

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Stephen Alexander Vaden

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

Judge, United States Court of International Trade

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: United States Department of Agriculture
Office of the General Counsel
1400 Independence Avenue, S.W., Room 107W
Washington, D.C. 20250

Residences: Alexandria, Virginia; Union City, Tennessee

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

1982; Memphis, Tennessee

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.

2005 – 2008, Yale Law School; J.D., 2008

2000 – 2004, Vanderbilt University, B.A. (*summa cum laude*), 2004

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.

2017 – present
United States Department of Agriculture

Office of the General Counsel
1400 Independence Ave., S.W., Room 107W
Washington, D.C. 20250
General Counsel (2018 – present)
Principal Deputy General Counsel (2017 – 2018)
Senior Adviser to the Office of General Counsel (2017)

2014 – 2017
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate

2011 – 2014, Summer 2007
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
Associate (2011 – 2014)
Summer Associate (Summer 2007)

2009 – 2010
Honorable Samuel H. Mays, Jr.
United States District Court for the Western District of Tennessee
167 North Main Street, Room 1111
Memphis, Tennessee 38103
Law Clerk

2008 – 2009
Honorable Julia Smith Gibbons
United States Court of Appeals for the Sixth Circuit
167 North Main Street, Room 970
Memphis, Tennessee 38103
Law Clerk

Fall 2007
Dean Harold H. Koh
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Teaching Assistant

Summer 2007
Waller Lansden Dortch & Davis
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Summer Associate

Summer 2006
Tennessee Supreme Court
401 Seventh Avenue North
Nashville, Tennessee 37219
Intern

2004 – 2005
John Marshall Vaden (deceased)
1204 Short Street
Union City, Tennessee 38261
Property Manager

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the United States military. I registered for the selective service in 2000.

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.

Degree from Vanderbilt University awarded *summa cum laude* and with high honors in the College of Art and Science (2004)

Phi Beta Kappa, Vanderbilt University (2004)

Phi Alpha Theta (history honorary society), Vanderbilt University (2004)

Fellow, Center for the Study of the Presidency, Vanderbilt University (2003 – 2004)

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.

Judicial Conference of the District of Columbia Circuit (2019 – present)

District of Columbia Bar (2012 – present)

Tennessee Bar (2009 – present)

10. **Bar and Court Admission:**

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

Tennessee, 2009
District of Columbia, 2012

There have been no lapses in membership.

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

United States Court of Appeals for the District of Columbia Circuit, 2013
United States Court of Appeals for the Fourth Circuit, 2011
United States Court of Appeals for the Sixth Circuit, 2009
United States Court of Appeals for the Seventh Circuit, 2013

There have been no lapses in membership.

11. Memberships:

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

Federalist Society for Law and Public Policy Studies (2005 – Present)
Member, Administrative Law and Regulation Practice Group Executive
Committee (2015 – present)

Teneo
Member (2008 – present)

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

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

12. Published Writings and Public Statements:

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

Chevron Deference in the Circuit Courts, Federalist Soc’y, Aug. 17, 2016. Copy supplied.

Perez v. Mortgage Bankers Association: Portending a Return to Judicial Engagement, 16 Engage: J. of the Federalist Soc’y Prac. Groups 3, 9, Oct. 2015. Copy supplied.

Tennessee Trial Court Strikes Down State’s Tort Reform Act, Federalist Soc’y St. Cts. Guide, June 1, 2015. Copy supplied.

Pre-9/11 Politicians in a Post 9/11 World, in *Intelligence and National Security: The Secret World of Spies* 415 (Loch K. Johnson & James J. Wirtz eds., 2015). Copy supplied.

More Judicial Accountability is Welcome, Com. Appeal, July 5, 2013. Copy supplied.

Bad Guy in Real Life Potboiler is Not Election of Judges, Tennessean, Aug. 24, 2008. Copy supplied.

Ghosts from the Past: Richard Nixon, the 1970 Cambodian Incursion, and a Re-Evaluation of His “Plan” to End the Vietnam War, B.A. thesis, Vanderbilt University, April 16, 2004. Copy supplied.

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

None.

- c. Supply four (4) copies of any testimony, official statements, or other communications

relating in whole or in part to matters of public policy or legal interpretation that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On July 25, 2019, I testified regarding Hemp Production and the 2018 Farm Bill at a hearing before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry. Video available at <https://www.agriculture.senate.gov/hearings/hemp-production-and-the-2018-farm-bill>.

Agency's Response to the USDA's Office of Inspector General's Report on USDA's Proposal to Realign and Relocate the Economic Research Service and National Institute of Food and Agriculture, Inspection Report 91801-0001-23, July 19, 2019. Copy supplied.

Memorandum on Certain Provisions of the Agriculture Improvement Act of 2018 Relating to Hemp, May 28, 2019. Copy supplied.

Stakeholder Call, Additional Explanation on Delay of California Federal Milk Marketing Order, Feb. 13, 2018. Audio available at <https://www.ams.usda.gov/sites/default/files/media/CAFederalMilkMarketingOrder.mp3>.

Letter to the U.S. Senate Agriculture, Nutrition, and Forestry Committee responding to questions related to my nomination and the reassignment of certain U.S. Department of Agriculture employees, Dec. 21, 2017. Copy supplied.

On November 9, 2017, I testified regarding my nomination to serve as General Counsel of the Department of Agriculture before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry. 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 10, 2019: Panelist, Northwest Tennessee Food Processing and Agri-Business Conference, Obion County Joint Economic Council, University of Tennessee, Martin, Tennessee. I spoke about the potential for hemp as a cash crop in Tennessee and about the farm programs USDA offers. I have no notes, transcript, or recording. The address of the Obion County Joint Economic Council is 214 East Church Street, Union City, Tennessee 38261.

September 25, 2019: Panelist, *The Impact of Federal ALJ Deference by the U.S. Supreme Court case Kisor v. Wilkie upon Bowles v. Seminole Rock & Sand Co. and Auer v. Robbins*, Federal Administrative Law Judges Conference, Denver, Colorado. I spoke about the implications of the *Kisor* decision on administrative agencies. I have no notes, transcript, or recording. The Federal Administrative Law Judges Conference may be contacted at <http://www.faljc.org/contact-us/>.

September 13, 2019: Speaker, *Regulatory Reform Down on the Farm (and Beyond)*, remarks to the Federalist Society's Montgomery Lawyers Chapter. I spoke about Executive Order 13771 and how it affects USDA. I have no notes, transcript, or recording. The address of the Montgomery Lawyers Chapter is Faulkner University, Thomas Goode Jones School of Law, 5345 Atlanta Highway, Montgomery, Alabama 36109.

June 26, 2019: Panelist, *Judicial Deference Determined: Kisor v. Wilkie*, the Federalist Society, Washington, D.C. Audio available at <https://fedsoc.org/events/judicial-deference-determined-kisor-v-wilkie>.

June 7, 2019: Speaker, Keynote Address at Sixth Mid-South Agricultural and Environmental Law Conference, National Agricultural Law Center, Memphis, Tennessee. I spoke about the Department's plans for Farm Bill implementation, the hemp program, and trade issues. I have no notes, transcript, or recording. The address of the National Agricultural Law Center is 2650 North Young Avenue, University of Arkansas, Fayetteville, Arkansas 72704.

May 8, 2019: Panelist, *Regulatory Reform Report Card: Agency General Counsel Perspective*, Seventh Annual Executive Branch Review Conference, the Federalist Society, Washington, D.C. Audio available at <https://fedsoc.org/commentary/podcasts/regulatory-reform-report-card-agency-general-counsel-perspective>.

March 27, 2019: Panelist, *Courthouse Steps Oral Argument: Kisor v. Wilkie*, the Federalist Society, Washington, D.C. Audio available at <https://fedsoc.org/events/courthouse-steps-oral-argument-kisor-v-wilkie>.

February 21, 2019: Speaker, *Address about the Biotech Labeling Regulation*, 2019 Agricultural Outlook Forum, U.S. Department of Agriculture, Washington, D.C. PowerPoint supplied.

November 15, 2018: Panelist, *Rulemaking by Adjudication: Who Am I to Judge?*, 2018 National Lawyers Convention, the Federalist Society, Washington, D.C. Video available at <https://fedsoc.org/conferences/2018-national-lawyers-convention#agenda-item-rulemaking-by-adjudication-who-am-i-to-judge>.

October 26, 2018: Speaker, Remarks at the 39th Annual Agricultural Law Education Symposium, American Agricultural Law Association, Portland, Oregon. I spoke about USDA's regulatory activity and the Trump Administration's priorities for

regulatory reform. I have no notes, transcript, or recording. The address of the American Agricultural Law Association is 825 South Kansas Avenue, Suite 500, Topeka, Kansas 66612. Media coverage available at <https://www.politico.com/newsletters/morning-agriculture/2018/10/29/farm-bill-to-test-trumps-deregulatory-push-393023>.

June 29, 2018: Speaker, *Regulatory Reform Down on the Farm (and Beyond)*, Federalist Society's Nashville Lawyers Chapter, Nashville, Tennessee. I spoke about Executive Order 13771 and how it affects USDA. I have no notes, transcript, or recording. The address of the Nashville Lawyers Chapter is 421 Tamarac Drive, Murfreesboro, Tennessee 37128.

June 8, 2018: Panelist, *From the Potomac: Ag Update from D.C.*, Fifth Mid-South Agricultural and Environmental Law Conference, National Agricultural Law Center, Memphis, Tennessee. I spoke on the Department's regulatory goals for 2018. I have no notes, transcript, or recording. The address of the National Agricultural Law Center is 2650 North Young Avenue, University of Arkansas, Fayetteville, Arkansas 72704.

April 19, 2017: Speaker, *Remarks on the Regulatory Landscape*, American Bar Association's Hot Topics in Pesticide Law & Policy Conference, Washington, D.C. I spoke on the need of reaching regulatory certainty based on science. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October 27, 2016: Speaker, *Podcast on Chevron Deference in the Circuit Courts*, the Federalist Society. Audio available at <https://fedsoc.org/commentary/podcasts/chevron-in-the-circuit-courts-podcast>.

February 13, 2014: Speaker, *Podcast on Capital Thinking about Lilliputian Systems, Inc. v. PHMSA*, Patton Boggs. Audio available at <https://www.voiceamerica.com/episode/75942/lilliputian-systems-inc-v-phmsa-asian-american-hotel-owners-association>.

- 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.

Benjamin Chaidell, *Panelists Urge Collaboration*, Yale Daily News, Apr. 2, 2008. Copy supplied.

Isaac Arnsdorf, *For Yale Law School, Conflicting Narratives*, Yale Daily News, Jan. 30, 2008. Copy supplied.

Paul Needham, *Law Students Forgo Classes for Campaign Work*, Yale Daily News, Nov. 16, 2007. Copy supplied.

Lacey Gonzales, *Craig Romney Recruits for Father*, Yale Daily News, Oct. 4, 2007. Copy supplied.

Thomas Kaplan, *Yale Law, Newly Defeated, Allows Military Recruiters*, New York Times, Oct. 1, 2007. Copy supplied.

Tyler Hill and Thomas Kaplan, *Eli Up for Attorney General*, Yale Daily News, Sept. 19, 2007. Copy supplied.

Andrew Mangino, *Eli Republicans Yet to Agree on Candidate*, Yale Daily News, Apr. 9, 2007. Copy supplied.

Andrew Mangino, *At Law School, Koh is Liberal Lion*, Yale Daily News, Apr. 4, 2007. Copy supplied.

Ruth Kim, *Koh Testifies about Human Rights*, Yale Daily News, Mar. 30, 2007. Copy supplied.

Andrew Mangino, *Law School Keeps Up Protests of JAG*, Yale Daily News, Oct. 3, 2006. Copy supplied.

Joe Charlet, *Profs Tackle Future of Supreme Court*, Yale Daily News, Sept. 15, 2005. 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.

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.

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.

2018 – present

General Counsel

United States Department of Agriculture

I was nominated by President Donald Trump on September 1, 2017, and confirmed by the United States Senate on November 27, 2018.

2018 – present

Member, Board of Directors

Commodity Credit Corporation

I was appointed by President Donald Trump.

2017 – 2018

Principal Deputy General Counsel

United States Department of Agriculture

I was appointed by President Donald Trump.

2017

Senior Adviser to the Office of General Counsel

United States Department of Agriculture

I was appointed by President Donald Trump.

- 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 am a member of the Tennessee Republican Party by virtue of contributing at least \$250 annually since 2016. I have never been a member of or held an office with an election committee. I have never held a position or played a role in a political campaign.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

From 2008 to 2009, I served as a law clerk to the Honorable Julia Smith Gibbons, United States Court of Appeals for the Sixth Circuit.

From 2009 to 2010, I served as a law clerk to the Honorable Samuel H. Mays, Jr., United States District Court for the Western District of Tennessee.

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

I have not practiced alone.

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

2011 – 2014
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
Associate

2014 – 2017
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

2017 – present
Office of General Counsel
United States Department of Agriculture
1400 Independence Avenue, S.W., Room 107W
Washington, D.C. 20250
General Counsel (2018 – present)
Principal Deputy General Counsel (2017 – 2018)
Senior Adviser (2017)

- iv. whether you served as a mediator, 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 never served as an arbitrator or mediator.

b. Describe

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

From 2011 to 2014, my law practice consisted of litigation in the federal courts regarding commercial and administrative law matters. A large portion of my practice involved legal research and brief writing. I also provided advice on election and other political law matters to a variety of clients from corporations to donors and campaigns.

From 2014 to 2017, my practice moved to Jones Day. I continued to be active in litigation matters. However, as the litigation portion of my practice declined, I focused more on regulatory matters. In addition to advising a variety of clients on election law matters, I focused on the Lobbying Disclosure Act and the Foreign Agents Registration Act. My clients were both individuals and small corporations.

Beginning in 2017, I became the senior political appointee at the United States Department of Agriculture's Office of General Counsel. I oversee a team of approximately 250 professionals who practice nearly every type of law imaginable in thirteen offices around the country. I spend the majority of my time on regulatory matters, managing the litigation docket, and providing general compliance advice on matters affecting the Department.

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

During my entire period of private law practice, my clients were clients of the law firm, typically large businesses or nonprofit organizations that the law firm represented in litigation or to which the firm provided counsel. I also represented individuals and smaller organizations to which the firm provided regulatory advice on election law and lobbying law matters.

Beginning in 2017, I became the senior political appointee at the United States Department of Agriculture's Office of General Counsel. I oversee a team of approximately 250 professionals who practice nearly every type of law imaginable in thirteen offices around the country. I spend the majority of my time on regulatory matters, managing the litigation docket, and providing general compliance advice on matters affecting the Department.

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

During my time at Patton Boggs, approximately 60% to 70% of my matters involved litigation, the vast majority of it in federal courts. The partner managing the matters appeared in court; I typically would accompany him, appear on the docket and on the briefs, but generally I did not argue in court. I drafted briefs in approximately twenty matters, with those briefs evenly split between trial and appellate. I argued one appeal before the D.C. Circuit as lead counsel.

During my time at Jones Day, my litigation matters declined to only about 30% of my practice. Most of that was spent authoring briefs, particularly amicus briefs. I drafted or co-drafted approximately ten briefs, evenly split between trial and appellate. Nearly all of those briefs were in federal court. I typically made a formal court appearance on the docket. I also appeared before the Federal Election Commission in

a contested matter. That matter was decided on the papers.

Currently, managing the U.S. Department of Agriculture's litigation docket takes approximately 30% to 40% of my time. I have not appeared in court on behalf of the Department. I supervise the filing of briefs in the 5,000 matters currently in litigation in either federal court or an administrative forum.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|------|
| 1. federal courts: | 85 % |
| 2. state courts of record: | 10 % |
| 3. other courts: | 0 % |
| 4. administrative agencies: | 5 % |

ii. Indicate the percentage of your practice in:

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

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

I have not tried any cases to verdict. I have handled approximately 25 to 30 matters that were decided on summary judgment or motions to dismiss or the appeals of such. In each, I was an associate counsel. I have also handled one case as lead counsel before the United States Court of Appeals for the D.C. Circuit. At the Department of Agriculture, I currently supervise attorneys handling more than 4,000 matters in litigation at every level of the federal court system and an additional 1,000 matters in litigation in administrative tribunals.

i. What percentage of these trials were:

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

- 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 authored a brief in opposition to a petition for certiorari in *Guerrero v. Moore*, 442 F. App'x 57 (4th Cir. 2011). I have also been involved in drafting the certiorari petition in *United States Forest Service v. Cowpasture River Preservation Association*, 911 F.3d 150 (4th Cir. 2018).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether you were the attorney of record. Given the citations, if the cases were report, 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(s) 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. *Scopo v. Laborers' Int'l Union of N. Am.*, No. 11-CV-3991 CBA, 2013 WL 837293 (E.D.N.Y. Mar. 6, 2013).

I served as co-counsel on the case, drafting the briefing before the district court and preparing the partner for oral argument on the motion to dismiss. The firm served as counsel to the Laborers International Union of North America, assisting the union with internal investigations into members alleged to have ties to organized crime. When we developed evidence that a union member had ties with organized crime, we would present the evidence to an internal arbitration panel, which would render a decision that could include expelling the member from the union. That member could then challenge the expulsion in federal court under the Labor Management Relations Act. Mr. Scopo sought to challenge his expulsion but instead brought constitutional claims and claims under New York state law. The district court agreed with our arguments on behalf of the union that (1) it was not a state actor so that constitutional claims could not be brought against it and (2) the state law tort claims against the union were preempted by federal law. It granted the union's motion to dismiss in full.

Date of representation: 2011 – 2013

Presiding Judge: Hon. Carol Bagley Amon

Counsel for Plaintiff(s):

Peter J. Famighetti
The Law Office of Borrelli & Associates, P.L.L.C.
One Old Country Road, Suite 347
Carle Place, New York 11514
(516) 248-5550

Counsel for Defendant(s):

Evan Lerner
Lerner Law Firm
400 Post Avenue, Suite 303
Westbury, New York 11590
(516) 307-1550

Robert M. Cheverie
Robert M. Cheverie & Associates, P.C.

333 East River Drive, Suite 101
East Hartford, Connecticut 06108
(860) 290-9610

2. *Org. for Competitive Markets v. U.S. Dep't of Agric.*, 912 F.3d 455 (8th Cir. 2018).

I participated as Principal Deputy General Counsel and General Counsel in supervising the defense of the case and developing the ultimately successful legal strategy to defeat the petition for review filed in the Eighth Circuit. USDA withdrew a series of rules promulgated under the Packers and Stockyards Act because they (1) conflicted with rulings of certain circuit courts on the authority granted to USDA to address unfair trade practices and (2) reflected a heavy-handed regulatory approach at odds with the administration's deregulatory, market-based approach to regulation. OCM sued and alleged that USDA (1) acted arbitrarily and capriciously in withdrawing the regulations and proposed regulations and (2) ignored a mandate from Congress to promulgate factors that USDA would consider unfair practices. The Eighth Circuit unanimously rejected OCM's contentions, noting that USDA followed all procedural requirements of the Administrative Procedure Act and publicly stated it would publish a new list of factors governing unfair trade practices to comply with the congressional mandate. The court also noted that USDA's actions, which prevented a direct conflict with four separate circuit courts of appeal, prevented the agency from improperly usurping the constitutional roles of Congress and the courts.

Date of representation: 2017 – 2018

Presiding Judges: Hon. James B. Loken, Hon. Duane Benton, and Hon. Bobby E. Shepherd

Counsel for Petitioner(s):

Javier M. Guzman
Democracy Forward Foundation
1333 H Street N.W.
Washington, D.C. 20005
(202) 448-9090

Counsel for Respondent(s):

Chad A. Readler
U.S. Department of Justice
Appellate Section, Room 7240
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-1371

3. *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

I participated solely in the appellate phase of the case as one of three co-counsel to an

amici, the Judicial Education Project and Senators Lindsey Graham, Thom Tillis, Ted Cruz, and Mike Lee. I co-drafted a brief arguing that North Carolina's decision to reduce the number of days of early voting, require voters to show some form of identification, eliminate same-day registration, and limit out-of-precinct voting did not violate the Voting Rights Act or the Fourteenth, Fifteenth, and Twenty-Sixth Amendments. The brief noted that North Carolina's law was a neutral election regulation that applied to all voters regardless of demographic characteristics. A majority of the Fourth Circuit panel disagreed, reversed the district court's contrary ruling, and enjoined the North Carolina law from taking effect as violative of Section 2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment.

Date of representation: 2013 – 2016

Presiding Judges: Hon. Diana G. Motz, Hon. James A. Wynn Jr., and Hon. Henry F. Floyd

Counsel for Appellant(s):

Penda D. Hair
1401 New York Avenue, N.W., Suite 1225
Washington, D.C. 20005
(202) 463-7877

Daniel T. Donovan
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000

Marc E. Elias
Perkins Coie LLP
700 13th Street, N.W., Suite 600
Washington, D.C. 20005
(202) 654-6200

Dale E. Ho
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2693

Ripley Rand
United States Attorney for the Middle District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
(828) 259-0645

Counsel for Appellee(s):

Alexander McPeters
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
(919) 716-6900

Karl S. Bowers, Jr.
Bowers Law Office LLC
Post Office Box 50549
Columbia, South Carolina 29250
(803) 260-4124

4. *Kant v. Lexington Theological Seminary*, 426 S.W.3d 587 (Ky. 2014).

My role in the case was limited to representing the American Association of University Professors on a pro-bono basis after the case reached the Kentucky Supreme Court. I co-authored the amicus brief with one other attorney and advised the client on how to help its member, Professor Laurence Kant. Lexington Theological Seminary terminated Professor Kant despite his having earned tenure. Professor Kant sued the seminary for violating his employment contract, which contained the tenure protections. The seminary argued that the ministerial exception prevented the state courts from adjudicating the contract claim. The amicus brief sided with Professor Kant and argued that the ministerial exception, then-recently elucidated in *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694 (2012), did not automatically bar claims that could be decided on secular grounds without reference to religious tenants or doctrine. Citing to arguments made in the amicus brief and the court's holding in a companion case, the Kentucky Supreme Court unanimously held that the ministerial exception did not bar Professor Kant's contract claim. The court remanded his contract claim to the trial court to be heard.

Date of representation: 2009 – 2014

Presiding Judges: Hon John D. Minton, Jr., Hon. Lisabeth Tabor Abramson, Hon. Bill Cunningham, Hon. Mary C. Noble, Hon. Will T. Scott, and Hon. Daniel J. Venters

Counsel for Appellant(s):

Christopher D. Miller
Arnold & Miller, PLC
401 West Main Street, Suite 303
Lexington, Kentucky 40507
(859) 381-9999

Counsel for Appellee(s):

Richard G. Griffith Stoll

Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3000

5. *Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Cir. 2016).

I participated solely in the appellate phase of the case as co-counsel to an amicus, the Judicial Education Project. I co-drafted a brief arguing that Ohio's decision to reduce the number of days of early voting allowed from 35 to 29 did not violate the Voting Rights Act, the Fourteenth Amendment, or the Fifteenth Amendment. The brief noted that Ohio's law was a neutral election regulation that allowed Ohio voters to have more days of early voting than most states of the union. A majority of the Sixth Circuit panel agreed, reversed the district court's contrary ruling, and allowed the Ohio law to go into effect.

Date of representation: 2015 – 2016

Presiding Judges: Hon. David McKeague, Hon. Richard Griffin, and Hon. Jane Branstetter Stranch

Counsel for Appellant(s):

Michael Dewine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980

Counsel for Appellee(s):

Marc E. Elias
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 654-6200

6. *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018).

My role in the case has been as General Counsel of the Department of Agriculture. I have overseen the effort to file a certiorari petition in this case and have co-managed strategy going forward with the Solicitor General's office to gain reversal of the Fourth Circuit's opinion. The Fourth Circuit found that neither USDA nor the Department of the Interior had legal authority to grant a permit for infrastructure to cross the Appalachian Trail. The proposed gas pipeline in this case, as well as thousands of other pipelines, powerlines, roads, and other infrastructure, cross the trail along its more than 2,000-mile route. The decision calls into question a legal understanding between USDA and Interior that dates back decades. Realizing the

potential impact of this decision, I led an interagency effort to convince the Solicitor General's office to seek review by the Supreme Court. I closely reviewed and edited the certiorari petition, have led USDA's efforts to prepare a draft reply to the response in opposition to certiorari, and am overseeing USDA's preparation of the necessary information for the Solicitor General to use in arguing the case now that the Supreme Court has accepted it.

Date of representation: 2018 – present

Counsel for Petitioner(s):

Austin D. Gerken, Jr.
Southern Environmental Law Center
48 Patton Avenue, Suite 304
Asheville, North Carolina 28801
(828) 258-2023

Counsel for Respondent(s):

Eric Grant
Deputy Assistant Attorney General
U.S. Department of Justice
Environment & Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-3977

7. *Saab Auto. AB v. Gen. Motors Co.*, 770 F.3d 436 (6th Cir. 2014).

I participated solely in the appellate phase of the case as co-counsel. I drafted the opening and reply briefs, prepared the joint appendix, and mooted the partner for oral argument. The case came from the bankruptcy of Saab Automobile following General Motors' efforts to prevent the purchase of all or part of Saab by a Chinese automobile company. General Motors asserted a contractual right to approve the Chinese company's investment because General Motors continued to provide technology to Saab following its sale of Saab in 2010. After the proposed deal's collapse, Saab sued General Motors for tortious interference with economic expectancy. The district court dismissed the complaint. On appeal, the Sixth Circuit disagreed with Saab and affirmed the district court, finding that (1) GM had a contractual right to consent to the proposed Chinese investment and (2) for that reason, GM's public statements asserting it had a right to consent were not intentionally misleading.

Date of representation: 2012 – 2014

Presiding Judges: Hon. Eugene E. Siler Jr., Hon. Alice M. Batchelder, and Hon. Bernice B. Donald

Counsel for Appellant(s):

Benjamin Chew
Patton Boggs, LLP
2550 M Street, N.W.,
Washington, D.C. 20037
(202) 457-6000

Counsel for Appellee(s):

Kathryn D. Kirmayer
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

8. *Lilliputian Sys., Inc. v. Pipeline & Hazardous Materials Safety Admin.*, 741 F.3d 1309 (D.C. Cir. 2014).

This case involved a petition for review to the United States Court of Appeals for the District of Columbia Circuit challenging a rulemaking proceeding before the Pipeline and Hazardous Materials Safety Administration (PHMSA). I served as lead counsel on the case, drafted the briefs, and argued the case before the court. The firm represented the petitioner in the rulemaking proceeding where the company sought to have the United States harmonize its regulations with other countries and allow for certain fuel cell cartridges to be carried in checked baggage aboard passenger aircraft. The petition argued that PHMSA (1) failed to justify its decision to refuse to harmonize American safety standards with their international counterparts and (2) failed to respond to Lilliputian's comments pointing out the discrepancy and noting the lack of evidence in the record supporting a failure to harmonize the regulations. The agency had previously allowed for hairspray cans, which contain the same chemical as the fuel cell cartridge, to be placed in checked baggage. A unanimous panel of the D.C. Circuit agreed and found the agency had acted arbitrarily and capriciously by failing to provide a reasoned explanation for why it treated similar products differently. It remanded the rulemaking proceeding to PHMSA for it to provide a reasoned explanation or change its position.

Date of representation: 2013 – 2014

Presiding Judges: Hon. Judith W. Rogers, Hon. Brett Kavanaugh, and Hon. Stephen F. Williams

Counsel for Respondent(s):

Stuart F. Delery
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

9. *Guerrero v. Moore*, 442 F. App'x 57 (4th Cir. 2011).

My involvement was limited to the initial appeal and subsequent petition for certiorari from 2011 to 2012. The law firm represented Ms. Esperanza Guerrero, her children, and two other family members on a pro bono basis. I drafted the briefs in the case before the Fourth Circuit, prepared the joint appendix, and mooted the partner who argued the case. Ms. Guerrero was a legal U.S. citizen whose home Officer Moore broke into without a search or arrest warrant while looking for a relative of Ms. Guerrero. The Fourth Circuit affirmed the trial court's denial of qualified immunity to the police officer. Existing Virginia Supreme Court precedent confirmed that a mere summons did not authorize police officers to enter a private residence. Officer Moore sought a writ of certiorari from the Supreme Court to review the Fourth Circuit's denial of qualified immunity. The Supreme Court requested that we respond to the petition. I drafted the response in opposition. The Supreme Court declined to hear the Officer's case after reviewing the petition. My involvement with the case ended following the Supreme Court's denial of certiorari.

Date of representation: 2011 – 2013

Presiding Judges: Hon. Diana G. Motz, Hon. Barbara M. Keenan, and Hon. James A. Wynn Jr.

Counsel for Petitioner(s):

Angela L. Horan
County Attorney's Office for the County of Prince William
1 County Complex Court
Prince William, Virginia 22192
(703) 792-6620

Counsel for Respondent(s):

Juan Cartagena
LatinoJustice/Puerto Rican, Legal Defense Fund (PRLDEF)
99 Hudson Street, 14th Floor
New York, New York 10013
(212) 739-7575

10. *Rowan v. Laborers Int'l Union of N. Am.*, No. 10-CV-3855-DRH-ETB, 2012 WL 3203046 (E.D.N.Y. Aug. 3, 2012).

I served as co-counsel on the case, drafting the briefing before the district court and preparing the partner for oral argument on the motion to dismiss. The firm served as counsel to the Laborers International Union of North America, assisting the union with internal investigations into members alleged to have ties to organized crime. When we developed evidence that a union member had ties with organized crime, we would present the evidence to an internal arbitration panel, which would render a

decision that could include expelling the member from the union. That member could then challenge the expulsion in federal court under the Labor Management Relations Act (LMRA). Mr. Rowan alleged that the union violated the LMRA by expelling him based on insufficient evidence, failing to conclude the internal proceedings within a four-month time frame, considering evidence of actions taken outside the statute of limitations, and subjecting him to an internal arbitration process riven by bias. The district court thoroughly analyzed each of Mr. Rowan's claims and granted the union's motion to dismiss in full.

Date of representation: 2011 – 2013

Presiding Judge: Hon. Denis R. Hurley

Counsel for Plaintiff(s):

Ira A. Sturm
Raab, Sturm & Ganchrow LLP
317 Madison Avenue, Suite 1708
New York, New York 10017
(212) 683-6699

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.)

From 2017 to the present, as the Principal Deputy General Counsel and now the General Counsel of the Department of Agriculture, I have had responsibility for overseeing all legal work within the Department, including attorneys who practice employment law, administrative law, intellectual property law, commercial transactions, constitutional law, environmental law, and ethics. I oversee the more than 4,000 active litigation matters at all levels of the federal court system and an additional 1,000 cases before administrative tribunals. I also advise the Secretary and other senior departmental leaders on their responsibilities and duties under the laws that govern the Department.

Additionally, I serve as a member of the Board of Directors of the Commodity Credit Corporation, where I have advised on the Department's development of the Trade Mitigation Programs in 2018 and 2019. These two programs are expected to distribute up to \$30 billion of compensation payments to American producers while also funding programs to open new markets for American agricultural goods.

In my private sector legal career, I served as the primary counsel to the Data Trust, a private corporation that primarily sold data to political campaigns or issue advocacy groups. I provided counsel on topics ranging from corporate law, employment law, and

election law. From 2014 to 2016, I also successfully defended the Data Trust before the Federal Election Commission in MUR 6888, where complaints alleged that the Trust (1) made in-kind contributions to campaign committees in the form of data management services and (2) that the Trust received, solicited, or directed funds that were not subject to the limits set by the Federal Election Campaign Act of 1971.

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 not taught any courses.

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 such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my mandated Financial Disclosure Report and will supply a copy to this Committee.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when

you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate any conflicts of interest if I am confirmed. However, I will evaluate any real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

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

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

During my private sector career, I agreed to take on representation of two pro bono litigation matters. I joined a team representing Ms. Esperanza Guerrero, her children, and two other family members, spending 200 to 300 hours on the case. I drafted the briefs in the case before the Fourth Circuit, prepared the joint appendix, and mooted the partner who argued the case. Ms. Guerrero was a legal U.S. citizen whose home Officer Moore broke into without a search or arrest warrant while looking for a relative of Ms. Guerrero. The Fourth Circuit affirmed the trial court's denial of qualified immunity to the police officer. Existing Virginia Supreme Court precedent confirmed that a mere summons did not authorize police officers to enter a private residence. Officer Moore sought a writ of certiorari from the Supreme Court to review the Fourth Circuit's denial of qualified immunity. The Supreme Court requested that we respond to the petition. I drafted the response in opposition. The Supreme Court declined to hear the Officer's case after reviewing the petition. My involvement with the case ended following the Supreme Court's denial of certiorari.

The second major litigation matter I undertook on a pro-bono basis was representation of the American Association of University Professors in filing an amicus brief before the Kentucky Supreme Court in the case of *Kant v. Lexington Theological Seminary*. This case was litigated from 2009 until at least 2014. I co-authored the brief with and advised the client on how to help its member, Professor Laurence Kant. Lexington Theological Seminary terminated Professor Kant despite his having earned tenure. Professor Kant sued the seminary for violating his employment contract, which contained the tenure protections. The seminary argued that the ministerial exception prevented the state courts from adjudicating the contract claim. The amicus brief sided with Professor Kant and argued that the ministerial exception, then-recently elucidated in *Hosanna-Tabor*

Evangelical Lutheran Church v. EEOC, 132 S. Ct. 694 (2012), did not automatically bar claims that could be decided on secular grounds without reference to religious tenants or doctrine. Citing to arguments made in the amicus brief and the court's holding in a companion case, the Kentucky Supreme Court unanimously found that the ministerial exception did not bar Professor Kant's contract claim. The court remanded his contract claim to the trial court to be heard. I spent 100 to 150 hours on this matter.

I have also worked on non-litigation matters on a pro-bono basis. President Barack Obama appointed Benjamin Ginsberg, a partner for whom I worked, to co-chair the Presidential Commission on Election Administration created by Executive Order 13639 on March 28, 2013. I assisted Mr. Ginsberg by attending commission meetings, taking notes, performing legal research, and helping to draft and edit the commission's final report, which it issued in January 2014. Over two years, I spent approximately 200 to 300 hours on this matter.

I continue to be an active member of First Baptist Church in my hometown of Union City, Tennessee. I find it particularly meaningful to give back to its benevolent committee. The committee was especially compassionate following the loss of each of my parents. Serving others in their time of need is particularly meaningful for me.

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.

In spring 2019, the White House Counsel's Office, with which I regularly work in my current role, asked if I would be interested in being considered for a judicial appointment to the United States Court of International Trade. On April 29, 2019, I interviewed with members of the White House Counsel's Office. I had follow up communications with the White House Counsel's Office over the next month. On October 2, 2019, the President announced his intent to nominate me.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.