

**Nomination of Patrick Wyrick to the U.S. District  
Court for the Western District of Oklahoma  
Questions for the  
Record May 30, 2018**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. In February 2017, Governor Mary Fallin appointed you to represent Oklahoma's Second Judicial District as a justice on the Oklahoma Supreme Court. Oklahoma's Constitution requires that the nine justices of the high court each represent one of the state's nine judicial districts. (Okla. Const. Art. VII, §2) In addition, the state constitution has a residency requirement for appointment of justices.

**a. What is the residency requirement for an appointment to the Second Judicial District on the Oklahoma Supreme Court?**

Unlike certain other state officers, such as members of the Legislature, who in addition to being qualified electors in their district must also reside in the district, *see* Okla. Const. Art. V, Section 17 (requiring that legislators "be qualified electors in their respective counties or districts *and*...reside in their respective counties or districts")(emphasis added), members of the Oklahoma Supreme Court are subject to no similar residency requirement. *See* Okla. Const. Art. VII, Section 2 (requiring only that justices be "a qualified elector in the district for at least one year" prior to their appointment, but not requiring residency in the district for any period). Historically, in fact, most members of the Court have lived in the Oklahoma City area where the Court is located, and some did so both before and after their appointments, even where their districts didn't include Oklahoma City.

**b. Did you reside in the Second Judicial District for at least one year immediately prior to the date of your appointment?**

As I explained at my hearing and to the Oklahoma Judicial Nominating Commission prior to my nomination to the Oklahoma Supreme Court, I lived and worked in the Oklahoma City area for several years prior to my nomination, but maintained my many ties to my home of Atoka, Oklahoma. The same is true of current and prior members of the Court, who similarly lived for years in the Oklahoma City area working state government jobs prior to their nominations to seats in their home districts.

**c. Were you a qualified elector in the Second Judicial District for at least one year immediately prior to the date of your appointment?**

Yes, which was also the conclusion of the bipartisan Oklahoma Judicial Nomination Commission, the body the people of Oklahoma have entrusted with making the final determination on such matters.

2. News reports and documents released through Oklahoma's Open Records Act show that while working as Oklahoma's Solicitor General, you worked with lobbyists. In 2011,

Devon Energy's director of government relations sent you a draft letter opposing a federal environmental regulation. Then-Oklahoma Attorney General Scott Pruitt reportedly changed 37 words out of the 1,016 words compromising the draft letter, added the seal of the State of Oklahoma, and sent it to the Administrator of the Environmental Protection Agency.

(*Energy Scripted Letters*, NYTimes, Dec. 6, 2014)

**a. When you received this email, what did you do?**

I don't recall this seven-year-old email. But given my usual practices when receiving such correspondence from members of the public, I likely passed it along to someone in the Office of the Attorney General to evaluate and determine whether it warranted the Office's attention.

**b. Did you at any time, discuss the email or its contents with Mr. Pruitt as Attorney General or anyone in his office?**

I do not recall any such conversations, but I almost certainly would have spoken to someone about it when I passed it along for review.

**c. Did you have any role in the letter ultimately sent from Mr. Pruitt to the Environmental Protection Agency?**

Please see my answer to Question 8(a) from Senator Whitehouse.

**d. During your confirmation hearing before the Senate Judiciary Committee, you stated that you divested from Devon Energy upon your appointment to the Oklahoma Supreme Court. On the Financial Disclosure Report that you submitted to the Senate (Form AO 10), Devon Energy common stock is listed. At the time you submitted your disclosure statement, did you or your spouse hold investments in Devon Energy? Do you continue to hold such investments?**

No, I did not own that stock at the time of my report, and I do not now.

3. In 2015, you represented the State of Oklahoma before the Supreme Court in *Glossip v. Gross*, 125 S.Ct. 2726. At oral argument, Justice Sotomayor said: "I am substantially disturbed that in your brief you made factual statements that were not supported by the cited ... sources. And in fact directly contradicted. . . . So nothing you say or read to me am I going to believe, frankly, until I see it with my own eyes, the context, okay?"

In addition, in the same case, you wrote a letter to the Supreme Court on a different misrepresentation, explaining that you "regret[ed] the citation error."

**a. At the time you submitted the brief, were you aware of the citation error? If not, when did the error first come to your attention?**

No. I became aware after it was noted in the reply brief, and I asked the attorney responsible for that citation if they could investigate the matter to determine whether correction was needed. After concluding that correction was warranted, as counsel of record in the case, I sent a letter to the Court to ensure that the Court had the correct citation.

**b. What steps did you take to ensure that you presented factually correct information to the Court at oral argument and in briefings?**

In every brief I've worked on, I've worked diligently to ensure that all information provided is correct. As a judge, I read a lot of briefs, and I can say that inadvertent mis-cites of the sort in *Glossip* are not uncommon in litigation, and the parties typically just address such issues in the subsequent briefs to the court. In the *Glossip* case, however, because there was no further briefing in the case in which I could simply correct the error, I thought it incumbent to send a letter to the Court giving it the correct citation. Such correction letters are not uncommon, and part of routine practice before the Court. For example, the United States Solicitor General occasionally files such letters with the Court, as it recently did to correct an inadvertent citation error that occurred in an argument given by the Solicitor General. Letter dated May 1, 2018, from Noel J. Francisco, Solicitor General, Dep't of Justice, *Trump v. Hawaii*, No. 17-965 (U.S. cert. granted Jan. 19, 2018); *see also, e.g.*, Letter dated August 26, 2016, from Ian Heath Gershengorn, Acting Solicitor General, Dep't of Justice, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (No. 15-1204); Letter dated Apr. 24, 2012, from Michael R. Dreeben, Deputy Solicitor General, Dep't of Justice, *Nken v. Holder*, 556 U.S. 418 (2009) (No. 08-681).

4. In response to a question on the Senate Judiciary Committee Questionnaire about your pro bono work, you responded: "I represented an Oklahoma service member who had been convicted of the unauthorized killing of an Iraqi detainee."

**a. What were the facts of the case and how did you become involved in the representation?**

Michael Behenna is a native of Edmond, Oklahoma, and former United States Army first lieutenant who was sentenced to a 15-year imprisonment in the United States Disciplinary Barracks for the murder of Ali Mansur Mohamed, who was being detained for alleged involvement in a deadly IED attack on Behenna's unit. Behenna's father worked for the FBI and Oklahoma State Bureau of Investigation, and his mother was a longtime Assistant United States Attorney for the Western District of Oklahoma. Michael's ties to the State made his case a fairly high-profile matter within Oklahoma, and so I was generally aware of his case. I became involved after one of my former professors at the University of Oklahoma College of Law, who sometimes works on litigation with the ACLU and other entities, approached me and asked if I would help him work on Behenna's appeal on a pro bono basis. I do not recall the specifics of how my professor came to be involved in the case. I agreed, and worked with that professor for several months on the case. Behenna ultimately chose to continue utilizing his trial counsel as counsel of record for his appeal, but we provided research and advice to that attorney and the Behenna family.

**b. At what stage of litigation did you become involved?**

As I recall, Behenna's case was on appeal to the United States Court of Appeals for the Armed Forces when I became involved.

**c. What was the outcome of this matter?**

As I recall, Behenna lost his appeal 3-2, but his sentence was later reduced for reasons that were raised in his appeal. From my recollection, he was ultimately released after serving a little less than five years in a federal prison.

5. Please respond with your views on the proper application of precedent by judges.

**a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

It is never appropriate for lower courts to depart from Supreme Court precedent.

**b. Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

All Supreme Court precedent is binding on lower court judges, and those judges should treat all such precedents as binding unless and until the Supreme Court overrules them. In certain circumstances, however, it might be appropriate for a lower court judge to point out gaps in the law or circuit conflicts regarding proper application of a Supreme Court precedent that the lower court judge believes might warrant the Supreme Court's attention.

**c. When, in your view, is it appropriate for a district court to overturn its own precedent?**

The need for predictability in the law should make a district court hesitant to depart from its past decisions. But such action might sometimes be appropriate where the rationales underlying a prior decision are determined to be flawed or outdated.

**d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

The Supreme Court has made clear that only it has the "prerogative . . . to overrule one of its precedents." *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016). As a nominee to a lower federal court, I cannot properly comment on the Supreme Court's exercise of a prerogative that it alone holds.

6. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece . . . one of the

things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is difference than judicial selection in past years...."

- a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law?" If so, by whom, what was asked, and what was your response?**

I do not recall anyone in the Administration asking me about my views on administrative law.

- b. What are your "views on administrative law"?**

As a nominee for a district court, I will faithfully apply all Supreme Court and Tenth Circuit precedents relating to administrative law.

7. On your Senate Questionnaire, you indicate that you have been a member of the Oklahoma City Lawyers Chapter of the Federalist Society since 2010. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

- a. Could you please elaborate on the "form of orthodox liberal ideology which advocates a centralized and uniform society" that the Federalist Society claims dominates law schools?**

The statements you reference are not mine, so I cannot speak to what they reference.

- b. How exactly does the Federalist Society seek to "reorder priorities within the legal system"?**

Please see my answer to Question 7(a) above.

- c. What "traditional values" does the Federalist society seek to place a premium on?**

Please see my answer to Question 7(a) above.

8. When Chief Justice Roberts was before the Committee for his nomination, Senator

Specter referred to the history and precedent of the Roe case law as “super-stare decisis.” One text book on the law of judicial precedent, co-authored by Justice Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, THOMAS WEST, p. 802 (2016)) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, THOMAS WEST, p. 802 (2016))

**a. Do you agree that *Roe v. Wade* is “super-stare decisis”? “superprecedent”?**

From the perspective of a lower court nominee, all Supreme Court precedent is equally binding, and I will faithfully apply all such precedents.

**b. Is it settled law?**

*Roe* is Supreme Court precedent binding on all lower courts. If confirmed, I will faithfully apply it and all other such precedents.

9. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. Do you acknowledge that *Obergefell*’s holding is now settled law?

*Obergefell* is Supreme Court precedent binding on all lower courts. If confirmed, I will faithfully apply it and all other such precedents.

10. At any point during the process that led to your nomination, did you have any discussions with anyone — including but not limited to individuals at the White House, at the Justice Department, or at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

11. Please describe with particularity the process by which you answered these questions.

I drafted answers to each of these questions and then solicited feedback on my answers from members of the Office of Legal Policy at the United States Department of Justice. I revised my answers in light of that feedback, but the answers to each question are my own.

**Senator Dick Durbin**  
**Written Questions for Britt Grant, Patrick Wyrick and Jane Nitze**  
**May 30, 2018**

For questions with subparts, please answer each subpart separately.

**Questions for Patrick Wyrick**

1. You served for six years as the Oklahoma Solicitor General, working in the office of Oklahoma Attorney General Scott Pruitt. In this capacity you supervised appellate litigation on behalf of Attorney General Pruitt's office, and you filed amicus briefs in cases such as *Hobby Lobby* and *King v. Burwell*.

- a. **Did you coordinate with Attorney General Pruitt on litigation decisions, such as the decision whether or not to file an amicus brief in particular cases?**

As a litigator for the State, I advised the Attorney General on many litigation matters. The decision on whether to file a case or a particular amicus brief, however, rested with the Attorney General alone.

- b. **What was your working relationship with Mr. Pruitt, who is now the EPA Administrator?**

Then-Attorney General Pruitt appointed me to the position of Solicitor General. During my time as Solicitor General, he was my ultimate boss, although I reported directly to the First Assistant Attorney General. I was honored that the Attorney General entrusted me to litigate cases on the State's behalf, and it was a privilege to spend nearly six years representing the State I so dearly love.

2. On May 22, The Leadership Conference on Civil and Human Rights submitted a letter strongly opposing your nomination. The letter said:

Mr. Wyrick worked closely with then-Attorney General Scott Pruitt to help the oil and gas industry advance its extreme anti-environment agenda. Emails that have been produced and published by the New York Times demonstrate this unseemly relationship. In one email, for example, a lobbyist for Devon Energy emailed Mr. Wyrick and praised him for a letter – ghost written by Devon Energy – that Mr. Pruitt sent on state government letterhead to the Environmental Protection Agency challenging its methane regulations. The emails demonstrate many other communications and collaborations between Mr. Wyrick and Devon Energy. According to his Financial Disclosure Report submitted to the Senate, Mr. Wyrick owns shares of Devon Energy. In February 2017, the Oklahoma Supreme Court – to which Mr. Wyrick had just been appointed – blocked a trial court's order to have more of Mr. Pruitt's emails made public.

- a. **How would you explain your relationship with Devon Energy when you were Solicitor General?**

Devon Energy is a large Oklahoma employer and, as an Oklahoma-based company, I understand it would sometimes raise issues of concern to various Oklahoma governmental agencies, including the Office of Attorney General. If such an issue was brought to my attention, I would—as I would with any such concern brought to the office—attempt to direct the issue to the person in our office best suited to evaluate the matter and determine if any action was appropriate.

- b. **Should Mr. Pruitt’s emails involving your work with Devon Energy be made available for this Committee to review?**

It would be improper for me to opine on matters implicating a former client’s communications and privileges.

3.

- a. **Do you believe that judges should be “originalist” and should adhere to the original public meaning of constitutional provisions when applying those provisions today?**

From the perspective of a lower court judge, the original public meaning of a constitutional provision should be considered when binding precedent from the Supreme Court says that the original public meaning should be considered. I would faithfully apply all binding precedent, regardless of the particular methodology the Supreme Court used in making its decision.

- b. **If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today?** The Foreign Emoluments Clause in Article I, Section 9, Clause 8, of the Constitution provides that:

...no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or title, of any kind whatever, from any King, Prince, or foreign State.

I have not had occasion to study the Foreign Emoluments Clause or any Supreme Court precedent interpreting it. There is, however, litigation regarding this Clause. *See District of Columbia v. Trump*, 291 F. Supp. 3d 725 (D. Md. 2018). Accordingly, under Canon 3(A)(6) of the Code of Conduct for United States Judges, I cannot comment further.

4. You say in your questionnaire that you have been a member of the Federalist Society since 2011.

- a. **Why did you join the Federalist Society?**



I joined after an associate at my former law firm became involved with a local chapter and began inviting me to events. I found the events to be a great source of thought-provoking legal debate.

- b. **Was it appropriate for President Trump to publicly thank the Federalist Society for helping compile his Supreme Court shortlist?** For example, in an interview with Breitbart News' Steve Bannon on June 13, 2016, Trump said "[w]e're going to have great judges, conservative, all picked by the Federalist Society." In a press conference on January 11, 2017, he said his list of Supreme Court candidates came "highly recommended by the Federalist Society."

As a judicial nominee, I am barred by Canon 5 in the Code of Conduct for United States Judges from commenting on political matters.

- c. **Please list each year that you have attended the Federalist Society's annual convention.**

I have attended the Federalist Society's annual convention, but I do not have records or memories of each time I attended that event. As best as I can recall, I have attended portions of that event on three occasions, in 2012, 2014, and 2017.

- d. On November 17, 2017, Attorney General Sessions spoke before the Federalist Society's convention. At the beginning of his speech, Attorney General Sessions attempted to joke with the crowd about his meetings with Russians. Video of the speech shows that the crowd laughed and applauded at these comments. (See <https://www.reuters.com/video/2017/11/17/sessions-makes-russia-joke-at-speech?videoId=373001899>) **Did you attend this speech, and if so, did you laugh or applaud when Attorney General Sessions attempted to joke about meeting with Russians?**

No.

5.

- a. **Is waterboarding torture?**

I have not had occasion to study this issue in depth, but it is my understanding that under federal law waterboarding constitutes torture where it is intentionally used "to inflict severe physical or mental pain or suffering" upon a detainee. 18 U.S.C. § 2340(1).

- b. **Is waterboarding cruel, inhuman and degrading treatment?**

I have not had occasion to study this issue in depth, but it is my understanding that federal law provides that no person in the custody or under the control of the United States Government may be subjected to any interrogation technique not authorized in the

Army Field Manual. 42 U.S.C. § 2000dd-2(a)(2). It is my understanding that waterboarding is not authorized in the Army Field Manual.

**c. Is waterboarding illegal under U.S. law?**

Please see my answers to Questions 5(a) and 5(b) above.

**6. Was President Trump factually accurate in his claim that 3 to 5 million people voted illegally in the 2016 election?**

I have not studied this question. Moreover, Canon 5 of the Code of Conduct for United States Judges prohibits me from commenting on political matters.

**7. Do you think the American people are well served when judicial nominees decline to answer simple factual questions?**

Judicial nominees should answer questions truthfully and to the maximum extent permitted by the Code of Conduct for United States Judges and the rules of privilege.

**8. During the confirmation process of Justice Gorsuch, special interests contributed millions of dollars in undisclosed dark money to a front organization called the Judicial Crisis Network that ran a comprehensive campaign in support of the nomination. It is likely that many of these secret contributors have an interest in cases before the Supreme Court. I fear this flood of dark money undermines faith in the impartiality of our judiciary.**

The Judicial Crisis Network has also spent money on advertisements supporting a number President Trump's nominees.

**a. Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Judicial Crisis Network in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.**

I have no knowledge of any such donations. I am not aware of the Judicial Crisis Network supporting my nomination. As to whether any such donations are problematic, that is a question of ongoing public debate on which Canon 5 of the Code of Conduct for United States Judges prohibits me from opining.

**b. If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have full information when you make decisions about recusal in cases that these donors may have an interest in?**

If confirmed, I would apply the recusal requirements specified in 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and all pertinent advisory opinions.

Beyond that, the disclosure or nondisclosure of any such donations constitutes a matter of ongoing public debate on which Canon 5 of the Code of Conduct for United States Judges prohibits me from opining.

- c. **Will you condemn any attempt to make undisclosed donations to the Judicial Crisis Network on behalf of your nomination?**

Please see my answers to Questions 8(a) and 8(b) above.

9.

- a. **Can a president pardon himself?**

I have not had occasion to consider this question, and thus cannot offer an informed opinion.

- b. **What answer does an originalist view of the Constitution provide to this question?**

Please see my answer to Question 9(a) above.

10. **In your view, is there any role for empathy when a judge is considering a case?**

Generally, a federal judge's oath requires the judge to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453. I am aware of instances, however, where the law directs that a judge take into account the status of a litigant, such as when construing the pleadings of a *pro se* party, or when sentencing a criminal defendant pursuant to the Sentencing Reform Act, which directs that a judge should take into account the history and characteristics of the defendant when arriving at an appropriate sentence. 18 U.S.C. § 3553(a)(1).

Nomination of Patrick Robert Wyrick  
United States District Court  
For the Western District of Oklahoma  
Questions for the Record  
Submitted May 30, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
  - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

Yes, I think it aptly illustrates a judge’s role in applying the law.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Some judicial decisions, such as the approval of a request for injunction, require a judge to balance the relative hardships on the parties that would flow from the decision. Others, such as those involving interpretation of a statute, sometimes require a judge to consider whether the interpretation would lead to an absurd result. But generally speaking, it is a judge’s job to follow the law and to leave practical consequences to the political branches. And in all cases, a judge should fairly apply the law to the facts at issue in the case before him or her without regard to the judge’s personal view of the outcome that will result from that ruling.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”
  - a. What role, if any, should empathy play in a judge’s decision-making process?

Please see my answer to Question 10 from Senator Durbin.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

A judge should not allow life experiences to impair his or her ability to apply the law faithfully and impartially.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

It is never appropriate for a judge to ignore binding precedents from a higher court.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not

have the same kind of resources to spend on their legal representation as large corporations?

If confirmed as a federal district court judge, I will faithfully adhere to my oath of office, which requires that I “administer justice without respect to persons, and do equal right to the poor and to the rich.” 28 U.S.C. § 453. In my time as a Justice of the Oklahoma Supreme Court, I have sought to do the same. I have sided with individuals suing hospitals over billing practices, *Cates v. Integris Health, Inc.*, 2018 OK 9, 412 P.3d 98; with parents suing a hospital over alleged malpractice, *Andrew v. Depani-Sparkes*, 2017 OK 42, 396 P.3d 210, 225 (Wyrick, J., concurring in judgment); with employees seeking to sue over work-related injuries, *Lind v. Barnes Tag Agency*, 2018 OK 35, --- P.3d --- (Wyrick, J., concurring); *Odom v. Penske Truck Leasing Co.*, 2018 OK 23, 415 P.3d 521; with a homeowner against a foreclosing lender, *Green Tree Servicing LLC. v. Dalke*, 2017 OK 74, 405 P.3d 676 (Wyrick, J., concurring in judgment); with home sellers against their realtor, *Green Meadow Realty Co. v. Gillock*, 2018 OK 42, --- P.3d ---; and against an association of oil and gas companies seeking to block an attempt to increase the gross-production tax for purposes of funding a teacher pay raise, *Oklahoma Indep. Producers Ass’n v. Potts*, 2018 OK 24, 414 P.3d 351, 360 (Wyrick, J., concurring specially).

- a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

Abusive discovery practices should trouble us all. They increase the cost of litigation in federal court and create barriers to litigants’ ability “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. A federal judge should administer the Federal Rules of Civil Procedure with Rule 1’s statement of purpose in mind.

5. Do you believe that discrimination (in voting access, housing, employment etc.) against minorities—including racial, religious, and LGBT minorities—exists today? If so, what role would its existence play in your job as a federal judge?

Yes. As a federal judge, I would faithfully apply all constitutional provisions, statutes, and other laws designed to stamp out such discrimination.

6. On September 16, 2016, during a panel at Antonin Scalia Law School, you said, “I think at this point I’m in the Phil Hamburger school of the entire administrative state is unlawful . . . .” I think we have all sorts of basic, fundamental, Constitutional problems with the nature of the current administrative state.” During your confirmation hearing, in reference to these comments, you said you were talking as “an advocate litigating on behalf of the State of Oklahoma,” and that “I don’t believe the entire administrative state is unlawful.”

- a. Your 2016 statements were in the first person (“I think . . .,” “I’m in the Phil Hamburger school . . .,” “I think we have all sorts of . . . problems”), which indicates you were speaking about your personal beliefs not the positions of your client. Did you at any time in your 2016 remarks state that the views you were discussing were not your own, but

instead the positions of your client?

As I recall, the panel discussion to which you refer was titled “Standing for States and Environmental Harms.” I was there to speak about standing for States—the State of Oklahoma in particular—and my comments related to the arguments I was making or considering making in litigation on behalf of the State of Oklahoma with respect to its standing to sue in particular matters.

- b. Do you still consider yourself in the “Phil Hamburger school,” and do you still believe in Professor Hamburger’s critique of the administrative state as unconstitutional? If yes, how do you expect federal agencies to have a fair shake in your courtroom? If no, what changed your view?

I am no longer an advocate for the State of Oklahoma, and have left behind those advocacy positions in favor of my neutral role as a judge. As a judge, it is clear that the administrative state is not unconstitutional, as binding precedents from the Supreme Court and Tenth Circuit make clear. If confirmed, I will faithfully apply those precedents. I will give all litigants a fair shake in my courtroom, and if a litigant seeks my recusal or I believe my impartiality might be reasonably questioned, I will scrupulously apply the recusal requirements specified in 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and all pertinent advisory opinions.

- c. What are the “basic, fundamental, Constitutional problems with the nature of the current administrative state” of which you spoke?

I do not recall specifically what I was referencing in that particular exchange with other panel members. I was likely referring to certain arguments the State of Oklahoma had developed relating to arguments made when challenging administrative action, whereby the State of Oklahoma argued that the nature of the regulatory actions in question implicated constitutional anti-commandeering principles.

- 7. You gave 16 speeches (9 out-of-state) to conservative advocacy groups – 14 to the Federalist Society and 2 to the Rule of Law Defense Fund.
  - a. In each of those speeches, were you advocating on behalf of a client, or were the views you presented your own?

I was always cognizant of my role as Solicitor General and always strove to ensure that I, at all times, provided public comments that were consistent with the positions of my client, the State of Oklahoma. My view of my ethical obligations to my client was that, even when sitting on my back porch talking to a family member, my duty of loyalty to my client required me to be cognizant of my client’s position on a particular subject and not create daylight between myself and my client with my words. In other words, regardless of whether I was speaking on my own time or otherwise, the source of the views I expressed did not change.

- b. What compensation did you receive, including but not limited to speaker’s fees, food, travel, and lodging?

I don't recall ever being compensated for speaking. With respect to travel costs, please see my answer to Question 7(c) below.

- c. What entity paid for your food, travel, lodging, and other expenses? If the answer to this question is an entity other than the state of Oklahoma, please provide copies of all paperwork you filed with the Oklahoma Ethics Commission regarding your compensation and reimbursement for those events.

Typically, invitations to speak are accompanied with an offer to cover the necessary expenses to get to and from the engagement, and given that I was quite sensitive to the State's always tenuous budget situation, I would typically decline any invitation that would impose any cost on the State. For in-state speaking engagements and other work, I would drive my own vehicle and would decline reimbursement for mileage or anything of the sort. For those not within driving distance, I would typically arrange travel through the hosting entity. I am no longer an employee of the Office of Attorney General, and thus don't have access to any files or paperwork relating to such matters.

- d. If the state of Oklahoma paid for your expenses to any of these speeches, please provide the Committee with a copy of your Requisition for Travel form and its approval by the appropriate state agencies.

Please see my answer to Question 7(c) above.

- e. Please explain why you do not have notes, transcripts, or recordings for 15 of these 16 speeches.

When speaking, I will sometimes jot down a few bullet points in case of memory failure, but I typically work from memory rather than notes. If I made any notes, I generally had no reason to retain them once I had spoken, particularly not years after the fact when I've moved on to a new role in which I no longer have occasion to speak on topics relating to my advocacy on behalf of the State. As noted in my response to Question 12(d) of my questionnaire, I have provided the committee with notes and recordings where they were still available.

- 8. In response to my questions about your role in the coordination efforts between Devon Energy and Attorney General Pruitt's office, you testified:

"I didn't recall the particular email you are referencing until it was brought to my attention a couple of days ago. As best I can recall someone emailed me a draft letter. I would have – I'm a litigator. I handle litigation issues. I would have passed it on to the appropriate person in the office who would have reviewed it and then action on that letter would have been taken by those people in the office."

Attached are eleven email exchanges between you, your subordinates, others in the Oklahoma Attorney General's Office, and Bill Whitsitt, Devon Energy's Executive Vice President of Public Affairs.

- September 2, 2011

- Whitsitt emailed you to pass along an attached draft letter to the EPA about methane estimates.
- October 19, 2011
  - The AG's Chief of Staff Drwenski emailed Whitsitt to let him know that the AG office had submitted his draft letter to the EPA. She copied you on her email.
  - Whitsitt responded to Drwenski's email with enthusiastic thanks. He too copied you on his email.
- January 18, 2013
  - Whitsitt emailed you to thank you for your help with a BLM rule making about hydraulic fracturing. He also attached a notice that expressed the intent of Northeastern states to sue for more methane regulation. Whitsitt mentioned that you and he had discussed the notice and promised to be in touch about next steps.
  - You replied to Whitsitt and asked whether any immediate action was necessary.
- January 19, 2013
  - Whitsitt responded that the next step would be to draft a warning to EPA and OMB.
- March 12, 2013
  - Whitsitt emailed you to thank you for a conversation he had had with you. He also attached again the Northeastern states' notice of intent to sue.
  - Whitsitt's assistant Sheila Harder then sent you instructions on how to submit the letter about hydraulic fracturing to OMB.
- March 21, 2013
  - Whitsitt emailed you a draft letter in response to the Northeastern states' notice of intent to sue over methane. He also made reference to a discussion he and you had had.
- March 28, 2013
  - Deputy Solicitor General Eubanks emailed Whitsitt and reported that AG Pruitt had submitted the letter about hydraulic fracturing to OMB on March 12, and they discussed a follow-up call to OMB.
- May 1, 2013
  - Eubanks sent Whitsitt a final draft of the letter responding to the Northeastern states' notice and asked Whitsitt for further suggestions.
  - Whitsitt provided Eubanks with line edits and improvements on the draft.
- May 2, 2013
  - Eubanks notified Whitsitt that he had submitted the letter responding to the Northeastern states' notice to the EPA.
- July 18, 2013
  - Eubanks sent a group of state attorneys general, copying you, a sign-on letter to the Department of Interior about the BLM hydraulic fracturing rule.
- August 26, 2013
  - Eubanks notified the co-signing AGs that he was going to submit the letter about the BLM hydraulic fracturing rule to the agency that day. He again copied you on his email.

Regarding these emails I have the following questions:



- a. You testified about the 2011 draft letter: "I would have passed it on to the appropriate person in the office who would have reviewed it and then action on that letter would have been taken by those people in the office." Between September 2 and October 19, 2011 did you communicate with Chief of Staff Drwenski about Whitsitt's draft letter? What was the content of these communications? Did you know that Attorney General Pruitt and/or others on his staff, were working with Devon Energy on this issue? Were you aware that the Attorney General submitted the Whitsitt letter as a comment to EPA?

It has been many years since the events you reference, and I have no memory of speaking to Ms. Drwenski. Given that the email was sent to both of us, I assume I would have spoken to her about it at some point and would have been aware that others on staff (e.g., Ms. Drwenski) had been made aware of the issue. I do not recall being involved in the submission of the letter, and I wouldn't typically be involved in such matters. I do not recall whether I was aware of the letter being sent at the time it was sent, but am now aware that it was.

- b. Whitsitt wrote to you on January 18, 2013: "thanks for the help on this!", referring to a letter to BLM. What help did you provide?

Given the amount of time that has I passed, I have no memory of this email and I do not know what Mr. Whitsitt was referencing.

- c. In the same email from January 18, 2013 Whittsit wrote: "I've attached a copy of the notice we discussed." When and in what setting did you and Whittsit have this discussion? What was the content of the discussion?

I do not recall any such discussion with Mr. Whittsit. Given the context of the email, it appears he is referencing a discussion he had with Attorney General Pruitt.

- d. On March 12, 2013, Whitsitt thanked you for a follow up conversation. When and in what setting did you and Whittsit have this conversation? What was the content of the conversation?

I have no recollection of any such conversation.

- e. On March 21, 2013 Whitsitt sent you a draft letter to be sent to the EPA Administrator and referenced running it through "the clearinghouse we discussed." What was the "clearinghouse" you and Whitsitt discussed? When and in what setting did you have this discussion?

I have no recollection of ever discussing any such "clearinghouse" with Mr. Whitsitt. It is not a term that I can recall being used to describe anything that I worked on.

- f. Did you supervise Deputy Solicitor General Eubanks in the spring and summer of 2013?

Yes.

- g. Eubanks assured Whitsitt on March 28, 2013: “we are trying to get a call with OMB set up.” Were you involved in this effort to get a call with OMB? Did you approve or otherwise advise Eubanks on this course of action? Did Eubanks consult with you about his interactions with Devon Energy?

I do not recall any such call or work to set up such a call. I do not recall Mr. Eubanks speaking to me about a call with OMB.

- h. On March 31, 2013, Devon Energy donated \$125,000 to the Republican Attorneys General Association. AG Pruitt served as Chairman of this Association from November 2011 to November 2013 and was a member of its Executive Committee from November 2013 to November 2015. Were you aware of Pruitt’s role at RAGA during this period? Were you aware of this donation?

During that period, I was aware that General Pruitt served as Chairman of RAGA, but I was not aware of RAGA’s fundraising or the amounts or sources of donations. I have since seen it reported that Devon Energy was a RAGA donor.

- i. Did Whitsitt and you have any other discussions about Devon Energy’s interests before EPA or the Department of Interior beyond the ones to which he explicitly refers in the cited emails? If so, when and in what setting did you have these discussions and conversations? And what was their content?

I don’t recall any such conversations with Mr. Whitsitt. I litigated several matters involving the EPA and the Department of Interior, but I do not recall any involving Devon Energy. As I recall, much of our EPA litigation involved regulations that the natural gas industry either did not oppose, or even supported, since such regulations were often designed to promote the use of natural gas over coal for electricity generation.

- j. These emails suggest that you were actively involved in the coordination efforts between Devon Energy and the Attorney General’s office in regard to agency rule making. Yet, you appeared to deny such active involvement during the hearing. How do you resolve this contradiction?

There is no contradiction. As I explained at the hearing, I was a litigator, and primarily an appellate litigator. Matters relating to rules generally came to my desk when they involved rules we were considering challenging in court either alone or with other states. With respect to non-litigation matters that Oklahomans might send my way, my practice was to direct those matters to the people in the office best suited to evaluate and act on them. Please also see my answer to Question 8(c) above.

- 9. You testified “I’ve held shares at Devon at times.” You also testified that as a judge you “have divested [your]self of shares of individual companies.”

- a. What has your role in the Wyrick Lumber Company been up to the present?

Prior to leaving for college, and throughout my childhood, I was an employee of Wyrick Lumber Company, doing various tasks around the store for my grandfather and father. For most of my life, I was a shareholder in Wyrick Lumber Company, but recently sold my shares in the company to my brother, who runs the Company. Since graduating law school, I have provided my father and brother with occasional legal advice with regard to the Company.

- b. What has your role in B2LPT, LLC been up to the present?

B2LPT is my wife's business entity, which holds her ownership interest in her physical-therapy clinics. Other than my attempts to be a supportive spouse, I have no role in that business.

- c. Why did you not list B2LPT, LLC under "business affiliations" on your Application for Oklahoma Judicial Vacancy?

As I recall, the questionnaire asked me to "List all business affiliations and occupations in which you are engaged outside of the legal profession," which I understood to be asking about my business affiliations and occupations, not those of my wife.

- d. Did you list B2LPT, LLC as an asset on your state supreme court financial disclosure? If you did not, please explain your reasons.

Yes, it is listed on my annual Financial Disclosure Statement.

- e. Please provide any financial disclosure forms and financial documents that you submitted as part of your application to the Oklahoma Supreme Court and that you have since provided to the State of Oklahoma.

I do not recall being asked to provide any financial disclosures forms or financial documents when applying to the Oklahoma Supreme Court. I have filed an annual Financial Disclosure Report with the Oklahoma Ethics Commission since being on the Court. A copy is attached.

10. You testified that one example of your independence as a judge was a majority opinion you wrote shortly after your appointment to the Oklahoma Supreme Court striking down an Oklahoma statute as unconstitutional despite the fact that the law was championed by the governor who had just appointed you and was being defended by the AG office for which you had just stopped working.

- a. Which case were you referring to in your testimony?

*Naifeh v. State ex rel. Oklahoma Tax Commission*, 2017 OK 63, 400 P.3d 759.

- b. On what date did this case come before your court?

*Naifeh* was filed on June 7, 2017.

- c. Did you have any involvement in the case prior to your appointment to the Court, while you were in the Attorney General's office? If so, why did you not recuse yourself?

No, the case was a challenge to a statute that wasn't enacted until after I had been appointed to the Court. *See* Smoking Cessation and Prevention Act of 2017, ch. 369, 2017 Okla. Sess. Laws 1492, 1494 (enacted May 31, 2017, which was more than three months after my appointment)

11. Regarding your residency:

- a. At what address did you live at the time of your birth? For how long was that your residence?

Respectfully, the inquiries here and in Questions 12 through 14 concern a subject—my eligibility to serve on the Oklahoma Supreme Court—that has been resolved by the bipartisan Oklahoma Judicial Nominating Commission, which Oklahomans have selected as the entity to make determinations on the qualifications for judicial office. That Commission concluded that I was qualified to serve on the Oklahoma Supreme Court, and the Oklahoma Supreme Court—noting that “the Judicial Nominating Commission’s decisions are valid when decided by a majority of its members”—long ago rejected a challenge to that conclusion as both untimely and brought by parties lacking standing. *Spencer v. Wyrick*, 2017 OK 19, ¶ 3 n.4, 392 P.3d 290 n.4. In an abundance of candor, I nonetheless have answered these inquiries to the best of my ability. I lived with my parents at Rural Route 4, Box 1530, Atoka, Oklahoma 74525, from the time I was born until I left for college in the fall of 1999.

- b. Please list every city and county in which you have voted from 2000 to the present.

I have not kept records, but as I recall, I have voted in Atoka, Atoka County; in Norman, Cleveland County; and in Moore, Cleveland County.

- c. During your confirmation hearing, you testified that you, your wife, and your children currently live in Cleveland County. Is this true?

Yes.

- d. How long has your primary residence been in Cleveland County?

I have lived and worked in the Oklahoma City area since completing my clerkship with Judge Payne in 2008.

- e. You testified that your children go to school in Cleveland County. Is this true?

Yes.

f. You and your wife work in the Oklahoma City metropolitan area. Is this true?

Yes.

g. You own a house in Cleveland County. Is this true?

Yes.

h. Your wife continues to be a sworn resident and registered voter of Cleveland County. Is this true?

Yes, she is registered in Cleveland County.

i. Do you currently own property in Atoka County? If so, when did you purchase it? Why did you purchase that property when you did?

Yes. I acquired it in 2016, for familial reasons.

j. In litigation brought by the Oklahoma ACLU, it was alleged that the deed to a property in Atoka was transferred to you by other members of your family. Is that allegation correct? It was also alleged that the deed stated “the property is not currently a homestead.” Is that allegation correct? In your view, what does it mean that the Atoka property was not “currently a homestead”?

Yes, I acquired the home from my parents, after they moved to Galveston, Texas. I do not recall if the deed says anything about a homestead. I did not draft the deed nor request the inclusion of any such language, so I cannot speak as to why it might have been included.

k. Since you obtained that property, how many days have you resided there? Does anyone else reside in that property?

My parents occasionally use the house when in Atoka for business or to visit family. One of my younger sisters, who lived in the house prior to my parents moving to Galveston, Texas, continues to live there. I am frequently in Atoka, visiting my grandmother, brother, and other family, and serving as a volunteer pitching coach for the high school baseball team. Due to work and family obligations, however, I typically drive to and from Atoka on the same day rather than spend the night, and use the house for things like changing clothes and other household needs, and the surrounding property for fishing and other outdoor activities.

12. Under Oklahoma law, a person changes his residency when he abandons his former residence with the intention not to return to it, and otherwise demonstrates an intent to change residency. *See Suglove v. Oklahoma Tax Comm'n*, 605 P.2d 1315, 1317 (Okla. 1979); *Moore v. Hayes*, 744 P.2d 934, 937 (Okla. 1987). You attested to being a resident of Atoka County when you transferred your voter registration to Atoka County in the fall of 2016. What facts demonstrate that at the time you registered to vote in Atoka County you had abandoned your prior residence in Cleveland County and demonstrated an intent to live

in Atoka County?

I consider Atoka my home, and the place to which I intend to return once professional obligations have passed and I am able. That is why I am registered to vote there; it is where my family is, and it is the place I consider home.

13. The Oklahoma Constitution requires that a person appointed to the Oklahoma Supreme Court “shall have been a qualified elector in the district for at least one year immediately prior to the date of filing or appointment.” Okla. Const. art. VII, § 2. You were appointed as the Justice representing District 2 on February 10, 2017. Being a qualified elector in District 2 for at least one year prior to the appointment would have required that you were a bona fide resident of District 2 since at least February 10, 2016. *See* 26 O.S. 4-101 (1981); 1984 OK AG 9, ¶10. You voted in Cleveland County March 1, 2016 and you appear to have maintained your residence in Cleveland County since. In light of these facts, how are you qualified to serve as a Supreme Court Justice representing District 2?

Precedents of the bipartisan Oklahoma Judicial Nominating Commission, which Oklahomans have selected as the entity to make determinations on the qualification for judicial office, establish that I am qualified, and that is why that entity concluded as much.

14. Between the fall of 2000 and the spring of 2016, you voted nine times in Cleveland County. To register to vote in Cleveland County, you had to fill out the Oklahoma voter registration form, which states, “You must register to vote at your address of residence” and requires you to attest under penalty of perjury that all the information given on the form, including your residence at the stated address, is true. You also attested under oath in your Application for Oklahoma Judicial Vacancy on October 27, 2016 that you are a resident of District 2 “since birth.” How do you reconcile this apparent contradiction?

There is no contradiction. Given that I lived in Cleveland County, I was certainly eligible to register to vote there, just as I was eligible to register to vote in Atoka County. The law merely requires that I choose one or the other, as a person can only be registered in one place at a time.

15. Regarding your citations in *Glossip v. Gross* and the rebuke you received from Justice Sotomayor, you testified before the Senate Judiciary Committee: “I certainly stand by the citations we made in that brief . . . .” However, you sent a letter of apology to the Supreme Court of the United States on May 13, 2015 admitting to a “citation error.” You wrote: “Respondents regret the citation error. Sincerely, Patrick R. Wyrick.” How do you reconcile this contradiction between your statements?

There is no contradiction. As I recall, the question to which I was responding concerned an exchange I had with Justice Sotomayor at oral argument, an exchange that did not involve any reference to the citation correction referenced in the letter. With regard to the comments Justice Sotomayor made at oral argument, as I explained at my hearing, I respectfully insist that the evidentiary materials she referenced fully supported the arguments we made in the brief. Again, Justice Sotomayor’s written dissent in the case makes no reference to any such dispute with the State’s evidence, and the Court ultimately sided with our position in the case.

16. In your brief to the Supreme Court in *Glossip v. Gross*, one of your key claims was that pentobarbital had become unavailable to the State of Oklahoma. You supported this claim with the representation that Oklahoma's supplier sent a letter to the Oklahoma Department of Corrections (ODOC) declining to provide more of the drug. The letter to which you cited for this claim was redacted, hiding all references that would identify the state that received the letter. A copy of that letter that you submitted as evidence is attached. An unredacted version of that letter was later made public by the media. It is also attached.
- a. The cited letter contained the sentence: "I am the owner and the pharmacist-in-charge of the Woodlands Compounding Pharmacy that has provided TDCJ with vials of compounded pentobarbital." You redacted the sentence to read: "I am the owner and the pharmacist-in-charge of --- that has provided --- with vials of compounded pentobarbital." Did you understand "TDJC" to be a reference to the Texas Department of Criminal Justice? Why did you redact not only the name of the pharmacy, but also the Texas Department of Criminal Justice?

Respectfully, the characterization of pentobarbital's unavailability as a "key claim[]" of Oklahoma in that litigation omits important context. First, the law did not require Oklahoma to prove that alternative drugs were unavailable; rather, it required the plaintiffs to prove that alternatives were available. *Glossip v. Gross*, 135 S. Ct. 2726, 2737 (2015). And, in any event, the plaintiffs argued that the availability of other drugs was irrelevant given the nature of their claim. *Warner v. Gross*, 776 F.3d 721, 732 (10th Cir. 2015). Second, as the majority in the Supreme Court noted, the petitioners did "not seriously contest" the point that pentobarbital was unavailable to Oklahoma. *Glossip*, 135 S. Ct. at 2738. The district court had previously found it "clear" that pentobarbital was unavailable to Oklahoma, Tr. of Ct.'s Ruling at 31, *Warner v. Gross*, No. 5:14-cv-00665-F (W.D. Okla. Dec. 22, 2014), and that factual finding was twice affirmed on appeal. *See Glossip*, 135 S. Ct. at 2738 ("[T]he District Court found that both sodium thiopental and pentobarbital are now unavailable to Oklahoma's Department of Corrections. The Court of Appeals affirmed that finding . . ."). Nor did any of the Justices in dissent contest this point. *See id.* at 2896 (Sotomayor, J., dissenting) (merely noting that the petitioning inmates' "assumption" that alternative drugs were available was "perhaps a reasonable assumption," but stopping short of saying that the drugs actually were available to Oklahoma).

Moreover, I became involved in the *Glossip* litigation only after the Supreme Court granted certiorari. The lower court litigation was handled by attorneys from our Office's Litigation Unit who specialized in such cases. That letter was introduced as evidence during those lower court proceedings long before my entry into the case. I thus had no role in the redaction or submission of the letter you referenced.

I am also not familiar with the acronyms "TDJC" or "TDCJ," and due to the confidentiality laws referenced below, I must refrain from hazarding a guess as to what they stand for.

As I understand it, the letter you reference was made part of the record before the district court as part of a request for a protective order seeking to prevent the plaintiffs

in the case from disclosing the identities of participants in the execution process in violation of state law. Along with an email to a pharmacist who received a bomb threat, and a complaint in a federal lawsuit where an Oklahoma pharmacy was identified as a supplier of execution drugs, the letter was provided as an example of an out-of-state pharmacy electing to stop providing drugs due to threats and harassment to illustrate why such a protective order was necessary to prevent other suppliers from refusing to make those drugs available to the State. Def.'s Mot. for Protective Order & Br. in Support, Doc. No. 64, *Warner v. Gross*, No. 5:14-cv-00665-F (W.D. Okla. Oct. 14, 2014). As required by various state laws requiring that the identity of execution drug suppliers be kept confidential, the State of Oklahoma made redactions removing any information that might lead someone to discovering the identity of both the supplier and end user. *See, e.g.*, Okla. Stat. tit. 22, § 1015(B) (Supp. 2012) ("The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings."); Tex. Gov't. Code Ann. § 552.1081; Tex. Code Crim. Proc. Ann. art 43.14(b) ("The name, address, and other identifying information of the following is confidential and excepted from disclosure . . . any person who participates in an execution...including a person who uses, supplies, or administers a substance during the execution . . . and any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.").

- b. The letter also contained the phrase: "Based on the phone calls I had with Erica Minor from TDCJ regarding . . . ." You redacted this phrase to read: "Based on the phone calls I had with --- from --- regarding . . . ." Why did you redact not only the name of the employee, but again also the Texas Department of Criminal Justice?

Please see my answer to Question 16(a) above.

- c. The letter contained the clause: "I never would have agreed to provide the drugs to the TDCJ." Why did you redact the Texas Department of Criminal Justice?

Please see my answer to Question 16(a) above.

- d. The letter also contained the clause: "However, the State of Texas misrepresented this fact . . . ." You redacted this clause to read: "However, the State of --- misrepresented this fact . . . ." Why did you redact the name of the state at issue?

Please see my answer to Question 16(a) above.

- e. Did you ever provide documentary evidence from the compounding pharmacy to the Supreme Court to support your claim in the brief that "Oklahoma's supplier of compounded pentobarbital . . . declined to continue supplying the drug to Oklahoma"?

Appellate review involves review of an evidentiary record that is created in the lower courts. Once a case arrives at the Supreme Court, the review is limited to that record,



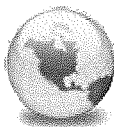
and new evidence is not added to that record. In any event, relying on un rebutted testimonial evidence regarding the Oklahoma pharmacy's communications with the State about its decision to stop supplying the State and regarding the State's inability to find a new supplier, the district court found it "clear" that pentobarbital was unavailable, Tr. of Ct. Ruling at 30-31, *Warner v. Gross*, No. 5:14-cv-00665-F (W.D. Okla. Dec. 22, 2014). As noted in my response to Question 16(a), that factual finding was twice affirmed on appeal, and the plaintiffs failed to identify any "known and available alternatives" to midazolam, the drug the State planned to use. *Warner*, 776 F.3d at 732. Accordingly, there was no reason to provide documentary support for that finding during appellate review. For a summary of the evidence presented to the trial court, I would direct you to the transcript of the court's ruling at pages 29-31.

f. Did you ever provide the Supreme Court with an unredacted version of the letter?

As far as I am aware, an unredacted letter was never part of the lower court record. Accordingly, it was not part of the record that the Supreme Court had before it on appellate review. Regardless, as explained in my response to Question 16(a) above, many states with the death penalty have laws requiring that the identity of those who participate in executions be shielded, thus making it impossible to provide unredacted materials without violating state law.

**The Next Pages Contain the Attachments to Question 8:**

**Emails Between You, Your Subordinates, Others in the Oklahoma Attorney General's  
Office, and Bill Whitsitt from Devon Energy**



EPA letter Draft

Whitsitt, Bill

to:

[REDACTED]

09/02/2011 02:55 PM

Cc:

"Crystal Drwenski [REDACTED]", "Ferate, AJ"

Hide Details

From: "Whitsitt, Bill" <[REDACTED]>

To: "[REDACTED]" <[REDACTED]>

Cc: "[REDACTED]" <[REDACTED]>, "Ferate, AJ" <[REDACTED]>

2 Attachments



ENV - GHG - AG letter to EPA Administrator Jackson on methane estimates (Draft 9-2-2011).docx

Patrick –

Just a note to pass along the electronic version of the draft letter to Lisa Jackson at EPA. You'll note that this version has some suggested cc recipients.

We have no pride of authorship, so whatever you decide to do on this is fine. We're just glad to provide some ideas.

If you have any questions, technical or otherwise, feel free to contact AJ Ferate or me. We'll be sure you have the right people to talk with.

Have a nice holiday weekend.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, OK 73102-8260

[REDACTED] Direct

[REDACTED] Fax

[REDACTED] Mobile

LIPTON.NY TIMES.ORR.2014-11-06 - #0001

file:///C:/Users/234417/AppData/Local/Temp/notesBEF787/~web0705.htm

11/4/2014

**From:** [REDACTED]  
**Sent:** Wednesday, October 19, 2011 1:49 PM  
**To:** Whitsitt, Bill  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** Letter - Lisa Jackson - EPA - methane emissions

Hi Bill,

Thank you again for your kind assistance with General Bruning while he was in town. Scott mentioned to Larry yesterday how much help you all provided.

I have an update for you on the methane emissions letter to Administrator Jackson. Great news - It was in fact sent to Jackson on Oct. 12. We are, however, still drafting the "dear colleague" letter advising states what we sent, why we sent it and encouraging them to do so as well. We will get that letter out this week.

As you recall, the letter mentions incorrect assumptions the EPA makes about Oklahoma producers and their procedures during "flowback." Because of these state-specific references, after discussing it, we felt it was better to encourage other states to look into the matter and send their own, similar letter.

I hope this is helpful. Please feel free to broadly circulate and reference Attorney General Pruitt's letter. Please also do not hesitate to let us know how we can be of further assistance.

Thank you again!  
Crystal Drwenski  
Chief of Staff  
Oklahoma Office of the Attorney General  
[REDACTED]

Office: [REDACTED]  
Cell: [REDACTED]  
313 NE 21st Street, Oklahoma City, OK 73105



RE: Letter - Lisa Jackson - EPA - methane emissions

Whitsitt, Bill to: [REDACTED]

Cc: [REDACTED]; [REDACTED]

10/19/2011 02:04 PM

Crystal –

Outstanding!

The timing of the letter is great, given our meeting this Friday with both EPA and the White House OMB OIRA staff.

We also appreciate the flagging of the issue for other AGs.

Please pass Devon's thanks to Attorney General Pruitt.

And it was our pleasure to help Jon.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, OK 73102-8260

[REDACTED] Direct

[REDACTED] Fax

[REDACTED] Mobile



**From:** [Whitsitt, Bill](#)  
**To:** [REDACTED]  
**Cc:** [Wright, Allen](#); [Rockwood, Brent](#); [Smith, Darren](#); [Luedecke, Richard](#)  
**Subject:** RE: Notice of Intent to Sue  
**Date:** 01/19/2013 12:57 PM

---

I'm not sure. Let's think about some input to EPA and OMB that might warn them that AGs from producing states will be ready to engage – and that EPA should immediately acknowledge that its methane emission estimates, that the states use as part of the suit justification, are erroneous.

Let us see what that might look like and then we'll be back in touch.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

[REDACTED] Direct  
[REDACTED] Fax  
[REDACTED] Mobile



**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, January 18, 2013 9:01 PM  
**To:** Whitsitt, Bill  
**Subject:** Re: Notice of Intent to Sue

Thanks, Bill. Does mean there's now no action item for us to consider?

Patrick R. Wyrick  
Solicitor General  
Oklahoma Office of the Attorney General

[REDACTED]  
Office: [REDACTED] 8  
Cell: [REDACTED]

313 NE 21st Street, Oklahoma City, OK 73105

-----"Whitsitt, Bill" <[REDACTED].com> wrote: -----

To: [REDACTED] " <[REDACTED]>  
From: "Whitsitt, Bill" [REDACTED] >  
Date: 01/18/2013 05:46PM  
Subject: Notice of Intent to Sue

Hi, Patrick.

I just let General Pruitt know that BLM is going to propose a different version of its federal lands hydraulic fracturing rule thanks to input received – thanks for the help on this! We'll see the new proposal sometime next week I believe and we'll be back in touch on potential next steps.

Also, I've attached a copy of the notice we discussed.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

Direct  
Fax  
Mobile



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[attachment "Env - GHG - Methane Emissions - States Notice of Intent to Sue (12-11-12).pdf" removed by Patrick Wyrick/OAG]

**From:** [Whitsitt, Bill](#)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Potential AGs Response to NE States Notice  
**Date:** 03/21/2013 08:37 AM  
**Attachments:** [Env - GHG - Methane Emissions -Seven States Notice AG Letter \(Draft 3-21-13\).docx](#)  
[Env - GHG - Methane Emissions -Seven States Notice AG Letter \(Draft 3-21-13\).docx](#)

---

Patrick –

Attached is a potential first-cut draft of a letter a (bipartisan if possible?) group of AGs might send to the acting EPA administrator and some others in the Administration in response to the NE states' notice of intent to sue for more E&P emission regulation.

It would be a shot across the bow, warning EPA not to not go down a negotiated-rulemaking or wink-at-a sue-and-settle tee-up process. If sent, I'd suggest that it be made public, at least to the Hill and to policy community publications.

It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed.

Please let me know what you and General Pruitt think, or if we can help further.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

[REDACTED] Direct  
[REDACTED] Fax  
[REDACTED] Mobile



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**From:** [Harder, Sheila](#)  
**To:** [REDACTED]  
**Subject:** Contact person for a letter sent to the Office of Management and Budget  
**Date:** 03/12/2013 01:56 PM

---

Hi Patrick!

I hope you are doing well!

I sent the information below to Melissa and Sarah Lenti and then Bill requested that I send it to you as well.

Please see the following contact information for sending a letter to Jeffrey D. Zients, Acting Director of the Office of Management and Budget. Please copy Mr. Boris Bershteyn on this letter. You cannot hand-deliver a letter to Mr. Zients' office and sending it by mail is a lengthy process. I called their office and was directed to also send the letter by email to Mr. Zients' Confidential Assistant, Roxana Moussavian, at [REDACTED]

If you would like to speak with Mr. Zients, please call [REDACTED] and ask for Roxana.

Mr. Jeffrey D. Zients, Acting Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

cc: Mr. Boris Bershteyn  
Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

If you have any questions or concerns please don't hesitate to contact me.

Kind regards,

Sheila Harder  
Executive Assistant to William F. Whitsitt, Ph.D.

Devon Energy Corporation  
333 West Sheridan Avenue  
Oklahoma City, OK 73102  
[REDACTED] Direct  
[REDACTED]

**From:** [Whitsitt, Bill](#)  
**To:** [REDACTED]  
**Cc:** [Rockwood, Brent](#); [Rosen, Rebecca](#)  
**Subject:** States' Intent To Sue on E&P Methane Emissions  
**Date:** 03/12/2013 01:50 PM  
**Attachments:** [Env - GHG - Methane Emissions - States Notice of Intent to Sue \(12-11-12\).pdf](#)  
[Env - GHG - Methane Emissions - States Notice of Intent to Sue \(12-11-12\).pdf](#)

---

Thanks for the conversation...and here is the states' letter to EPA.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

[REDACTED] Direct  
[REDACTED] Fax  
[REDACTED] Mobile



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Subject: RE: Re-proposed BLM Hydraulic Fracturing Rule

---

Clayton –

The re-proposed rule is actually in the review stage at OIRA (OMB's Office of Information and regulatory Analysis) prior to a version being approved for a second round of public comment.

Our goal is to have input to OIRA with a goal of its directing BLM to completely do away with the present thrust.

It is possible that OIRA will conclude its review very soon, hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly. Hope this helps.

I've attached the leaked version of the re-proposal that we're working from.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

Direct  
Fax  
Mobile



**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, March 28, 2013 11:37 AM  
**To:** Whitsitt, Bill  
**Subject:** Re-proposed BLM Hydraulic Fracturing Rule

Mr. Whitsitt,

Sorry to bother you but I have been unable to locate a Federal Register notice for the re-proposed BLM rule on Hydraulic fracturing on public lands. I know AG Pruitt sent a letter to OMB on the rule on March 12, 2013 but I have been unable to determine when the comment period deadline is for the re-proposed rule.

Do you know whether the re-proposed rule has been published in the Federal Register and if so, when the public comment period ends?

Thank you in advance for any assistance.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]

---

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[attachment "Env - HF BLM Reproposed Rule Draft to OIRA (1-18-13) .docx" deleted by Clayton Eubanks/OAG]

**From:** [Clayton Eubanks](#)  
**To:** [Whitsitt, Bill](#)  
**Subject:** RE: Re-proposed BLM Hydraulic Fracturing Rule  
**Date:** 03/28/2013 01:24 PM

---

Thank you Bill, this helps! As you know, in addition to the letter we are trying to get a call with OMB set up.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]

From: "Whitsitt, Bill" [REDACTED] >  
To: [REDACTED] <[REDACTED]>  
Date: 03/28/2013 01:18 PM  
Subject: RE: Re-proposed BLM Hydraulic Fracturing Rule

---

Clayton –

The re-proposed rule is actually in the review stage at OIRA (OMB's Office of Information and regulatory Analysis) prior to a version being approved for a second round of public comment.

Our goal is to have input to OIRA with a goal of its directing BLM to completely do away with the present thrust.

It is possible that OIRA will conclude its review very soon, hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly. Hope this helps.

I've attached the leaked version of the re-proposal that we're working from.

*Bill*

William F. Whitsitt, Ph.D.  
Executive Vice President  
Public Affairs

Devon Energy Corporation  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102  
[REDACTED] Direct  
[REDACTED] Fax

**From:** [Clayton Eubanks](#)  
**To:** [REDACTED]  
**Subject:** EPA Methane letter-7 States NOI  
**Date:** 05/01/2013 10:42 AM  
**Attachments:** [FINAL EPA Methane Letter without signature pages.docx](#)

---

Mr. Whitsitt,

Attached is the final draft of the methane letter to EPA regarding the 7 NE States NOI to sue over the regulation of methane emissions.

We have received good support on this and I would like to get the letter out in the morning. I thought we should insert a sentence or two regarding the recent EPA report indicating their initial estimates on methane emissions for two categories were too high.

Any suggestions?

Thank you.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]

**From:** [Rockwood, Brent](#)  
**To:** [REDACTED]  
**Cc:** [Whitsitt, Bill](#)  
**Subject:** RE: EPA Methane letter-7 States NOI  
**Date:** 05/02/2013 04:55 PM  
**Attachments:** [EPAMethane050213.pdf](#)

---

Clayton: I'm glad the Devon team could help, and thanks for all of your work on this.

Best regards,

Brent Rockwood  
Director, Public Policy & Government Affairs

Devon Energy Corporation  
333 West Sheridan Avenue  
Oklahoma City, OK 73102  
[REDACTED] Direct  
[REDACTED] Mobile



**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, May 02, 2013 4:51 PM  
**To:** Rockwood, Brent  
**Cc:** Whitsitt, Bill  
**Subject:** RE: EPA Methane letter-7 States NOI

I sent the letter today. The final version is attached.

Thanks for all your help on this.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: [REDACTED]

**From:** "Rockwood, Brent" <[REDACTED]>  
**To:** [REDACTED] <[REDACTED]>  
**Date:** 05/02/2013 04:27 PM

Subject: RE: EPA Methane letter-7 States NOI

---

Clayton: I just wanted to follow up to see if you needed anything else from the Devon team. Also, when is AG Pruitt planning to send the letter?

Best regards,

**Brent Rockwood**  
Director, Public Policy & Government Affairs

**Devon Energy Corporation**  
333 West Sheridan Avenue  
Oklahoma City, OK 73102

[REDACTED] Direct  
[REDACTED] Mobile  
[REDACTED]



**From:** Whitsitt, Bill  
**Sent:** Wednesday, May 01, 2013 1:29 PM  
**To:** [REDACTED]  
**Cc:** Wright, Allen; Rockwood, Brent; Smith, Darren; Sandlin, Jesse  
**Subject:** FW: EPA Methane letter-7 States NOI

Clayton –

Here you go. Please note that you could use just the red changes, or both red and blue (the latter being some further improvements from one of our experts) or none.

Hope this helps.

Thanks for all your work on this!

*Bill*

**William F. Whitsitt, Ph.D.**  
Executive Vice President  
Public Affairs

**Devon Energy Corporation**  
333 West Sheridan Avenue Suite 900  
Oklahoma City, OK 73102

[REDACTED] Direct  
[REDACTED] Fax  
[REDACTED] Mobile  
[REDACTED]



Another sign-on opportunity. Attached is a letter we have prepared to the Department of Interior (BLM) on the Bureau of Land Management's Revised proposed hydraulic fracturing rule to apply on federal and Indian lands under BLM control. I think the letter speaks for itself and the issues involved. For a short synopsis, BLM previously issued a proposed rule to regulate hydraulic fracturing on all federal and Indian lands, after comment and a strong push from several States, Tribes, industry and trade groups, the BLM withdrew the proposed rule for revision. On May 24, 2013 the BLM reissued a revised proposed rule, the revised rule, while incorporating some of the changes suggested in comments, is still an unnecessary and over- burdensome rule that duplicates state efforts at an enormous cost to oil and gas producers.

States have an excellent record of protecting the environment and public health, while simultaneously facilitating oil & natural gas development and promoting economic growth. Rather than force an unnecessary, one-size-fits-all regulatory regime on top of carefully crafted state-specific programs, BLM should instead work with states on how best to address any health, safety or environmental issues arising from hydraulic fracturing and related operations on federal lands by deferring to proven state regulatory and enforcement programs. By focusing too much on achieving "consistent" regulation (that we hear from DOI and BLM as being needed), rather than the best regulation, the BLM's proposal fundamentally ignores local and regional differences among states. The attached letter also focuses on the Clean Water Act issues inherent in the BLM proposed rule and questions whether the BLM has any authority to regulate state water resources.

The comment deadline for the proposed rule is August 23, 2013, if your State is interested in joining this letter please let me know on or before **AUGUST 19, 2013.**

Thank you.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: ([REDACTED])  
[REDACTED]

**Swanson, Cory**

---

**From:** [REDACTED]  
**Sent:** Friday, August 23, 2013 10:43 AM  
**To:** [REDACTED]; [REDACTED]; [REDACTED];  
Mattioli, Mark; Fox, Tim; VanDyke, Lawrence; Bennion, Jon; Darkenwald, Scott; Swanson,  
Cory; [REDACTED]; [REDACTED]  
**Cc:** [REDACTED]; [REDACTED]; [REDACTED]  
**Subject:** State Comment Letter on BLM Hydraulic Fracturing - Final  
**Attachments:** BLM Hydraulic Fracturing Rule State Sign-on Letter 8-23-2013.pdf

All,

Attached is the final State comment letter to BLM on the proposed hydraulic fracturing rule.

Thank you for supporting the letter, Oklahoma sincerely appreciates it.

Have a great weekend.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]

**From:** [Melissa Houston](#)  
**To:** [Allen Wright](#)  
**Subject:** Fwd: State Comment Letter on BLM Hydraulic Fracturing - Revised  
**Date:** 08/23/2013 02:03 PM  
**Attachments:** [State Attorneys General Comment Letter-BLM Hydraulic Fracturing Rule 8-23-2013.pdf](#)  
[State Attorneys General Comment Letter-BLM Hydraulic Fracturing Rule 8-23-2013.pdf](#)

---

Sent from the iPhone of Melissa McLawhorn Houston

Begin forwarded message:

**From:** "Clayton Eubanks" <[REDACTED]>  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
**Cc:** "Tom Bates" <[REDACTED]>, "Melissa Houston"  
[REDACTED] <[REDACTED]>, "Patrick Wyrick"  
<[REDACTED]>  
**Subject:** State Comment Letter on BLM Hydraulic Fracturing - Revised

All,

This is the actual letter that is being mailed today and submitted to [Regulations.gov](#), same letter, same content,

Just on slightly different letterhead.

Thanks again.

P. Clayton Eubanks  
Deputy Solicitor General  
Office of the Attorney General of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Tel: ([REDACTED])  
Fax: ([REDACTED])  
[REDACTED]

**The Next Page Contains the Attachment to Question 16:**

**Redacted and Unredacted Excerpts from the Letter That Woodlands Compounding  
Pharmacy Sent to TDCJ**

Dear Sirs and Madam:

I am the owner and pharmacist-in-charge of the [REDACTED]  
the pharmacy that has provided [REDACTED] with vials of compounded pentobarbital.

Based on the phone calls I had with [REDACTED] of [REDACTED] regarding its request for these  
drugs, including statements that she made to me, it was my belief that this information

---

Dear Sirs and Madam:

I am the owner and pharmacist-in-charge of the Woodlands Compounding Pharmacy,  
the pharmacy that has provided TDCJ with vials of compounded pentobarbital.

Based on the phone calls I had with Erica Minor of TDCJ regarding its request for these  
drugs, including statements that she made to me, it was my belief that this information

[...]

would be kept on the "down low" and that it was unlikely that it would be discovered that  
my pharmacy provided these drugs. Based on [REDACTED] requests, I took steps to  
ensure it would be private. However, the State of [REDACTED] misrepresented this fact  
because my name and the name of my pharmacy are posted all over the internet. Now  
that the information has been made public, I find myself in the middle of a firestorm that  
I was not advised of and did not bargain for. Had I known that this information would be  
made public, which the State implied it would not, I never would have agreed to provide  
the drugs to the [REDACTED]

---

would be kept on the "down low" and that it was unlikely that it would be discovered that  
my pharmacy provided these drugs. Based on Ms. Minor's requests, I took steps to  
ensure it would be private. However, the State of Texas misrepresented this fact  
because my name and the name of my pharmacy are posted all over the internet. Now  
that the information has been made public, I find myself in the middle of a firestorm that  
I was not advised of and did not bargain for. Had I known that this information would be  
made public, which the State implied it would not, I never would have agreed to provide  
the drugs to the TDCJ.



# OKLAHOMA ETHICS COMMISSION

PHONE: (405) 521-3451 • FAX: (405) 521-4905 • WEBSITE: WWW.OK.GOV/ETHICS

## FINANCIAL DISCLOSURE STATEMENT FOR ELECTED STATE OFFICERS

Amended:

Full Name of State Officer PATRICK R WYRICK	Filing Year 2017	Name of State Office JUSTICE OF THE SUPREME COURT, DISTRICT 2	Term of Office 02/10/2017 - 12/31/2018
Electronic Mail Address PATRICK.WYRICK@OSCN.NET	Work Phone Number (405) 556-9368	Mailing Address, City, State, Zip Code OKLAHOMA JUDICIAL CENTER, 2100 N. LINCOLN BLVD, OKLAHOMA CITY, OK, 73105	

"Elected state officer" shall mean a state officer who is subject to election or retention.

- ☒ I understand that as an elected state officer, as defined above, I am required to comply with the Rules of the Oklahoma Ethics Commission and that, according to the Oklahoma Supreme Court, those Rules have the "weight of statutes."
- ☒ I have read and understand the Conflicts of Interest Rules in Rule 4 of the Ethics Rules including that as part of the Ethics Rules I am required to comply with more restrictive rules or policies established by the agency I serve as well as more restrictive provisions of the statutes of Oklahoma.

"Agency" is defined in Rule 4 to include any entity of state government created by the Constitution or laws of the State of Oklahoma and supported in whole or in part by state funds or entrusted with the expending of state funds or administering of state property or otherwise exercising the sovereign power of the State of Oklahoma.

- ☒ I understand the Ethics Commission Rules are available in the Oklahoma statutes at Title 74, Chapter 62, Appendix I, and on the Ethics Commission website at [www.ethics.ok.gov](http://www.ethics.ok.gov).
- ☒ I understand the Ethics Commission provides continuing education programs, educational materials and is available to answer questions and provide analysis regarding the application of Ethics Rules to specific fact situations.

### 1. Private Gain.

- ☒ I understand that elected state officers cannot use his/her State office (1) for his/her own private gain; (2) for the endorsement of any product, service or enterprise; (3) for the private gain of a family member or person with whom he/she is affiliated in a nongovernmental capacity, including nonprofit organizations of which he/she is a member or officer; or (4) for the private gain of persons with whom he/she is seeking employment or business relations.

### 2. Solicitation of funds for civic, community or charitable organizations.

- ☐ **Non-Judicial Officers.** I understand it is not a misuse of office, under the Ethics Rules, to promote or solicit funds for civic, community or charitable organizations, including those promoting businesses or industries, or civic, community or charitable fund-raising events provided I receive nothing for doing so except the costs associated with the participation in a fund-raising promotion or event paid for from funds of a charitable organization.
- ☒ **Judicial Officers.** I understand the more restrictive provisions of the Code of Judicial Conduct also govern my participation in the solicitation of funds for civic, community or charitable organizations.

3. **Use of office, title or authority.**

- ☒ I understand an elected state officer cannot use or permit the use of his/her office or title or any authority associated with his/her state office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to the state officer, the family members of the state officer, or person with whom he/she is affiliated in a nongovernmental capacity, except to the extent otherwise permitted or authorized by the Constitution, statutes or by the Ethics Rules.

4. **Material Financial Interest.**

- ☒ I understand I must disclose, on this form, any material financial interest as defined below, that I, my spouse or my dependent(s) had in the preceding calendar year covering January 1, 2017 through December 31, 2017.

A material financial interest shall mean one or more of the interests identified below:

- an ownership interest in a private business, including but not limited to, a closely held corporation, limited liability company, Subchapter S corporation or partnership for which I, my spouse or my dependent(s) is a director, officer, owner, manager, employee, or agent or any private business, closely held corporation or limited liability company in which I, my spouse or my dependent(s) owns or has owned stock, another form of equity interest, stock options, debt instruments, or has received dividends or income worth \$20,000.00 or more;
- an ownership interest of 5% or more in a publicly traded corporation or other business entity;
- an ownership interest in a publicly traded corporation or other business entity from which dividends or income, not to include salary, of \$50,000.00 or more were derived during the preceding calendar year;
- an interest that arises as a result of service as a director or officer of a publicly traded corporation or other business entity;
- income derived from employment, other than compensation pertaining to the office subject to election or retention, in the amount of \$20,000.00 or more.

Disclose in the table below the name and address of all entities in which you, your spouse or your dependents had a material financial interest in the preceding calendar year, and who has the interest.

Name and Address of Entity	Description (optional)	Filer / Spouse / Dependent
B2LPT LLC 923 N. ROBINSON AVE. OKLAHOMA CITY, OK 73102		SPOUSE

- ☐ **Amended Financial Disclosure Statement Certification.** I certify this amendment is not made for the purpose of reporting information that was intentionally omitted or misstated on the original or previously filed Financial Disclosure Statement.

**Acknowledgement:** By signing, electronic or otherwise, my name below, I, acknowledge that the information submitted is complete, true and accurate as of the date submitted. I understand the failure to provide such information is a violation of the Ethics Rules of Oklahoma. I understand that I can update the information above at any time by filing an amended Financial Disclosure Statement.

4/4/2018

Date

PATRICK R WYRICK

Signature



**Nomination of Patrick Robert Wyrick, to be United States District Judge for  
the Western District of Oklahoma  
Questions for the  
Record Submitted May  
30, 2018**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has said that a court should look to whether a right is “objectively, deeply rooted in this Nation’s history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). I would also look to other relevant cases from the Supreme Court for guidance on other factors that should be considered. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261 (1990); *Loving v. Virginia*, 388 U.S. 1 (1967); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

- b. Would you consider whether the right is deeply rooted in this nation’s history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation’s history and tradition?

Yes. Under *Glucksberg*, the inquiry focuses on historical practice under the common law, practice in the American colonies, the history of state statutes and judicial decisions, and long-established traditions. *See* 521 U.S. at 710-16. I would look to Supreme Court and Tenth Circuit precedents to ascertain which sources are relevant to the inquiry.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of a court of appeals outside your circuit?

Yes, I would consider whether the right has previously been recognized by Supreme Court or Tenth Circuit precedent. I would consider precedent from other circuits if precedent from my circuit did not resolve the question.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right had been recognized by Supreme Court or circuit precedent?

Yes, and yes.

- e. Would you consider whether the right is central to “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life”? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Yes, both *Casey* and *Lawrence* are binding Supreme Court precedents. And I would apply both of them, along with all Supreme Court precedent.

- f. What other factors would you consider?

I would consider any other factor required by binding precedent from the Supreme Court and the Tenth Circuit.

- 2. Does the Fourteenth Amendment’s promise of “equal protection” guarantee equality across race and gender, or does it only require racial equality?

The Fourteenth Amendment applies to both race and gender. See *United States v. Virginia*, 518 U.S. 515 (1996).

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

From the perspective of an inferior court judge, this argument raises a purely academic question. If confirmed, I would be bound to apply all Supreme Court precedent, no matter what arguments are made to the contrary.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I am familiar with the case, but do not know why that case did not reach the Supreme Court until 1996.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

In its *Obergefell* decision, the Supreme Court held that the Fourteenth Amendment requires same-sex couples to be afforded the right to marry “on the same terms accorded to couples of the opposite sex.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015).

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

It is my understanding that the lower federal courts are currently deciding the answer to this question, and that the Supreme Court has not yet answered it. Because it is a matter pending or impending before a court, Canon 3(A)(6) of the Code of Conduct for United States Judges prohibits me from answering.

3. The Supreme Court has decided several key cases addressing the scope of the right to privacy under the Constitution.
  - a. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

Yes, the Supreme Court so held in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). If confirmed, I would apply *Griswold*, *Eisenstadt*, and all other binding Supreme Court precedents.

- b. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

Yes, the Supreme Court so held in numerous cases including *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); and *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). If confirmed, I would apply *Roe*, *Casey*, *Whole Woman's Health*, and all other binding Supreme Court precedents.

- c. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

Yes, the Supreme Court held as much in *Lawrence v. Texas*, 539 U.S. 558 (2003). If confirmed, I would apply *Lawrence* and all other binding Supreme Court precedents.

- d. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

N/A

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "Higher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.
  - a. When is it appropriate to consider evidence that sheds light on our changing

understanding of society?

If confirmed as a lower court judge, I would follow all binding Supreme Court precedent and all binding Tenth Circuit precedent. Where those precedents make it appropriate to consider evidence that sheds light on our changing understanding of society, I would do so.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

As the holder of a degree in sociology, I am aware that there is much debate and literature on this subject, and I've recently acquainted myself with the Reference Manual on Scientific Evidence, which examines this subject and discusses various circumstances where science, data, and expert testimony play a role in judicial analysis. If confirmed, I would rely on Supreme Court and Tenth Circuit precedents to determine whether sociological evidence, scientific evidence, and data should be considered in a particular case.

5. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93.
  - a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

I am aware that the answer to this question is debated amongst members of academia. From the perspective of a lower court judge, however, the debate is irrelevant because *Brown* is a binding precedent that I would faithfully apply.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ ‘equal protection,’ and ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-pages/democratic-constitutionalism> (last visited May 30, 2018).

From the perspective of a nominee for a lower court, the judge’s job is to identify the most relevant legal authorities and to apply them faithfully and fairly to the case at hand regardless of the interpretative method utilized by the authors of those legal authorities.

6. You are a member of the Federalist Society, a group whose members often advocate an “originalist” interpretation of the Constitution.
  - a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full

development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Please see my answer to Question 5(a) above.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ ‘equal protection,’ and ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-pages/democratic-constitutionalism> (last visited May 2, 2018).

Please see my answer to Question 5(a) above.

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

In instances where I, as a lower court judge, might be called upon to ascertain the meaning of a constitutional provision, I would consult binding precedents of the Supreme Court and Tenth Circuit. In the rare instances where those precedents don’t provide an answer, I would consider the original public meaning of a constitutional provision dispositive when binding precedent from the Supreme Court says that the original public meaning is dispositive.

- d. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later? What group or groups of people would you consider in such a definition of “public”?

Please see my answer to Question 6(c) above.

- e. What sources of authority would you employ to discern the contours of a constitutional provision?

I would consult binding precedents of the Supreme Court and Tenth Circuit.

- 7. In 2014, you were counsel of record on an amicus brief submitted in support of the respondents in *Sebelius v. Hobby Lobby Stores, Inc.*, *sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). Your brief argued that the Department of Health and Human Services had “substantially burden[ed] the undisputed, sincere, and deeply held religious faith of these citizens of Oklahoma that are otherwise fully protected by the Constitution and laws of the State of Oklahoma,” adding that the coverage mandate “forcibly require[s] [the corporations and their owners] to undertake actions that are contrary to the undisputed, sincere, and deeply held religious faith of these citizens.”
  - a. Should a court inquire into how remote the employer’s involvement is in the

provision of contraception when evaluating the employer's legal claim?

Under the Religious Freedom Restoration Act, such an inquiry may be relevant to whether the law burdens the employer's exercise of religion.

- b. Is there any opt-out procedure that would satisfy an objection to the contraception mandate in the Affordable Care Act?

The answer to this question would depend upon the facts of the particular case. Without knowing more, I can only say that the answer to the question would likely turn on whether, pursuant to the Religious Freedom Restoration Act, the opt-out procedure was a narrowly-tailored means by which to advance the government's compelling interest in guaranteeing access to contraceptives.

- c. When does the law require deference to an employer's religious beliefs that conflict with generally applicable laws protecting others' fundamental rights?

With the Religious Freedom Restoration Act, the Congress has directed that federal laws substantially burdening a person's free exercise of their religion must be justified by a compelling governmental interest, and must be the least restrictive means of advancing that interest. If the law does not satisfy that standard, it cannot be lawfully applied to the citizen.

- 8. In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court rejected religious and moral beliefs as a sufficient justification for a law that criminalized intimate same-sex relationships. Can religious or moral beliefs be the sole basis for the enactment and enforcement of criminal laws, consistent with the Constitution?

Generally speaking, absent a constitutional provision to the contrary, legislatures may enact criminal laws based upon the policy rationales that they find relevant.

- 9. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 865-66 (1984), the Supreme Court stated:

Judges are not experts in the field, and are not part of either political branch of the Government. Courts must, in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policy-making responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices – resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.

- a. Do you agree that the rationale and holding of *Chevron* remain good law?

Yes, *Chevron* and its progeny remain binding Supreme Court precedents, and if confirmed I would faithfully apply those precedents.

- b. Are existing limits on the application of *Chevron* deference sufficient to prevent agencies from overstepping their interpretative authority?

It is my understanding that this is a question that is frequently litigated. Accordingly, under Canon 3(A)(6) of the Code of Conduct for United States Judges, I cannot comment further. If confirmed, I would be bound by the Supreme Court's opinion in *Chevron* and the cases that followed it, and I would apply those precedents faithfully.

- c. If a statute is unclear, what is the appropriate level of deference that should be afforded to an administrative agency's interpretation?

Supreme Court precedents require different levels of deference depending on the circumstances. *See, e.g.,* William E. Eskridge, Jr. & Lauren E. Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan*, 96 Geo. L.J. 1083 (2008) (collecting different deference doctrines). If confirmed, I would apply the appropriate Supreme Court precedents to the facts of the particular case.

10. During oral argument in *Glossip v. Gross*, 135 S. Ct. 2726 (2015), Justice Sotomayor expressed concern that you misrepresented facts to the Supreme Court, stating, "I am substantially disturbed that in your brief you made factual statements that were not supported by the [sources you] cited . . . and in fact directly contradicted [them]. . . . So nothing you say or read to me am I going to believe, frankly, until I see it with my own eyes in the context, okay?"

- a. Did anyone raise these issues with you before you filed the brief with the Court?

No.

- b. It was subsequently reported that you sent a letter apologizing to the Court. Why did you feel the need to write to the Court and offer an apology?

To clarify, the letter you reference was not part of the colloquy with Justice Sotomayor that you reference. With respect to that letter, our response brief inadvertently misidentified something in the record, and since we had no additional opportunities to provide briefing to the Court, we instead sent a letter to the Court to ensure that the Court had the correct citation. For additional context, please see my answers to Question 16 from Senator Whitehouse.

- c. Please provide a copy of the letter that you sent to the Court.

Please find it attached.

- d. Did you face any disciplinary action for your misrepresentations to the Court?

No, because there were no such misrepresentations. The Supreme Court, in fact, sided with our position in toto.

- e. Have you been accused of misrepresenting facts in any other cases?

Not to my recollection.

- f. Federal judges receive lifetime appointments, and diligence and a rigorous commitment to accuracy are necessary attributes for these positions. If your misrepresentations were simply an oversight, then do you agree with me that they do not reflect the diligence and rigorous commitment to accuracy required for service on the federal bench?

There were no misrepresentations, only an inadvertent citation error made by a lawyer working on the case, and which I, as counsel of record on the case, took steps to correct with the Court. My record demonstrates the diligence and rigorous commitment to accuracy required for service on the federal bench.





OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

May 13, 2015

BY UNITED STATES MAIL

Scott S. Harris, Clerk  
Supreme Court of the United States  
One First Street NE  
Washington, DC 20543

Re: *Glossip et al. v. Gross et al.*, No. 14-7955

Dear Mr. Harris:

As the Court is aware from page 19 of Petitioners' Reply Brief, Respondents inadvertently cited a letter as having been sent to the Oklahoma Department of Corrections. The district court's opinion, cited in Respondents' brief, provides the correct citation to the record evidence on the unavailability of pentobarbital to the State and does not rely on this letter. Respondents regret the citation error.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Wyrick".

Patrick R. Wyrick  
Solicitor General of Oklahoma  
*Counsel of Record*

**Questions for the Record**  
**Senator Mazie K. Hirono**  
**Patrick Robert Wyrick, Western District of Oklahoma**

1. Chief Justice John Roberts has recognized that “the judicial branch is not immune” from the widespread problem of sexual harassment and assault and has taken steps to address this issue. As part of my responsibility as a member of this committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I would like each nominee to answer two questions.

**a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

**b. Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

No.

2. You represented the State of Oklahoma in a challenge brought by an Oklahoma citizen against a proposed state constitutional amendment which sought to “forbid courts from looking at international law or Sharia law when deciding cases.” The plaintiff argued that the amendment cast his faith in a bad light, inhibited the practice of his faith, disabled the courts from probating his will according to his wishes, and afforded limited avenues of state court relief to him and other Muslims. Your argument, rejected by the Tenth Circuit, was that the amendment did not unconstitutionally impair the practice of Islam in Oklahoma and dismissed the harms as “speculative.”

Yet, you were also the counsel of record on an *amicus* brief submitted in support of Hobby Lobby, arguing that a corporation with 23,000 employees has rights to the exercise of religion protected by the Religious Freedom Restoration Act, and that it could use those rights to deny the thousands of women it employed access to contraception. Your brief emphasized Oklahoma’s own “long tradition of protecting religious liberty.”

**How do you square these two principles? Is there more to it than one involves Christian beliefs and one involves Muslim beliefs?**

Oklahoma does have a long tradition of protecting religious liberty. Consistent with that principle, I certainly agree that if the constitutional amendment you reference was read as singling out a particular religious group or denomination for disparate treatment, it would run afoul of the denominational-neutrality principle articulated in cases like *Larson v. Valente*, 456 U.S. 228 (1982). That is why, when I became involved in the case for purposes of oral argument of the appeal (I was not involved in the briefing), I offered the Tenth Circuit a saving construction of the amendment, whereby it could be read as applying equally to all international law, and not just to Sharia Law. The Tenth Circuit ultimately rejected that argument, and the State did not seek rehearing or certiorari from that decision.

3. Your Supreme Court amicus brief in support of Hobby Lobby argued that Affordable Care Act’s contraception coverage mandate “forcibly require[s] [the corporations and their owners] to undertake actions that are contrary to the undisputed, sincere, and deeply held religious faith of these citizens.”

Justice Ginsburg’s dissent in *Hobby Lobby*, which was joined by the other two women on the

Supreme Court-- Justices Sotomayor and Kagan--as well as by Justice Breyer, took into account the impact to the employees. She wrote: "The exemption sought by Hobby Lobby and Conestoga would...deny legions of women who do not hold their employers' beliefs access to contraceptive coverage."

**In choosing to file an amicus brief in support of Hobby Lobby, how much did you consider the significant need of the 23,000 Hobby Lobby employees, many of them Oklahoma women working paycheck to paycheck, for access to health care they would now be denied?**

During my tenure as Solicitor General, the decision to file an amicus brief on behalf of the State of Oklahoma was made by the Attorney General of Oklahoma.

4. As Solicitor General for Oklahoma, you were very close to then-Attorney General Scott Pruitt. He has called you his "dear friend and trusted counselor." Nowhere is this clearer than in your work with Mr. Pruitt to gut protections for clean air, clean water, and protect public lands. According to public records requests, you are on numerous emails with oil and gas lobbyists in which they sent talking points and draft language for Mr. Pruitt which he would use nearly word for word. Of course these same lobbyists later made campaign contributions to Mr. Pruitt. I note also that you own stock in Devon Energy, one of the largest oil and gas companies in Oklahoma, a company that directly emailed you a draft letter in 2011 challenging the Obama Administration's methane regulations.

**Given your long record of close cooperation with oil and gas lobbyists at a time when you were in a position of public trust, how can you reassure us that if you are on the court, you will fairly assess claims relating to the environment and apply the law without bias? Why should we believe you?**

I do not currently own stock in Devon Energy. Regardless of the subject matter of the case, I will apply the governing law and precedents without bias. I believe my record as a judge provides evidence that this is so.

5. In your dissent in *Multiple Injury Trust Fund v. Garrett*, you would have denied a permanently disabled worker eligibility for compensation from the state's Multiple Injury Trust Fund. Your dissent seemed to strain to find ways to limit the claimant's access to the relief by holding him to the unnecessarily high standard of having every element of his disability formally adjudicated by the WCC tribunal.

When the Senate considered the nomination of Neil Gorsuch to the Supreme Court, I asked questions about how he disregarded laws that protected American workers, including Alphonse Maddin, the frozen trucker. He said again and again his record didn't matter because he would apply the law. But just last week, Justice Gorsuch was the deciding vote to reverse a century of law and use a cramped reading of the statute to undermine workers' rights in *Epic Systems v. Lewis*. So I want to ask you what I asked him.

**Did the purposes of the Multiple Injury Trust fund to provide relief for permanently disabled workers play any role in your decision?**

I applied the law to the facts of the case and concluded that Garrett lacked the "previous adjudication of disability adjudged and determined by the Workers' Compensation Court" necessary to bring a claim against the Multiple Injury Trust Fund. Okla. Stat. tit. 85, § 171 (Supp. 2005). In doing so, I considered both the purpose of the fund and "the obvious legislative intent over the last twenty years to decrease and limit the Fund's liability," to ensure its continued solvency. *Ball v. Multiple Injury Trust Fund*, 2015 OK 64, ¶ 16, 360 P.3d 499, 507.

**Nomination of Patrick R. Wyrick to the  
United States District Court for the Western District of Oklahoma  
Questions for the Record  
Submitted May 30, 2018**

**QUESTIONS FROM SENATOR BOOKER**

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>1</sup> Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.<sup>2</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>3</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>4</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

I do believe that racism still exists in our country, both explicit and implicit.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

I have seen statistics demonstrating that people of color make up a higher percentage of incarcerated individuals than they do of the population generally.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

As a sociology/criminology major at the University of Oklahoma, I was exposed to research on this topic, but largely cannot recall specific books, articles, or reports. I do, however, recall writing about a report by James S. Liebman, Jeffery Fagan, and Valerie West called *A Broken System: Error Rates in Capital Cases, 1973-1995*, which I studied in depth while working as an extern in the Oklahoma Indigent Defense System's Capital Crimes Division. I am also familiar with Supreme Court decisions like *Furman v. Georgia*, 408 U.S. 238 (1972), which suspended application of the death penalty in part based on concerns that implicit and explicit racial bias

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<sup>1</sup> JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

<sup>2</sup> *Id.*

<sup>3</sup> ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>4</sup> *Id.* at 8.

caused uneven application of capital punishment. I have also read books like Malcolm Gladwell's *Blink*, which explores this subject in some depth.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.<sup>5</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.<sup>6</sup>

- a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I am not familiar with the particular statistics you cite. Having not studied the issue, I have not had occasion to form any opinions regarding the statistical relationship between incarceration rates and crime rates.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my answer to Question 2(a) above.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

4. Since *Shelby County, Alabama v. Holder*, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.<sup>7</sup> One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.<sup>8</sup> Despite this, President Trump, citing no information, alleged that widespread

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<sup>5</sup> THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at [http://www.pewtrusts.org/~media/assets/2016/12/national\\_imprisonment\\_and\\_crime\\_rates\\_continue\\_to\\_fall\\_web.pdf](http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), available at <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

<sup>8</sup> Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, available at [https://www.washingtonpost.com/news/work/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm\\_term=.4da3c22d7dca](https://www.washingtonpost.com/news/work/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca).

voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

That is a factual question that is currently being litigated, and which may come before me in litigation. Canon 3(A)(6) of the Code of Conduct for United States Judges prohibits me from “mak[ing] public comment on the merits of a matter pending or impending in any court.” I thus cannot offer an opinion on the issue.

- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

Please see my answer to Question 4(a) above.

- c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my answer to Question 4(a) above.

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted May 30, 2018**  
**For the Nomination of:**

**Patrick R. Wyrick**, to be U.S. District Judge for the Western District of Oklahoma

1. In describing your approach to statutory interpretation, you have written that an inquiry “begins with the text of the statute and—absent unresolvable ambiguity—ends with the text.”

In your dissent to *Multiple Injury Trust Fund v. Garrett*, you argued that you would have denied a permanently disabled worker eligibility for certain forms of state relief.

You would have held the claimant to the extraordinarily high standard of having every element of his disability formally adjudicated by the compensation tribunal, though it did not seem to have been the tribunal’s intent for such adjudication to be necessary.

- a. **When deciding this case, did you consider the impact that it would have on the individual?**

As a judge, I always remain cognizant of the fact that each case involves litigants who are affected by the decisions we render. But, as the oath that Congress requires federal judges to take directs, I strive to apply the law even-handedly, “without respect to persons . . . do[ing] equal right to the poor and to the rich.” 28 U.S.C. § 453.

- b. **When you decide cases based only on the text of the statute, do you think it is appropriate to consider the impact of a ruling on individuals?**

Please see my answer to Question 1(a) above.

- c. **Do you see any limitations to following a textualist philosophy as a judge?**

The Supreme Court has instructed that “[t]he starting point in discerning congressional intent is the existing statutory text,” *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004), and that “it is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Id.* (internal quotation marks omitted). That the text is not always plain might be viewed by some as a limitation on this approach, but the Supreme Court has accounted for this by holding that extrinsic materials can be relevant “to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

2. As Oklahoma's Solicitor General, you helped write a brief on behalf of Oklahoma and Nebraska that sought to intervene and challenge Colorado's legalization of recreational marijuana by popular referendum.

In other words, this case was not about the requirement that you defend a statute passed by your state or to defend a position previously taken by your state. This was a law passed in another state by popular referendum.

**a. What factors should a state consider when deciding whether or not to intervene into the laws of another state?**

As Solicitor General, when evaluating potential litigation on behalf of the State, I generally looked to whether the State and its citizens were being harmed, and if so, whether there was a viable non-litigation recourse available to remedy those harms. In the case you reference, the primary non-litigation means by which to solve the problem of interstate trafficking of drugs was to go to Congress and advocate for national legislation on the subject. That had, of course, already occurred with the passage of the Controlled Substances Act, 84 Stat. 1242 (1970) (codified as amended at 21 U.S.C. §§ 801 *et seq.*), such that litigation to enforce the provisions of that Act was the State of Oklahoma's only recourse. In other cases, where the question was whether to intervene in a case in support of another state's laws, *see, e.g.*, Br. for the States of Illinois, . . . Oklahoma et al. as Amici Curiae in Support of Resp'ts Harris et al., *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012) (No. 10-224), I would evaluate whether a decision in the case invalidating that other state's law would impair an Oklahoma interest such that our involvement as a friend of the court was appropriate. Nevertheless, my opinions merely served as the basis for advising the Attorney General, who was solely responsible for the ultimate decision on whether or not to intervene.

3. **What role did you have personally in the decision to actively intervene in Colorado's marijuana legalization?**

I advised the Attorney General on that decision, but as with all decisions regarding whether to file suit, the decision was made solely by the Attorney General.