 2005
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
Summer Associate (2004); Law Clerk (2004 – 2005)

Summer 2003
Boies, Schiller & Flexner LLP
1401 New York Avenue, N.W.
Washington, DC 20005
Summer Associate

2003 – 2005
President and Fellows of Harvard College
Massachusetts Hall
Cambridge, MA 02138
Resident Advisor

2000 – 2001
Criterion Economics
1717 K Street, N.W., Suite 900
Washington, D.C. 20006
Research Assistant

Other Affiliations (uncompensated):

2017 – present
Texas Access to Justice Commission
1414 Colorado Street
Austin, Texas 78701
Ex-Officio Member

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 did not serve in the military. I registered for the selective service 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.

National Association of Attorneys General, Best Brief Award (2014)

National Association of Attorneys General, Best Brief Award (2013)

American Inns of Court, Temple Bar Scholar (2009)

Mustard Seed Foundation, Harvey Fellow (2004 – 2005)

Harvard Law School

Ames Moot Court, Semi-Finalist (2004)

T.J. Duane Scholar (2003)

Editor, *Harvard Journal of Law and Public Policy* (2002 – 2003)

Truman Scholars Foundation, Truman Scholar (2000)

University of Virginia

Jefferson Scholar (1997 – 2001)

Phi Beta Kappa (2000 – 2001)

Echols Scholar (1997 – 2001)

Raven Society (2000 – 2001)

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

American Bar Association (2006 – 2008; 2012 – 2014)

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.

Virginia, 2005

District of Columbia, 2011

Texas, 2012

There have been no lapses in membership.

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

Supreme Court of the United States, 2009

United States Court of Appeals for the District of Columbia Circuit, 2014

United States Court of Appeals for the First Circuit, 2010

United States Court of Appeals for the Second Circuit, 2013

United States Court of Appeals for the Fourth Circuit, 2010

United States Court of Appeals for the Fifth Circuit, 2010
United States Court of Appeals for the Ninth Circuit, 2015
United States District Court for the District of Columbia, 2011
United States District Court for the Eastern District of Texas, 2013
United States District Court for the Northern District of Texas, 2013
United States District Court for the Southern District of Texas, 2013
United States District Court for the Western District of Texas, 2013
United States District Court for the Eastern District of Virginia, 2010
District of Columbia Court of Appeals, 2011
Supreme Court of Texas, 2012
Supreme Court of Virginia, 2005

Membership in the U.S. District Court for the District of Columbia lasts for three years. I did not renew it in 2014 because I had relocated to Texas and no longer practiced before that court. That court's attorney directory lists my membership status as "provisional." There have been no other lapses in memberships.

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.

Central Union Mission (2006 – 2008)

Compassion International (2008 – present)

Cru (2008 – 2015)

Federalist Society for Law and Public Policy Studies (2002 – present)

Harvey Fellows Screening Committee for Law, Philosophy, and Sociology (2012 – 2013)

Lady Bird Johnson Wildflower Center (2016 – present)

National Rifle Association (2015 – present)

University of Virginia, Jefferson Scholars Foundation Regional Selection Committee (2009 – 2014; 2018 – 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, 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 these organizations 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.

With Scott H. Angstreich, *The Insiders' Guide to the United States Court of Appeals for the District of Columbia Circuit* in APP. PRAC. COMPEND. (Council of Appellate Lawyers 2012). Copy supplied.

Sherman's March Into the Sea, 74 TENN. L. REV. 319 (2007). Copy supplied.

The MedSouth Joint-(Ad)venture: Big and Beautiful or Collusive & Criminal?, 14 ANNALS OF HEALTH L. 125 (2005). Copy supplied.

With Jason Bernd, *Or encourage Board to forfeit power?*, THE CAVALIER DAILY, Apr. 13, 2000. Copy supplied.

As a senior adviser to Greg Abbott, both previously when he served as the Attorney General of Texas and currently while he serves as the Governor of Texas, I drafted and edited numerous published materials. All of those materials, however, were published under Greg Abbott's name, and he exercised editorial control and decisionmaking power over the contents of those materials.

- 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.

Temple Bar Foundation, *Temple Bar Scholar Report*, December 1, 2009. Report supplied.

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

Letter to Sens. Grassley and Feinstein, Nomination of Judge Neil M. Gorsuch, Mar. 14, 2017. Copy supplied.

Testimony: Hearing before the Texas House Select Committee on State & Federal Power & Responsibility, September 13, 2016 (testimony given on behalf of Governor Abbott as Deputy General Counsel). Copy of written testimony supplied. A full recording of my testimony is available at http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=12213.

Testimony: Hearing before the Texas House Committee on the Judiciary & Civil Jurisprudence, April 28, 2015 (testimony given on behalf of Governor Abbott as Deputy General Counsel). I did not prepare or submit written testimony; recording supplied.

Letter to Pres. Obama, Nomination of Prof. Elizabeth Warren, July 28, 2010. 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.

October 23, 2017: Speaker, Investiture of Justice Jennifer Caughey, First Court of Appeals of Texas. I have no notes, transcript, or recording. I discussed the Governor's appointment of Justice Caughey to the court. The address of the court is 301 Fannin Street, Houston, TX 77002.

September 21, 2017: Speaker, "U.S. Supreme Court Update: Term in Review & Term Ahead," Austin Bar Association, Austin, Texas. Power point supplied.

January 17, 2017: Panel Moderator, Administrative Law, Texas Association of Business Conference, Austin, Texas. I have no notes, transcript, or recording. The panelists discussed recent developments in administrative law cases involving the business community. The address of the Texas Association of Business is 1209 Nueces Street, Austin, TX 78701.

January 12, 2017: Speaker, "Time for a Convention of States?," Texas Public Policy Foundation, Austin, Texas. Recording and notes supplied.

December 8, 2016: Speaker, "Evolving Justiciability: Discretionary Standing and Practical Finality," American Bar Association, Washington, D.C. Recording supplied.

October 20, 2016: Speaker, "Economic Liberty and the U.S. Constitution After *St. Joseph Abbey*," Institute for Justice, Austin, Texas. Notes supplied.

October 17, 2016: Speaker, "Irrational Basis: The Scrutiny Only Applicable to Gun Law," Federalist Society, University of Chicago Student Chapter, Chicago, Illinois. Notes supplied.

October 6, 2016: Speaker, "Irrational Basis: The Scrutiny Only Applicable to Gun Law," Federalist Society, Fort Worth Lawyers Chapter, Fort Worth, Texas. My notes were substantially similar to my October 17, 2016 event notes, a copy of which are supplied.

October 5, 2016: Speaker, "The ABA's New Speech Code for Lawyers," Federalist Society, Dallas Lawyers Chapter, Dallas, Texas. Notes supplied.

September 27, 2016: Speaker, "Article V and a Convention of States," Texas Public Policy Foundation, Austin, Texas. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

September 27, 2016: Speaker, "Article V and a Convention of States," Convention of States Townhall, Fort Worth, Texas. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

September 15, 2016: Speaker, "U.S. Supreme Court Update: Term in Review & Term Ahead," Austin Bar Association, Austin, Texas. Power point supplied.

September 8, 2016: Speaker, "Panel: SCOTUS Roundup," Federalist Society, University of Texas Student Chapter, Austin, Texas. Recording supplied.

August 2, 2016: Speaker, "The Office of the Solicitor General: Advocacy for Protecting the People," Blackstone Legal Fellowship, Washington, D.C. Notes supplied.

May 9, 2016: Speaker, "Article V and a Convention of States," Federalist Society, University of Chicago Student Chapter, Chicago, Illinois. Recording supplied.

April 20, 2016: Speaker, "American Bar Association Teleforum Regarding

Oral Arguments in *United States v. Texas*—On the APA, the Constitution, and Executive Discretion in Enforcing the Law.” Recording supplied.

April 13, 2016: Speaker, “Article V and a Convention of States,” Federalist Society, Oklahoma City Lawyers Chapter, Oklahoma City, Oklahoma. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

March 6, 2016: Speaker, “Article V and a Convention of States,” United States Naval Academy, Annapolis, Maryland. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

February 23, 2016: Speaker, “Article V and a Convention of States,” Federalist Society, University of Texas Student Chapter, Austin, Texas. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

February 4, 2016: Speaker, “Article V and a Convention of States,” Texas Association of Health Underwriters, Austin, Texas. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

January 28, 2016: Speaker, “Article V and a Convention of States: Pandora’s Box or a Return to First Principles?,” Federalist Society, Duke University Student Chapter, Durham, North Carolina. My notes were substantially similar to my January 12, 2017 event notes, a copy of which are supplied.

October 16, 2015: Speaker, “The Second Amendment Today in Texas,” Federalist Society and the Dallas Democratic Forum (joint event), Dallas, Texas. I have no notes, transcript, or recording. This talk discussed bills passed by the 84th Texas Legislature to regulate firearms. The event was held at the Belo Mansion, 2101 Ross Avenue, Dallas, TX 75201.

September 17, 2015: Speaker, “The U.S. Supreme Court Term in Review and Term to Come,” Austin Bar Association, Austin, Texas. Power point supplied.

September 10, 2015: Speaker, “Supreme Court Term in Review,” Federalist Society, University of Texas Student Chapter, Austin, Texas. I have no notes, transcript, or recording. This talk discussed cases from the Supreme Court’s most-recent Term. The address of the University of Texas Law School is 727 E. Dean Keeton Street, Austin, TX 78705.

August 4, 2015: Speaker, “The Office of the Solicitor General: Advocacy for Protecting the People,” Blackstone Legal Fellowship, Phoenix, Arizona. My notes were substantially similar to my August 2, 2016 event notes, a copy of which are supplied.

May 20, 2015: Speaker, "Does the Law Still Rule? Reflections on the American Legal System 800 Years After the Magna Carta," Federalist Society, Atlanta Lawyers Chapter, Atlanta, Georgia. Notes supplied.

April 17, 2015: Speaker, U.S. Supreme Court Clerkships, Austin Bar Association's Bench-Bar Conference, Austin, Texas. I have no notes, transcript, or recording. This talk addressed the process of applying to be and serving as a U.S. Supreme Court clerk. The address of the Austin Bar Association is 816 Congress Avenue #700, Austin, TX 78701.

April 4, 2015: Guest Lecturer, "The Law of Habeas Corpus," University of Texas Law School. Notes supplied.

March 31, 2015: Speaker, "When Can the Executive Decide Not to Enforce the Law?," Federalist Society, Dallas Lawyers Chapter, Dallas, Texas. My notes were substantially similar to my May 20, 2015 event notes, a copy of which are supplied.

March 14, 2015: Speaker, "The Take Care Clause," Federalist Society, Southern Leadership Conference, New Orleans, Louisiana. My notes were substantially similar to my May 20, 2015 event notes, a copy of which are supplied.

March 12, 2015: Speaker, "When Can the Executive Decide Not to Enforce the Law? A Discussion of Prosecutorial Discretion Under *Heckler v. Chaney*," Federalist Society, Austin Lawyers Chapter, Austin, Texas. My notes were substantially similar to my May 20, 2015 event notes, a copy of which are supplied.

March 5, 2015: Speaker, "The Take Care Clause," Federalist Society, University of Chicago Lawyers Chapter, Chicago, Illinois. My notes were substantially similar to my May 20, 2015 event notes, a copy of which are supplied.

September 18, 2014: Speaker, "U.S. Supreme Court Term in Review and Term to Come," Austin Bar Association, Austin, Texas. Power point supplied.

April 16, 2014: Speaker, "The Law of Habeas Corpus," Federalist Society, Yale Law School Student Chapter, New Haven, Connecticut. My notes were substantially similar to my April 4, 2015 event notes, a copy of which are supplied.

September 19, 2013: Speaker, "U.S. Supreme Court Term in Review and Term to Come," Austin Bar Association, Austin, Texas. Power point supplied.

February 1, 2013: Speaker, "The Law of Habeas Corpus," Blackstone Legal Fellowship, Arlington, Virginia. My notes were substantially similar to my April 4, 2015 event notes, a copy of which are supplied.

September 20, 2012: Speaker, "U.S. Supreme Court Term in Review and Term to Come," Austin Bar Association, Austin, Texas. Power point supplied.

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

Radio interview, KUT 90.5 FM (Austin, TX), Apr. 19, 2016. The interview discussed the Supreme Court's ruling in *United States v. Texas*. I have contacted KUT 90.5 FM, and they have been unable to provide me with a copy of this radio interview.

Radio interview, KXDJ 98.3 FM (Spearman, TX), Jan. 28, 2016. Recording supplied, though KXDJ was unable to provide me with a complete version.

Radio interview, KOKE 98.5 FM (Austin, TX), Jan. 26, 2016. The interview discussed Article V and a Convention of States. I have contacted KOKE 98.5 FM, and they have been unable to provide me with a copy of this radio interview.

Christy Hoppe, *Greg Abbott Pushes to Block Disabled Texans' Lawsuits Against State*, DALL. MORN. NEWS, Feb. 15, 2014. Copy supplied.

Dave Thompson, *E.C. Glass Graduate Enjoying Clerkship with U.S. Supreme Court Justice Samuel Alito*, THE NEWS & ADVANCE (Lynchburg, Va.), Sept. 2, 2008. Copy supplied.

University of Virginia, *From Jefferson Scholar Classmates to U.S. Supreme Court Clerks*, Aug. 18, 2008. Copy supplied.

B.I.O.: A Vine Time for Love, Wash. Post Express, Apr. 24, 2008. Copy supplied.

Jonas Blank, *Student Wins New Duane Scholarship*, HARV. L. REC., Feb. 5, 2003. Copy supplied.

Valerie Strauss, *Payoff on a Parent's Persistence*, WASH. POST, Jan. 23, 2001. Copy supplied.

Odds and Ends—'One' Performance 'Four' You, THE CAVALIER DAILY, Sept. 14, 2000. Copy supplied.

Rachel Schatz, *Oldham earns second*, THE CAVALIER DAILY, Mar. 31, 2000. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including

positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

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

Of these, approximately what percent were:

- i. jury trials: _____%
bench trials: _____% [total 100%]
- ii. 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of

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

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

I have not held judicial office.

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

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

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

Deputy Solicitor General, State of Texas, 2012 – 2015. Appointed in March 2012 by then-Attorney General Greg Abbott.

Deputy General Counsel, State of Texas, 2015 – 2017. Appointed in February 2015 by Governor Greg Abbott.

Acting General Counsel, State of Texas, 2017. Appointed in November 2017 by Governor Greg Abbott.

Ex Officio Member, Texas Access to Justice Commission, 2017 – present. Appointed in December 2017 by Governor Greg Abbott.

General Counsel, State of Texas, 2018 – present. Appointed in January 2018 by

Governor Greg Abbott.

- 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.

Volunteer envelope stuffer, George Allen for United States Senate, Virginia
(2000)

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

- a. Describe in reverse chronological order your law practice and legal experience after graduation from law school including:

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

From 2008 to 2009, I served as a law clerk to the Honorable Samuel A. Alito, Jr., Supreme Court of the United States. From 2005 to 2006, I served as a law clerk to the Honorable David B. Sentelle, United States Court of Appeals for the District of Columbia Circuit.

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

I have not practiced law alone.

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

2017 – present
Texas Access to Justice Commission
1414 Colorado Street
Austin, Texas 78701
Ex Officio Member

2015 – present
State of Texas, Office of the Governor
1100 San Jacinto Boulevard, Fourth Floor
Austin, Texas 78701
General Counsel (2018 – present)
Acting General Counsel (2017)
Deputy General Counsel (2015 – 2017)

2012 – 2015
State of Texas, Office of the Attorney General
209 West 14th Street, Seventh Floor
Austin, Texas 78701
Deputy Solicitor General

2009 – 2012
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC (now Kellogg
Hansen Todd Figel & Frederick PLLC)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Associate

2006 – 2008
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney-Adviser

- 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 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.

From 2006 to 2008, while at the United States Department of Justice, I worked in the Office of Legal Counsel. I drafted opinions, advised members of the executive branch regarding a wide range of constitutional, statutory, and national-security matters, assisted with litigation projects, and identified legal infirmities in proposed bills and regulations.

From 2009 to 2012, while in private practice at Kellogg Huber (now Kellogg Hansen), I handled complex civil litigation and appellate matters. I managed (or helped manage) litigation and discovery, drafted critical motions, and drafted appellate briefs on behalf of major clients.

From 2012 to 2015, while at the Texas Attorney General's Office, I served as Deputy Solicitor General. My practice was almost exclusively appellate in nature. I argued numerous cases on behalf of the people of

Texas and drafted briefs in dozens of others. I also managed several large-scale litigation projects in both district and appellate courts.

From 2015 to the present, I have served in the Texas Governor's Office of General Counsel. I first served as Deputy General Counsel, then Acting General Counsel, then General Counsel. In those roles, I advised and continue to advise the Governor on a wide range of statutory and constitutional issues under both state and federal law. I also oversaw and continue to oversee numerous litigation projects in which the Governor is an interested party. I also have various management responsibilities for the Office of the Governor.

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

From 2006 to 2008, while in the Office of Legal Counsel, I represented the United States. My practice was not specialized—it ranged across a broad spectrum of issues and areas.

From 2009 to 2012, while at Kellogg Huber (now Kellogg Hansen), I represented various companies and individuals in litigation. I handled (or helped handle) all aspects of litigation—from the filing of a complaint to discovery, critical motions, depositions, trial, and appellate briefs.

From 2012 to 2015, while in the Texas Attorney General's Office, I represented the State of Texas. I specialized in appellate practice, but my cases ranged across a broad spectrum of issues and areas.

From 2015 to the present, I have served the Governor of Texas through the Office of General Counsel. In each role held in that office, I oversaw and continue to oversee a wide array of legal work that implicates the Governor and executive branch agencies.

- 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.

From 2009 to 2015, my practice was exclusively litigation-related. During that time, I appeared in court frequently.

From 2006 to 2008 and from 2015 to present, my practice has been less focused on litigation and more focused on general legal counsel; during those time periods, I appeared in court infrequently.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 95%

- 2. state courts of record: 1%
- 3. other courts: 2%
- 4. administrative agencies: 2%

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 75%
 - 2. criminal proceedings: 25%

For the purposes of the foregoing breakdown, I included habeas corpus cases as “criminal proceedings” because they involve criminal-law issues. The writ of habeas corpus, however, is civil in nature. If habeas cases are counted as “civil proceedings,” the breakdown is approximately 98%-2%.

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

I have tried two cases to verdict, judgment, or final decision. In those cases, I served as associate counsel.

- i. What percentage of these trials were:
 - 1. jury: 0%
 - 2. non-jury: 100%

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

I have argued two cases before the U.S. Supreme Court:

Jennings v. Stephens, 135 S. Ct. 793 (2015)
Trevino v. Thaler, 569 U.S. 413 (2013)

I have been counsel of record for *amici curiae* in two merits cases:

United States v. Texas, 136 S. Ct. 2271 (Mem.) (2016)
Horne v. Department of Agriculture, 569 U.S. 13 (2013)

I have been supporting counsel (not counsel of record) for parties in three merits cases:

Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015)
Utility Air Regulatory Group v. EPA, 134 S. Ct. 2427 (2014) (consolidated)

with *Texas v. EPA*, No. 12-1269)
EPA v. EME Homer City Generation, 134 S. Ct. 1584 (2014)

I have been supporting counsel (not counsel of record) for *amicus curiae* in two merits case:

Zivotofsky ex rel. Zivotofsky v. Kerry, 135 S. Ct. 2076 (2015)
Shelby County v. Holder, 570 U.S. 529 (2013)

I have been counsel of record in two certiorari-stage cases that arose out of the same Fifth Circuit decision:

McGowen v. Thaler, No. 12-5354 (July 18, 2012)
Thaler v. McGowen, No. 12-82 (July 17, 2012)

In addition, I have consulted on other briefs and oral arguments on behalf of the State of Texas. In addition to these cases, I regularly reviewed and consulted on multi-state amicus briefs during my tenure in the Texas Attorney General's Office. The following list reflects my best efforts to identify those cases.

Mullenix v. Luna, 136 S. Ct. 305 (2015)
Horne v. Department of Agriculture, 135 S. Ct. 2419 (2015)
Salinas v. Texas, 570 U.S. 178 (2013)
Tarrant Regional Water District v. Herrmann, 569 U.S. 614 (2013)

In addition, I also reviewed applications and certiorari petitions filed with the Supreme Court to stay, vacate, or reverse lower court actions favoring the State. None of those applications or petitions resulted in my filing anything with the Court on the State's behalf (beyond waivers of briefs in opposition). The only application and petitions I specifically recall reviewing are:

Brown v. Livingston, No. 13A1237 (June 12, 2014)
Pitonyak v. Stephens, No. 13-1004 (Feb. 18, 2014)
Thomas v. Stephens, No. 13-7038 (June 27, 2013)
Morales v. Stephens, No. 13-59 (May 10, 2013)

I have supplied copies of all of the briefs on which I appeared or consulted in the cases listed above, along with the transcripts of my oral arguments.

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. *Texas v. United States*, 86 F. Supp. 591 (S.D. Tex. 2015) (preliminary injunction issued), 787 F.3d 733 (5th Cir. 2015) (stay pending appeal denied), 809 F.3d 134 (5th Cir. 2015) (preliminary injunction affirmed), 136 S. Ct. 2271 (2016) (preliminary injunction affirmed by an equally divided Court).

The question in this case was whether the Deferred Action for Parental Accountability program was lawful. I drafted the complaint and the preliminary-injunction motion, and I compiled the preliminary-injunction record to support the 26 plaintiff States' request for emergency relief. I argued the case in the district court (Hanan, J.) and won a nationwide injunction. Immediately thereafter, I left the Attorney General's Office to join the Governor's Office. But I continued to help the appellate process and authored an amicus brief to support the injunction; the Fifth Circuit (per Smith, Elrod, and Higginson, JJ.) affirmed. The States ultimately won when the Supreme Court affirmed the injunction by an equally divided vote.

Many lawyers for many different parties participated at different stages of the litigation. Below are my co-lead counsel and the lead opposing counsel at the trial stage.

Co-Counsel:

Alex Potapov
[Then at Office of Texas Attorney General]
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001
202-879-3407

Scott A. Keller
Office of the Attorney General
209 W. 14th Street
Austin, TX 78711
512-936-2725

Counsel for the United States (trial court):

Kyle R. Freeny
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C., 20530
202-514-1263

2. *Trevino v. Thaler*, 133 S. Ct. 1911 (2013).

This was the first case I argued as counsel of record in the Supreme Court of the United States. The question was whether ineffective assistance of counsel during state habeas proceedings can excuse the procedural default of a claim. By a 5-4 vote, the Supreme Court answered the question in the affirmative in an opinion authored by Justice Breyer and joined by Justices Kennedy, Ginsburg, Sotomayor, and Kagan. Chief Justice Roberts filed a dissenting opinion, which Justice Alito joined, and Justice Scalia filed a dissenting opinion, which Justice Thomas joined. I authored the merits brief and argued the case on behalf of the State of Texas, by and through the Executive Director of the Texas Department of Criminal Justice.

Co-Counsel:

Jonathan F. Mitchell
[Then at Office of Texas Attorney General]
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
650-723-1397

James P. Sullivan
[Then at Office of Texas Attorney General]
King & Spalding
500 W. 2nd St., Suite 1800
Austin, Texas 78701
512-457-2014

Adam W. Aston
[Then at Office of Texas Attorney General]
Jackson Walker
100 Congress Ave., Suite 1100
Austin, Texas 78701
512-236-2056

Arthur C. D'Andrea
[Then at Office of Texas Attorney General]
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711
512-936-7000

Counsel for Carlos Trevino:

Warren Alan Wolf
115 E Travis #746
San Antonio, TX 78205

210-225-0055

3. *Jennings v. Stephens*, 135 S. Ct. 793 (2015).

This was the second case I argued as counsel of record in the Supreme Court of the United States. The question was whether the cross-appeal rule applies to a habeas petitioner who won one claim and lost a second. By a 6-3 vote, the Supreme Court answered the question in the negative in an opinion authored by Justice Scalia and joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Thomas filed a dissenting opinion, joined by Justices Kennedy and Alito. I authored the merits brief and argued the case on behalf of the State of Texas, by and through the Executive Director of the Texas Department of Criminal Justice.

Co-Counsel:

Jonathan F. Mitchell
[Then at Office of Texas Attorney General]
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
650-723-1397

Arthur C. D'Andrea
[Then at Office of Texas Attorney General]
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711
512-936-7000

Alex Potapov
[Then at Office of Texas Attorney General]
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001
202-879-3407

Counsel for Robert Mitchell Jennings:

Randolph Schaeffer
1301 McKinney, Suite 3100
Houston, TX 77010
713-951-9555

4. *United States v. Apple*, 952 F. Supp. 2d 638 (S.D.N.Y. 2013), *aff'd*, 791 F.3d 290 (2d Cir. 2015), *cert. denied*, 136 S. Ct. 1376 (2016).

The question in this case was whether Apple violated Section 1 of the Sherman Act by agreeing with publishers to increase the price of certain newly released and bestselling e-

books. I was the lead appellate attorney for Texas, which in turn was the lead state in the 32-state coalition that sued to protect the interests of e-book consumers. The States prevailed in both the district court (Cote, J.) and the Second Circuit (Jacobs, Livingston, and Lohier, JJ.). The Supreme Court denied Apple's certiorari petition. As a consequence of the victory, Apple paid more than \$400 million in damages.

Co-Counsel:

Arthur C. D'Andrea
[Then at Office of Texas Attorney General]
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711
512-936-7000

Counsel for the United States:

Malcolm Stewart
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
202-514-2211

Counsel for Apple:

Theodore Boutros
Gibson Dunn & Crutcher
333 South Grand Ave.
Los Angeles, CA 90071
213-229-7804

Counsel for Macmillan Publishers:

Eamon P. Joyce
Sidley Austin LLP
787 7th Avenue
New York, N.Y. 10019
212-839-5300

Counsel for Simon & Schuster:

Gregory Silbert
Weil, Gotshal & Manges LLP
767 5th Avenue
New York, N.Y. 10153
212-310-8000

5. *Texas v. EPA; Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

This case presented several challenges to complex rules promulgated under the Clean Air Act. Texas served as the lead state in a multistate coalition challenging the rules. There

were numerous questions presented in this case, but the one I handled was whether EPA's "tailoring rule" was entitled to *Chevron* deference. I managed the multi-state effort, collaboration with the private petitioners, researching and drafting of the merits briefs, and oral-argument preparation regarding the "tailoring rule." The Supreme Court agreed with the States in invalidating the "tailoring rule," in an opinion authored by Justice Scalia and joined in relevant part by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito. Justice Breyer filed an opinion dissenting in relevant part, joined by Justices Ginsburg, Sotomayor, and Kagan.

Co-Counsel:

Jonathan F. Mitchell
[Then at Office of Texas Attorney General]
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
650-723-1397

Roger Martella
[Then at Sidley Austin]
General Electric
41 Farnsworth Street
Boston, MA 02210
203-373-2211

Counsel for the United States:

Donald Verrilli
[Then at U.S. Department of Justice]
Munger Tolles & Olson LLP
1155 F. St, NW
Washington, DC 20004
202-220-1101

6. *New York v. Amgen*, 652 F.3d 103 (1st Cir. 2011).

The question in this case was whether a qui tam relator named Kassie Westmoreland stated a claim under the False Claims Act for a pharmaceutical company's unlawful sales and marketing tactics. Kellogg Huber (now Kellogg Hansen) represented Ms. Westmoreland. I helped the trial team identify appellate issues and drafted the appellate briefs. The First Circuit (per Lynch, C.J., and Lipez and Howard, JJ.) ruled in Ms. Westmoreland's favor. Amgen agreed to pay \$762 million to settle the claims.

Co-Counsel:

Derek T. Ho
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC
(now Kellogg Hansen Todd Figel & Frederick PLLC)
1615 M St., NW

Washington, DC 20036
202-326-7900

Counsel for New York:

Steven Wu
Office of the Attorney General
120 Broadway
New York, NY 10271
212-416-6312

Counsel for Amgen:

Michelle Odorizzi
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60606
312-701-7309

7. *Air Transport Association v. Export-Import Bank*, 878 F. Supp. 2d 42 (D.D.C. 2012),
reversed sub nom. Delta Air Lines, Inc. v. Export-Import Bank, 718 F.3d 974 (D.C.
Cir. 2013).

The question in this case was whether loan guarantees made by the Export-Import Bank are subject to judicial review. I was tasked with devising a legal theory to challenge those loan guarantees. I drafted the complaint and a motion for emergency relief (before Boasberg, J.). I left private practice before the case was decided, but our client eventually prevailed in the D.C. Circuit. As a result of this case, billions of dollars in federal loan guarantees are now subject to administrative challenge and judicial review.

Co-Counsel:

Michael K. Kellogg
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC
(now Kellogg Hansen Todd Figel & Frederick PLLC)
1615 M St., NW
Washington, DC, 20036
202-326-7900

Counsel for the United States:

David M. Glass
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
202-514-4469

8. *Anderson News v. American Media*, 680 F.3d 162 (2d Cir. 2012).

The question in this case was whether a magazine wholesaler named Anderson News

properly stated a conspiracy claim under the Sherman Act against magazine publishers and suppliers. Kellogg Huber (now Kellogg Hansen) represented the plaintiff Anderson News and took over the case after the district court dismissed the plaintiff's complaint. I researched the legal issues implicated by the appeal, drafted and assisted in drafting the appellate briefs, and participated in one or more moot courts. The Second Circuit (per Kearse, Leval, and Chin, JJ.) ruled in favor of Anderson News.

Co-Counsel:

Michael K. Kellogg
Aaron M. Panner
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC
(now Kellogg Hansen Todd Figel & Frederick PLLC)
1615 M St., NW
Washington, DC 20036
202-326-7900

Counsel for American Media:

David G. Keyko
Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, NY 10036
212-858-1604

Counsel for Bauer Publishing:

Barry J. Brett
Troutman Sanders, LLP
405 Lexington Ave.
New York, NY 10174
212-704-6216

Counsel for Time Inc. and Time/Warner Retail Sales & Marketing:

Rowan D. Wilson
Cravath, Swaine & Moore LLP
825 Eighth Ave.
New York, NY 10019
212-474-1348

Counsel for Rodale:

John M. Hadlock
Rosenberg & Estis, P.C.
733 Third Ave.
New York, NY 10017
212-551-1217

9. *Hotze v. Burwell*, 784 F.3d 984 (5th Cir. 2015).

The question in this case was whether the Affordable Care Act violated the Constitution's Origination Clause, U.S. Const. art. 1, § 7, cl. 1. I was lead counsel for 20 States in support of the plaintiffs and authored the brief on behalf of that coalition. I left the Attorney General's Office before the case was decided. The Fifth Circuit (per King, Jolly, and Costa, JJ.) did not reach the merits of the States' arguments and instead held that the plaintiffs lacked standing.

Co-Counsel:

Alex Potapov
[Then at Office of Texas Attorney General]
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001
202-879-3407

Gregory G. Katsas
[Then at Jones Day]
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001
202-216-7220

Counsel for the United States:

Alisa B. Klein
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
202-514-1597

10. *Pitonyak v. Stephens*, 732 F.3d 525 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1565 (2014).

This case arose from a high-profile murder on the University of Texas campus in 2005. Colton Pitonyak confessed to and was convicted of murdering Jennifer Cave. The case was presented in a "48 Hours" episode called "In Too Deep," and a true-crime novel called *Descent Into Hell*. I served as the State's lead lawyer during Pitonyak's federal postconviction appeal, in which Pitonyak argued that he was denied exculpatory information. I wrote the State's brief and argued the case (before Higginbotham, Owen, and Southwick, JJ.). The State succeeded in defending the judgment against Mr. Pitonyak, and the Supreme Court denied certiorari.

Co-Counsel:

James P. Sullivan
[Then at Office of Texas Attorney General]
King & Spalding
500 W. 2nd St., Suite 1800

Austin, Texas 78701
512-457-2014

Arthur C. D'Andrea
[Then at Office of Texas Attorney General]
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711
512-936-7000

Counsel for Colton Pitonyak:

Joseph Turner
1504 West Ave.
Austin, TX 78701
512-474-8252

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.)

Office of the Governor of Texas: I presently serve as General Counsel to Texas Governor Greg Abbott. I previously served as Governor's Abbott's Acting General Counsel and Deputy General Counsel. I review bills introduced in the Legislature and provide counsel to the Governor and his staff. I also work with members of the Legislature on bills that are priorities for the Governor. I assist the Governor in the judicial-appointment process, reviewing applications, interviewing candidates, and providing counsel to the Governor regarding candidates. I give speeches in Texas and around the country on topics that are priorities for the Governor, including the rule of law and the Constitution. Finally, I provide legal counsel and advocacy to maintain the separation of powers. For example, in 2015, the Legislative Budget Board challenged the Governor's constitutional authority to line-item veto the budget. I counseled state officials regarding the Governor's authority and drafted a legal brief to defend that authority. The Governor ultimately prevailed when the Attorney General determined his line-item vetoes were valid.

Office of the Attorney General of Texas: Between March 2012 and February 2015, I served as then-Attorney General Abbott's Deputy Solicitor General. In that capacity, I counseled state officials on protecting prisoners' religious freedoms.

Department of Justice: Between August 2006 and July 2008, I served in the Office of Legal Counsel at the U.S. Department of Justice. In that capacity, I provided legal counsel regarding a wide range of constitutional, statutory, and international legal issues.

I reviewed legislation for constitutional problems and assisted others in drafting opinions for the Office. I also drafted legal briefs and argued before military commissions charged with conducting war-crimes trials.

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.

I have never taught my own course.

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

None.

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, with or without compensation.

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 the State of Texas (including the Offices of the Governor and the Attorney General), Kellogg Hansen, and any clients that I represented at that firm. I would also recuse myself in matters involving my family, close friends, and 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 work load, 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.

I performed pro bono service when I was in private practice. In particular, my first appellate argument was a pro bono case in the United States Court of Appeals for the Fourth Circuit. I have spent most of my career in public service, however, where I have not been able to serve private clients. I nonetheless continue to serve the community through speaking events, panel discussions, and other community-service opportunities.

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 3, 2017, Senator Cornyn's office called me and invited me to interview with the Federal Judicial Evaluation Committee. I interviewed with that Committee in Houston, Texas, on February 17, 2017. The Committee recommended my nomination. On March 2, 2017, I interviewed with Senators

Cornyn and Cruz in Washington, DC. On March 10, I was contacted by the White House Counsel's Office and invited to interview for a vacancy on the United States Court of Appeals for the Fifth Circuit. Since that time, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On March 17, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On January 30, 2018, I interviewed with Senator Cruz in Washington, DC. On February 15, 2018, 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.