

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

**The Arkansas State
Conference NAACP, et al.,**

Plaintiffs,

vs.

**The Arkansas Board of
Apportionment, et al.,**

Defendants

Case No. 4:21-cv-1239-LPR

**Plaintiffs' Motion
for Recusal**

The plaintiffs respectfully move the Court for recusal under 28 U.S.C. § 455.

1. The Code of Conduct for United States Judges emphasizes the importance of promoting public confidence in the integrity and impartiality of the judiciary by avoiding impropriety and the appearance of impropriety in all activities.

2. Federal law further provides that a just must recuse “in any proceeding in which his impartiality might reasonably be questioned,” or where “he has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455.

3. According to public records, the Honorable Lee Rudofsky and his wife hosted a fundraiser at his home in 2018 for candidate Leslie Rutledge, one of the named defendants in this case who is also likely to be a witness. (Exhibit 1: Rudofsky Judicial Questionnaire at 25.)

4. According to other public records, Judge Rudofsky also donated \$1,000 to Rutledge in 2017 and \$500 in 2018 to candidate Asa Hutchinson, another one of the named defendants in this case who is likely to be a witness. (Exhibit 2: Political Donations of Lee Rudofsky.)

5. In each case, Judge Rudofsky’s fundraiser and donations were in support of the candidates’ most recent campaign for his or her current term in office.

6. Rutledge is the Attorney General of the State of Arkansas and is a member of the Arkansas Board of Apportionment. Hutchinson is the Governor of the State of Arkansas and is a member of the

Arkansas Board of Apportionment. Together, they constitute two-thirds of the Board.

7. This case challenges the reapportionment plan for the Arkansas House of Representative that the Board of Apportionment recently adopted. The plaintiffs allege that the plan unlawfully dilutes Black voting strength in violation of Section 2 of the Voting Rights Act.

8. Rutledge and Hutchinson are likely to be witnesses in this case because they were key decisionmakers in adopting the challenged plan and because, under the applicable law, their justification for the plan is a relevant circumstance. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 45 (1986) (evidence regarding the policy underlying the challenged practice “may have probative value”). It is quite common in redistricting cases to depose the legislators or other officials who were responsible for adopting a challenged plan.

9. This is a case of significant public importance, and one that is likely to be scrutinized closely by the media and by the public at large.

10. Under these circumstances, an objective, knowledgeable member of the public could reasonably doubt Judge Rudofsky’s

impartiality with respect to Rutledge and Hutchinson in this matter, and recusal is therefore appropriate.

11. The plaintiffs submit a memorandum of law in support of this motion.

Accordingly, the plaintiffs pray that the Court grant this motion to recuse.

Dated: December 31, 2021

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Gary Sullivan (AR Bar: 92051)
Email: gary@acluarkansas.org
ARKANSAS CIVIL LIBERTIES
UNION FOUNDATION, INC.
904 West 2nd Street
Little Rock, AR 72201
Tel: (501) 374-2842

Ceridwen Cherry (*PHV* Admitted)
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AMERICAN CIVIL LIBERTIES
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915 15th St NW
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Email: slakin@aclu.org
AMERICAN CIVIL LIBERTIES
UNION, VOTING RIGHTS
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125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2500

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2929 Arch Street
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New York, NY 10036 – 6797
(212) 698-3500 | (212) 698-3599

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DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800 | (312) 646-5858

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San Francisco, CA 94104-4446
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Deleted: Pending

Attorneys for the Plaintiffs

EXHIBIT 1

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Lee Philip Rudofsky

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

United States District Court for the Eastern District of Arkansas

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.

Walmart Home Office
702 Southwest 8th Street
Bentonville, Arkansas 72716

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

1979; New York, New York

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

2002 – 2005, Harvard Law School; J.D., 2005

2000 – 2002, Cornell University (Cornell Institute for Public Affairs); M.P.A., 2002

1997 – 2001, Cornell University (School of Industrial & Labor Relations); B.S. 2001

December 2000 – May 2001, University of Haifa; no degree (Cornell University Semester Abroad Program)

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

2018 – present; 2014 – 2015

Walmart

702 Southwest 8th Street

Bentonville, Arkansas 72716

Senior Director, Global Anti-Corruption Compliance Team (2018 – present)

Assistant General Counsel, Corporate Affairs & Government Relations (2014 – 2015)

2017 – present

University of Arkansas School of Law

1045 West Maple Street

Fayetteville, Arkansas 72701

Adjunct Professor, Corporate Counsel Colloquium (scheduled Fall 2019)

Adjunct Professor, Creation of the Constitution (Spring 2018)

Adjunct Professor, Appellate Advocacy (Fall 2017)

Adjunct Professor, Federal Courts (Spring 2017)

2015 – 2018

Arkansas Attorney General's Office

323 Center Street, Suite 200

Little Rock, Arkansas 72201

Solicitor General of Arkansas

2013 – 2014; 2010 – 2012; 2007 – 2009; Summer 2004

Kirkland & Ellis, LLP

1301 Pennsylvania Avenue N.W.

Washington, District of Columbia 20004

Senior Associate (2013 – 2014)

Associate (2010 – 2012; 2007 – 2009)

Summer Associate (Summer 2004)

2012

Mitt Romney for President 2012

138 Conant Street

Beverly Massachusetts 01915

Deputy General Counsel and Director of Legal Election Day Operations

2010

Steve Poizner for Governor

520 Capitol Mall

Sacramento, California 95841

Deputy General Counsel and Acting General Counsel

Fall 2009

Borgeson & Burns P.C. (now closed)

100 Cushman Street, Suite 311

Fairbanks, Alaska 99701
Associate

Spring 2009
George Mason University Antonin Scalia Law School
3301 Fairfax Drive
Arlington, Virginia 22201
Adjunct Professor, Environmental Law and Regulation

2006 – 2007
Judge Andrew Kleinfeld
United States Court of Appeals for the Ninth Circuit
250 Cushman Street, Suite 3-A
Fairbanks, Alaska 99701
Law Clerk

2005 – 2006
Justice Robert Cordy
Supreme Judicial Court of Massachusetts
1 Pemberton Square
Boston, Massachusetts 02108
Law Clerk

2001 – 2002
Kaplan, Inc.
409 College Avenue
Ithaca, New York 14853
LSAT, GRE, GSAT and SAT Instructor

Summer 2002
Jewish Institute for National Security Affairs
1101 Fourteenth Street N.W., Suite 1030
Washington, District of Columbia 20005
Summer Intern

Summer 2001
Meister Seelig & Fein LLP
125 Park Avenue, 7th Floor
New York, New York 10017
Legal Intern

Other Affiliations (uncompensated)

2018 – present
Cornell University Council
Division of Alumni Affairs and Development

130 East Seneca Street, Suite 400
Ithaca, New York 14850
Member

2016 – present
Arkansas Advisory Committee to the United States Commission on Civil Rights
1331 Pennsylvania Avenue, NW, Suite 1150
Washington, District of Columbia 20425
Member (2016 – present)
Parliamentarian (2017 – present)

2016 – 2017
Arkansas Bar Commission on Diversity
Arkansas Bar Association
2224 Cottondale Lane
Little Rock, Arkansas 72202
Co-Chair

2014 – 2019
Congregation Etz Chaim of Northwest Arkansas
4074 Southwest H Street
Bentonville, AR 72712
Executive Vice-President (2017 – 2019)
Congregational Member of Board of Directors (2014 – 2015)

2014
Tom Cotton for Senate
Cantrell Road
Little Rock, Arkansas 72223
Volunteer Lawyer

2011 – 2013
Jewish Institute for National Security Affairs
1101 Fourteenth Street N.W., Suite 1030
Washington, District of Columbia 20005
Vice Chairman, Young Leadership Council

2008 – 2012
Ivy Council
Columbia University
116th Street & Broadway
New York, New York 10027
Board of Directors

Fall 2008
John McCain for President

624 North Rainbow Boulevard
Las Vegas, Nevada 89107
Volunteer Lawyer

2007 – 2008
Romney for President Judicial Advisory Committee
138 Conant Street
Beverly Massachusetts 01915
Member

Summer 2005
United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, District of Columbia 20510
Short-term Volunteer Law Clerk for Committee Majority Staff

2003 – 2004
Office of Counsel to the Governor of Massachusetts
Massachusetts State House
24 Beacon Street
Boston, Massachusetts 02133
Law Clerk

Summer 2003
Office of Counsel to President of the United States
Eisenhower Executive Office Building
1650 Pennsylvania Avenue N.W.
Washington, District of Columbia 20502

Spring 2003
Professor Mary Ann Glendon
Harvard Law School
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Fall 2002 – Winter 2003
Justus Reid Weiner
Jerusalem Center for Public Affairs
Rechov Tel Chai 13
Jerusalem, Israel 92107 (work completed via internet)
Research Assistant

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

selective service.

I have not served in the United States military. I registered for the selective service upon turning 18.

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

Elected by Cornell University Board of Trustees to the Cornell University Council (2018 – present)

Elected by colleagues to the Judge Henry Woods Chapter of the American Inns of Court (2017 – 2018)

Harvard Journal of Law and Public Policy, Assistant Articles Editor (2004 – 2005), Senior Editor (2003 – 2004), and Editor (2002 – 2003)

Dean's List, Cornell University (Fall 1997, Spring 1998, Fall 1998, Spring 2000, Fall 2000)

Outstanding Service Award from Haifa University (Semester Abroad Program) for mentoring Ethiopian immigrants to Israel (2001)

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

Alaska Bar Association (2009 – present)

American Inns of Court, Judge Henry Woods Chapter (2017 – 2018)

Arkansas Bar Association (2015 – present)

Co-Chair of the Arkansas Bar Commission on Diversity (2016 – 2017)

District of Columbia Bar Association (2007 – present)

Federalist Society (2002 – present)

Vice-President of Northwest Arkansas Lawyers' Chapter (2014 – present)

Colloquia Chair of Harvard Law Chapter (2004 – 2005)

International Law and National Security Practice Group Executive Committee (2004 – 2006)

New York State Bar Association (2006 – 2011)

Republican National Lawyers' Association (2004 – present, intermittently)

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.

Alaska, 2009
Arkansas, 2015
California (Registered In-House Counsel), 2010
District of Columbia, 2007
Massachusetts (Registered In-House Counsel), 2012
New York, 2006

I terminated my California In-House Counsel registration in 2010 and my Massachusetts In-House Counsel registration in 2013 after my work as campaign counsel in those states concluded. There have been no lapses in membership.

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

Supreme Court of the United States, 2015
United States Court of Appeals for the District of Columbia Circuit, 2008
United States Court of Appeals for the First Circuit, 2009
United States Court of Appeals for the Second Circuit, 2008 (inactive status)
United States Court of Appeals for the Eighth Circuit, 2015
United States Court of Appeals for the Ninth Circuit, 2007
United States District Court for the Eastern District of Arkansas, 2015
United States District Court for the Western District of Arkansas, 2015

I believe that sometime in 2010 or 2011 I became inactive in the Second Circuit. Because my practice no longer involved the Second Circuit, I did not renew my admission. There have been no other lapses.

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.

1836 Club (2016 – 2018)

Arkansas Advisory Committee to the United States Commission on Civil Rights,
Member and Parliamentarian (2016 – present)

Arkansas Republican Party (2014 – present)
Tusk Club (2016 – present)

Benton County Republican Party (dates unknown)

Congregation Etz Chaim
Vice President (2017 – 2019)
Congregational Board Member (2014 – 2015)

Cornell University Council (2018 – present)

Harvard Law School Spring 2015 Reunion Engagement Committee (2015)

Harvard Masonic Lodge (2005 – 2016)

Ivy Council, Board of Directors (2008 – 2009)

Jewish Institute for National Security Affairs,
Vice-Chairman, Young Leadership Council (2011 – 2013)

Little Rock Center-Right Attorneys Lunch Group (2015 – present)

National Rifle Association (dates unknown)

WALPAC (2014 – 2015; 2018 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, 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.

The Harvard Masonic Lodge limits its membership to men. Otherwise, to the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Lee Rudofsky, *Thanks, Arkansas: Blessed to Live in This State*, Nw Ark. Gazette, Oct. 19, 2018. Copy supplied.

Lee Rudofsky, *In Day One of Hearings, Democrats Show Only that Kavanaugh is a Mainstream Judge*, App. Advoc. Blog (Sept. 4, 2018). Copy supplied.

Lee Rudofsky, *Docket Watch: Board of Trustees of the University of Arkansas v. Matthew Andrews*, Federalist Soc'y Docket Watch Blog (Aug. 17, 2018). Copy supplied.

Leslie Rutledge, *Religious conscience must be protected*, Nw Ark. Gazette, July 1, 2018. Copy supplied.

Lee Rudofsky, *Symposium: The Stays – A Practical Victory, A Legal Concern*, SCOTUSBlog (July 14, 2017, 6:34 pm). Copy supplied.

Leslie Rutledge, *Confirm Judge Neil Gorsuch to the Supreme Court*, Wash. Exam'r, Mar. 20, 2017. Copy supplied.

Leslie Rutledge, *Schnarr v. State: Developing the law in three areas*, Daily Rec. (Ark.), Feb. 13, 2017. Copy supplied.

Leslie Rutledge, *Supreme Court to consider on-line speech of sex offenders*, Daily Rec. (Ark.), Feb. 6, 2017. Copy supplied.

Lee Rudofsky, *Supreme Court strengthens qualified immunity doctrine*, Daily Rec. (Ark.), Jan. 23, 2017. Copy supplied.

Leslie Rutledge, *Update on religious rights of soldiers: Supreme Court petition alert*, Daily Rec. (Ark.), Jan. 16, 2017. Copy supplied.

Leslie Rutledge, *New rule on old files*, Daily Rec. (Ark.), Jan. 9, 2017. Copy supplied.

Leslie Rutledge, *Changing horses mid-stream*, Daily Rec. (Ark.), Jan. 2, 2017. Copy supplied.

Lee Rudofsky, *More than the sum of its parts*, Daily Rec. (Ark.), Dec. 26, 2016. Copy supplied.

Leslie Rutledge, *Picking Pruitt is right choice for the EPA*, Daily Rec. (Ark.), Dec. 19, 2016. Copy supplied.

Leslie Rutledge, *Arkansas Attorney General: Why Scott Pruitt is the right choice for the EPA*, Fox News Online, Dec. 15, 2016

Leslie Rutledge, *New rules*, Daily Rec. (Ark.), Dec. 12, 2016. Copy supplied.

Lee Rudofsky, *Why the overtime rule failed*, Daily Rec. (Ark.), Dec. 5, 2016. Copy supplied.

Leslie Rutledge, *Wrestling with Congressional Intent in Immigration Law*, Daily Rec. (Ark.), Nov. 21, 2016. Copy supplied.

Leslie Rutledge, *Reexamining jury-deliberation secrecy*, Daily Rec. (Ark.), Nov. 7, 2016. Copy supplied.

Leslie Rutledge, *The CFPB's unconstitutional power grab*, Daily Rec. (Ark.), Oct. 24, 2016. Copy supplied.

Lee Rudofsky, *Never forget*, Daily Rec. (Ark.), Oct. 17, 2016. Copy supplied.

Lee Rudofsky, *Football and the law*, Daily Rec. (Ark.), Oct. 12, 2016. Copy supplied.

Leslie Rutledge, *A supremely important term*, Daily Rec. (Ark.), Oct. 10, 2016. Copy supplied.

Lee Rudofsky, *Sobriety checkpoints: important and constitutional*, Daily Rec. (Ark.), Oct. 3, 2016. Copy supplied.

Leslie Rutledge, *The vanishing window of self-governance*, Daily Rec. (Ark.), Sept. 5, 2016. Copy supplied.

Lee Rudofsky, *Paying it forward*, Daily Rec. (Ark.), Aug. 29, 2016. Copy supplied.

Leslie Rutledge, *Hazy regulations*, Daily Rec. (Ark.), Aug. 22, 2016. Copy supplied.

Lee Rudofsky, *What the Olympics can teach us*, Daily Rec. (Ark.), Aug. 15, 2016. Copy supplied.

Leslie Rutledge, *Protecting the rights of conscience*, Daily Rec. (Ark.), Aug. 8, 2016. Copy supplied.

Lee Rudofsky, *Free speech works*, Daily Rec. (Ark.), Aug. 1, 2016. Copy supplied.

Leslie Rutledge, *Supporting law enforcement*, Daily Rec. (Ark.), July 25, 2016. Copy supplied

Lee Rudofsky, *Ensuring federal regulators respect the role of the state*, Daily Rec. (Ark.), July 18, 2016. Copy supplied.

Leslie Rutledge, *Injunction junction*, Daily Rec. (Ark.), July 11, 2016. Copy supplied.

Lee Rudofsky, *One Scalia Got Wrong*, Daily Rec. (Ark.), July 4, 2016. Copy supplied.

Leslie Rutledge, *Serving Arkansans*, Daily Rec. (Ark.), June 27, 2016. Copy supplied.

Lee Rudofsky, *Protecting Arkansas taxpayers and The Public Fisc*, Daily Rec. (Ark.), June 20, 2016. Copy supplied.

Leslie Rutledge, *Protecting small business and the attorney-client relationship*, Daily Rec. (Ark.), June 13, 2016. Copy supplied.

Leslie Rutledge, *New and dangerous labor rule hurts small businesses*, Wash. Exam'r, June 8, 2016. Copy supplied.

Leslie Rutledge, *A duty to defend*, Daily Rec. (Ark.), June 6, 2016. Copy supplied.

Lee Rudofsky, *The next generation*, Daily Rec. (Ark.), May 30, 2016. Copy supplied.

Lee Rudofsky, *Balancing Public Service and Fatherhood*, Peekaboo: Nw Ark. Fam. Mag., May 29, 2016. Copy supplied.

Lee Rudofsky, *Predicting legal tsunamis*, Daily Rec. (Ark.), May 16, 2016. Copy supplied.

Leslie Rutledge, *Reflections from Appeals on Wheels*, Daily Rec. (Ark.), May 9, 2016. Copy supplied.

Lee Rudofsky, *What is a solicitor general?*, Daily Rec. (Ark.), May 2, 2016. Copy supplied.

Leslie Rutledge, *Justice Scalia: Champion of democracy and the written constitution*, Daily Rec. (Ark.), Apr. 25, 2016. Copy supplied.

Lee Rudofsky, *Mountaintop Coal Mining: A Permitting Process in Flux*, Fed. Soc'y Blog (Sept. 11, 2009). Copy supplied.

Lee Rudofsky, *Even in busy D.C., memories of Fairbanks will never fade*, Fairbanks Daily News-Miner, Nov. 3, 2007. Copy supplied.

Wedding Announcement, Wash. Post, June 4, 2006. Copy supplied.

Lee Rudofsky, Letter to the Editor, *Opinion Column Misrepresents Republicans*, Harv. L. Rec., Nov. 17, 2004. Copy supplied.

Lee Rudofsky, *Israel Burning: America's key ally feeling effects [of] terrorism by Palestinian Leadership*, Cornell Rev., Dec. 7, 2001. Copy supplied.

Lee Rudofsky, *Only In America: Anti-American Protestors Lack Historical Perspective*, Cornell Rev., Nov. 9, 2001. Copy supplied.

Lee Rudofsky, *Highway Robbery: Like a hijacked jet, the Student Activity Fee Spins out of Control*, Cornell Rev., Oct. 18, 2001. Copy supplied.

Lee Rudofsky, *The Face of Terror: The Man Behind the Bombings: Who is Osama Bin Laden*, Cornell Rev., Sept. 21, 2001. Copy supplied.

Lee Rudofsky & Michael Hanson, *Stealing The Vote: SA Political Boss Masterminds Election Fraud Scheme*, Cornell Rev., Sept. 21, 2001. Copy supplied.

Lee Rudofsky, Letter to the Editor, *Presidential Support*, Cornell Rev., Feb. 28, 2001. Copy supplied.

Lee Rudofsky, *Validating Vouchers: Privatization is the Last, Best Hope for Public Education Reform*, Cornell Rev., Nov. 3, 2000. Copy supplied.

Lee Rudofsky, *Voter[s] are drawn to a do nothing candidate? Hillary Clinton has done nothing, so keep it up*, Cornell Rev., Oct. 13, 2000. Copy supplied.

Lee Rudofsky, Letter to the Editor, *S.A Rep. suggests holding off on funding reform*, Cornell Daily Sun, May 4, 2000. Copy supplied.

Lee Rudofsky, *Student Assembly Resolution to Appreciate the Efforts of Cornell Dining Staff*, Cornell Daily Sun, May 4, 2000. Copy supplied.

Lee Rudofsky, Letter to the Editor, *S.A. member's remarks both 'reactionary' and 'absurd'*, Cornell Daily Sun, Apr. 13, 2000. Copy supplied.

Lee Rudofsky, Letter to the Editor, *Candidate denies oppressing opponents' freedom of speech*, Cornell Daily Sun, Mar. 1, 2000. Copy supplied.

Lee Rudofsky, Letter to the Editor, *S.A. Rep. Questions Columnist's Statements About Activity Fees*, Cornell Daily Sun, Sept. 20, 1999. Copy supplied.

Lee Rudofsky, Letter to the Editor, *Will C.U. Have Music on the Slope?*, Cornell Daily Sun, Spring 1999. Copy supplied.

Lee Rudofsky, Letter to the Editor, *Student Assembly Rep. Apologizes for his Behavior*, Cornell Daily Sun, Sept. 28, 1998. Copy supplied.

Leslie Kirchler & Lee Rudofsky, Letter to the Editor, *SAF and S.A. Member Criticize S.A. Decisions*, Cornell Daily Sun, Nov. 25, 1997. Copy supplied.

While I was an intern for the Jewish Institute for National Security Affairs in 2002, I helped write one or more op-ed pieces. I do not recall which pieces I helped author, and I have been unable to locate any such pieces.

- 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.

Arkansas Advisory Committee to the United States Commission on Civil Rights, Project Proposal (April 23, 2018). Copy supplied.

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

Arkansas Advisory Committee to the United States Commission on Civil Rights, Public Hearing Transcripts (April 23, 2019, September 7, 2018). Copy supplied.

Arkansas Advisory Committee to the United States Commission on Civil Rights, Telephonic Meeting Minutes (March 1, 2019, September 7, 2018, March 9, 2018, May 15, 2017, March 13, 2017, February 13, 2017). Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Daniel A. Bress (Feb. 27, 2019). Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Eric E. Murphy (July 28, 2018). Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Andrew L. Brasher (May 17, 2018). Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Britt C. Grant (May 16, 2018). Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Patrick R. Wyrick (May 1, 2018). Copy supplied.

Letter to the United States Senate and Senate Judiciary Committee supporting the nomination of J. Campbell Barker (Apr. 12, 2018). Copy supplied.

Letter to the Centerton Planning Commission regarding rezoning (Mar. 14, 2018). Copy supplied.

Hearing testimony, Litigation Reports Oversight Subcommittee of the Arkansas Legislative Council regarding Arkansas state sovereign immunity after *Board of Trustees of the University of Arkansas v. Matthew Andrews*, Jan. 30, 2018. Audio recording supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Kyle Duncan (Nov. 16, 2017). Copy supplied.

Letter to the Arizona Commission on Appellate Court Appointments recommending selection of Jennifer Perkins, June 30, 2017. Copy supplied.

Letter to the United States Senate Judiciary Committee supporting the nomination of Jeffrey Bossert Clark, June 27, 2017. Copy supplied.

Comment Letter to EPA Administrator McCarthy re the proposed rule “Clean Energy Incentive Program Design Details” (Nov. 1, 2016). Copy supplied.

Letter to EPA Administrator McCarthy requesting extension of time to comment on proposed rule “Clean Energy Incentive Program Design Details” (Aug. 1, 2016). Copy supplied.

Brief of Kenneth B. Mehlman, et al. as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 576 U.S. ____ (2015); 135 S. Ct. 2584 (2015) (No. 14-556). Copy supplied.

Brief of Kenneth B. Mehlman, et al. as Amici Curiae Supporting Respondents, *Hollingsworth v. Perry*, 570 U.S. 693 (2013) (No. 12-144). Copy supplied.

Letter from Romney for President 2012 to the Virginia Attorney General and Virginia Board of Elections regarding Voter Participation Center (July 24, 2012). Copy supplied.

Letter from Romney for President 2012 to West Bloomfield Township Clerk Catherine Shaughnessy regarding missing election memory cards (July 2012). I have been unable to locate a copy of the letter. I am providing a news article describing the letter.

Joint letter from Harvard Law School Alumni supporting the nomination of former Dean Elena Kagan (June 24, 2010). Copy supplied.

Cornell University Student Assembly Meeting Minutes (November 2, 2000, October 26, 2000, October 12, 2000, September 28, 2000, September 14, 2000, August 31, 2000, May 4, 2000, April 27, 2000, April 20, 2000, April 13, 2000, April 6, 2000, March 20, 2000, March 9, 2000, March 2, 2000, February 17, 2000, February 10, 2000, February 3, 2000, January 27, 2000, December 2, 1999, November 29, 1999, November 22, 1999, November 18, 1999, November 11, 1999, November 4, 1999, October 28, 1999, October 21, 1999, October 14, 1999, October 7, 1999, September 23, 1999, September 16, 1999, September 9, 1999, September 2, 1999, April 22, 1999, April 15, 1999, April 8, 1999, April 1, 1999, March 18, 1999, March 11, 1999, February 25, 1999, February 18, 1999, February 11, 1999, February 4, 1999, January 28, 1999, December 3, 1998, November 23, 1998, November 19, 1998, November 12, 1998, November 5, 1998, October 29, 1998, October 15, 1998, October 1, 1998, September 24, 1998, September 17, 1998, September 3, 1998, April 30, 1998, April 23, 1998, April 16, 1998, April 9, 1998, April 2, 1998, March 26, 1998, March 12, 1998, March 5, 1998, February 26, 1998, February 19, 1998, February 12, 1998, February 5, 1998, January 22, 1998, November 13, 1997, November 6, 1997, October 30, 1997, October 16, 1997, October 9, 1997, September 11, 1997). Copy supplied.

I believe I signed letters of support for the nominations of Andy Oldham to the U.S. Court of Appeals for the Fifth Circuit, Jeff Mateer to the U.S. District Court for the Eastern District of Texas, and Brett Talley for the U.S. District Court for the Middle District of Alabama. I have been unable to locate a copy of those letters.

- 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.

January 29, 2019: Panel Presenter, The King Can Do No Wrong: Sovereign Immunity in Arkansas, University of Arkansas School of Law Federalist Society, Fayetteville, Arkansas. Notes supplied.

June 26, 2018: Panel Presenter, “Constitutional Interpretation and *Andrews*,” Federalist Society Little Rock Lawyers Chapter, Little Rock, Arkansas. Notes supplied.

June 5, 2018: Presenter, Sovereign Immunity in the Age of *Andrews*, Office of the Arkansas Attorney General, Little Rock, Arkansas. Notes supplied.

May 30, 2018: Podcast Speaker, *Wilson v. Sellers* – Post-Decision SCOTUSCast, The Federalist Society, Washington, D.C. Recording available at <https://fedsoc.org/commentary/podcasts/wilson-v-sellers-post-decision-scotuscast>.

March 19, 2018: Panel Presenter, Judicial Appointments Review and Discussion, Rule of Law Defense Fund, New Orleans, Louisiana. The panel was on the appointment of Justice Gorsuch to the U.S. Supreme Court, potential future U.S. Supreme Court nominees, selections for lower court judicial openings, and early trends in Justice Gorsuch’s jurisprudence. I have no notes, transcript, or recording. The address for Rule of Law Defense Fund is 1747 Pennsylvania Avenue N.W., Suite 800, Washington, D.C. 20006.

November 21, 2017: Podcast Speaker, *Wilson v. Sellers* – Post-Argument SCOTUSCast, The Federalist Society, Washington, D.C. Recording available at <https://fedsoc.org/commentary/podcasts/wilson-v-sellers-post-argument-scotuscast>.

September 14, 2017: Presenter, Supreme Court Preview, Federalist Society Little Rock Lawyers Chapter, Little Rock, Arkansas. Notes supplied.

September 13, 2017: Speaker, U.S. Supreme Court Preview and Review, Federalist Society Memphis Lawyers Chapter, Memphis, Tennessee. The speech was on recent and upcoming U.S. Supreme Court cases. I have no notes, transcript, or recording. The address for the Federalist Society Memphis Lawyers Chapter is c/o Federalist Society, 1776 I Street N.W., Suite 300, Washington, D.C. 20006.

September 11, 2017: Speaker, Independent State Grounds: State-based Strategies for Securing Constitutionally Protected Freedoms, Alliance Defending Freedom, Cancun, Mexico. The speech was on religious liberties litigation by state Attorneys General across the nation. I have no notes, transcript, or recording. The address for Alliance Defending Freedom is 15100 North 90th Street, Scottsdale, Arizona 85260.

August 3, 2017, Panel Presenter, Recent Death Penalty Litigation in Arkansas, Eighth Circuit Chief Judges Conference, Little Rock, Arkansas. Recording supplied.

June 15, 2017: Panel Presenter, Voting Rights and Access to the Ballot, Arkansas Bar Association 2017 Annual Bar Convention, Hot Springs, Arkansas. The panel was on recent and upcoming U.S. Supreme Court cases regarding voter identification, redistricting / gerrymandering, and the maintenance of voter registration lists. I have no notes, transcript, or recording. The address for the Arkansas Bar Association is 2224 Cottondale Lane, Little Rock, Arkansas 72202.

July 11, 2017: Panel Moderator, The New Court: *Trinity Lutheran*, Justice Gorsuch, and Religious Liberty's Future, Alliance Defending Freedom, Laguna Niguel, California. Notes supplied.

May 9, 2017: Panel Presenter, Supreme Court Perspectives: The Gorsuch Effect, Rule of Law Defense Fund, Charleston, South Carolina. The panel was on recently decided and upcoming U.S. Supreme Court cases. I have no notes, transcript, or recording. The address for Rule of Law Defense Fund is 1747 Pennsylvania Avenue N.W., Suite 800, Washington, D.C. 20006.

March 25, 2017: Panel Presenter, State Solicitors General, Harvard Law School Federalist Society Alumni Symposium, Cambridge, Massachusetts. Notes and press supplied.

February 16, 2017: Speaker, February Meeting, Northwest Arkansas Young Republicans, Fayetteville, Arkansas. I spoke about my job as solicitor general. I have no notes, transcript, or recording. I do not know the physical address of the Arkansas Young Republicans, but their website is <https://www.arkansasyr.gop/>.

January 12, 2017: Speaker, Update from the Office of the Arkansas Attorney General, Western States Land Commissioners Association, Rogers, Arkansas. Notes supplied.

October 22, 2016: Panel Moderator, Death in Arkansas – A Retrospective, University of Arkansas Law Review, Fayetteville, Arkansas. Recording supplied.

October 18, 2016: Panel Presenter, School Law Panel, 2016 Arkansas Public School Resource Center Fall Conference, Hot Springs Convention Center, Hot Springs, Arkansas. The panel was on legal issues relevant to K-12 education. I have no notes, transcript, or recording. The address for the Arkansas Public School Resource Center is Victory Building, 1401 West Capitol, Suite 315, Little Rock, Arkansas 72201.

September 2, 2016: Speaker, Current Legal Issues Facing Solicitors General, Cornell Institute for Public Affairs, Ithaca, New York. The speech was an

informal classroom discussion regarding current legal issues facing Solicitors General across the country. I have no notes, transcript, or recording. The address for the Cornell Institute for Public Affairs is 294 Caldwell Hall, Ithaca, New York 14853.

September 2, 2016: Panel Presenter, Cornell Sprint Football Alumni Careers, Cornell Sprint Football Team, Ithaca, New York. The panel was an informal discussion regarding career paths of former Sprint Football members and potential career paths of current team members. I have no notes, transcript, or recording. The address for Cornell Sprint Football is Teagle Hall, Ithaca, New York 14853.

September 1, 2016: Speaker, State Solicitors General and the Fight Against Federal Overreach, Cornell University Law School Federalist Society, Ithaca, New York. The speech was on recent federalism litigation brought by state attorneys general throughout the nation. The speech also discussed my career path and the various ways law students can prepare themselves for public service. I have no notes, transcript, or recording. The address for the Cornell University Law School Federalist Society is Myron Taylor Hall, Ithaca, New York 14853.

June 23, 2016: Panel Presenter, Independent State Grounds: State-based Strategies for Protecting Religious Freedom, Alliance Defending Freedom, Maui, Hawaii. Notes supplied.

June 3, 2016: Panel Presenter, Case Law Update, Office of the Arkansas Attorney General, Little Rock, Arkansas. Notes supplied.

May 27, 2016: Panel Presenter, Legality of Sobriety Checkpoints, Arkansas Prosecuting Attorneys Association, Little Rock, Arkansas. The panel was on the legality of sobriety checkpoints and the impact of an Arkansas Supreme Court case, *Whalen v. State*. I have no notes, transcript, or recording. The address for the Arkansas Prosecuting Attorneys Association is 323 Center Street, Suite 750, Little Rock, Arkansas 72201.

March 1, 2016. Podcast Panel Presenter, The Texas Abortion Case in the Supreme Court: *Whole Women's Health v. Hellerstadt* Oral Argument Preview, The Federalist Society, Washington, D.C. Recording available at <https://fedsoc.org/commentary/podcasts/the-texas-abortion-case-in-the-supreme-court-whole-woman-s-health-v-hellerstedt-oral-argument-preview-podcast>.

February 17, 2016: Panel Presenter, Arkansas & U.S. Supreme Court Sessions: A Sneak Peek, Federalist Society Little Rock Lawyers Chapter, Little Rock, Arkansas. Notes supplied.

February 16, 2016: Panel Presenter, Arkansas & U.S. Supreme Court Sessions: A Sneak Peek, Federalist Society Northwest Arkansas Lawyers Chapter, Fayetteville, Arkansas. Notes supplied.

November 13, 2015: Interview-Style Presentation, An Interview with Lee Rudofsky, Federalist Society Harvard Law Alumni, Washington, D.C. The interview was about my career path, work as Solicitor General of Arkansas, how I prepare for oral argument, and advice for law students. I have no notes, transcript, or recording. The address for the Federalist Society is 1776 I Street N.W., Suite 300, Washington, D.C. 20006.

August 30, 2015: Speaker, Introduction of Arkansas Attorney General Leslie Rutledge, Congregation Etz Chaim, Bentonville, Arkansas. The event was a consecration of a Torah that had been hidden during the Holocaust and needed to be refurbished. My introduction discussed General Rutledge's commitment to religious freedom. I have no notes, transcript, or recording. The address for Congregation Etz Chaim is 4074 Southwest H Street, Bentonville, Arkansas 72712. Press coverage supplied.

June 13, 2015: Panel Moderator, Officers of the Court: Judicial tips for avoiding the most common and most serious ethical dilemmas facing lawyers today, South Asian Bar Association of North America, Orlando, Florida. The panel was on legal ethics. I have no notes, transcript, or recording. The address for the South Asian Bar Association of North America is unknown; the website for the organization is <https://www.sabanorthamerica.com>.

April 27, 2015: Interviewer, A Conversation with Alberto Gonzales, Federalist Society Northwest Arkansas Lawyers Chapter, Fayetteville, Arkansas. The event was an interview of Judge Alberto Gonzales regarding his career and time as White House Counsel and Attorney General. I have no notes, transcript, or recording. The address for the Northwest Arkansas Federalist Society is c/o Josh Mostyn, Mostyn Prettyman PLLC, 2601 North Walton Boulevard, Bentonville, Arkansas 72712.

August 9, 2013: Speaker, Continuous Improvement for Fair & Open Elections, Republican National Lawyers Association, Chicago, Illinois. Presentation slides supplied.

October 9, 2012: Speaker, Update from the Romney Campaign, Republican National Lawyers Association, New York, New York. This was a preview of volunteer opportunities for Republican lawyers on election day. I have no notes, transcript, or recording. The address for the Republican National Lawyers Association is P.O. Box 18965, Washington, D.C. 20036.

I was invited to speak at an event on July 20, 2005, at the National Endowment for Democracy in Washington, D.C., on the subject of bringing free market ideas to college campuses. I do not recall whether I actually participated in that event, and I have no notes, transcript, or recording. The address of the National

Endowment for Democracy is 1025 F Street NW, Suite 800, Washington, D.C. 20004.

2004: Debater, 2004 U.S. Presidential Elections and Foreign Policy, Harvard Law Republicans and Harvard Law Democrats, Cambridge, Massachusetts. This was a debate between two members of the Harvard Law Republicans and two members of the Harvard Law Democrats focused on current issues in the 2004 Presidential Election. I have no notes, transcript, or recording. The address for both the Harvard Law Republicans and Harvard Law Democrats is 1585 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 5, 2000: Debater, 2000 U.S. Presidential Elections, Cornell Republicans and Cornell Democrats, Ithaca, New York. This was a debate between four Cornell Republicans and four Cornell Democrats focused on current issues in the 2000 Presidential Election. I have no notes, transcript, or recording. The address for both the Cornell Republicans and Cornell Democrats is Day Hall, Ithaca, New York 14853. Press coverage supplied.

1998: Speaker, National Junior Honor Society Induction, West Hollow Middle School, Dix Hills, New York. The speech was on the importance of building good character. I have no notes, transcript, or recording. The address for the West Hollow Middle School is 250 Old East Neck Road, Melville, New York 11747.

- 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.

Press Release, Arkansas Attorney General's Office, Rutledge Names Nicholas Bronni as Solicitor General: Thanks Lee Rudofsky for his Service to the Office and State (July 11, 2018). Copy supplied.

Tessa L. Dysart, Leslie H. Southwick, & Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Arguments*, Third Edition, National Institute for Trial Advocacy, August 2017 at p. 142. Copy supplied.

Press Release, Arkansas Attorney General's Office, Rutledge Welcomes Lee Rudofsky as State's First Solicitor General, July 30, 2015. Copy supplied.

Virginia A. Greiman, OPIA's Guide to Conservative / Libertarian Public Interest Law, Harvard Law School Office of Public Interest Advising, September 2007, at p. 24. Copy supplied.

Hugo Torres, *HLS GOP Goes to Washington D.C.*, Harv. L. Rec., Mar. 17, 2005. Copy supplied.

Amy Garrigues, *HLS GOP enters the Beltway*, Harv. L. Rec., Mar. 11, 2004. Copy supplied.

Lea Sevcik, *HLS GOP rubs shoulders with DC luminaries*, Harv. L. Rec., Mar. 19, 2003. Copy supplied.

Spring of 2002. PEGASYS Public Access Television (Ithaca, NY). I appeared on a 30-minute broadcast of CIPA's (Cornell Institute for Public Affairs') Point of View series. The show was a panel discussion of current events. I do not have a recording or transcript of that appearance.

Ryan, *For Hillary, First Stop: Cornell*, Cornell Daily Sun, Oct. 25, 2000. Copy supplied.

Ryan, *Chair of C.U. Republicans Resigns*, Cornell Daily Sun, Sept. 19, 2000. Copy supplied.

Ken Meyer, *Candidates Promise Change*, Cornell Daily Sun, Mar. 7, 2000. Copy supplied.

2000-2001 Student Assembly Candidates, Cornell Daily Sun, Mar. 6, 2000. Copy supplied.

Maggie Frank, *S.A. Discusses Diversity as Elections Near*, Cornell Daily Sun, Mar. 3, 2000. Copy supplied.

2000-2001 Student Assembly Candidates, Cornell Daily Sun, Feb. 28, 2000. Copy supplied.

Nathaniel Berman, *Student Assembly Debates Affirmative Action*, Cornell Daily Sun, Feb. 11, 2000. Copy supplied.

Nilo Alvarado & Jason Flannick, *New Meal Plan Proposed*, Cornell Daily Sun, Feb. 4, 2000. Copy supplied.

Christen Aragoni, *Student Assembly Sets Activities Fee at \$92*, Cornell Daily Sun, Dec. 3, 1999. Copy supplied.

Christen Aragoni, *Tsourounis '00 suspends use of list-serve*, Cornell Daily Sun, Dec. 3, 1999. Copy supplied.

Jason Flannick, *Balch Dining to Close in 2001*, Cornell Daily Sun, Nov. 19, 1999. Copy supplied.

Jonathan Lewinsohn, *Members helped by counseling session*, Cornell Daily Sun, Oct. 08, 1999. Copy supplied.

Jason Flannick, *Campus Life May Introduce Meal Plan for Collegetown*, Cornell Daily Sun, Sept. 10, 1999. Copy supplied.

Sean Copeland, *Cash-Op Dining Reinstated*, Cornell Daily Sun, May 3, 1999. Copy supplied.

Joseph J. Sabia, *Republican Steamroller*, Cornell Rev., Mar. 19, 1999. Copy supplied.

Christopher Marquis, *Sour Grapes*, Cornell Rev., Mar. 19, 1999. Copy supplied.

Yoni Levine, *Cornell Announces Results of Campus Elections*, Cornell Daily Sun, Mar. 9, 1999. Copy supplied.

Christen Aragoni, et al., *Candidates Reflect on Positions, Goals for Upcoming Assembly Term*, Cornell Daily Sun, Mar. 2, 1999. Copy supplied.

Christopher Marquis, *Nowhere Man*, Cornell Rev., Feb. 26, 1999. Copy supplied.

Sean Copeland, *S.A., Trustee Hopefuls Vie for [unreadable]*, Cornell Daily Sun, Feb. 26, 1999. Copy supplied.

Announcing Student Assembly Candidates, Cornell Daily Sun, Feb. 19, 1999. Copy supplied.

Christopher Marquis, *Leethal Weapon*, Cornell Rev., Sept. 25, 1998. Copy supplied.

Reena Thomas, *S.A. Requests Resignation From Assembly Member*, Cornell Daily Sun, Apr. 23, 1998. Copy supplied.

Reena Thomas & Salil Gupte, *Candidates Seek Positions As Student Representatives*, Cornell Daily Sun, Mar. 2, 1998. Copy supplied.

Announcing Student Assembly Candidates, Cornell Daily Sun, Feb. 23, 1998. Copy supplied.

Reena Thomas, *Assembly Creates Reform Committee*, Cornell Daily Sun, Feb. 18, 1998. Copy supplied.

Sarah Striffler, *Student Assembly Gains Five New Representatives*, Cornell Daily Sun, Sept. 29, 1997. Copy supplied.

Sarah Striffler, *Students Vie For Seats on Student Assembly*, Cornell Daily Sun, Sept. 23, 1997. Copy supplied.

Student Assembly Vote – New Student At Large Candidates, Cornell Daily Sun, Sept. 22, 1997. Copy supplied.

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

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

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

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

Solicitor General of Arkansas (July 2015 – July 2018). I was appointed by Arkansas Attorney General Leslie Rutledge.

Arkansas Advisory Committee to the United States Commission on Civil Rights (November 2016 – present). To the best of my understanding, I was appointed by the Commission.

- 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.

Member, Arkansas Republican Party (2014 – present).

Member, Tusk Club (2016 – present).

Fundraiser Host, Leslie Rutledge for Arkansas Attorney General (2018). My wife and I hosted a fundraiser for Leslie Rutledge at our home.

Volunteer Fundraiser, Jeb Bush for President (2016). I solicited donations from friends for Jeb Bush.

Member, Northwest Arkansas Chapter of the Arkansas Young Republicans (2014 – 2015).

Member, Benton County Republican Committee (2014 – 2015).

Volunteer Lawyer, Cotton for Senate (2014). I provided advice to campaign counsel on how to set up and run a volunteer lawyers' group during the campaign and on election day. I also fielded legal questions on election day. In addition to my work as a volunteer lawyer, I solicited campaign contributions from friends for Senator Cotton.

Fundraiser Host, Ron DeSantis for Congress (2012). My wife and I hosted a fundraiser for Ron DeSantis at our home.

Deputy General Counsel and Director of Legal Election Day Operations, Mitt Romney for President (February 2012 – December 2012). I coordinated staff lawyers and volunteer lawyers for poll watching activities, litigation support, and potential recount contingencies. I reviewed press statements for legal propriety. I assisted in ensuring fair state primaries, caucuses, and conventions. I also carried out routine in-house counsel responsibilities.

Deputy General Counsel and Acting General Counsel, Steve Poizner for Governor (January 2010 – June 2010). I coordinated volunteer lawyers for poll watching activities, litigation support, and potential recount contingencies. I reviewed press statements and advertisements for legal propriety. I supervised the campaign's financial reporting responsibilities. I also carried out routine in-house counsel responsibilities.

Volunteer Lawyer, McCain for President / Lawyers for McCain (2008). I assisted with ballot access issues during early voting and on election day in Nevada. I also prepared litigation papers for potential filing.

Member, Romney for President Judicial Advisory Council (2008). I was a member of the campaign's judicial advisory council.

President, Harvard Law Republicans (2004 – 2005).

Political Director, Harvard Law Republicans (2003 – 2004).

Member, Harvard Law Republicans (2002 – 2005).

Poll Watcher, George W. Bush for President (2004).

Director of Elections, Cornell Republicans (2001).

Member, Cornell Republicans (1997 – 2002).

Volunteer, Rick Lazio for Senate (2000). As a member of the Cornell Republicans, I volunteered for phone banks and door-to-door campaigning in support of Rick Lazio.

Volunteer, Allan Binder for Suffolk County Legislator (1996). I vaguely recall that, when I was in high school, I volunteered as a leafletter and phone banker for Allan Binder.

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

a. Describe chronologically your law practice and legal experience after graduation from law school including:

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

From 2005 to 2006, I served as a law clerk to the Honorable Robert J. Cordy III, Associate Justice of the Massachusetts Supreme Judicial Court.

From 2006 to 2007, I served as a law clerk to the Honorable Andrew J. Kleinfeld, Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced law alone.

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

Summer 2005

United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, District of Columbia 20510
Short-term Volunteer Law Clerk for Committee Majority Staff

2007 – 2009; 2010 – 2012; 2013 – 2014

Kirkland & Ellis, LLP
1301 Pennsylvania Avenue N.W.
Washington, District of Columbia 20004
Associate (2007 – 2009; 2010 – 2012)
Senior Associate (2013 – 2014)

Fall 2009

Borgeson & Burns P.C. (now closed)
100 Cushman Street, Suite 311
Fairbanks, Alaska 99701
Associate

2010

Steve Poizner for Governor
520 Capitol Mall
Sacramento, California 95841
Deputy General Counsel and Acting General Counsel

2012

Mitt Romney for President 2012
138 Conant Street,
Beverly, Massachusetts 01915
Deputy General Counsel and Director of Legal Election Day Operations

2014 – 2015; 2018 – present

Walmart
702 Southwest 8th Street
Bentonville, Arkansas 72716
Assistant General Counsel, Corporate Affairs & Government Relations
(2014 – 2015)
Senior Director, Global Anti-Corruption Compliance Team (2018 –
present)

2015 – 2018

Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Solicitor General of Arkansas

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 2005 – 2007, I was a law clerk to two judges—one on the Supreme Judicial Court of Massachusetts, and one on the United States Court of Appeals for the Ninth Circuit. I drafted memoranda recommending the grant or denial of certiorari, drafted bench memoranda for cases, and drafted and revised opinions. I also routinely provided oral summaries of cases prior to argument. In life without parole cases and certain life with parole cases, I was often responsible for reviewing the entire trial record and making a fully independent assessment of whether there were any reviewable trial errors.

In 2007 – 2009, 2010 – 2011, and 2013, I was a civil litigator and appellate attorney at Kirkland & Ellis LLP. I worked principally on constitutional, administrative, environmental and complex commercial litigation in the federal district courts and federal courts of appeal. I coordinated significant discovery matters, prepared lay and expert witnesses for court, defended depositions, drafted numerous motions to dismiss and motions for summary judgment in trial courts, and drafted numerous appellate briefs. I also worked closely with in-house counsel to review written and oral presentations to governments and industry trade associations.

In 2009, when my wife began a clerkship in Alaska for the United States Court of Appeals for the Ninth Circuit, I joined a small firm (Borgeson & Burns, P.C.) in Fairbanks. I prepared a memorandum regarding several questions of employment law for a hotel franchise. I also drafted complaints, motions to dismiss, motions for summary judgment, and an appellate brief in areas ranging from trespass law to property disputes to complex commercial transactions. I also counseled a small corporation on its dissolution.

In 2010, I was afforded the opportunity to work on a major gubernatorial campaign. I became the Deputy General Counsel to Steve Poizner's 2010 campaign for Governor of California. For several months, my boss was out on maternity leave and I served as the Acting General Counsel to the campaign. I ensured the campaign's compliance with relevant campaign

finance, election, and employment laws. I reviewed all statements from the campaign prior to their use. I prepared and/or supervised the preparation of election law litigation templates (complaints, affidavits, motion for temporary restraining orders, responses) to use if needed on election day. I coordinated poll watchers and legal advisors.

After Poizner lost the primary in 2010, my wife and I returned to DC and I went back to work at Kirkland & Ellis, where my practice continued as described above until 2012. In 2012, I joined Mitt Romney's presidential campaign as Deputy General Counsel (and later as Director of Legal Election Day Operations as well). I supervised lawyers around the country—some employees, many volunteers—in legal preparations for primaries, caucuses, conventions, and ultimately general election day. I also analyzed the election laws of nearly every state across the country, specifically in regard to operations of the primary, caucus, and/or general election. With this information, I advised our political team on how best to comply with and succeed under those laws.

After Romney lost the general election, I returned to Kirkland & Ellis, where my practice continued as described above until 2014. When I moved in-house to Walmart in 2014, my duties included (1) advising our federal and state corporate affairs teams on applicable campaign finance and lobbying laws, (2) reviewing, for legal propriety, potential responses from our corporate communications team to media inquiries across all subject matters, (3) understanding the state of our most sensitive and high-profile litigation in order to provide relevant updates to our corporate communications professionals, (4) reviewing, for legal propriety, numerous portions of Walmart's Annual Global Responsibility Report, and (5) drafting contracts between our Corporate Affairs department and outside vendors.

In 2015, I was appointed Solicitor General of Arkansas by Arkansas Attorney General Leslie Rutledge. During my three-year tenure as Solicitor General, I (1) litigated cases in the state trial court and the federal district court, (2) briefed and/or argued matters in the Arkansas Supreme Court, the Eighth Circuit, and the United States Supreme Court, and (3) reviewed and revised Attorney General Opinions. The matters I handled included a variety of topics, such as the death penalty, murder convictions, proper sentencing, equal protection, due process, sovereign immunity, private rights of action, free speech, free exercise, the establishment clause, separation of powers, and federalism.

In addition to the matters I directly handled, I also reviewed and revised nearly all briefs from our civil and criminal departments before they were filed in the Arkansas Supreme Court or any federal courts of appeal. On novel or sensitive legal matters, I helped those departments plan and

supervise legal strategy for trial litigation in both the state and federal courts. I estimate that, as part of this process, I reviewed and revised approximately 500 briefs and trial court motions.

I also created and ran a formal moot court program for the office. Attorneys had to be mooted twice in front of me and other peers before arguing a case in the Arkansas Supreme Court or the federal courts of appeal. This required me to complete a deep dive into the briefs and trial record of almost every case argued by the Office. I estimate that I presided over about 70 moot courts.

In 2018, I returned to Walmart as a Senior Director on the Anti-Corruption Compliance Team. For approximately six months, I assisted Walmart's Corporate Secretary and Chief Legal Officer in streamlining policies, processes, and organizational structures in the legal department and the ethics and compliance department. Currently, I am serving as the global subject matter expert on anti-corruption training.

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

At Kirkland & Ellis LLP, my clients were generally Fortune 500 companies and national trade associations. For much of my Kirkland practice, I specialized in environmental law.

At Borgeson & Burns, I had a general practice. I had no "typical" clients. My clients included individuals with property disputes, small companies requiring corporate law services and employment law advice, and a utility company requiring litigation defense work.

As in-house counsel to two political campaigns (and as a volunteer lawyer for other political campaigns), I primarily specialized in campaign finance law, election law, and ballot access issues. I most often counseled the campaigns' political and policy departments.

At Walmart, during the time I counseled the Corporate Affairs and Government Relations team, I specialized in campaign finance laws, lobbying rules and media relations. Currently, I help the company train associates to comply with the Foreign Corrupt Practices Act and other applicable anti-corruption laws worldwide.

As Solicitor General of Arkansas, I represented the State of Arkansas, state agencies and state officials. I also provided counsel to the Arkansas Attorney General. I specialized in state and federal constitutional law.

- 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.

At Kirkland & Ellis LLP and Borgeson & Burns P.C., 80% of my practice was in litigation and appeals. I very rarely appeared in court and not as principal counsel.

During my time as in-house counsel for (and as a volunteer lawyer to) political campaigns, 20% of my practice was in litigation and appeals. I did not appear in court.

During my time at Walmart, 5% of my practice was in litigation and appeals. I did not appear in court.

During my time as Solicitor General of Arkansas, 95% of my practice was in litigation and appeals. I appeared in state and federal courts frequently, often multiple times a month.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 55% |
| 2. state courts of record: | 40% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 5% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 65% |
| 2. criminal proceedings: | 35% |

- 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 involved in one full trial, and in numerous cases that have been resolved by a court as opposed to being settled by the parties.

I was a member of Kirkland & Ellis's large trial team representing British Petroleum in the Deepwater Horizon multi-district litigation. We tried Phase One of this matter fully, with the Judge issuing Findings of Fact and Conclusions of Law. I was an associate counsel. I prepared witnesses for trial, prepared examination questions for lead counsel, assisted in resolving exhibit disputes, and prepared daily summations of testimony and court rulings for the client.

As Solicitor General of Arkansas, I conducted four preliminary injunction or stay of execution hearings that involved multiple fact and expert witnesses. I was the chief counsel in those matters and supervised a team of several lawyers. I

litigated a preliminary injunction matter in federal district court that was based primarily on a matter of law. Thus, the preliminary injunction decision amounted to a final judgment. I was chief counsel on this matter.

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.

Brief in Opposition, *Planned Parenthood of Arkansas & Eastern Oklahoma v. Jegley*, No. 17-935 (2008). Copy supplied.

Reply Brief, *Missouri et al. v. California*, No. 148 (2018). Copy supplied.

Reply in Support, *Indiana v. Massachusetts*, No. 149 (2018). Copy supplied.

Brief in Opposition, *Bell v. Arkansas*, No. 17-6749 (2018). Copy supplied.

Amici Curiae Brief in Support, *Louisiana Department of Corrections v. Ware*, No. 17-930 (2018). Copy supplied.

Brief in Opposition, *Holly v. Arkansas*, No. 17-6514 (2018). Copy supplied.

Motion for Leave to File Bill of Complaint, *Indiana et al. v. Massachusetts*, No. 149 (2017). Copy supplied.

Motion for Leave to File Bill of Complaint, *Missouri et al. v. California*, No. 148 (2017). Copy supplied.

Amici Curiae Brief in Support, *Wilson v. Sellers*, No. 16-6855 (2017). Copy supplied.

Amici Curiae Brief in Support, *Arlene's Flowers, Inc. v. Washington*, No. 17-108 (2017). Copy supplied.

Opposition to Application for Stay of Execution, *Williams v. Kelley*, No. 16-8923 (2017). Copy supplied.

Opposition to Application for Stay of Execution, *Williams v. Arkansas*, No. 16-8922 (2017). Copy supplied.

Opposition to Application for Stay of Execution, *Williams v. Kelley*, No. 16-8921

(2017). Copy supplied.

Opposition to Application for Stay of Execution, *Williams v. Kelley*, No. 16-8815 (2017). Copy supplied.

Opposition to Application for Stay of Execution, *Williams v. Kelley*, No. 16-8816 (2017). Copy supplied.

Opposition to Application for Stay of Execution, *Jones v. Kelley*, No. 16A1028 (2017). Copy supplied.

Opposition to Application for Stay of Executions, *Lee v. Hutchinson*, No. 16-8788 (2017). Copy supplied.

Opposition to Application for Stay of Executions, *Lee v. Arkansas*, No. 16A1018 (2017). Copy supplied.

Opposition to Application for Stay of Executions, *McGehee v. Hutchinson*, No. 16-8787 (2017). Copy supplied.

Opposition to Application for Stay of Executions, *McGehee v. Hutchinson*, No. 16-8770 (2017). Copy supplied.

Opposition to Application for Stay of Executions, *Lee v. Hutchinson*, No. 16A1016 (2017). Copy supplied.

Application to Vacate Stay of Execution, *Arkansas v. Davis*, No. 16A987 (2017). Copy supplied.

Brief in Opposition, *Pavan v. Smith*, No. 16-992 (2017). Copy supplied.

Brief of Amici Curiae in Support, *Weaver v. Massachusetts*, No. 16-240 (2017). Copy supplied.

Brief in Opposition, *Arkansas v. Delaware*, No. 22O146 (2017). Copy supplied.

Reply Brief, *Arkansas State Police v. Wren*, No. 16-313 (2016). Copy supplied.

Brief in Opposition, *Johnson v. Kelley*, No. 16-6496 (2016). Copy supplied.

Answer to Counterclaim, *Arkansas v. Delaware*, No. 22O146 (2016). Copy supplied.

Petition for Writ of Certiorari, *Arkansas State Police v. Wren*, No. 16-313 (2016). Copy supplied.

Motion for Leave to File Bill of Complaint, *Arkansas v. Delaware*, No. 22O146 (2016). Copy supplied.

Reply in Support, *West Virginia v. United States Environmental Protection Agency*, No. 15A773 (2016). Copy supplied.

Application for Immediate Stay, *West Virginia v. United States Environmental Protection Agency*, No. 15A773 (2016). Copy supplied.

Reply to Brief in Opposition, *Beck v. Edwards*, No. 15-448 (2015). Copy supplied.

Petition for Writ of Certiorari, *Kelley v. Gordon*, No. 15-741 (2015). Copy supplied.

Petition for Writ of Certiorari, *Beck v. Edwards*, No. 15-448 (2015). Copy supplied.

I also believe I appeared on the following filings, which I have not yet been able to locate.

Response in Opposition, *Johnson v. Kelley*, No. 16A336 (2017).

Brief of Respondent Arkansas in Opposition, *Jones v. Arkansas*, No. 16-8814 (2017).

Response to Application, *Lee v. Jegley*, No. 16A1017 (2017).

Response to Application, *Lee v. Arkansas*, No. 16A1013 (2017).

Response to Application, *Johnson v. Kelley*, No. 16A986 (2017).

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. *Haas v. Martin*, 60CV-18-752 (Pulaski County, Arkansas).

Pulaski County Circuit Court, Arkansas. Judge Alice Gray. February 2018 – July 2018.

I represented the State Board of Election and its members against a state constitutional challenge to Arkansas's voter identification system. The state trial court concluded the system contravened Arkansas's constitution and entered a preliminary injunction. The Arkansas Supreme Court stayed the trial court's injunction and ultimately reversed it. *Martin v. Haas*, 2018 Ark. 283. The Court concluded the voter identification system did not violate the Arkansas constitution. On remand, the plaintiff dismissed his claims with prejudice.

I supervised this litigation at the state trial court and Arkansas Supreme Court. I heavily revised drafts of our motion to dismiss and preliminary injunction papers. I coordinated discovery. I prepared witnesses for testimony at a preliminary injunction hearing. I assisted lawyers from our office in preparing cross-examination questions. I supervised the preparation of witness affidavits. I directed associate counsel in conducting the preliminary injunction hearing. I argued some evidentiary issues and a question related to the presence or absence of party witnesses in the courtroom. I drafted significant portions of our stay motion to the Arkansas Supreme Court, and heavily revised the other portions. I left the Solicitor General Role before merits briefing and oral argument.

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2. *Kelley v. Johnson*, 2016 Ark. 268.

Arkansas Supreme Court. Chief Justice Howard Brill and Justices Paul Danielson, Karen Baker, Courtney Goodson, Josephine Hart, Rhonda Wood, Robin Wynne. July 2015 – April 2017.

Nine death row prisoners brought multiple claims alleging that the manner in which Arkansas intended to carry out their death sentences violated the State Constitution and state law. *Johnson v. Kelley*, 60CV-15-2921 (Pulaski County, Arkansas). They also requested stays of scheduled executions. I represented the Director of the Arkansas Department of Correction.

The state trial court entered what it called a preliminary injunction prohibiting the scheduled executions. The Arkansas Supreme Court concluded that the state trial court did not have the authority to enter what amounted to a stay of execution. Nonetheless, the Arkansas Supreme Court entered its own stay of execution. *See Wendy Kelley, et al. v. the Hon. Wendell Griffen*, 2015 Ark. 375. The trial court largely denied defendant's motion to dismiss. The trial court granted partial summary judgment for the plaintiffs (on a contracts clause claim regarding disclosure of execution drug information) and denied the defendant's motion for summary judgment on all claims. The Arkansas Supreme Court stayed the case. The Court ultimately reversed the trial court on all claims, and ordered the case dismissed. The United States Supreme Court denied certiorari. On remand, the state trial court dismissed the case with prejudice.

I supervised the litigation in the state trial court, including significantly revising our motion to dismiss, motion for summary judgment, and stay opposition papers. I drafted large portions of our stay and merits briefing in the Arkansas Supreme Court, and heavily edited those portions I did not draft. I presented oral argument at the Arkansas Supreme Court. I drafted most portions of the United States Supreme Court papers—oppositions to time extensions, stay applications, and certiorari. *Stacey Johnson, et al. v. Wendy Kelley, et al.*, 137 S. Ct. 1067, 16A336, 16A986, 16-6496. I reviewed and heavily revised the portions of the United States Supreme Court papers I did not draft. When the case returned to the state trial court, I litigated the case until it was dismissed with prejudice.

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3. *McGehee, et al. v. Hutchinson, et al.*, 2017 WL 1399554, Case No. 4:17-cv-00179KGB

Federal District Court for the Eastern District of Arkansas. Judge Kristine Baker.
March 2017 – June 2018.

Three weeks before their scheduled execution, 9 death row prisoners challenged, *inter alia*, Arkansas's lethal injection protocol and Arkansas's execution schedule as a violation of the Eighth Amendment, due process, and/or other constitutional and

statutory protections. I represented Arkansas Governor Asa Hutchinson and Wendy Kelley in her official capacity as the Director of the Arkansas Department of Correction.

The prisoners asked for a preliminary injunction / stays of execution. There was significant expedited discovery, motion to dismiss briefing, preliminary injunction/stay briefing and a four-day hearing at which numerous witnesses (some lay, some expert) testified. I supervised and directed this litigation, with the assistance of several other lawyers from the Attorney General's Office. I significantly revised expedited discovery motions/responses drafted by others. I argued discovery issues in front of Judge Baker. I supervised the discovery process for our side of the litigation. I assisted in the preparation of three witnesses for direct testimony. I conducted cross-examination of two expert witnesses. I conducted the opening/closing arguments. I provided strategic guidance and direction to associate counsel in their questioning of other witnesses. I provided direction for, drafted large parts of, and heavily revised the remainder of our motion to dismiss and preliminary injunction/stay briefing.

The district court granted a preliminary injunction/stay with respect to Plaintiffs' claim that the three-drug midazolam protocol constituted cruel and unusual punishment and thus violated the Eighth Amendment. The Eighth Circuit vacated the injunction/stay. *See McGeehee v. Hutchinson*, 854 F.3d 488 (8th Cir. 2017) (en banc). The United States Supreme Court denied Plaintiffs' stay application and denied certiorari. *See McGeehee v. Hutchinson*, 137 S. Ct. 1275 (2017). I provided direction for, drafted parts of, and revised our Eighth Circuit and United States Supreme Court briefing. After four of the eight scheduled April 2017 executions went forward, I transferred this litigation to another lawyer in our office, though I continued to review briefing and supervise strategy decisions until I left the Solicitor General role in July of 2018.

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4. *Lewis v. State*, 2017 Ark. 211.

Arkansas Supreme Court. Chief Justice Dan Kemp and Justices Karen Baker, Courtney Goodson, Josephine Hart, Rhonda Wood, Robin Wynne, and Shawn Womack. January 2017 – August 2017.

Arron Lewis kidnapped and murdered a real estate agent after posing as a potential home buyer. Lewis appealed his conviction, arguing that numerous different pieces of evidence should have been suppressed. The State filed a cross-appeal, disputing the lower court's decision to exclude some evidence from Lewis's home and car. I represented the State of Arkansas. The Arkansas Supreme Court affirmed Lewis's conviction and dismissed the State's cross-appeal.

I reviewed and revised the briefing at the Arkansas Supreme Court. I presented oral argument at the Arkansas Supreme Court.

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5. *McKesson Medical-Surgical Inc. v. Arkansas*, 60CV-17-1960 (Pulaski County, Arkansas).

Pulaski County Circuit Court, Arkansas. Judge Alice Gray. April 2017 – April 2018.

A pharmaceutical distributor, McKesson, brought multiple claims against the State of Arkansas, cumulatively alleging that state officials improperly obtained drugs from McKesson that the State planned to use in scheduled lethal injection executions. McKesson asked the state trial court to enter a temporary restraining order / preliminary injunction against use of these drugs in the scheduled executions. I represented the State of Arkansas, the Arkansas Department of Correction, the Governor and the Director of the Arkansas Department of Correction.

The first trial judge assigned to the case (the Hon. Wendell Griffen) entered an *ex parte* temporary restraining order. *McKesson Medical-Surgical Inc v. Arkansas*, 60CV-17-1921 (Pulaski County, Arkansas). Shortly thereafter, McKesson dismissed that case and the Arkansas Supreme Court removed Judge Griffen from all cases involving executions or the death penalty. McKesson filed a new complaint, again seeking injunctive relief. The new trial judge (the Hon. Alice Gray) granted the requested preliminary injunctive relief. After an emergency request from the State and briefing from both parties, the Arkansas Supreme Court vacated the injunction. *Arkansas v. McKesson Medical-Surgical Inc.*, CV-17-317 (Ark. 2017). Eventually, because the drugs were used in executions and the remainder of the drugs expired, the Arkansas Supreme Court dismissed the case as moot at the joint request of both parties. 2018 Ark. 154.

I ran this litigation. At the state trial court, I drafted significant portions of our motion for change of venue, motion to dismiss, and opposition to a preliminary injunction. I directed and heavily revised the portions I did not draft. I prepared our clients and witnesses for testimony at the preliminary injunction hearing. I argued some legal/evidentiary issues at the hearing. I conducted closing arguments. I drafted and revised cross-examination questions. I supervised associate counsel in questioning witnesses. At the Arkansas Supreme Court, I drafted significant portions of our multiple emergency writ petitions and our multiple stay briefing. I directed and heavily revised the portions I did not draft.

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6. *Pavan et al. v. Smith*, 582 U.S. ____ (2017).

United States Supreme Court. Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, and Gorsuch. July 2015 – March 2018.

Three same-sex female married couples brought a § 1983 suit against the Director of the Arkansas Department of Health. The couples were seeking declaratory and injunctive relief that would require Arkansas to (1) apply the presumption of paternity to a female spouse of a birth mother, and (2) thus automatically place the female spouse of a birth mother on the original birth certificate of the child without need for adoption or a court order. I represented the Director of the Arkansas Department of Health, who is responsible for issuing birth certificates.

The state trial court granted summary judgment in favor of the couples and ordered the three spouses to be placed on the birth certificates. *Pavan v. Smith*, 60CV-15-3153 (Pulaski County, Arkansas). The Arkansas Supreme Court stayed the trial court's order and reversed on appeal. *Smith v. Pavan*, 2016 Ark. 437. The United States Supreme Court granted the couples' petition for a writ of certiorari and summarily reversed the Arkansas Supreme Court. On remand, the Arkansas Supreme Court acknowledged the binding nature of the United States Supreme Court's ruling. But the Court noted that even under this ruling the state trial court went too far by unilaterally rewriting major portions of the state birth certificate statute. So, to that extent, the Arkansas Supreme Court vacated the state trial court's summary judgment ruling and remanded the case for further proceedings. Ultimately, the state trial court issued an order requiring the State to place female spouses of birth mothers on birth certificates on the same terms as the State would place male spouses of birth mothers on birth certificates.

I reviewed and revised the summary judgment papers in the state trial court. I drafted portions of the stay briefing and the merits briefing in the Arkansas Supreme Court. I heavily revised the portions I did not draft. I conducted oral argument in the Arkansas Supreme Court. I reviewed and revised our brief in opposition to certiorari in the United States Supreme Court. On remand to the Arkansas Supreme Court, I drafted our papers concerning actions for that court to take on remand. On remand to the state trial court, I drafted papers (1) concerning how to proceed given the higher court rulings, and (2) with respect to mediation ordered by the state trial court.

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7. *Planned Parenthood of Arkansas & Eastern Oklahoma v. Gillespie*, 867 F.3d 1034 (8th Cir. 2017).

United States Court of Appeals for the Eighth Circuit. Judges Stephen Colloton, Bobby Shepherd, and Michael Melloy. September 2015 – December 2017.

This case concerned whether 42 U.S.C. § 1396a(a)23 affords patients and/or providers a private right of action to challenge a State's decision to terminate a provider from its Medicaid program for (disputed) misconduct. There were additional constitutional claims brought by the Plaintiffs, but they were not litigated in the first round of preliminary injunction litigation. I represented the Director of the Arkansas Department of Human Services in both the federal district court and the federal court of appeal.

The district court concluded that the patient Plaintiffs (not the provider) had a private right of action under the statute in question. The district court entered a preliminary injunction requiring the State to continue treating Planned Parenthood as part of the Medicaid program. *Planned Parenthood Arkansas & Eastern Oklahoma et al. v. Selig*, 2015 WL 13710046. The Eighth Circuit vacated that decision, concluding that 42 USC § 1396a(a)23 gives neither the provider nor the patients a private right of action. On remand, Plaintiffs requested a preliminary injunction based on their constitutional claims. The district court denied that request.

I ran this litigation for about two years. I drafted most of our motion to dismiss and temporary restraining order / preliminary injunction papers. The parts drafted by another attorney were heavily and substantively revised by me. I drafted several motions pertaining to expedited discovery. I drafted discovery-related questions and documents addressed to the Plaintiffs, and I supervised my client's response to discovery. I supervised potential witnesses in the drafting of affidavits. I argued discovery motions. I argued the motion to dismiss and preliminary injunction issues. I drafted papers related to (and argued) the question of whether a class action should be certified. I drafted the appellate briefs in this case and conducted oral argument at the Eighth Circuit. After the Eighth Circuit vacated the injunction and remanded the case for further proceedings, I transferred the case to my deputy.

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8. *Protect Fayetteville vs. City of Fayetteville*, 2017 Ark. 49.

Arkansas Supreme Court. Chief Justice Dan Kemp and Justices Karen Baker, Courtney Goodson, Josephine Hart, Rhonda Wood, Robin Wynne, and Shawn Womack. November 2015 – June 2018.

Private plaintiffs and (as an intervenor) the State of Arkansas claimed that a City's newly adopted anti-discrimination ordinance was preempted by state law. The City of Fayetteville argued that the ordinance was consistent with, and thus not preempted by, state law. The City also claimed that the applicable state law violated the Equal Protection clause of the United States Constitution. During the case, the existence and scope of legislative and executive privilege also became a significant legal question. I represented the State of Arkansas, a plaintiff-intervenor.

The City prevailed in the trial court. *Protect Fayetteville v. City of Fayetteville*, Case No. 72CV-15-1510. The court granted summary judgment for the City, concluding that the ordinance did not conflict with the state law. The state trial court did not reach the City's claim that the state law was unconstitutional. On appeal, the Arkansas Supreme Court concluded (1) that the ordinance was preempted by the state law at issue, and (2) the City had failed to preserve the constitutional issue. The Supreme Court reversed and remanded the case.

When the case came back to the state trial court, the trial court did not enter final judgment for the Plaintiffs. Instead, the court allowed the City to amend its answer and allowed a new entity to intervene in the case and file a counter-claim alleging the state law at issue was unconstitutional. The court also allowed for discovery that the State argued would violate legislative and executive privilege. The State asked for a preliminary injunction to enjoin the ordinance during the remaining litigation. The

trial court denied the motion, and the State appealed. After staying the lower court proceedings, the Arkansas Supreme Court dismissed the entire case. *Protect Fayetteville v. City of Fayetteville*, 2019 Ark. 28, 2019 Ark. 30.

I supervised and participated in the litigation of this matter in state trial court. A lawyer from our Civil Department drafted the intervention papers and part of the motion to dismiss briefing (which was converted by the Judge to a summary judgment motion). I directed and then reviewed and substantially revised that briefing. I also was the primary drafter of portions of the brief in support and most of the reply brief on our motion to dismiss/motion for summary judgment. I drafted the State's opening and reply briefs to the Arkansas Supreme Court. I also presented oral argument to the Arkansas Supreme Court.

On remand, I reviewed and revised numerous papers. I was the primary drafter of the State's preliminary injunction motion. I provided strategic guidance, direction, and revisions to motions to quash discovery requests from opposing counsel. I supervised my deputy's conduct of a preliminary injunction and discovery hearing. I directed and heavily revised the State's request for the Arkansas Supreme Court to stay the case and accept an immediate appeal. On appeal to the Arkansas Supreme Court, I drafted the opening and reply briefs on the preliminary injunction issue. I also provided strategic guidance, direction and revisions to the briefing on the discovery issues. I left the Solicitor General role prior to oral argument of these issues.

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9. *Rodgers v. Bryant*, 301 F.Supp.3d 928 (E.D. Ark. Sept. 2017).

Federal District Court for the Eastern District of Arkansas. Judge Billy Roy Wilson.
August 2017 – June 2018.

Two plaintiffs challenged an Arkansas law prohibiting aggressive or dangerous panhandling. They claimed the law violated the First and Fourteenth Amendment of the United States Constitution. Specifically, they claimed the law prohibited/chilled their speech. I represented Colonel Bryant, Director of the Arkansas State Police. The district court preliminarily enjoined the law. The district court case is stayed, and the injunction is currently on appeal at the Eighth Circuit.

I provided direction for, and heavily revised, the motion to dismiss, the opposition to a motion for preliminary injunction, and associated court papers. I helped prepare our witnesses for testimony at the preliminary injunction hearing. I cross-examined the two plaintiffs at the preliminary injunction hearing. I argued several legal issues at the same hearing. I provided direction for and review of portions our Eighth Circuit briefing, before I left the Solicitor General role.

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10. *Ward v. State*, 2018 Ark. 59.

Arkansas Supreme Court. Chief Justice Kemp and Justices Karen Baker, Courtney Goodson, Josephine Hart, Rhonda Wood, Robin Wynne, and Shawn Womack. April 2017 – June 2018.

Mr. Ward, a death row inmate, requested that the Arkansas Supreme Court recall the mandate in his case and reexamine his claim that his death sentence was unconstitutional under *Ake v. Oklahoma* and *McWilliams v. Dunn*. The underlying *Ake* violation, according to Mr. Ward, was lack of an independent defense expert on the issue of competency. I represented the State of Arkansas.

The Arkansas Supreme Court stayed Mr. Ward's executions, accepted full briefing and oral argument on the motion, and then denied recall. I directed and revised the briefing on the motion to recall the mandate. I presented oral argument. I drafted several post-decision procedural motions and responses at the Arkansas Supreme Court. After I left the role of Solicitor General, Mr. Ward unsuccessfully sought certiorari in the United States Supreme Court.

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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.)

I have not performed lobbying on behalf of any client in my career. At Walmart, one of my roles as in-house counsel was to counsel our lobbying team on applicable laws and regulations.

At Kirkland & Ellis, LLP, I was one of numerous lawyers representing British Petroleum in the Deepwater Horizon litigation. Most of my role was outside the courtroom. Among other activities, I prepared expert and lay witnesses for deposition and trial, I prepared examination questions for use at trial, I defended depositions, I assisted in the taking of depositions, I supervised the preparation of expert reports, I significantly participated in discovery and document review, I wrote memoranda on different aspects of response and cleanup activities, and I reviewed and revised draft presentations/statements to governments, the industry, and media.

I assisted in the representation of *Siemens* in litigation related to the Kaprun Ski Train Accident in Austria. I drafted significant portions of motions to dismiss, motions to disqualify counsel, and appellate briefing. I concentrated primarily on the *forum non conveniens* doctrine. This litigation was in federal district court and the Second Circuit.

I assisted in the representation of the Air Conditioning, Heating, and Refrigeration Institute. I drafted significant portions of a brief to the Second Circuit, defending the Furnace Rule published by the Department of Energy in 2007.

I assisted in the representation of the Alliance of Automobile Manufacturers, the National Automobile Dealers Association, and individual dealerships. Our clients were primarily challenging certain states' motor vehicle greenhouse gas standards as preempted by the Clean Air Act and the Energy Policy Conservation Act. I prepared responses to motions to dismiss, motions for summary judgment, and appellate briefing in numerous federal jurisdictions across the country. I supervised our clients in their preparations of affidavits.

I reviewed all Attorney General Opinions prior to their release. My job was to sign off on the Opinions, or to revise them if necessary. After my sign-off, the Opinion would go to the Chief Deputy Attorney General for review and subsequently to the Attorney General for review.

I reviewed and revised approximately 500 briefs of attorneys from the Civil Department and the Criminal Department. I also conducted approximately 70 moot courts to prepare lawyers in the office for oral arguments.

In my role as in-house counsel for political campaigns, I spent the bulk of my time supervising the training and preparation of poll watchers, preparing for potential election period and recount litigation, and ensuring compliance with elections law in various states throughout the country. In my role as in-house counsel for Walmart, aside from providing legal counsel to our lobbyists, I primarily reviewed statements to press for accuracy and legal propriety.

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.

Creation of the Constitution, University of Arkansas School of Law (Spring 2018). This course focused in detail on the debates at the Constitutional Convention of 1787 and the ratification debates between the federalists and anti-federalists. Syllabus supplied.

Appellate Advocacy, University of Arkansas School of Law (Fall 2017). This course focused on refining brief-writing skills and oral advocacy. Students learned to identify common errors in brief writing and to persuasively revise each portion of a brief. Each student also prepared and presented two oral arguments. Syllabus supplied.

Federal Courts, University of Arkansas School of Law (Spring 2017). This course focused on difficult issues of federal jurisdiction, including Article III case or controversy requirements, federal question jurisdiction, diversity jurisdiction, the *Erie* doctrine and federal common law, sovereign immunity, § 1983 actions, *Bivens* actions, and abstention doctrines. Syllabus supplied.

Environmental Law and Regulation, George Mason University Antonin Scalia Law School (Spring 2009). This course focused on major environmental laws, regulations, and Supreme Court cases, including the Clean Water Act, the Clean Air Act, NEPA, and associated regulations and caselaw. I do not have a syllabus.

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.

Part of my employment package at Walmart is restricted stock. However, none of this stock has vested.

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

I have no plans, commitments, or agreements to pursue outside employment during my service with the court. I would like to teach a law school course if and when time permits.

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

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

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse myself in any litigation where I have ever played a

role. I will evaluate any other real or potential conflict, or relationship that could give rise to the appearance of conflict, on a case-by-case basis and determine appropriate action (up to and including recusal) with the advice of parties, their counsel, and the applicable laws, rules, canons, codes, and practices.

If confirmed, I will recuse from all cases involving Walmart for a reasonable amount of time after I leave the company. Moreover, my wife currently works at Walmart. If she chooses to remain at the company, I will not preside over cases involving Walmart until she leaves the company and a reasonable amount of time then passes.

- 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 review and address any real or potential conflict of interest pursuant to 28 USC 455, Canon 3 of the Code of Conduct for United States Judges, and all other laws, rules, canons, codes, and practices governing such circumstances.

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

Since 2016, I have served as a member and parliamentarian of the Arkansas Advisory Committee to the United State Commission on Civil Rights. The Committee is attempting to study (and suggest ways to potentially mitigate) the disproportionate incarceration of minorities compared to their percentage of the total population in Arkansas. I estimate that I spend two hours per month on this.

I have served as a volunteer moot court judge for the annual appellate advocacy competition at the University of Arkansas School of Law since 2018. I estimate that I spend five hours per year on this.

Since 2014, as a member, board member, and Vice President of Congregation Etz Chaim, I have participated in and helped plan food drives, food packaging days, and charitable activities of this nature. I estimate that I spend five hours per year on this.

I served as the Co-Chairperson of the Arkansas Bar Commission on Diversity from 2016 – 2017. I estimate that I spent one hour per month on this.

I participated in a diversionary Youth Court as a volunteer advisor in Fall 2009. I estimate that I spent 45 minutes per month on this.

I served as a member of the Board of Directors/Governors of Ivy Council, an association of the student governments of the Ivy League that is dedicated to creating positive change for both students and communities, from 2008 – 2012. I estimate that I spent six hours per year on this.

26. Selection Process:

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

In April of 2017, Judge Leon Holmes announced he would be taking senior status effective March 31, 2018. Later that year, I indicated to Senator John Boozman and Senator Tom Cotton (or their staff) that I would be interested in the position of United States District Judge for the Eastern District of Arkansas. Between March 2018 and October 2018, on trips I took to D.C. for other business or personal reasons, I met two or three times informally with Senator Cotton's Chief of Staff and General Counsel. On October 18, 2018, I met with Senator Boozman in Rogers, Arkansas. Several days later, I was informed by Senator Cotton's General Counsel that the Senators were putting together a committee of three lawyers to interview candidates.

On October 29, 2018, I interviewed with the committee for about 30 minutes in Little Rock, Arkansas. On November 6, 2019, I heard from Senator Cotton's General Counsel that the Senators had jointly recommended me to the White House. Either that day or the next day I received an email and a call from the Office of White House Counsel, inviting me to interview. On November 13, 2018, I interviewed in Washington, D.C., with attorneys from the Office of White House Counsel and the Office of Legal Policy. On February 23, 2019, the Office of White House Counsel notified me that I was preliminarily selected for the position. Since that time, I have periodically communicated with individuals in the White House Counsel's Office and the Department of Justice.

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

No.

EXHIBIT 2

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Money to Parties	RUDOFSKY, LEE BENTONVILLE, AR 72712	WALMART	10-03-2017	\$1,000	Republican Party of Arkansas (R)	Federal
Money to Parties	RUDOFSKY, LEE BENTONVILLE, AR 72712	WALMART	06-11-2018	\$300	Republican Party of Arkansas (R)	Federal
Money to Candidates	RUDOFSKY, LEE BENTONVILLE, AR 72712	WALMART	10-23-2018	\$250	Westerman, Bruce (R)	Federal
Money to Candidates	RUDOFSKY, LEE BENTONVILLE, AR 72712	WALMART STORES, INC	04-23-2018	\$250	Womack, Steve (R)	Federal
Money to Candidates	RUDOFSKY, LEE BENTONVILLE, AR 72712	WALMART STORES, INC	08-15-2018	\$1,000	Womack, Steve (R)	Federal
Money to Candidates	RUDOFSKY, LEE BENTONVILLE, AR 72712	ARKANSAS AG OFFICE	06-30-2017	\$500	Boozman, John (R)	Federal
Money to Candidates	RUDOFSKY, LEE BENTONVILLE, AR 72712	ARKANSAS AG OFFICE	06-07-2018	\$500	Boozman, John (R)	Federal

Category	Contributor	Occupation	Date	Amount	Recipient	Recipient Jurisdiction
Money to Parties	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	10-31-2018	\$1,000	Republican Party of Arkansas (R)	Federal
Money to Candidates	RUDOFISKY, LEE BENTONVILLE, AR 72712	ARKANSAS ATTORNEY GENERAL	02-20-2016	\$1,000	Rubio, Marco (R)	Federal
Money to Candidates	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	06-29-2015	\$500	DeSantis, Ron (R)	Federal
Money to PACs	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	01-06-2015	\$500	Right To Rise PAC (R)	Federal
Money to Candidates	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	05-03-2015	\$500	Boozman, John (R)	Federal
Money to Candidates	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	06-30-2015	\$500	Bush, Jeb (R)	Federal
Money to Parties	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	04-26-2016	\$250	Republican Party of Arkansas (R)	Federal
Money to Parties	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	02-16-2016	\$1,000	Republican Party of Arkansas (R)	Federal
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Money to Candidates	RUDOFISKY, LEE BENTONVILLE, AR 72712	WALMART	05-03-2015	\$500	Boozman, John (R)	Federal
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712	ASSOCIATE	04-26-2016	\$250	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to	RUDOFISKY, LEE	ASSOCIATE	02-16-2016	\$1,000	ARKANSAS	Arkansas

Category	Contributor	Occupation	Date	Amount	Recipient Party	Recipient Jurisdiction
Money to Candidates	RUDOFISKY, LEE Bentonville, AR 72712	ATTORNEY/LEGAL	10-16-2018	\$100	DOTSON, JIM	Arkansas
Money to Candidates	RUDOFISKY, LEE Bentonville, AR 72712	ATTORNEY/LEGAL	10-01-2018	\$500	STERLING, DAVID	Arkansas
Money to Candidates	RUDOFISKY, LEE Bentonville, AR 72712	OTHER	01-18-2018	\$500	Asa Hutchinson	Arkansas
Money to Candidates	RUDOFISKY, LEE Bentonville, AR 72712	ATTORNEY	01-31-2018	\$200	PETERSON, NELS	Georgia
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712	ASSOCIATE	10-03-2017	\$1,000	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to Candidates	RUDOFISKY, LEE Bentonville, AR 72712	OFFICE AND ADMINISTRATIVE OCCUPATIONS	10-02-2018	\$500	GRIFFIN, JOHN TIMOTHY (TIM)	Arkansas
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712	ASSOCIATE	06-06-2017	\$1,000	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712		10-31-2018	\$1,000	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712		12-03-2018	\$10	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to Parties	RUDOFISKY, LEE Bentonville, AR 72712	ASSOCIATE	06-11-2018	\$300	ARKANSAS REPUBLICAN PARTY	Arkansas
Money to Candidates	RUDOFISKY, LEE MR BENTONVILLE, AR 72712	WALMART	05-20-2015	\$500	Starrett, Grant (R)	Federal

Category	Contributor	Occupation	Date	Amount	Recipient	Recipient Jurisdiction
Money to Candidates	RUDOFISKY, LEE P Bentonville, AR 72712		03-28-2017	\$1,000	Leslie Rutledge	Arkansas

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information for the purpose of soliciting contributions or for any commercial purpose. Bear in mind that contributions to politicians can also be made through **Political Action Committees.**

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EXHIBIT 3

Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. A: Codes of Conduct

Ch. 2: Code of Conduct for United States Judges

[Introduction](#)

[Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary](#)

[Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities](#)

[Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently](#)

[Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office](#)

[Canon 5: A Judge Should Refrain From Political Activity](#)

[Compliance with the Code of Conduct](#)

[Applicable Date of Compliance](#)

Introduction

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the “Code of Judicial Conduct for United States Judges.” **See:** [JCUS-APR 73](#), pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code:

- March 1987: deleted the word “Judicial” from the name of the Code;
- September 1992: adopted substantial revisions to the Code;
- March 1996: revised part C of the Compliance section, immediately following the Code;
- September 1996: revised Canons 3C(3)(a) and 5C(4);
- September 1999: revised Canon 3C(1)(c);
- September 2000: clarified the Compliance section;
- March 2009: adopted substantial revisions to the Code;
- March 2014: revised part C of the Compliance section, which appears below, immediately following the Code;

- March 2019: adopted revisions to Canon 2A Commentary, Canon 3, Canon 3A(3), Canon 3B(4), Canon 3B(4) Commentary, Canon 3B(6), and Canon 3B(6) Commentary.

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies. Requests for opinions and other questions concerning this Code and its applicability should be addressed to the Chair of the Committee on Codes of Conduct by email or as follows:

Chair, Committee on Codes of Conduct
c/o General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

Procedural questions may be addressed to:

Office of the General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

- A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.
- C. *Nondiscriminatory Membership.* A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

Canon 2C. Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. *See New York State*

Club Ass'n. Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.
- (4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:
 - (a) initiate, permit, or consider ex parte communications as authorized by law;
 - (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;
 - (c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
 - (d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

- (5) A judge should dispose promptly of the business of the court.
- (6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

B. Administrative Responsibilities.

- (1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.
- (2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.
- (3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.
- (4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards.
- (5) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.
- (6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.

C. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
 - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;
 - (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
 - (d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
 - (i) a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) acting as a lawyer in the proceeding;
 - (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (iv) to the judge's knowledge likely to be a material witness in the proceeding;
 - (e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

- (3) For the purposes of this section:
- (a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;
 - (b) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;
 - (c) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
 - (i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;
 - (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;
 - (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (iv) ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
 - (d) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation.
- (4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge’s spouse or minor child) divests the interest that provides the grounds for disqualification.

- D. *Remittal of Disqualification.* Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

COMMENTARY

Canon 3A(3). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

Canon 3A(4). The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.

Canon 3A(5). In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the

public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

Canon 3B(3). A judge's appointees include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians, and personnel such as law clerks, secretaries, and judicial assistants. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

Canon 3B(4). A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that "cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees") and Rule 4(a)(3) (providing that "cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability").

Canon 3B(6). Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that "cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge's assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity

and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.”).

Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

Canon 3C. Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

Canon 3C(1)(c). In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A judge who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned under Canon 3C(1) or if the judge has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

Canon 3C(1)(d)(ii). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if “the judge's impartiality might reasonably be questioned” under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Canon 3C(1)(d)(iii), the judge's disqualification is required.

Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

A. Law-related Activities.

- (1) *Speaking, Writing, and Teaching.* A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) *Consultation.* A judge may consult with or appear at a public hearing before an executive or legislative body or official:
 - (a) on matters concerning the law, the legal system, or the administration of justice;
 - (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or
 - (c) when the judge is acting pro se in a matter involving the judge or the judge's interest.
- (3) *Organizations.* A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.
- (4) *Arbitration and Mediation.* A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.
- (5) *Practice of Law.* A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

B. *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the

judge or be regularly engaged in adversary proceedings in any court.

- (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. Financial Activities.

- (1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.
- (2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.
- (3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.
- (4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would

be permitted to do so by the Judicial Conference Gift Regulations. A “member of the judge’s family” means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge’s family.

- (5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s official duties.

E. *Fiduciary Activities.* A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge’s family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

- (1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

F. *Governmental Appointments.* A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge should not, in any event, accept such an appointment if the judge’s governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge’s country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

G. *Chambers, Resources, and Staff.* A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.

H. *Compensation, Reimbursement, and Financial Reporting.* A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge’s judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- (1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- (2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.
- (3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

COMMENTARY

Canon 4. Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

Canon 4A. Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.

Canon 4A(4). This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (e.g., when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

Canon 4A(5). A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

Canon 4B. The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

Canon 4C. A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

Canon 4D(5). The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Canon 4E. Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

Canon 4F. The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

Canon 4H. A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges' receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving "honoraria" (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of "outside earned income."

Canon 5: A Judge Should Refrain From Political Activity

A. *General Prohibitions.* A judge should not:

- (1) act as a leader or hold any office in a political organization;
- (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or
- (3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.

B. *Resignation upon Candidacy.* A judge should resign the judicial office if the judge becomes a candidate in a primary or general election for any office.

- C. *Other Political Activity.* A judge should not engage in any other political activity. This provision does not prevent a judge from engaging in activities described in Canon 4.

COMMENTARY

The term “political organization” refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge

A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

- (1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);
- (2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court’s appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

B. Judge Pro Tempore

A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

- (1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.
- (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

C. Retired Judge

A judge who is retired under 28 U.S.C. § 371(b) or § 372(a) (applicable to Article III judges), or who is subject to recall under § 178(d) (applicable to judges on the Court of Federal Claims), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. However, bankruptcy judges and magistrate judges who are eligible for recall but who have notified the Administrative Office of the United States Courts that they will not consent to recall are not obligated to comply with the provisions of this Code governing part-time judges. Such notification may be made at any time after retirement, and is irrevocable. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. § 373(c)(5) and (d).

COMMENTARY

The 2014 amendment to the Compliance section, regarding retired bankruptcy judges and magistrate judges and exempting those judges from compliance with the Code as part-time judges if they notify the Administrative Office of the United States Courts that they will not consent to recall, was not intended to alter those judges' statutory entitlements to annuities, cost-of-living adjustments, or any other retirement benefits.

Applicable Date of Compliance

Persons to whom this Code applies should arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it and should do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the judicial council of the circuit approves.