

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Steven James Menashi

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

Circuit Judge, United States Court of Appeals for the Second 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 White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

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

1979; White Plains, New York

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, Stanford Law School, J.D., with distinction; 2008

2003 – 2005, Johns Hopkins University School of Advanced International Studies. No degree conferred.

1997 – 2001, Dartmouth College, A.B., *magna cum laude*; 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.

2018 – Present
Office of White House Counsel

The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
Associate Counsel and Special Assistant to the President

2017 – 2018
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20024
Acting General Counsel (2017 – 2018)
Principal Deputy General Counsel (2018)

2016 – 2019
Antonin Scalia Law School
George Mason University
3301 Fairfax Drive
Arlington, Virginia 22201
Assistant Professor of Law (on leave, 2017 – 2019)

2013 – 2015
New York University School of Law
40 Washington Square South
New York, New York 10012
Koch-Searle Research Fellow

2011 – 2017
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Partner (2015 – 2016)
Of Counsel (2013 – 2015; 2016 – 2017)
Associate (2011 – 2013)

2010 – 2011
Honorable Samuel A. Alito Jr.
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543
Law Clerk

2009 – 2010
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Olin-Searle Fellow

2008 – 2009

Honorable Douglas H. Ginsburg
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Law Clerk

Summer 2007

Hogan & Hartson LLP
[now Hogan Lovells US LLP]
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Summer Associate

Summer 2006

United States Department of Defense
Office of the General Counsel
Pentagon 3E999
Washington, D.C. 20301
Honors Legal Intern

2004 – 2005

The New York Sun
105 Chambers Street
New York, New York 10007
Editorial Writer

2001 – 2004

Hoover Institution
Stanford University
1399 New York Avenue, N.W., Suite 500
Washington, D.C. 20005
Associate Editor, *Policy Review* (2002 – 2004)
Public Affairs Fellow (2002 – 2004)
Assistant Editor, *Policy Review* (2001 – 2002)

Other Affiliations (unpaid)

2018

Food Allergy Fund
3220 N Street N.W., Suite 170
Washington, D.C. 20007
Director

2015 – 2017

New York University School of Law

Classical Liberal Institute
40 Washington Square South
New York, New York 10012
Program Affiliate Scholar

2015 – 2016
New York University School of Law
Institute of Judicial Administration
40 Washington Square South
New York, New York 10012
Research Fellow

2002 – 2005
The Hanover Review Inc.
32 Main Street
Hanover, New Hampshire 03755
Director

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 after I turned 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.

Order of the Coif, Stanford Law School (2008)

Degree from Stanford Law School conferred with distinction (2008)

Stanford Law Review
Senior Articles Editor (2007 – 2008)
Member (2006 – 2007)

Best Team, Best Oralist, and Best Brief, Kirkwood Moot Court Competition, Stanford Law School (2008)

Carl Mason Franklin Award in International Law, Stanford Law School (2008)

Steven M. Block Civil Liberties Award, Stanford Law School (2008)

Humane Studies Fellowship, Institute for Humane Studies (2007)

Stanford Law & Policy Review
Managing Editor (2006 – 2007)
Associate Editor (2005 – 2006)

David and Lucille Packard Fellowship, Johns Hopkins University School of Advanced International Studies (2004)

Publius Fellow, The Claremont Institute (2002)

Phi Beta Kappa, Dartmouth College (2001)

Degree from Dartmouth College conferred *magna cum laude* (2001)

Colby Government Prize, Dartmouth College (2001)

Lowry Outstanding Editor Award, Center for Print and Broadcast Media (2000, 2001)

Rufus Choate Scholar, Dartmouth College (2000)

McGuigan Opinion/Editorial Award, Center for Print and Broadcast Media (1999)

Edson Memorial Prize for Excellence in American Government, Dartmouth College (1998)

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.

None.

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.

New York (2010)
District of Columbia (2011)

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 (2015)
U.S. Court of Appeals for the First Circuit (2016)

U.S. Court of Appeals for the Second Circuit (2013)
U.S. Court of Appeals for the Third Circuit (2013)
U.S. Court of Appeals for the Fourth Circuit (2014)
U.S. Court of Appeals for the Fifth Circuit (2013)
U.S. Court of Appeals for the Seventh Circuit (2015)
U.S. Court of Appeals for the Ninth Circuit (2013)
U.S. District Court for the Southern District of New York (2012)
U.S. District Court for the Eastern District of New York (2013)
U.S. District Court for the District of Colorado (2012)

My membership in the bar of the United States Court of Appeals for the Fifth Circuit was administratively closed in 2018 because the admission expired after five years and I did not apply for readmission.

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 (2008 – Present)

Antonin Scalia Law School, George Mason University
Journals, Moot Court, and Trial Advocacy Committee (2016 – 2017)
Library and Technology Committee (2016 – 2017)

I recently learned that I have been listed on the masthead of the *Dartmouth Review* as a member of its “Advisory Board.” As I understand it, this is an honorific designation. I have not participated in the operation of the *Dartmouth Review* since I left the board of the Hanover Review Inc. in 2005.

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, no organization 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.

With Samuel Estreicher, *Taking Steel Seizure Seriously: The Iran Nuclear Agreement and the Separation of Powers*, 86 Fordham L. Rev. 1199 (2017). Copy supplied.

With Douglas H. Ginsburg, *Our Illiberal Administrative Law*, 10 N.Y.U. J. L. & Liberty 475 (2016). Copy supplied.

How Great Is the Threat to Religious Freedom, Really?, Mosaic Mag., Aug. 17, 2015. Copy supplied.

With Douglas H. Ginsburg, *Rational Basis with Economic Bite*, 8 N.Y.U. J. L. & Liberty 1055 (2014). Copy supplied.

Cain as His Brother's Keeper: Property Rights and Christian Doctrine in Locke's Two Treatises of Government, 42 Seton Hall L. Rev. 185 (2012). Copy supplied.

Ethnonationalism and Liberal Democracy, 32 U. Pa. J. Int'l L. 57 (2010). Copy supplied.

Toward a 'More Enlightened and Tolerant View': Educational Choice and the Regulation of Religious Institutions, 66 N.Y.U. Ann. Surv. Am. L. 31 (2010). Copy supplied.

With Douglas H. Ginsburg, *Nondelegation and the Unitary Executive*, 12 U. Pa. J. Const. L. 251 (2010). Copy supplied.

Religion of Doubt, Commentary, June 2010, at 43 (reviewing Ian Buruma, *Taming the Gods: Religion and Democracy on Three Continents* (2010)). Copy supplied.

Jews and Money, Commentary, Feb. 2010, at 49 (reviewing Jerry Z. Muller, *Capitalism and the Jews* (2010)). Copy supplied.

Article III as a Constitutional Compromise: Modern Textualism and State Sovereign Immunity, 84 Notre Dame L. Rev. 1135 (2009). Copy supplied.

All the President's Czars, Wkly. Standard, Oct. 12, 2009, at 16. Copy supplied.

The Undead Constitution, Pol'y Rev., Oct. – Nov. 2009, at 76 (reviewing Cass R. Sunstein, *A Constitution of Many Minds: Why the Founding Document Doesn't Mean What It Meant Before* (2009)). Copy supplied.

Political Lexicographer: William Safire's Voice, Forbes.com, Sept. 27, 2009. Copy supplied.

The Moral Critic: Irving Kristol, 1920-2009, Forbes.com, Sept. 19, 2009. Copy supplied.

The Metaphor Analyst, N.Y. Sun, Dec. 28, 2004. Copy supplied.

A Worthy Coalition, N.Y. Sun, Oct. 6, 2004, at 10. Copy supplied.

No Defense, N.Y. Sun, Aug. 27, 2004, at 10. Copy supplied.

Conflicts Religious and Secular, Pol'y Rev., Aug. – Sept. 2004, at 90 (reviewing Arthur Hertzberg, *The Fate of Zionism: A Secular Future for Israel & Palestine* (2003)). Copy supplied.

Agitprop, N.Y. Sun, July 22, 2004, at 8. Copy supplied.

A Democratic Test, N.Y. Sun, July 14, 2004, at 10. Copy supplied.

The Politics of the WHO, New Atlantis, Fall 2003, at 88. Copy supplied.

The Word Is Nigh, Claremont Rev. Books, Fall 2003, at 30 (reviewing Norman Podhoretz, *The Prophets: Who They Were, What They Are* (2002)). Copy supplied.

Focus on Evil, Nat'l Rev., Sept. 1, 2003, at 47 (reviewing Riccardo Orizio, *Talk of the Devil: Encounters with Seven Dictators* (2002)). Copy supplied.

Freedom of Expression 101, Hoover Inst. Wkly. Essays, Feb. 24, 2003. Copy supplied.

Humans, Animals, and the Human Animal, Pol'y Rev., Feb. – March 2003, at 77 (reviewing Matthew Scully, *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy* (2002)). Copy supplied.

Defining 'Culture,' But Not as Anthropologists Would, Wash. Times, Dec. 15, 2002, at B8 (reviewing Hilton Kramer and Roger Kimball, eds., *The Survival of Culture* (2002)). Copy supplied.

Comfort's Cost; When Our Torments Meet Prozac, Wash. Times, Sept. 1, 2002, at B8 (reviewing Peter Lawler, *Aliens in America: The Strange Truth about Our Souls* (2002)). Copy supplied.

The Church-State Tangle, Pol'y Rev., Aug.-Sept. 2002, at 37. Copy supplied.

The Empty Decade, Doublethink, Summer 2002, at 21 (reviewing Herbert London, *Decade of Denial: A Snapshot of America in the 1990s* (2001)). Copy supplied.

Teaching Evil, Pol'y Rev., April-May 2002, at 90 (reviewing Robert D. Kagan, *Warrior Politics: Why Leadership Demands a Pagan Ethos* (2002)). Copy supplied.

Charmed by Tyranny, Pol'y Rev., Feb.-March 2002, at 81 (reviewing Mark Lilla, *The Reckless Mind: Intellectuals in Politics* (2001)). Copy supplied.

Israel's New Best Friend, Am. Enterprise Online, Dec. 12, 2001. Copy supplied.

Yasser Arafat, Zionist, Nat'l Rev. Online, Nov. 8, 2001. Copy supplied.

Double Dorm Standards, Am. Enterprise, Oct.-Nov. 2000, at 16. Copy supplied.

Hide That College Fund!, N.Y. Times, Nov. 21, 1998, at A15. Copy supplied.

The New York Sun

From 2004 to 2005, I served as an editorial writer for the *New York Sun*. Among my responsibilities was the writing of the initial draft of unsigned staff editorials that generally appeared on a daily basis. Signed pieces I wrote for the *New York Sun* are included above. The process for preparing such editorials was collaborative and the published versions of editorials often differed substantially from initial drafts I submitted. For the preparation of this Questionnaire I reviewed every editorial published during my tenure. Although potentially over inclusive, out of an abundance of caution I have provided below a list of those editorials, based on my recollection, for which I may have prepared the initial draft or participated substantially in editing.

The Religious Test, N.Y. Sun, July 27, 2005. Copy supplied.

(202) 224-6542, N.Y. Sun, July 22, 2005. Copy supplied.

A Long-Standing Norm, N.Y. Sun, July 21, 2005. Copy supplied.

A Bold Choice, N.Y. Sun, July 20, 2005. Copy supplied.

Unacceptably Political, N.Y. Sun, July 19, 2005. Copy supplied.

Free-Market Environmentalism, N.Y. Sun, July 18, 2005. Copy supplied.

Supply-Side Surge, N.Y. Sun, July 13, 2005. Copy supplied.

Costs and Benefits, N.Y. Sun, July 13, 2005. Copy supplied.

The New Israeli Economy, N.Y. Sun, June 27, 2005. Copy supplied.

Durbin's Non-Apology, N.Y. Sun, June 23, 2005. Copy supplied.

Impatient Patriots, N.Y. Sun, June 22, 2005. Copy supplied.

Mr. Smith Leaves Washington, N.Y. Sun, June 21, 2005. Copy supplied.

Bracketing Pyongyang, N.Y. Sun, June 17, 2005. Copy supplied.

The Bottom Line, N.Y. Sun, June 13, 2005. Copy supplied.

Dean's Identity Crisis, N.Y. Sun, June 9, 2005. Copy supplied.

Courage to Care, N.Y. Sun, June 8, 2005. Copy supplied.

High Marks, N.Y. Sun, June 7, 2005. Copy supplied.

Death in Beirut, N.Y. Sun, June 3, 2005. Copy supplied.

After Donaldson, N.Y. Sun, June 2, 2005. Copy supplied.

Garden-Variety Republicans, N.Y. Sun, May 31, 2005. Copy supplied.

An Atlanticist Moment, N.Y. Sun, May 27, 2005. Copy supplied.

Let Us Buy Wine, N.Y. Sun, May 25, 2005. Copy supplied.

Time to End the Cap, N.Y. Sun, May 24, 2005. Copy supplied.

Above Average, N.Y. Sun, March 24, 2005. Copy supplied.

Leadership Needed, N.Y. Sun, March 23, 2005. Copy supplied.

Failing to Junk, N.Y. Sun, March 22, 2005. Copy supplied.

A Way to Solvency, N.Y. Sun, March 16, 2005. Copy supplied.

Prayers at the Plaza, N.Y. Sun, March 15, 2005. Copy supplied.

Losing Choices, N.Y. Sun, March 14, 2005. Copy supplied.

"Too Much Housing," N.Y. Sun, March 11, 2005. Copy supplied.

Schumer's Miscalculator, N.Y. Sun, March 10, 2005. Copy supplied.

Charitable and Independent, N.Y. Sun, March 9, 2005. Copy supplied.

Mad as Hell, N.Y. Sun, March 8, 2005. Copy supplied.

Competition Pays, N.Y. Sun, March 4, 2005. Copy supplied.

New York Finds a Way, N.Y. Sun, March 3, 2005. Copy supplied.

High Prices and Low Politics, N.Y. Sun, March 1, 2005. Copy supplied.

Bloomberg's Wasteland, N.Y. Sun, Feb. 24, 2005. Copy supplied.

Undue Process, N.Y. Sun, Feb. 23, 2005. Copy supplied.

Doctoroff's Dyspepsia, N.Y. Sun, Feb. 17, 2005. Copy supplied.

Up the Ante, N.Y. Sun, Feb. 16, 2005. Copy supplied.

Pretty Draconian, N.Y. Sun, Feb. 7, 2005. Copy supplied.

West Side Super Bowl, N.Y. Sun, Feb. 7, 2005. Copy supplied.

Still Paying for It, N.Y. Sun, Feb. 3, 2005. Copy supplied.

Hate Grows in Brooklyn, N.Y. Sun, Feb. 1, 2005. Copy supplied.

Democratic Medicine, N.Y. Sun, Jan. 28, 2005. Copy supplied.

Reverse Reparations, N.Y. Sun, Jan. 27, 2005. Copy supplied.

Deeply Depressed, N.Y. Sun, Jan. 26, 2005. Copy supplied.

Hillary Tunes Up, N.Y. Sun, Jan. 25, 2005. Copy supplied.

Reading for Javits, N.Y. Sun, Jan. 24, 2005. Copy supplied.

A Fire in the Mind of Men, N.Y. Sun, Jan. 21, 2005. Copy supplied.

Schumer's Priority, N.Y. Sun, Jan. 20, 2005. Copy supplied.

Spark of the Old Pataki, N.Y. Sun, Jan. 19, 2005. Copy supplied.

Small Tent, N.Y. Sun, Jan. 18, 2005. Copy supplied.

Mourning Armanious, N.Y. Sun, Jan. 18, 2005. Copy supplied.

Bloomberg Is Watching You, N.Y. Sun, Jan. 17, 2005. Copy supplied.

No Thanks, N.Y. Sun, Jan. 14, 2005. Copy supplied.

Pataki's A-Bomb, N.Y. Sun, Jan. 13, 2005. Copy supplied.

Opportunity Knocks, N.Y. Sun, Jan. 12, 2005. Copy supplied.

Bloomberg in the Bronx, N.Y. Sun, Jan. 11, 2005. Copy supplied.

Speech and Fraud, N.Y. Sun, Jan. 10, 2005. Copy supplied.

Weiner and Kucinich, N.Y. Sun, Jan. 7, 2005. Copy supplied.

Defensive Medicine, N.Y. Sun, Jan. 6, 2005. Copy supplied.

A Living City, N.Y. Sun, Jan. 5, 2005. Copy supplied.

Litigious SEALs, N.Y. Sun, Dec. 30, 2004. Copy supplied.

Schumer's Advice, N.Y. Sun, Dec. 23, 2004. Copy supplied.

Autophagy of the Lawyers, N.Y. Sun, Dec. 21, 2004. Copy supplied.

On the Merits, N.Y. Sun, Dec. 8, 2004. Copy supplied.

Expressly Prohibited, N.Y. Sun, Dec. 6, 2004. Copy supplied.

Over Ruled, N.Y. Sun, Dec. 1, 2004. Copy supplied.

Mental Anguish, N.Y. Sun, Nov. 30, 2004. Copy supplied.

"This Case Is It," N.Y. Sun, Nov. 29, 2004. Copy supplied.

Tax Chicken, N.Y. Sun, Nov. 23, 2004. Copy supplied.

Two Dissidents, N.Y. Sun, Nov. 22, 2004. Copy supplied.

A Change to Make Tomorrow, N.Y. Sun, Nov. 17, 2004. Copy supplied.

Paris, Oslo, Helsinki, N.Y. Sun, Nov. 12, 2004. Copy supplied.

Silver Lining?, N.Y. Sun, Nov. 10, 2004. Copy supplied.

Democracy, State by State, N.Y. Sun, Nov. 8, 2004. Copy supplied.

Indivisible, N.Y. Sun, Nov. 3, 2004. Copy supplied.

A Note to the Bush Haters, N.Y. Sun, Nov. 3, 2004. Copy supplied.

Democracy for Political Science, N.Y. Sun, Nov. 2, 2004. Copy supplied.

Kerry's Team, N.Y. Sun, Oct. 29, 2004. Copy supplied.

Rush's Rights, N.Y. Sun, Oct. 22, 2004. Copy supplied.

New York "Emergency," N.Y. Sun, Oct. 20, 2004. Copy supplied.

"Irresponsible," N.Y. Sun, Oct. 14, 2004. Copy supplied.

The Questions Count, N.Y. Sun, Oct. 13, 2004. Copy supplied.

Freedom for the Faithful, N.Y. Sun, Oct. 7, 2004. Copy supplied.

Dodge City?, N.Y. Sun, Sept. 23, 2004. Copy supplied.

The Next Worst Thing, N.Y. Sun, Sept. 16, 2004. Copy supplied.

Deafening Silence, N.Y. Sun, Sept. 15, 2004. Copy supplied.

Large Moneyed Interests, N.Y. Sun, Sept. 14, 2004. Copy supplied.

Teachers' Choices – and Ours, N.Y. Sun, Sept. 10, 2004. Copy supplied.

Crossing the Line?, N.Y. Sun, Sept. 9, 2004. Copy supplied.

Moscow and Maalot, N.Y. Sun, Sept. 7, 2004. Copy supplied.

Beyond the NYU Tragedy, N.Y. Sun, Sept. 7, 2004. Copy supplied.

The Governable City, N.Y. Sun, Sept. 3, 2004. Copy supplied.

The Schwarzenegger Amendment, N.Y. Sun, Sept. 2, 2004. Copy supplied.

Guiliani's Point, N.Y. Sun, Sept. 1, 2004. Copy supplied.

A Senator for Boro Park, N.Y. Sun, Aug. 31, 2004. Copy supplied.

Colorado and New York, N.Y. Sun, Aug. 27, 2004. Copy supplied.

A Changed City, N.Y. Sun, Aug. 25, 2004. Copy supplied.

Charter School Questions, N.Y. Sun, Aug. 18, 2004. Copy supplied.

Blaine in Florida, N.Y. Sun, Aug. 17, 2004. Copy supplied.

A Country of Concern, N.Y. Sun, Aug. 11, 2004. Copy supplied.

Press Bias and the Campaign, N.Y. Sun, Aug. 10, 2004. Copy supplied.

Focus on Your Job, N.Y. Sun, Aug. 9, 2004. Copy supplied.

Checking the Box, N.Y. Sun, Aug. 6, 2004. Copy supplied.

Turtle Bay's Tax Plan, N.Y. Sun, Aug. 4, 2004. Copy supplied.

Poletown and Property, N.Y. Sun, Aug. 3, 2004. Copy supplied.

Late in Albany, N.Y. Sun, Aug. 3, 2004. Copy supplied.

Kerry Reports for Duty, N.Y. Sun, July 30, 2004. Copy supplied.

The Best Defense, N.Y. Sun, July 29, 2004. Copy supplied.

The Race Flipflop, N.Y. Sun, July 28, 2004. Copy supplied.

Remonstrance in Queens, N.Y. Sun, July 28, 2004. Copy supplied.

Movement in Malaysia, N.Y. Sun, July 28, 2004. Copy supplied.

Kerry vs. the Democrats, N.Y. Sun, July 27, 2004. Copy supplied.

Introducing Mr. Kerry, N.Y. Sun, July 26, 2004. Copy supplied.

The Return of McKinney, N.Y. Sun, July 23, 2004. Copy supplied.

An Intelligence Tsar?, N.Y. Sun, July 21, 2004. Copy supplied.

Keep off the Grass, N.Y. Sun, July 16, 2004. Copy supplied.

Emergency in Carolina, N.Y. Sun, July 14, 2004. Copy supplied.

Republicans Go Wobbly, N.Y. Sun, July 9, 2004. Copy supplied.

Single-Sex Story, N.Y. Sun, July 8, 2004. Copy supplied.

Indian Democracy, N.Y. Sun, May 27, 2004. Copy supplied.

The Housing Hysteria, N.Y. Sun, May 25, 2004. Copy supplied.

Blog Posts

From 2003 to 2005, and again briefly in 2009, I was a contributor to the blog, the *American Scene*. I have provided below a list of entries I wrote.

Whose Jews, Am. Scene, Nov. 9, 2009. Copy supplied.

"Frum Forum," Am. Scene, Nov. 3, 2009. Copy supplied.

The Banality of the "the Banality of 'The Banality of Evil,'" Am. Scene, Nov. 3, 2009. Copy supplied.

WASP Guilt, Am. Scene, Oct. 27, 2009. Copy supplied.

On Going to Law School, Am. Scene, Oct. 19, 2009. Copy supplied.

"To Referee Public Debates," Am. Scene, Oct. 19, 2009. Copy supplied.

On "Antichrist," Am. Scene, Oct. 13, 2009. Copy supplied.

Some Thoughts on "A Serious Man," Am. Scene, Oct. 9, 2009. Copy supplied.

The Nobel "Peace" Prize, Am. Scene, Oct. 9, 2009. Copy supplied.

American Conservatism and the Beaconsfield Position, Am. Scene, Oct. 8, 2009. Copy supplied.

Tenther Madness, Am. Scene, Oct. 8, 2009. Copy supplied.

Heightism and Hamburgers, Am. Scene, Jan. 17, 2005. Copy supplied.

Fun, for and Against, Am. Scene, Jan. 16, 2005. Copy supplied.

An Intention to Stay, Am. Scene, Jan. 16, 2005. Copy supplied.

"Still Giving Orders"?, Am. Scene, Jan. 16, 2005. Copy supplied.

Sam's Club vs. K Street, Am. Scene, Jan. 11, 2005. Copy supplied.

Intoxicating, Am. Scene, Jan. 11, 2005. Copy supplied.

All Right, Am. Scene, Dec. 17, 2004. Copy supplied.

Oh Come On, Am. Scene, Dec. 16, 2004. Copy supplied.

The End of The New Republic, Am. Scene, Dec. 13, 2004. Copy supplied.

Dolph's Doubt, Am. Scene, Dec. 13, 2004. Copy supplied.

Twilight Struggles and Benevolent Hegemony, Am. Scene, Dec. 11, 2004. Copy supplied.

Nietzsche is Peachy, Am. Scene, Dec. 10, 2004. Copy supplied.

Re: Happy Hanukkah from Mel Gibson, Am. Scene, Dec. 9, 2004. Copy supplied.

The Myth of Anti-Zionism, Am. Scene, Jan. 17, 2004. Copy supplied.

Correcting Reuters, Am. Scene, Dec. 4, 2003. Copy supplied.

Toys, Am. Scene, Nov. 21, 2003. Copy supplied.

Cato and the World, Am. Scene, Oct. 9, 2003. Copy supplied.

Carter's World, Am. Scene, Sept. 23, 2003. Copy supplied.

Funny, She Doesn't Look Jewish, Am. Scene, Sept. 10, 2003. Copy supplied.

Back, Am. Scene, Sept. 1, 2003. Copy supplied.

The Pathology of Berkeley, Am. Scene, July 29, 2003. Copy supplied.

Howard Dean, Blogging for America, Am. Scene, July 14, 2003. Copy supplied.

Freedom Waffles, Am. Scene, July 13, 2003. Copy supplied.

I Don't, Am. Scene, July 13, 2003. Copy supplied.

Saddam's Friends – And Ours, Am. Scene, June 27, 2003. Copy supplied.

Bush and the Jews, Am. Scene, June 24, 2003. Copy supplied.

Invasive Human Nature, Am. Scene, June 24, 2003. Copy supplied.

"Beware of this 'Black Spinster,'" Am. Scene, June 24, 2003. Copy supplied.

Court Reform, Am. Scene, June 23, 2003. Copy supplied.

Italy and Islam, Am. Scene, June 14, 2003. Copy supplied.

Free Speech, Am. Scene, June 11, 2003. Copy supplied.

Perversely Stubborn, Am. Scene, June 8, 2003. Copy supplied.

Indeed, Am. Scene, June 8, 2003. Copy supplied.

Armavirumque, Am. Scene, June 6, 2003. Copy supplied.

Happy Birthday Socrates, Am. Scene, June 4, 2003. Copy supplied.

Coexistence, Am. Scene, June 4, 2003. Copy supplied.

"*Sex with Boss Good for Career*," Am. Scene, June 3, 2003. Copy supplied.

"*I Want You*," Am. Scene, June 2, 2003. Copy supplied.

India, France, and Germany, Am. Scene, May 29, 2003. Copy supplied.

Straussians in the News, Am. Scene, May 15, 2003. Copy supplied.

Queen Noor, Jew-Hating Despot, Am. Scene, May 8, 2003. Copy supplied.

They're on to Me, Am. Scene, May 6, 2003. Copy supplied.

III, Am. Scene, May 5, 2003. Copy supplied.

Buchanan's World, Am. Scene, May 2, 2003. Copy supplied.

Who Is Abu Mazen?, Am. Scene, April 29, 2003. Copy supplied.

Oh Come On, Am. Scene, April 28, 2003. Copy supplied.

More on Perle, Am. Scene, April 23, 2003. Copy supplied.

Losing the Battle, Am. Scene, April 22, 2003. Copy supplied.

Live with It, Am. Scene, April 21, 2003. Copy supplied.

Cloning, the End Times, Etc., Am. Scene, April 16, 2003. Copy supplied.

The Ideological War, Am. Scene, April 16, 2003. Copy supplied.

The Americanness of the War, Am. Scene, April 3, 2003. Copy supplied.

Media War, Am. Scene, April 1, 2003. Copy supplied.

Liberators and Liberated, Am. Scene, April 1, 2003. Copy supplied.

Being Against France, Am. Scene, March 29, 2003. Copy supplied.

At Columbia, Am. Scene, March 28, 2003. Copy supplied.

Getting to Democracy, Am. Scene, March 26, 2003. Copy supplied.

Un-Patriotic Is the Least of It, Am. Scene, March 25, 2003. Copy supplied.

Best Picture, Am. Scene, March 24, 2003. Copy supplied.

Hawkish Dove, Am. Scene, March 24, 2003. Copy supplied.

Move to Florida, Am. Scene, March 24, 2003. Copy supplied.

Japanese Aid, Am. Scene, March 24, 2003. Copy supplied.

True Believers, Am. Scene, March 21, 2003. Copy supplied.

New Rules, Am. Scene, March 19, 2003. Copy supplied.

"The Right Partner," Am. Scene, March 16, 2003. Copy supplied.

Our Store, Am. Scene, March 11, 2003. Copy supplied.

Two for One, Am. Scene, March 11, 2003. Copy supplied.

A Very Pink Protest, Am. Scene, March 8, 2003. Copy supplied.

Especially, Am. Scene, March 6, 2003. Copy supplied.

Double Standards and the Fatal Hug, Am. Scene, March 6, 2003. Copy supplied.

Party Pooper, Am. Scene, March 4, 2003. Copy supplied.

The Post and the War, Am. Scene, Feb. 27, 2003. Copy supplied.

Saladin al-Chirac, Am. Scene, Feb. 22, 2003. Copy supplied.

NATO, Belgium, and Terror, Am. Scene, Feb. 22, 2003. Copy supplied.

America in, France and Germany Down, Am. Scene, Feb. 20, 2003. Copy supplied.

Post-Cons, Am. Scene, Feb. 20, 2003. Copy supplied.

Morals, Am. Scene, Feb. 19, 2003. Copy supplied.

I Thought We Were Friends, Am. Scene, Feb. 18, 2003. Copy supplied.

A Post-Conservative Right?, Am. Scene, Feb. 18, 2003. Copy supplied.

The Repulsiveness of Animal Rights, Am. Scene, Feb. 17, 2003. Copy supplied.

Love and Death, Am. Scene, Feb. 15, 2003. Copy supplied.

India and Us, Am. Scene, Feb. 13, 2003. Copy supplied.

Not New, Am. Scene, Feb. 12, 2003. Copy supplied.

Against Nuance, Am. Scene, Feb. 11, 2003. Copy supplied.

Neo-environmentalism, Am. Scene, Feb. 11, 2003. Copy supplied.

"*Unique Legitimacy*," Am. Scene, Feb. 10, 2003. Copy supplied.

In December 2004, I served as a "guest blogger" for the blog, the Daily Dish. I have provided below a list of entries I wrote.

Beyond Framing, Daily Dish, Dec. 29, 2004. Copy supplied.

Blogism, Daily Dish, Dec. 29, 2004. Copy supplied.

Text for the Times, Daily Dish, Dec. 29, 2004. Copy supplied.

Orange Revolution, Daily Dish, Dec. 27, 2004. Copy supplied.

Euro-Atlanticism and the Mideast, Daily Dish, Dec. 27, 2004. Copy supplied.

Tsunami, Daily Dish, Dec. 27, 2004. Copy supplied.

God and the White House, Daily Dish, Dec. 26, 2004. Copy supplied.

'The Wild West of Cyberspace', Daily Dish, Dec. 26, 2004. Copy supplied.

Abortion and the Dems, Daily Dish, Dec. 26, 2004. Copy supplied.

Kurdistan, Daily Dish, Dec. 26, 2004. Copy supplied.

McKinney and the Dems, Daily Dish, Dec. 26, 2004. Copy supplied.

An Evangelical Left, Daily Dish, Dec. 22, 2004. Copy supplied.

Perception and Power, Daily Dish, Dec. 22, 2004. Copy supplied.

No Excuse, Daily Dish, Dec. 22, 2004. Copy supplied.

God in the White House, Daily Dish, Dec. 22, 2004. Copy supplied.

What Rumsfeld Means, Daily Dish, Dec. 21, 2004. Copy supplied.

Honor Among Bloggers, Daily Dish, Dec. 21, 2004. Copy supplied.

The Mind of God, Daily Dish, Dec. 21, 2004. Copy supplied.

Disengagement Reconsidered, Daily Dish, Dec. 21, 2004. Copy supplied.

Bush and the Jewish Vote, Daily Dish, Dec. 21, 2004. Copy supplied.

College Writings

Speaking for the Greeks, Dartmouth Rev., May 14, 2001, at 9. Copy supplied.

Matters of Life and Death, Dartmouth Rev., March 12, 2001, at 3. Copy supplied.

Arm Thyself, Dartmouth Rev., Feb. 26, 2001, at 3. Copy supplied.

Tolerance at Dartmouth, Dartmouth Rev., Feb. 12, 2001, at 3. Copy supplied.

A Time of Loss and Mourning, Dartmouth Rev., Jan. 30, 2001, at 3. Copy supplied.

The Yuck Factor, Dartmouth Rev., Jan. 15, 2001, at 3. Copy supplied.

The College on the Pill, Dartmouth Rev., Jan. 15, 2001, at 7. Copy supplied.

Divining the Will of the People, Dartmouth Rev., Nov. 13, 2000, at 3. Copy supplied.

To Youth and Liberty, Dartmouth Rev., Oct. 30, 2000, at 3. Copy supplied.

Dynamism, Dartmouth Rev., Oct. 16, 2000, at 3. Copy supplied.

Heteropatriarchal Gynophobes!, Dartmouth Rev., Oct. 2, 2000, at 3. Copy supplied.

Colleges' Housing Hypocrisy, Dartmouth Rev., Oct. 2, 2000, at 6. Copy supplied.

I'm Going to Say It Now, Dartmouth Rev., Sept. 18, 2000, at 3. Copy supplied.

Truth and Politics, Dartmouth Rev., April 24, 2000, at 3. Copy supplied.

Vagina Friendly, Dartmouth Rev., April 10, 2000, at 3. Copy supplied.

Alumni Relations, Dartmouth Rev., March 13, 2000, at 3. Copy supplied.

Alumni Sue College Trustees, Dartmouth Rev., March 13, 2000, at 6. Copy supplied.

Talk to My Lawyer, Dartmouth Rev., Feb. 7, 2000, at 3. Copy supplied.

Never Trust Anyone Under 30, Dartmouth Rev., Jan. 24, 2000, at 3. Copy supplied.

James Wright Is Watching You, Dartmouth Rev., Jan. 24, 2000, at 5. Copy supplied.

The McFate Suite Six: Anti-Greek Plotting, Dartmouth Rev., Nov. 5, 1999, at 8. Copy supplied.

The Diversity Test, Dartmouth Rev., Oct. 12, 1999, at 6. Copy supplied.

The Trustees' Bland Vision, Dartmouth Rev., Sept. 28, 1999, at 7. Copy supplied.

Hands Off Student Cash, Dartmouth Rev., Aug. 26, 1999, at 3. Copy supplied.

Rock the Boat: Dan Quayle on Becoming President, Dartmouth Rev., Aug. 26, 1999, at 8. Copy supplied.

Chilling Free Expression, Dartmouth Rev., Aug. 16, 1999, at 3. Copy supplied.

Hula No More: Lu'au Called Racist, Dartmouth Rev., Aug. 16, 1999, at 6. Copy supplied.

Dartmouth's Anti-Semitism, Dartmouth Rev., July 22, 1999, at 3. Copy supplied.

Second-Rate Fraternities, Dartmouth Rev., July 22, 1999, at 3. Copy supplied.

Exploiting Difference, Dartmouth Rev., July 8, 1999, at 3. Copy supplied.

Poisoned Ivy, Nat'l Rev., May 3, 1999, at 4. Copy supplied.

Question Authority, Already!, Dartmouth Rev., March 10, 1999, at 9. Copy supplied.

Obfuscation and Liberal Education, Dartmouth Rev., Feb. 17, 1999, at 8. Copy supplied.

Paternalism and Illegality, Dartmouth Rev., Feb. 10, 1999, at 6. Copy supplied.

The Deconstruction of Duke English, Dartmouth Rev., Feb. 3, 1999, at 6. Copy supplied.

Doing It the Chicago Way, Dartmouth Rev., Jan. 13, 1999, at 8. Copy supplied.

Bill Maher: Politically Inept, Dartmouth Rev., Dec. 15, 1998, at 7. Copy supplied.

A Cultural Revolution for Dartmouth?, Dartmouth Rev., Nov. 17, 1998, at 9. Copy supplied.

With Alexander Nazaryan, *I Don't Know What We're Protesting*, Dartmouth Rev., Nov. 10, 1998, at 6. Copy supplied.

Neo-McCarthyism in the Academy, Dartmouth Rev., Nov. 10, 1998, at 8. Copy supplied.

That's Where the Money Is, Dartmouth Rev., Oct. 7, 1998, at 6. Copy supplied.

Dartmouth Ranked Tenth Best College, Dartmouth Rev., Sept. 30, 1998, at 6. Copy supplied.

Inside the Twisted Steeple, Dartmouth Rev., May 27, 1998, at 6. Copy supplied.

Sad Sad Said, Dartmouth Rev., May 27, 1998, at 8. Copy supplied.

With Alexander Wilson, *Harvard: Research and Destroy*, Dartmouth Rev., April 29, 1998, at 6. Copy supplied.

With Christopher Pearson, *Research and Teaching: Compatible?*, Dartmouth Rev., April 22, 1998, at 6. Copy supplied.

With Barrett Thornhill, *A Postmodern Primer*, Dartmouth Rev., April 15, 1998, at 6. Copy supplied.

President Freedman: Using His Religion, Dartmouth Rev., April 8, 1998, at 10. Copy supplied.

With Alexander Wilson, *President Freedman Rambles On*, Dartmouth Rev., Feb. 18, 1998, at 6. Copy supplied.

Lyndon's Campus Legacy, Dartmouth Rev., Jan. 21, 1998, at 6. Copy supplied.

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

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have not found any responsive materials.

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.

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have not found any responsive materials.

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.

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have found the following responsive materials.

September 27, 2017: Panelist, Overview of Supreme Court Case – *Trinity Lutheran v. Comer*, 2017 National Private School Leadership Conference, Office of Innovation and Improvement, Office of Non-Public Education, U.S. Department of Education. I have no notes, transcript, or recording. The address of the Department of Education is 400 Maryland Avenue, S.W., Washington, D.C. 20024.

August 3, 2017: Panelist, Education-Related Cases from the Supreme Court Term, Office for Civil Rights, U.S. Department of Education. I have no notes, transcript, or recording. The address of the Department of Education is 400 Maryland Avenue, S.W., Washington, D.C. 20024.

September 9, 2016: Workshop Participant, Sixth Annual Manne Faculty Forum, Law and Economics Center, Antonin Scalia Law School, George Mason University. I received comments on the paper eventually published as *Taking Steel Seizure Seriously: The Iran Nuclear Agreement and the Separation of Powers*, 86 Fordham L. Rev. 1199 (2017), a copy of which is supplied in response to 12.a.

June 2, 2016: Moderator, Panel on “Pushing the Limits of Deference: *Seminole Rock* and *City of Arlington*,” Center for the Study of the Administrative State Conference on “Rethinking Judicial Deference: History, Structure, and Accountability,” Antonin Scalia Law School, George Mason University. Video available at <https://vimeo.com/169757570>.

March 17-18, 2016: Participant, Paper Presentations, “Revisiting Judicial Deference: History, Structure & Accountability,” Center for the Study of the Administrative State, Antonin Scalia Law School, George Mason University. I have no notes, transcript, or recording. The address of the Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, Virginia 22201.

April 10, 2015: Moderator, Panel on “Historical Roots of the Protection, and Regulation, of Economic Liberties,” NYU Journal of Law & Liberty Symposium on “Economic Liberties and State Constitutions,” New York University School of Law. Video available at <https://www.youtube.com/watch?v=-qwGhQRkZ00>.

February 10, 2014: “Rational Basis with Economic Bite,” Panel on Individual Rights, NYU Journal of Law & Liberty Symposium on Richard Epstein’s *The Classical Liberal Constitution*, New York University School of Law. Video available at https://www.youtube.com/watch?v=gJ_VSYyl3dk.

December 5-7, 2013: Participant, Conference on “Leo Strauss on Edmund Burke,” Claremont McKenna College. I have no notes, transcript, or recording. The address of Claremont McKenna College is 888 North Columbia Avenue, Claremont, California 91711.

September 20, 2013: Moderator, Panel on “Conservatorship and the Takings Clause,” NYU Journal of Law & Business Conference on “The Future of Fannie and Freddie,” New York University School of Law. Video available at <https://www.youtube.com/watch?v=imvd7KP7oJc>.

April 2013: Participant, Conference on “Covenantal Identity and Religious Liberty,” Straus Center for Torah and Western Thought, Yeshiva University. I have no notes, transcript, or recording. The address of the Straus Center is 500 West 185th Street, New York, New York 10033.

March 7-9, 2013: Participant, Workshop on “Locke on Religion,” Claremont McKenna College. I have no notes, transcript, or recording. The address of Claremont McKenna College is 888 North Columbia Avenue, Claremont, California 91711.

September 7-9, 2012: Participant, Workshop on “Leo Strauss’s *The City and Man*: On Plato’s *Republic*,” Claremont McKenna College. I have no notes, transcript, or recording. The address of Claremont McKenna College is 888 North Columbia Avenue, Claremont, California 91711.

February 6, 2009: “Nondelegation and the Unitary Executive,” Panel on “The President and Popular Control of Bureaucratic Elites,” University of Pennsylvania Journal of Constitutional Law Symposium on “Presidential Power in Historical Perspective: Reflections on Calabresi and Yoo’s *The Unitary Executive*,” University of Pennsylvania School of Law. A version of my remarks were later published as *Nondelegation and the Unitary Executive*, 12 U. Penn. J. Const. L. 251 (2010), a copy of which is supplied in response to Question 12.a.

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.

To my recollection and through searches of my records and publicly available databases by persons acting on my behalf, I have found the following responsive materials.

Chris Bjorke, *Ex-ALLTEL Number Now Line to Tell All; Anyone Who Tries to Call the Verizon Phone Book's Toll-Free Number for ALLTEL's Dallas Office Will Be Sent to a Phone Sex Site*, Wilkes Barre Times Leader, Dec. 11, 2002. Copy Supplied.

Editors for the Dartmouth Review and Their Reactions to Last Night's Republican Presidential Debate in New Hampshire (NPR Morning Edition broadcast Jan. 7, 2000). Transcript supplied.

Donna Greene, *Officials Line Up to Back Primary Day Favorites*, N.Y. Times, Feb. 13, 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? _____

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

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

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

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

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

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not 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.

2018 – Present

Associate Counsel and Special Assistant to the President,
Office of the White House Counsel, The White House
I was appointed by President Donald Trump.

2017 – 2018

Acting General Counsel and Principal Deputy General Counsel,
U.S. Department of Education
I was appointed by Secretary Betsy DeVos.

In the 2000 New York State Republican Primary, I ran unsuccessfully as a delegate to the Republican convention supporting Steve Forbes.

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.

In November 2012, I served as a volunteer “Lawyer for Romney” for less than a week around the election.

In 1997, while in high school and shortly afterward, I served as an intern at the Westchester Republican County Committee in White Plains, New York.

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 Douglas H. Ginsburg, Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit.

From 2010 to 2011, I served as a law clerk to the Honorable Samuel A. Alito Jr., Associate Justice of the Supreme Court of the United States.

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

I have never 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.

2009 – 2010

Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Olin-Searle Fellow

2011 – 2017

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Partner (2015 – 2016)
Of Counsel (2013 – 2015; 2016 – 2017)
Associate (2011 – 2013)

2013 – 2016

New York University School of Law
40 Washington Square South
New York, New York 10012
Koch-Searle Research Fellow (2013 – 2015)
Institute of Judicial Administration Research Fellow (2015 – 2016)
Classical Liberal Institute Program Affiliate Scholar (2015 – 2017)

2016 – 2019

Antonin Scalia Law School
George Mason University
3301 Fairfax Drive
Arlington, Virginia 22201
Assistant Professor of Law (on leave from 2017 to 2019)

2017 – 2018

United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20024
Acting General Counsel (2017 – 2018)
Principal Deputy General Counsel (2018)

2018 – Present

Office of the White House Counsel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
Associate Counsel and Special Assistant to the President

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.

My legal experience has included commercial and appellate litigation, academic scholarship, teaching, and government service.

I practiced in the litigation group at the New York office of Kirkland & Ellis LLP from 2011 to 2017. During that time, my practice consisted mainly of “issues and appeals” work, meaning the crafting of appellate arguments and briefs in federal and state appellate court proceedings as well as identifying legal issues in trial court proceedings and crafting dispositive motions such as motions to dismiss. The general character of my practice did not change but I acquired increasing responsibility over time.

I have also engaged in academic work during my career. From 2009 to 2010, I was an Olin-Searle fellow at Georgetown University Law Center. From 2013 to 2016, I was a research fellow at New York University School of Law. From 2016 to 2017, I was an assistant professor of law at Scalia Law School at George Mason University, before going on leave to enter government service. As an academic, I published articles on constitutional law, administrative law, statutory interpretation, and other topics in journals such as *the Fordham Law Review*, *Notre Dame Law Review*, and *University of Pennsylvania Journal of Constitutional Law*. As a professor, I taught courses on administrative law and civil procedure.

In 2017, I joined the U.S. Department of Education as deputy general counsel and acting general counsel. In that capacity, I was responsible for providing legal advice related to all aspects of the Department’s operations, including litigation, rulemaking, regulation, and enforcement. I supervised 110 lawyers in seven divisions in the Office of the General Counsel.

In 2018, I joined the White House Counsel’s Office as special assistant and associate counsel to the President. In that capacity, I am responsible for providing legal advice to senior staff in the Executive Office of the President and for managing legal issues involving executive branch agencies and components of the Executive Office of the President.

ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

In private practice, I addressed a range of legal issues and clients. I worked on cases involving administrative law, constitutional law, antitrust, securities regulation, and products liability. Some significant clients included Abbott Laboratories, BP America, Chipotle Mexican Grill Inc., IBM Corporation, Johnson & Johnson, Teva Pharmaceuticals North America, and UBS Warburg.

As an academic, I specialized in administrative law, constitutional law, and civil procedure.

At the Education Department, my client was the Department and I specialized in administrative law and education law, including application of the Administrative Procedure Act, the Higher Education Act, and the Elementary and Secondary Education Act.

At the White House Counsel's Office, my principal client is the President of the United States, and I have worked on a range of issues and legal authorities.

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.

My time in private practice focused mainly on the "issues and appeals" aspects of litigation. I authored and submitted briefs and dispositive motions and prepared for arguments, appearing in court occasionally. In government, I was also involved in litigation strategy, reviewed briefs prepared by the Justice Department, and participated in moot courts. As an agency general counsel and a White House lawyer, ongoing litigation matters occupied perhaps a third of my time, and litigation concerns are also relevant to legal advice on other matters.

i. Indicate the percentage of your practice in:

- | | | |
|----|--------------------------|-----|
| 1. | federal courts: | 55% |
| 2. | state courts of record: | 15% |
| 3. | other courts: | 0% |
| 4. | administrative agencies: | 30% |

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.

As a lawyer focused on issues and appeals, and then as a general counsel, I have not served as counsel in a case tried to verdict. Indeed, the objective typically was to obtain a judgment in advance of trial. I have, however, filed dispositive motions in numerous trial court proceedings.

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.

Brief of Amici Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016). Brief available at 2016 WL 155631.

Petition for Writ of Certiorari, *Johnson & Johnson v. Reckis*, 136 S. Ct. 896 (2016) (No. 15-449). Brief available at 2015 WL 5895924.

Reply Brief of Petitioners, *Johnson & Johnson v. Reckis*, 136 S. Ct. 896 (2016) (No. 15-449). Brief available at 2015 WL 9591988.

Petition for Writ of Certiorari, *Target Corp. v. Guvenoz*, 136 S. Ct. 2409 (2016) (No. 15-1081). Brief available at 2016 WL 771162.

Reply Brief of Petitioners, *Target Corp. v. Guvenoz*, 136 S. Ct. 2409 (2016) (No. 15-1081). Brief available at 2016 WL 2866073.

Reply Brief of Petitioners, *SmithKline Beecham Corp. v. King Drug Co.*, 136 S. Ct. 2428 (2016) (No. 15-1055). Brief available at 2016 WL 2866072.

Supplemental Brief of Petitioners, *SmithKline Beecham Corp. v. King Drug Co.*, 136 S. Ct. 2428 (2016) (No. 15-1055). Brief available at 2016 WL 6124400.

Petition for Writ of Certiorari, *PLIVA, Inc. v. Kohles*, 137 S. Ct. 1434 (2017) (No. 16-684). Brief available at 2016 WL 6916229.

Reply Brief of Petitioners, *PLIVA, Inc. v. Kohles*, 137 S. Ct. 1434 (2017) (No. 16-684). Brief available at 2017 WL 992395.

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. *Safelite Grp. v. Jepsen*, 764 F.3d 258 (2d Cir. 2014) (Winter, Walker, Cabranes, JJ.).

This case concerned the constitutionality of a state law that prohibited an insurance claims processor from recommending that an insurance customer receive glass repairs at an affiliated company unless the processor also recommended a competitor company. The Second Circuit held that the law was a restriction on commercial speech subject to intermediate scrutiny rather than an informational disclosure law subject to rational basis review. The court decided that the statute could not survive intermediate scrutiny and ordered a preliminary injunction against its enforcement. I briefed the case for Safelite Group Inc. and Safelite Solutions LLC (briefs available at 2014 WL 1259322 and 2014 WL 2025068). I had also briefed the motion for preliminary injunction in the district court. *See Safelite Grp. v. Jepsen*, 988 F. Supp. 2d 199 (D. Conn. 2013) (Arterton, J.) (briefs available at 2013 WL 6253536 and 2013 WL 11248541).

Co-Counsel

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Benjamin Carl Jensen
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
(860) 275-8200

Principal Counsel for Appellee

Hon. Matthew J. Budzik
[formerly Connecticut Assistant Attorney General]
Connecticut Superior Court
101 Lafayette Street
Hartford, Connecticut 06106

2. *Gagliardi v. City of Boca Raton*, 197 F. Supp. 3d 1359 (S.D. Fla. 2016) (Marra, J.).

This case involved claims by plaintiffs that the decisions of the City of Boca Raton to change its zoning law and to approve the construction of a Jewish religious center violated the First and Fourteenth Amendments of the U.S. Constitution and the Florida Constitution. The district court dismissed the plaintiffs' complaint for lack of standing. I briefed the motion to dismiss for Intervenor Chabad of East Boca Inc. and TJC Land Trust, the parties that sought to build the center (briefs available at 2016 WL 3581253 and 2016 WL 2771273). The plaintiffs filed an amended complaint, which was also dismissed. *See Gagliardi v. City of Boca Raton*, No. 16-CV-80195, 2017 WL 5239570 (S.D. Fla. Mar. 28, 2017). I briefed the motion to dismiss in that proceeding as well.

Co-Counsel

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Elliot C. Harvey Schatmeier
[formerly at Kirkland & Ellis LLP]
Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067
(310) 201-2100

Lawrence C. Marshall
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305
(650) 723-7572

Henry Handler
Weiss, Handler & Cornwell, P.A.
One Boca Place, Suite 218-A
2255 Glades Road
Boca Raton, Florida 33431
(561) 997-9995

Lori H. Windham
Daniel H. Blomberg
Becket Fund for Religious Liberty
1200 New Hampshire Avenue N.W., Suite 700
Washington, D.C. 20036
(202) 955-0095

Principal Counsel for Defendant City of Boca Raton
Daniel L. Abbott

Weiss Serota Helfman Cole & Bierman, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
(954) 763-4242

Principal Counsel for Plaintiffs

Arthur C. Koski
Law Offices of Arthur C. Koski
101 North Federal Highway, Suite 602
Boca Raton, Florida 33432
(561) 362-9800

3. *McCall v. Scott*, 199 So. 3d 359 (Fla. 1st Dist. Ct. App. 2016) (Rowe, Makar, and Bilbrey, JJ.).

This case involved a challenge under Article I, Section 3, and Article IX, Section 1, of the Florida Constitution to Florida's Tax Credit Scholarship Program. Pursuant to the program, the state provides tax credits for contributions to nonprofit organizations that award scholarships to low-income students. The Florida First District Court of Appeal held that the plaintiffs could not maintain their constitutional challenge for lack of standing. I briefed the case on behalf of Intervenor-Defendants, parents of children who received scholarships as part of the program (brief available at 2015 WL 12844933). The Florida Supreme Court later denied review. *See McCall v. Scott*, No. SC16-1668, 2017 WL 192043 (Fla. Jan. 18, 2017). I also briefed the case before the Florida Supreme Court (brief available at 2016 WL 6922365). The circuit court had previously granted a motion to dismiss for lack of standing. *See McCall v. Scott*, No. 2014-CA-002282, 2015 WL 3945409 (Fla.Cir.Ct. May 18, 2015). I briefed that motion as well (brief available at 2015 WL 10713290).

Co-Counsel

Daniel J. Woodring
Woodring Law Firm
203 North Gadsden Street, Suite 1-C
Tallahassee, Florida 32301
(850) 567-8445

Karen D. Walker
Nathan A. Adams, IV
Holland & Knight LLP
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
(850) 224-7000

Howard Coker
Coker, Schickel, Sorenson, Posgay, Camerlengo & Iracki
136 East Bay Street
Jacksonville, Florida 32202

(904) 356-6071

Raoul G. Cantero
White & Case LLP
Southeast Financial Center, Suite 4900
200 South Biscayne Boulevard
Miami, Florida 33131
(305) 371-2700

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Principal Counsel for Appellee State of Florida

Rachel E. Nordby
[Formerly Florida Deputy Solicitor General]
Shutts & Bowen
215 South Monroe Street, Suite 804
Tallahassee, Florida 32301
(850) 241-1722

Principal Counsel for Appellants

Ronald G. Meyer
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Tallahassee, Florida 32301
(850) 878-5212

4. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 168 F. Supp. 3d 908 (E.D. La. 2016) (Barbier, J.).

This case presented the question whether a party responsible for the oil spill is liable under the Oil Pollution Act of 1990 for a claimant's economic loss that resulted from the moratorium on offshore drilling imposed by the federal government following the Deepwater Horizon spill. The district court held that such losses did not result from the discharge or substantial threat of discharge of oil and therefore the act did not impose such liability. Accordingly, the court granted BP's motion to dismiss. I briefed the motion to dismiss on behalf of BP Exploration & Production Inc. (briefs available at 2015 WL 9413470 and 2016 WL 1222147).

Co-Counsel

Jeffrey Bossert Clark
[formerly with Kirkland & Ellis LLP]
Assistant Attorney General

Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

Robert C. Brock
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 879-5000

Richard C. Godfrey
J. Andrew Langan
Matthew T. Regan
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
(312) 862-2200

Martin R. Boles
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, California 90071
(213) 680-1400

Christopher W. Keegan
Kirkland & Ellis LLP
555 California Street
San Francisco, California 94104
(414) 439-1400

Don K. Haycraft
Liskow & Lewis
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139
(504) 581-7979

Emily Johnson Henn
Covington & Burling LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, California 94065
(650) 632-4715

Neil K. Roman
Covington & Burling LLP

620 Eighth Avenue
New York, New York 10018
(212) 841-1221

Principal Counsel for Plaintiffs

Stephen J. Herman
Herman Herman & Katz LLC
820 O'Keefe Avenue
New Orleans, Louisiana 70113
(504) 581-4892

5. *United States ex rel. Palmieri v. Alpharma Inc.*, 647 F. App'x 166 (4th Cir. 2016) (Gregory, Duncan, and Diaz, JJ.).

This case concerned a relator's claim that defendant pharmaceutical companies had violated the False Claims Act by marketing a product for off-label use. The Fourth Circuit held that the district court had erred in failing to consider the defendants' defenses under the False Claims Act's first-to-file bar and public-disclosure bar because those defenses are jurisdictional in nature. I briefed the case for defendants-appellees Alpharma Inc., Alpharma Pharmaceuticals LLC, King Pharmaceuticals Inc., and Pfizer Inc. (brief available at 2014 WL 3381757). I also briefed the motions to dismiss for the defendants in the district court proceedings. The district court had dismissed the relator's first amended complaint and second amended complaint for failure to allege the submission of a false claim with sufficient particularity to satisfy Federal Rule of Civil Procedure 9(b). *See United States ex rel. Palmieri v. Alpharma Inc.*, 928 F. Supp. 2d 840 (D. Md. 2013) (Hollander, J.) (brief available at 2012 WL 8436296); *United States ex rel. Palmieri v. Alpharma Inc.*, No. 10-1601, 2014 WL 1168953 (D. Md. Mar. 21, 2014) (Hollander, J.) (briefs available at 2013 WL 3355690 and 2013 WL 4510008).

Co-Counsel

John C. O'Quinn
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 879-5000

Devin A. DeBacker
[formerly with Kirkland & Ellis LLP]
Office of White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20502
(202) 456-4672

Principal Counsel for Relator

Anna C. Dover
Milberg LLP
One Pennsylvania Plaza, 50th Floor

New York, New York 10119
(212) 594-5300

6. *State of Indiana v. IBM Corp.*, 51 N.E.3d 150 (Ind. 2016) (Rush, C.J., David, Dickson, and Rucker, JJ.).

This case concerned a contract between the State of Indiana and IBM Corporation pursuant to which the State hired IBM to modernize its welfare eligibility system. The State terminated the contract before performance was complete. The court considered whether the termination was for cause under the contract as well as other issues such disputes over fees and equipment costs. The Indiana Supreme Court held that termination was for cause because IBM had committed a material breach of the contract, and the court summarily affirmed the Indiana Court of Appeals on issues related to fees. The Indiana Court of Appeals had held that there was a material breach but that IBM was entitled to fees related to subcontractor assignments and change orders. *See State of Indiana v. IBM Corp.*, 4 N.E.3d 696 (Ind. Ct. App. 2014) (Vaidik, Baker, Friedlander, JJ.). I briefed the case for IBM before the court of appeals (briefs available at 2013 WL 3490473 and 2013 WL 4707087), and I briefed the motion for transfer to the Indiana Supreme Court (brief available at 2014 WL 5419252). Upon transfer, the Indiana Supreme Court relied on the briefs filed in the Indiana Court of Appeals.

Co-Counsel

Steven D. McCormick
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
(312) 862-2000

Andrew W. Hull
Hoover Hull LLP
111 Monument Circle, Suite 4400
Post Office Box 44989
Indianapolis, Indiana 46244
(317) 822-4400

Daniel K. Burke
[formerly with Hoover Hull LLP]
DKB Legal LLC
1016 3rd Avenue S.W., Suite 100
Carmel, Indiana 46032
(317) 709-4242

Jonathan C. Bunge
[formerly with Kirkland & Ellis LLP]
Quinn Emanuel Urquhart & Sullivan, LLP
191 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

(312) 705-7400

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Principal Counsel for Appellant State of Indiana

Peter J. Rusthoven
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 236-1313

7. *In re Sauer-Danfoss Inc. Stockholder Litig.*, No. 8396, 2016 WL 297812 (Del. Ch. Jan. 22, 2016) (Laster, V.C.).

This case involved a challenge by former stockholders of Sauer-Danfoss Inc. to a transaction by which Danfoss A/S acquired the remaining shares of Sauer-Danfoss Inc. that it did not already own. On summary judgment, the Delaware Court of Chancery held that entire fairness was the appropriate standard of review for evaluating the transaction, that the Danfoss-affiliated defendants (Danfoss A/S, Danfoss Acquisition Inc., and Danfoss-affiliated directors of Sauer-Danfoss) were entitled to burden-shifting based on a fully informed and uncoerced stockholder vote, and that the special committee defendants (i.e. the independent directors of Sauer-Danfoss) were not entitled to summary judgment on the ground that the plaintiffs could not overcome the presumption of independence. I briefed the motion for summary judgment on behalf of the special committee defendants (briefs available at 2015 WL 5836970 and 2015 WL 9500923).

Co-Counsel

Yosef J. Riemer
Matthew Solum
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Gregory P. Williams
Lisa A. Schmidt
Richards Layton & Finger P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

Rachel E. Horn
[formerly with Richards Layton & Finger P.A.]
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
(202) 942-5000

Principal Counsel for Danfoss-Affiliated Defendants

Meredith E. Kotler
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
(212) 225-2000

Principal Counsel for Plaintiffs

James S. Notis
Gardy & Notis LLP
560 Sylvan Avenue, Suite 3085
Englewood Cliffs, New Jersey 07632
(201) 567-7377

8. *Wagner v. Teva Pharms. USA Inc.*, 840 F.3d 355 (7th Cir. 2016) (Wood, C.J., Rovner and Blakey, JJ.).

This case concerned claims that generic drug manufacturers violated state tort laws by failing adequately to warn of the risks of their products. The Seventh Circuit held that the federal Food, Drug, and Cosmetics Act preempted state failure-to-warn claims because the manufacturers were unable to change their labeling under federal law. I briefed the case for appellees Teva Pharmaceuticals USA Inc., Barr Pharmaceuticals LLC, and Barr Laboratories Inc. (brief available at 2015 WL 7069309).

Co-Counsel

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Devin S. Anderson
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 879-5000

John K. Crisham
[formerly with Kirkland & Ellis LLP]

Greenberg Traurig, LLP
1200 17th Street, Suite 2400
Denver, Colorado 80202
(303) 572-6500

Linda E. Maichl
Jeffrey F. Peck
Joseph P. Thomas
Ulmer Berne LLP
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202
(513) 698-5000

Principal Counsel for Plaintiff-Appellant

Kathleen A. Wagner
Wagner Law Offices S.C.
6425 Odana Road, Suite 14
Madison, Wisconsin 53719
(608) 256-6000

9. *In re Lipitor Antitrust Litig.*, 855 F.3d 126 (3d Cir. 2017); *In re Lipitor Antitrust Litig.*, 868 F.3d 231 (3d Cir. 2017) (Ambro, Smith, and Fisher, JJ.).

These consolidated appeals involved antitrust challenges to settlements of patent-infringement litigation between pharmaceutical patent holders and generic manufacturers. The court addressed a jurisdictional question involving whether the case had to be heard by the U.S. Court of Appeals for the Federal Circuit. The court also addressed an antitrust question involving the allegations required to state an antitrust claim against a settlement that involves an alleged delay of the introduction of generic drug products into the marketplace. The Third Circuit held that the plaintiffs' allegations of fraudulent procurement and enforcement of patents did not arise under patent law and therefore the case did not need to be transferred to the Federal Circuit. The court further held that the plaintiffs plausibly alleged an impermissible reverse-payment settlement based on the patent holder's agreement not to produce an authorized generic product. I briefed the case on behalf of Defendants-Appellees Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA Inc., generic manufacturers, in *In re Effexor XR Antitrust Litig.*, No. 15-1184 (filed Feb. 16, 2016). The district court had dismissed the claims as inadequately pleaded. *See In re Effexor XR Antitrust Litig.*, No. 11-5479, 2014 WL 4988410 (D.N.J. Oct. 6, 2014) (Sheridan, J.). I had briefed a motion to dismiss in the district court proceedings (briefs available at 2012 WL 1204314, 2012 WL 3309442, and 2013 WL 4510066).

Co-Counsel

John C. O'Quinn
Jonathan D. Janow
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

(202) 879-5000

Gregory L. Skidmore
[formerly with Kirkland & Ellis LLP]
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
(704) 377-2536

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Principal Counsel for Appellants Rite Aid Corporation, et al.

Barry L. Refsin
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square
18th & Cherry Streets, 27th Floor
Philadelphia, Pennsylvania 19103
(215) 496-7031

Principal Counsel for Appellants Walgreen Company et al.

Scott E. Perwin
Kenny Nachwalter P.A.
Four Seasons Tower
1441 Brickell Avenue, Suite 1100
Miami, Florida 33131
(305) 373-1000

Principal Counsel for Appellants Meijer Inc. and Meijer Distribution

Linda P. Nussbaum
Nussbaum Law Group P.C.
570 Lexington Avenue, 19th Floor
New York, New York 10022
(917) 438-9189

Principal Counsel for Appellant Giant Eagle Inc.

Bernard D. Marcus
Marcus & Shapira LLP
One Oxford Centre, 35th Floor
Pittsburgh, Pennsylvania 15219

Principal Counsel for Appellants Direct-Purchaser Class Plaintiffs

David F. Sorensen
Berger & Montague P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103
(215) 875-5705

Principal Counsel for Appellants End-Payor Class Plaintiffs

Michael M. Buchman
Motley Rice LLC
600 Third Avenue, Suite 2101
New York, New York 10016
(212) 577-0040

Principal Counsel for Appellants RP Healthcare Inc., et al.

Joseph M. Alioto
[formerly Alioto Law Firm]
Cotchett, Pitre & McCarthy, LLP
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, California 94010
(650) 697-6000

Principal Counsel for Appellants Painters District Council No. 30

Health & Welfare Fund and Medical Mutual of Ohio

Lori A. Fanning
Miller Law LLC
115 South LaSalle Street, Suite 2910
Chicago, Illinois 60603
(312) 332-3400

Principal Counsel for Appellees Pfizer Inc., et al.

Robert A. Milne
White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
(212) 819-8200

Principal Counsel for Appellees Ranbaxy Inc.

Karen N. Walker
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 879-5000

Principal Counsel for Appellees Daiichi Sankyo Co. Ltd and Daiichi Sankyo Inc.

Noah M. Leibowitz

[formerly with Simpson Thacher & Bartlett LLP]
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3538

10. *Safelite Grp. Inc. v. Rothman*, 229 F. Supp. 3d 859 (D. Minn. 2017) (Nelson, J.).

This case concerned the constitutionality of state law requirements that prohibited an insurance claims processor with an affiliated glass repair business from telling customers that they may be balanced-billed by competing businesses and requiring the processor to advise customers of their right to choose a glass repair vendor. The court held that the prohibition on balance-billing statements violated the First Amendment but the required advisory did not. I briefed the motion for preliminary injunction in the district court on behalf of Safelite Group Inc. and Safelite Solutions LLC (briefs available at 2015 WL 2400022 and 2015 WL 2400023) and briefed the motion for summary judgment with the trial team.

Co-Counsel

Jay P. Lefkowitz
Matthew F. Dexter
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

Richard D. Snyder
Emily Unger
Fredrikson & Byron P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
(612) 492-7000

John E. Iole
Jones Day
500 Grant Street, Suite 4500
Pittsburgh, Pennsylvania 15219
(412) 391-3939

Christian R. Reigstad
[Formerly Kirkland & Ellis LLP]
Ropes & Gray
1211 Avenue of the Americas
New York, New York 10036
(212) 596 9726

Principal Counsel for Defendants

Oliver J. Larson
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101
(651) 757-1265

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

My most significant legal activities, apart from the litigation described above, include government service and academic scholarship.

As acting general counsel at the Department of Education, I served as the chief legal officer of a cabinet agency with 4,400 employees, a \$68 billion budget, and a \$1 trillion loan portfolio. I advised the Secretary on administration of the Department's programs and its regulatory work. Together with the attorneys in the Office of the General Counsel, I reviewed the Department's activities in light of its authorizing statutes, the Administrative Procedure Act, and the Constitution.

As special assistant to the President and associate counsel to the President, I advise administrative agencies and senior staff within the Executive Office of the President. I have participated in interagency review of regulations, analysis of statutory and constitutional questions, litigation strategy, and review of legislation. I have addressed questions involving the separation of powers and the administrative process.

As an academic, I studied issues related to constitutional and administrative law. I have written on the constitutional status of state sovereign immunity, which implicates interesting questions related to textualist constitutional interpretation and its relationship to broad principles that the Constitution protects. I have also written about the separation of powers, including the connection between the nondelegation doctrine and the fragmentation of executive authority as well as the limits of presidential policymaking under the *Youngstown* framework. I have additionally identified current practices in administrative law that tend to undermine the framework for agency accountability that was envisioned by the Administrative Procedure Act, and I have explored other topics as well. I taught courses in administrative law and civil procedure and advised students.

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.

In Fall 2016, I taught Administrative Law at Scalia Law School, George Mason University. This is the basic course in the topic. It covers constitutional constraints on the structure and activities of administrative agencies, the requirements of the Administrative Procedure Act, and judicial review of agency action. Syllabus supplied.

In Spring 2017, I taught Civil Procedure at Scalia Law School, George Mason University. It is an introductory course for first-year students, and it covers statutory and constitutional requirements related to jurisdiction, application of the Federal Rules of Civil Procedure, and preclusion doctrines. Syllabus supplied.

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

I do not expect to derive future benefits from previous business relationships.

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 do not have any plans or commitments to pursue outside employment if confirmed.

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 Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

Cases most likely to present conflicts issues would be those related to my service as a government lawyer or as a private practitioner. If confirmed, I would recuse myself from any matter in which, during my government employment, I participated as counsel, adviser, or material witness or expressed an opinion concerning the merits of the particular case in controversy. *See* 28 U.S.C. § 455(b)(3). I would also recuse myself from any matter in which, during my private practice, either I or a lawyer with whom I was then practicing participated. *See* 28 U.S.C. § 455(b)(2).

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 would evaluate any potential conflicts of interest under 28 U.S.C. § 455, Canon 3C of the Code of Conduct for United States Judges, and all other laws, rules, practices, and procedures governing such circumstances. In considering the standards set forth in those rules, I would consult judicial decisions and opinions of the Judicial Conference applying the rules to particular 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.

While in private practice, I devoted significant time to pro bono matters. My representation of Chabad of East Boca Raton, which involved the litigation described in response to question 17 as well as state-court proceedings and which involved Chabad's right to build a Jewish religious center, was a pro bono matter that entailed approximately 150 hours. The amicus brief in the *Zubik* litigation, which is noted in response to question 16(e) and which involved the rights of religious believers to avoid religiously offensive conduct, was a pro bono matter that entailed approximately 50 hours. Additionally, as a professor, I devoted time to working with students to provide guidance for their academic work and their professional development.

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 May 2018, I interviewed with attorneys in the White House Counsel's Office and the Justice Department's Office of Legal Policy for anticipated vacancies in the federal courts in New York. In July 2019, I interviewed with Senator Charles Schumer. Throughout this process 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.

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.