

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Stephen Sidney Schwartz

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

Judge, United States Court of Federal Claims

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

Schaerr Duncan LLP
1717 K St. N.W., Suite 900
Washington, DC 20006

I live in Arlington, Virginia.

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

1983; Rochester, MN.

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Chicago Law School
September 2005 – June 2008
J.D., June 2008

Yale College
September 2001 – May 2005
B.A., May 2005

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Partner
2016 – present
Schaerr Duncan LLP
1717 K St. N.W., Suite 900
Washington, DC 20006

Counsel
2015 – 2016
Cause of Action Institute
1875 Eye St. N.W., Suite 800
Washington, DC 20006

Associate
2009 – 2015
Kirkland & Ellis LLP
655 Fifteenth St. N.W.
Washington, DC 20005

Law Clerk
2008 – 2009
Chambers of the Hon. Jerry E. Smith, United States Court of Appeals for the Fifth Circuit
515 Rusk St.
Houston, TX 77002

Summer Associate
2008
Mayer Brown LLP
1999 K St. N.W.
Washington, DC 20006

Summer Associate
2007
Kirkland & Ellis LLP
655 Fifteenth St. N.W.
Washington, DC 20005

Summer Intern
2006
Suffolk County District Attorney's Office
One Bulfinch Pl.
Boston, MA 02114

Other Affiliation (uncompensated)

Trustee

2011 – present
The Churchill Fund, an Illinois 501(c)(3)
c/o Daniel E. Frank
P.O. Box 34521
Washington, DC 20043

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

I have not served in the U.S. military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

“Rising Star” in Business Litigation, *DC Super Lawyers* (2014; 2015)

Kirkland & Ellis Pro Bono Service Award (2011; 2012; 2013)

The University of Chicago Law School:

Graduated with Honors (2008)

Finalist, Hinton Moot Court (2008)

Editorial board member, *University of Chicago Law Review* (2007 – 2008)

Yale College:

Distinction in the History Major (2005)

Intercollegiate Studies Institute Honors Fellow (2005)

Richter Fellow (2004)

Robin Winks Fellow (2004)

Winner, Austin Carlos Gormley Prize Debate (2004)

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

American Bar Association

Bar Association of the Fifth Federal Circuit

Federalist Society for Law & Public Policy Studies

10. **Bar and Court Admission:**

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

My bar memberships are as follows. There have been no lapses of membership.

<u>Bar</u>	<u>Date</u>
District of Columbia	10/4/2010
Virginia	10/16/2008

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

My court memberships are as follows. There have been no lapses of membership.

<u>Court</u>	<u>Date</u>
Supreme Court of the United States	4/22/2015
United States Court of Appeals for the District of Columbia Circuit	7/31/2015
United States Court of Appeals for the Federal Circuit	3/31/2014
United States Court of Appeals for the First Circuit	4/8/2016
United States Court of Appeals for the Second Circuit	6/11/2012
United States Court of Appeals for the Fourth Circuit	6/16/2014
United States Court of Appeals for the Fifth Circuit	4/3/2009
United States Court of Appeals for the Eighth Circuit	4/18/2014
United States District Court for the District of Columbia	1/10/2011
United States District Court for the Southern District of Texas	4/8/2011
District of Columbia Court of Appeals	10/4/2010
Supreme Court of Virginia	10/16/2008

11. **Memberships:**

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

The Churchill Fund, an Illinois 501(c)(3) (2009 – present)
Trustee (2011 – present)

The Edmund Burke Society at the University of Chicago (2005 – present)

The Tory Party of the Yale Political Union (2001 – present)

Yale Alumni Schools Committee (2009 – present)

Alumni applicant interviewer (2009 – present)

Yale Political Union (2002 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct

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

To the best of my knowledge, none of the organizations listed discriminates or has discriminated on those bases.

12. Published Writings and Public Statements:

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

I have written the following publications:

Horne v. USDA: *An Exercise in Minimalism?*, 10 N.Y.U. J. of Law & Liberty 777 (2016). Copy supplied.

Letter to the editor, "Hip-hop fails at wordplay," Washington Post, September 27, 2013. Copy supplied.

"Manifest Disregard of the Law": Does It Provide Courts a Reason to Vacate Arbitration Awards?, 24:33 Legal Backgrounder (Wash. Legal Found. Oct. 9, 2009). Copy supplied.

Comment, *Is There a Common-Law Necessity Defense in Federal Criminal Law?*, 75 U. Chi. L. Rev. 1259 (2008). Copy supplied.

As a counsel at Cause of Action Institute I assisted with preparation of a number of press releases regarding matters I was involved with. I have collected the following press releases that I recall working on in some capacity:

Press Release, Cause of Action Institute, Cause of Action Asks Federal Court To Reconsider Complaint Filed By Small Business Owner Who Is Being Wrongly Targeted By The Federal Government (May 27, 2015). Copy supplied.

Press Release, Cause of Action Institute, What the Department of Labor Is Doing To This Woman and Her Business Is Absolutely Absurd (Nov. 4, 2015). Copy supplied.

Press Release, Cause of Action Institute, East Coast Fishermen File Lawsuit Over At-Sea Monitoring Mandate (Dec. 10, 2015). Copy supplied.

Press Release, Cause of Action Institute, Cause of Action Institute Sues to Stop White House Obstruction of the Freedom of Information Act (May 9, 2016). Copy supplied.

Press Release, Cause of Action Institute, Court Rules in Favor of Rhea Lana's Consignment Events in Department of Labor Dispute Over Volunteers (June 3, 2016). Copy supplied.

Press Release, Cause of Action Institute, Cause of Action Institute Seeks Supreme Court Review in Chicago Transit Authority False Claims Act Suit (July 27, 2016). Copy supplied.

Press Release, Cause of Action Institute, Court Rules Against Local Fishermen, Upholds Job-Killing Government Mandate (July 29, 2016). Copy supplied.

As a member of the *University of Chicago Law Review* from 2006 to 2008 I was responsible for editing and cite-checking articles and student comments for publication. I have collected the following publications that I recall working on in some capacity:

Christopher Avery, Christine Jolls, Richard A. Posner, & Alvin E. Roth, *The New Market for Federal Judicial Law Clerks*, 74 U. Chi. L. Rev. 447 (2007). Copy supplied.

Ross R. Fulton, "*Our Federal System*": *States' Susceptibility to Challenge When Applying Federal Affirmative Action Law*, 74 U. Chi. L. Rev. 687 (2007). Copy supplied.

James E. Pfander, *Removing Federal Judges*, 74 U. Chi. L. Rev. 1227 (2007). Copy supplied.

Mary Anne Case, *All the World's the Men's Room*, 74 U. Chi. L. Rev. 1655 (2007). Copy supplied.

Martha C. Nussbaum, *Robin West*, *Jurisprudence and Gender: Defending a Radical Liberalism*, 75 U. Chi. L. Rev. 985 (2008). Copy supplied.

I interned in the summer of 2004 with the Hon. Bernard Jenkin, MP, a member of the U.K. Parliament. I wrote a press release for Mr. Jenkin that may have been reprinted by a local newspaper. I do not recall the substance of the press release and have been unable to locate a copy.

I wrote a biweekly column in the *Yale Herald* in the spring semester of 2005. I no longer have copies of those columns in my records. I have contacted the current *Herald* staff, and was unable to obtain copies from their archive. I have been able to recover the following column through the Internet Archive:

Stephen S. Schwartz, *Neocons vs. Conservatives: The battle for the Right*, *Yale Herald*, Feb. 4, 2005. Copy supplied.

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

None.

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

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Panelist: Horne: *Property and Prohibitions*, N.Y.U. Journal of Law & Liberty, N.Y.U. Law School, New York, NY, February 26, 2016. Video supplied.

Panelist: Horne v. USDA, *Takings Law, and the Regulation of Commodities and Other Property*, Notre Dame Law School Law & Economics Program (P.O. Box 780, Notre Dame, IN 46556; participated over remote video connection), December 4, 2015. I spoke regarding the Supreme Court's decision in *Horne v. USDA*. I did not speak from prepared text, and I have been unable to locate any outlines or notes from which I may have spoken.

Panelist: *Looming Land Use Constitutional Issues*, Annual Meeting of the

American Bar Association (321 North Clark St., Chicago, IL 60654), July 31, 2015. I spoke regarding the Supreme Court's decision in *Horne v. USDA*. I did not speak from prepared text, and I have been unable to locate any outlines or notes from which I may have spoken.

Panelist: *Takings of Personal Property: An Assessment of U.S. Supreme Court Arguments in Horne v. U.S. Department of Agriculture*, Washington Legal Foundation, Washington, DC, April 22, 2015. Video supplied.

Panelist: *Supremacy Clause Issues in the Independent Living Center Litigation*, American Health Lawyers Association, Baltimore, MD, March 29–30, 2012. Slides supplied.

Panelist: *Federal Supremacy and Medicaid Reimbursement Policy: Will the federal courts and the federal agency leave room for state decisions?*, American Association of Public Welfare Attorneys (now American Association of Health and Human Services Attorneys, 1133 19th St. N.W., Suite 400, Washington, DC 20036), Oklahoma City, OK, September 12, 2011. I spoke regarding the Supreme Court case *Douglas v. Independent Living Center*. I did not speak from prepared text, and I have been unable to locate any outlines or notes from which I may have spoken.

Presenter: *Helping New Hampshire Fishermen To Reel In Overregulation*, Cause of Action Institute, Washington, DC, published December 8, 2015. Video supplied.

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

Guest: *Ken Pittman Show*, WBSM Radio, December 12, 2015. No copies available.

Media Call re *Goethel v. Pritzker*, December 10, 2015. Audio supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify

each such case, and for each provide the following information:

I have never held judicial office.

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

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

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

I have never held public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Volunteer researcher, Romney for President (2012)

Door-to-door volunteer, U.K. Conservative Party (summer 2004)

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

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

After law school I clerked for Judge Jerry E. Smith on the United States Court of Appeals for the Fifth Circuit. My clerkship lasted from the summer

of 2008 to the summer of 2009.

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

I have not practiced alone.

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

2008

Mayer Brown LLP
1999 K St. N.W.
Washington, DC 20006
Summer Associate

2009 – 2015

Kirkland & Ellis LLP
655 15th St. N.W.
Washington, DC 20005
Associate

2015 – 2016

Cause of Action Institute
1875 Eye St. N.W., Suite 800
Washington, DC 20006
Counsel

2016 – present

Schaerr Duncan LLP
1717 K St. N.W., Suite 900
Washington, DC 20006
Associate (2016 – 2017)
Partner (2017 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator.

b. Describe:

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

My work at Kirkland & Ellis involved a combination of commercial and appellate litigation. I joined Cause of Action Institute in May 2015 to focus on litigation involving abuses of discretion by federal agencies. At Schaerr Duncan LLP, which I joined in November 2016, my work has focused on complex statutory and constitutional litigation in federal district and appellate courts.

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

Early in my career at Kirkland & Ellis I litigated extensively on behalf of Nationwide Mutual Insurance Company defending claims arising from Hurricane Ike. Later in my time at Kirkland, in 2013 and after, my commercial practice focused on administrative law and regulatory issues, especially on behalf of generic drug manufacturers such as Teva and Mylan. Meanwhile I worked on various appellate and Supreme Court matters involving (among other issues) federal preemption, the Commerce Clause, and the Free Exercise Clause.

My clients at Cause of Action Institute included New England fishermen litigating burdensome fishery monitoring regulations and a children's clothing consignment business defending its business model's compliance with the Fair Labor Standards Act.

In the main, my work at Schaerr Duncan has involved defending statutes and policies of state and local government entities against challenges under federal statutes and the Constitution. One example is *Gloucester County School Board v. G.G.*, ___ S. Ct. ___ (2017), in which my firm represented the School Board.

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

Virtually all of my practice has been litigation or pre-litigation (including informal administrative proceedings). A smaller portion of my practice has involved purely administrative processes such as drafting regulatory comments. My court appearances have been occasional.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 80%
 - 2. state courts of record: 10%
 - 3. other courts: 0%
 - 4. administrative agencies: 10%

- ii. Indicate the percentage of your practice in:

1. civil proceedings: 95%
2. criminal proceedings: 5%

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

I have been chief counsel in two cases that reached final appellate or trial court decisions. I have been an associate counsel in approximately 20 others. I have also represented amici in the Supreme Court on a number of occasions, including a pending matter where I am counsel of record for the amicus.

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

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

A substantial portion of my practice has been in the Supreme Court. My practice has included three merits cases (all of which were resolved successfully for my clients), a number of petitions for writs of certiorari, and amicus briefs in seven cases.

Merits Cases

Gloucester County School Board v. G.G., No. 16-273 (drafted merits brief; Court vacated and remanded without argument). Copy supplied.

Horne v. U.S. Department of Agriculture, No. 14-275 (drafted both certiorari and merits briefing; second-chaired argument; secured reversal). Copies supplied.

Mutual Pharmaceutical Co. v. Bartlett, No. 12-142 (drafted merits reply brief; assisted with argument preparation; secured reversal). Copy supplied.

Petitions for Certiorari

North Carolina v. NAACP, No. 16-833 (drafted petition briefing as well as briefing in opposition to motion to dismiss). Copies supplied.

United States ex rel. Cause of Action v. Chicago Transit Authority, No. 16-131 (drafted petition). Copy supplied.

Rocky Mountain Farmers Union v. Corey, Nos. 13-1148 (drafted petition briefing), No. 13-1308 (drafted opposition to conditional cross petition). Copies supplied.

Teva Pharmaceuticals USA, Inc. v. Superior Court, No. 13-956 (on briefs). Copies supplied.

Avis Budget Group v. Alaska Rent-a-Car, No. 13-330 (on briefs). Copies

supplied.

In addition, at Kirkland I participated in writing a petition for certiorari that was filed by another firm without Kirkland's involvement being disclosed. Because of privilege concerns, I am not able to disclose the details of this representation. The petition was denied.

Amicus Briefs

Brewer v. Arizona Dream Act Coalition, No. 16-1180 (petition pending). Copy supplied.

Advocate Health Care Network v. Stapleton, Nos. 16-74, 16-86, 16-256 (in support of prevailing party). Copy supplied.

Armstrong v. Exceptional Child Center, Inc., No. 14-15 (in support of prevailing party). Copy supplied.

Douglas v. Independent Living Center, No. 10-283 (in support of prevailing party). Copy supplied.

Sebelius v. Hobby Lobby Stores, Inc., Nos. 13-354, 13-356 (in support of prevailing party). Copy supplied.

Williamson v. Mazda Motor of America, No. 08-1314. Copy supplied.

PPL Montana LLC v. Montana, No. 10-218 (submitted amicus briefs in support of prevailing party at both certiorari and merits stage). Copies supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Brewer v. Arizona Dream Act Coalition*, No. 16-1180 (U.S.) (pending). The State of Arizona restricts issuance of driver's licenses to individuals who are in the country legally. Arizona is defending that policy against a challenge based on President Obama's DACA policy. I was counsel of record for Governor Jeb Bush, submitting a certiorari-stage amicus brief in support of Arizona. The date of my representation was 2017.

Counsel for Arizona
Dominic E. Draye

Solicitor General
Office of the Attorney General
1275 W. Washington, Phoenix, AZ 85007
602-542-8255

Counsel for Respondents
Michael Tan
American Civil Liberties Union Foundation
Immigrants' Rights Project
39 Drumm St.
San Francisco, CA 94111
415-343-0770

2. *Gloucester County School Board v. G.G.*, No. 16-273 (U.S. Mar. 6, 2017). A transgender student challenged a school board's policy assigning students to restrooms based on biological sex. I joined my firm, which represents the school board, after certiorari was granted, and drafted the opening merits brief. The Supreme Court vacated and remanded before argument. The case is now pending before the United States Court of Appeals for the Fourth Circuit. The dates of my representation are 2016 to present.

Co-Counsel
Kyle Duncan
Schaerr Duncan LLP
1717 K St. N.W., Suite 900
Washington, DC 20006
202-787-1060

Counsel for Respondent
Joshua A. Block
American Civil Liberties
Union Foundation
125 Broad St.
New York, NY 10004
212-549-2500

3. *North Carolina v. North Carolina State Conference of the NAACP*, No. 16-833 (U.S.). Plaintiffs sued North Carolina alleging that certain voting regulations violate the Voting Rights Act. The district court ruled in favor of the state, but the Fourth Circuit reversed. I drafted the petition briefing. A change of administrations led to briefing about who represented the state, some of which I drafted as well. The dates of my representation were 2016 to 2017.

Co-Counsel
Kyle Duncan
Schaerr Duncan LLP

1717 K St. N.W., Suite 900
Washington, DC 20006
202-787-1060

Counsel for Respondents

Daniel T. Donovan
Kirkland & Ellis LLP
655 Fifteenth St. N.W.
Washington, DC 20005
202-879-5000

Office of the Solicitor General
United States Department of Justice
Washington, DC 20530
202-514-2217

4. *June Medical Services v. Gee*, No. 3:16-cv-00444 (M.D. La.) (Jackson, C.J.) (pending). I represent the State of Louisiana in defending against challenges to a number of abortion regulations passed in 2016. I have been handling much of the dispositive motion briefing with the client, state regulators, and outside interested parties. The dates of my representation are 2016 to present.

Co-Counsel

Kyle Duncan
Schaerr Duncan LLP
1717 K St. N.W., Suite 900
Washington, DC 20006
202-787-1060

Opposing Counsel

Janet Crepps
Center for Reproductive Rights
199 Water St., 22nd Floor
New York, NY 10038
864-962-8519

5. *Goethel v. Pritzker*, No. 15-cv-497 (D. N.H. Jul. 29, 2016) (Laplante, C.J.). Department of Commerce regulations requiring certain New England fishermen to pay for monitoring and enforcement costs threaten to put a large number of fishermen out of business. I was lead counsel representing a group of fishermen in challenging those regulations on statutory and constitutional grounds. The district court denied relief, and I left my firm at the time while the appeal was pending. The United States Court of Appeals for the First Circuit affirmed on April 14, 2017. The dates of my representation were 2015 to 2016.

Co-Counsel

James Wheat

Wadleigh Starr & Peters PLLC
95 Market St.,
Manchester, NH 03101
603-206-7241

Opposing Counsel

Andrea Gelatt
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, DC 20044-7611
202-305-0388

6. *Rhea Lana, Inc. v. Department of Labor*, 824 F.3d 1023 (D.C. Cir. 2016) (Garland and Pillard, JJ., and Edwards, S.J.). The Department of Labor issued a “determination letter” holding that a children’s clothing consignment business was in violation of the Fair Labor Standards Act. The business sued under the Administrative Procedure Act, but its complaint was dismissed for lack of final agency action. I led and argued a successful appeal that allowed the business to present its claims on the merits. The case is now pending on remand in the United States District Court for the District of Columbia. The dates of my representation were 2015 to 2016.

Co-Counsel

Matthew J. MacLean
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth St. N.W.
Washington, DC 20036
202-663-8183

Opposing Counsel

Sydney A. Foster
U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. N.W.
Washington, DC 20530
202-514-2000

7. *Horne v. U.S. Department of Agriculture*, 133 S. Ct. 2053 (2015). Department of Agriculture regulations required California raisin growers to give a portion of their annual crop to the Department’s agent, with nothing (or a negligible amount) in return. I drafted certiorari briefing on behalf of raisin growers that led to the Supreme Court granting review, drafted the merits briefing, and second-chaired the argument. I was also responsible for organizing almost 20 amicus briefs in support of the petition. The Supreme Court found that the regulations effected an

unauthorized taking. The dates of my representation were 2014 to 2015.

Co-Counsel

Michael W. McConnell
Kirkland & Ellis LLP
655 Fifteenth St. N.W.
Washington, DC 20005
202-879-5000

Opposing Counsel

Office of the Solicitor General
United States Department of Justice
Washington, D.C. 20530-0001
202-514-2217

8. *Proctor v. LeClaire*, 715 F.3d 402 (2d Cir. 2013) (Kearse, Katzmann, and Lohier, JJ.). A New York State prisoner who had been in solitary confinement for nearly two decades alleged that he was being denied his procedural due process right to regular, meaningful review of his status. The district court dismissed his pro se complaint based on res judicata and collateral estoppel because he had raised similar claims about a different period of his confinement. I researched his claims, drafted appellate briefs, and second-chaired the argument. The panel reversed and remanded for the district court to reconsider on the merits. The dates of my representation were 2012 to 2013.

Co-Counsel

Beth A. Williams
Kirkland & Ellis LLP
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9. *BP Macondo Well Litigation*, MDL 2179 (E.D. La.) (Barbier, J.). Kirkland & Ellis represented BP in district court and appellate litigation arising from the Macondo oil spill. I was involved in various strategic roles from when the spill was still ongoing in 2010 until I left Kirkland in 2015. Among other roles, I assisted extensively with briefing in *In re Deepwater Horizon*, 753 F.3d 570 (5th Cir.) (King, Benavides, and Dennis, JJ.), *cert. denied*, 135 S. Ct. 2893 (2015). Litigation related to the Macondo oil spill remains pending in the district court

and the United States Court of Appeals for the Fifth Circuit.

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10. *Rocky Mountain Farmer's Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013) (D.W. Nelson, Gould, Murguia, JJ.). California regulates motor fuels used in-state based in part on where and how the fuel is produced. I assisted with constitutional challenges to that regime, drafting Ninth Circuit, en banc, and Supreme Court certiorari briefing, as well as by assisting with oral argument preparation and organizing the filing of multiple amicus briefs. The matter remains pending in the United States District Court for the Eastern District of California. The dates of my representation were 2012 to 2015.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My most significant legal activities are the ones described in my respond to Question 17. I have never performed lobbying activities. I have been involved in informal proceedings before federal regulatory agencies, including drafting comments for agency rulemakings and seeking informal agency rulings on matters. My FDA practice, in particular, involved issues such as awards of marketing exclusivity for generic drugs under the Hatch-Waxman Act. I have also been involved in a supporting capacity in a number of internal investigations for companies assessing potential violations of law.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

I do not expect any deferred income or future benefits.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

My wife is a consultant at Deloitte Consulting, where she works on engagements for federal agencies. If confirmed, I would recuse myself from matters where Deloitte is a plaintiff or where plaintiffs seek compensation from the federal government in connection with engagements she had a substantial role in. I am not aware that any other relative's interests present other likely conflicts.

I do not anticipate that any matters I have been involved in at my previous firms are likely to lead to claims for compensation against the federal government in the Court of Federal Claims. If any such matter did appear before me, I would recuse myself.

I do not hold any financial interests or participate in any financial arrangements that are likely to present conflicts of interest.

Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to the appearance of a conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances. I also anticipate that I will maintain a list of my wife's professional engagements, which I will cross-reference with matters potentially assigned to me.

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

A substantial amount of my practice has been devoted to pro bono representations of persons of modest means who have been subject to unfair government action, including several of the matters described above. See, in particular, *Proctor v. LeClaire* (representing a prison inmate in solitary confinement), *Horne v. USDA* (representing a farmer whose property was taken by the government), *Goethel v. Pritzker* (representing fishermen alleging ultra vires government regulation), and *Rhea Lana v. DOL* (representing a family business trying to protect its business model). I have spent hundreds of hours on each of those matters. My practice at Cause of Action Institute, in particular, was largely devoted to the *Goethel* and *Rhea Lana* litigation. At Kirkland & Ellis I received awards for pro bono practice in 2011, 2012, and 2013.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On April 3, 2017, officials from the White House Counsel's Office approached me about my interest in the Court of Federal Claims. I interviewed for the appointment on April 7, 2017, with officials from the White House Counsel's Office and the Department of Justice Office of Legal Policy. Following that interview, officials from the White House Counsel's Office informed me that the White House intended to move forward with my nomination.

Since April 3, 2017, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C.

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

No.