

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Stuart Kyle Duncan

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

United States Court of Appeals for the Fifth Circuit

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

Schaerr Duncan LLP
1717 K Street N.W., Suite 900
Washington, District of Columbia 20006

Residence: McLean, Virginia

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

1972; Baton Rouge, Louisiana

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 – 2004, Columbia University School of Law; L.L.M., 2004

1994 – 1997, Paul M. Hebert Law Center, Louisiana State University; J.D., 1997

1990 – 1994, Louisiana State University; B.A., 1994

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.

2016 – present

Schaerr Duncan LLP
1717 K Street N.W., Suite 900
Washington, District of Columbia 20006
Co-founder and Managing Partner

2014 – 2016
Duncan PLLC
[Now part of Schaerr Duncan LLP]
1629 K Street N.W., Suite 300
Washington, District of Columbia 20006
Founder and managing partner

2012 – 2014
The Becket Fund for Religious Liberty
1200 New Hampshire Avenue, Suite 700
Washington, District of Columbia 20036
General Counsel

2008– 2012
Office of the Attorney General
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
Appellate Chief

2004 – 2008
The University of Mississippi School of Law
481 Chucky Mullins Drive
University, Mississippi 38677
Assistant Professor of Law

2002 – 2004
Columbia Law School
435 West 116th Street
New York, New York 10027
Associate-in-Law

2001 – 2002
Weil, Gotshal & Manges LLP
700 Louisiana Avenue, Suite 1700
Houston, Texas 77002
Associate (worked out of transitional office in Austin, TX)

1999 – 2001
Office of the Attorney General
State of Texas

300 West 15th Street
Austin, Texas 78701
Assistant Solicitor General

1998 – 1999
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Associate

1997 – 1998
Hon. John M. Duhé, Jr.
U.S. Court of Appeals for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana 70130
Law Clerk (worked out of chambers in Lafayette, LA)

Summer 1996
Thompson & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Summer Law Clerk

Summer 1996
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Summer Law Clerk

Summer 1995
McGlinchey Stafford PLLC
301 Main Street, Suite 1400
Baton Rouge, Louisiana 70801
Summer Law Clerk

Summer 1995
Kean Miller LLP
400 Convention Street, #700
Baton Rouge, Louisiana 70802
Summer Law Clerk

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 did not serve in the 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.

Louisiana Family Forum – Gladiator Award (2011).

Louisiana District Attorneys Association – Award for outstanding service to Louisiana’s prosecutors and the Office of the District Attorney in *Thompson v. Connick* (2010).

National Association of Attorneys General – “Best Brief” awards for U.S. Supreme Court written advocacy (2000, 2009).

Columbia Law School, Associates-in-law Program (2002 – 2004).

Paul M. Hebert Law Center, Louisiana State University – Order of the Coif (1997).

Paul M. Hebert Law Center, Louisiana State University – Hall of Fame (1997).

Louisiana Law Review – Executive Senior Editor (1996 – 1997).

Louisiana State University – *Summa cum laude* (1994).

Junior Year Abroad, University of Siena, Siena, Italy (1993 – 1994).

Università per Stranieri, Siena, Italy – Diploma in advanced Italian language and literature (1993).

Louisiana State University – Chancellor’s Scholarship (1990).

Louisiana State University – National Merit Scholarship (1990).

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.

Louisiana Bar Association (1997 – present).

D.C. Bar Association (2012 – present).

American Bar Association

Committee on the Relationship of the Legislative, Executive and Judicial Branches (2016 – present).

10. **Bar and Court Admission:**

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

Louisiana, 1997

Texas, 1999

District of Columbia, 2012

I have taken inactive status in the Texas bar since 2002, when I stopped practicing frequently in that State.

- 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, 2001
U.S. Court of Appeals for the Fourth Circuit, 2016
U.S. Court of Appeals for the Fifth Circuit, 1998
U.S. Court of Appeals for the Sixth Circuit, 2016
U.S. Court of Appeals for the Ninth Circuit, 2014
U.S. Court of Appeals for the Tenth Circuit, 2012
U.S. Court of Appeals for the Eleventh Circuit, 2014
U.S. Court of Appeals for the D.C. Circuit, 2012
U.S. District Court for the Eastern District of Louisiana, 2009
U.S. District Court for the Middle District of Louisiana, 2009
U.S. District Court for the District of Columbia, 2016

My membership in the bar of the United States Court of Appeals for the Fifth Circuit lapsed through nonuse. I was readmitted in 2009.

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.

To my recollection:

Member, D.C. Board of Regents, Thomas Aquinas College (2016 – present)

Federalist Society for Law and Public Policy Studies (2012 – present)

Knights of Columbus (2005 – present)

Louisiana State Legislature, *Ad hoc* Study Committee on Proposed Religious Freedom Amendment to Louisiana Constitution (representative of Louisiana Attorney General's Office) (2010)

University of Mississippi Law School (2004 – 2008)
Scholarship Committee (2004 – 2008)
Curriculum Committee (2004 – 2008)
Ad-Hoc Committee on Non-Academic Disciplinary Matters (2004 – 2008)
Coach, ABA National Appellate Advocacy Competition Moot Court
Team (2007, 2008)
Faculty Advisor, Catholic Student Association (2004 – 2008)

Louisiana Law Review, Executive Senior Editor (1996 – 1997)

- 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 Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. To the best of my knowledge, none of the other 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.

Kyle Duncan, Schaerr Duncan LLP, in *WINNING ON APPEAL* (3d ed. 2017) (Tessa L. Dysart, Leslie H. Southwick, Ruggero J. Aldisert, Eds.). Copy supplied.

Obergefell Fallout, in *CONTEMPORARY WORLD ISSUES: SAME-SEX MARRIAGE* (ABC-CLIO 2016) (David Newton, Ed.). Copy supplied.

Hobby Lobby Spells Doom for Mandate 2.0, RELIGIOUS FREEDOM INSTITUTE, June 30, 2016. Copy supplied.

Supplemental Briefs in Zubik v. Burwell, Federalist Society for Law & Public Policy Studies, Apr. 15, 2016. Copy supplied.

Trinity Lutheran Church v. Pauley, Federalist Society for Law & Public Policy Studies, Feb. 04, 2016. Copy supplied.

Symposium: Overruling Windsor, SCOTUSblog, June 27, 2015. Copy supplied.

Marriage, Self-Government, and Civility, PUBLIC DISCOURSE, Apr. 23, 2015. Copy supplied.

Coming up at the Supreme Court, Becket Fund for Religious Liberty, Nov. 5, 2013. Copy supplied.

How Fares Religious Freedom?, FIRST THINGS, Oct. 2013. Copy supplied.

Law, Not Theology, Becket Fund for Religious Liberty, Aug. 22, 2013. Copy supplied.

Abortion-Drug Mandate Unaffected By Delay of Obamacare's Employer Mandate, CNSNEWS, July 3, 2013. Copy supplied.

What EEOC gets and HHS doesn't, Becket Fund for Religious Liberty, June 13, 2013. Copy supplied.

Fighting the Stupid Public Square, Becket Fund for Religious Liberty, Feb. 28, 2013. Copy supplied.

HHS Threat Undiminished: Election Analysis, NAT'L CATHOLIC REGISTER, Nov. 8, 2012. Copy supplied.

One HHS Mandate Case Dismissed, Don't Read Too Much Into It, NAT'L REV. ONLINE, July 17, 2012. Copy supplied.

The Other Health-Care Mandate: Good Samaritan Turned Upside Down, NAT'L CATHOLIC REGISTER, Jan. 21, 2012. Copy supplied.

The Establishment Clause and the Limits of Pure History, in THE AMERICAN EXPERIMENT RELIGIOUS FREEDOM (Univ. of Portland 2008) (Hogan & Frederking, Eds.). Copy supplied.

Misunderstanding Freedom From Religion: Two Cents on Madison's Three Pence, 9 NEV. L.J. 32 (2008). Copy supplied.

Bringing Scalia's Decalogue Dissent Down from the Mountain, 2007 UTAH L. REV. 287 (2007). Copy supplied.

Subsidiarity and Religious Establishments in the United States Constitution, 52 VILLANOVA L. REV. 67 (2007). Copy supplied.

Can the Doctrine of Subsidiarity Help Courts Interpret the Establishment Clause? 12 CATHOLIC SOCIAL SCIENCE REV. 83 (2007). Copy Supplied.

Child Pornography and First Amendment Standards, 76 MISS. L.J. 677 (2007). Copy supplied.

With Ronald J. Rychlak, *Wrong Turn: The Purpose-Driven Life Gives Bad Directions*, CatholicCulture.Org (2005). Copy supplied.

Secularism's Laws: State Blaine Amendments and Religious Persecution, 72 FORDHAM L. REV. 493 (2003). Copy supplied.

Duty, Risk & The Spectre of Solidarity in Louisiana Tort Law, 57 LA. L. REV. 239 (1996). Copy supplied.

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

On the Side of the Angels?: Updating the Mississippi Supreme Court's View of the Judicial Role, 2004-2008, Federalist Society for Law & Public Policy Studies (2008) (white paper). 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.

Testimony as Appellate Chief of Louisiana Department of Justice to Louisiana House Health and Welfare Committee on H.B. 60 (May 12, 2009). Recording supplied.

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

September 27, 2017: Panelist, Supreme Court Preview: What Is in Store for October Term 2017?, Federalist Society for Law & Public Policy Studies, Washington, District of Columbia. Recording supplied.

July 13, 2017: Speaker, Supreme Court Review Webinar, State & Local Legal Center, Washington, District of Columbia. Recording supplied.

July 6, 2017: Panelist, "Scholars and Scribes on 2016-17 Supreme Court Term, Heritage Foundation, Washington, District of Columbia. Recording supplied.

February 16, 2017: Presenter, "Gloucester County School Board v. G.G.," Federalist Society Louisiana State Student Chapter, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

January 9, 2017: Presenter, "Gloucester County School Board v. G.G.," Federalist Society, Administrative Law & Regulation Practice Group Podcast, Washington, District of Columbia. Recording supplied.

July 7, 2016: Panelist, "Obama's Edict on School Showers, Lockers and Bathrooms: Challenges and Legal Responses," Heritage Foundation, Washington, District of Columbia. Notes and press coverage supplied.

June 2, 2016: Panelist, "Zubik v. Burwell Supreme Court Seminar," SCOTUSblog and the District of Columbia Bar, Washington, District of Columbia. Recording supplied.

February 23, 2016: Presenter, "Justice Scalia and Religious Liberty," Legatus, Tysons Corner, Virginia. I have no notes, transcript, or recording. The address of Legatus is P.O. Box 444, Ann Arbor, Michigan 48106.

October 27, 2015: Debater, "At the Intersection of Church & State: Chaos, Contraceptives, & Creeds," Federalist Society, Louisiana State Student Chapter, Baton Rouge, Louisiana. Notes supplied.

June 25, 2015: Panelist, "Must the states recognize same sex marriages?," Federalist Society, Washington, District of Columbia. Recording supplied.

June 25, 2015: Panelist, "How could the Supreme Court affect marriage?," Federalist Society, Washington, District of Columbia. Recording supplied.

June 12, 2015: Debater, "The Great Debate: Gay Marriage," Louisiana State Bar Association Annual Meeting, Destin, Florida. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 Saint Charles Avenue, New Orleans, Louisiana 70130.

May 6, 2015: Presenter, "Religious Liberty at Home and Abroad," Leonine Forum, Catholic Information Center. I have no notes, transcript, or recording. The address of the Catholic Information Center is 1501 K Street, N.W., Suite 175, Washington, District of Columbia 20005.

December 4, 2014: Debater, "Gay Marriage," Federalist Society for Law & Public Policy Studies, Brigham Young University J. Reuben Clark School of Law Chapter, Provo, Utah. Notes supplied.

November 6, 2014: Presenter, "*Hobby Lobby* and Religious Freedom Assessing the Supreme Court's Decision," Federalist Society for Law & Public Policy Studies, Cincinnati Lawyers Chapter, Cincinnati, Ohio. Notes supplied.

September 16, 2014: Debater, "Full Faith & Due Process: Same-Sex Marriage in Louisiana," Federalist Society for Law & Public Policy Studies, Louisiana State University Law Chapter, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

August 6, 2014: Presenter, "Professor, Solicitor, General Counsel: Lessons From and For Being a Flexible Advocate," Blackstone Legal Fellowship Program, Scottsdale, Arizona. Notes supplied.

July 1, 2014: Presenter, "Update on *Brady v. Maryland*," Louisiana District Attorneys' Association, Baton Rouge, Louisiana. Notes supplied.

June 26, 2014: Presenter, "Obamacare, Hobby Lobby and the Liberty of Conscience," Federalist Society for Law & Public Policy Studies, Baton Rouge Lawyers Chapter, Baton Rouge, Louisiana. Notes supplied.

May 30, 2014: Presenter, "*Sebelius v. Hobby Lobby Stores, Inc.*," Federalist Society for Law & Public Policy Studies, Montgomery Lawyers Chapter, Montgomery, Alabama. Notes supplied.

May 14, 2014: Panelist, "The Contraceptive Mandate," Federalist Society, Second Annual Executive Branch Review Conference, Washington, District of Columbia. Recording supplied.

May 5, 2014: Presenter, "*Sebelius v. Hobby Lobby Stores, Inc.*," Federalist Society for Law & Public Policy Studies, Dallas Lawyers Chapter, Dallas, Texas. Notes supplied.

April 9, 2014: Debator, "Can a Corporation Exercise Religion?," Debating Law & Religion Series, Yale Law School, New Haven, Connecticut. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 2, 2014: Presenter, “Religious Liberty at Home and Abroad,” Leonine Forum, Catholic Information Center, Washington, District of Columbia. I have no notes, transcript, or recording. The address of the Catholic Information Center is 1501 K Street, N.W., Suite 175, Washington, District of Columbia 20005.

March 24, 2014: Panelist, “*Hobby Lobby Stores v. Sebelius*,” C-SPAN, Washington, District of Columbia. Recording supplied.

February 27, 2014: Presenter, “*Hobby Lobby* and Religious Liberty,” Legatus, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of Legatus is P.O. Box 444, Ann Arbor, Michigan 48106.

February 4, 2014: Presenter, “*Sebelius v. Hobby Lobby Stores, Inc.*: Religious Small Business Owners Challenge the HHS Mandate that Businesses Must Provide Contraception Coverage,” Federalist Society for Law & Public Policy Studies, Miami Lawyers Chapter, Miami, Florida. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

November 20, 2013: Panelist, “Religious Liberty and Conflicting Moral Visions,” Federalist Society, National Lawyers Convention, Washington, District of Columbia. Recording supplied.

October 3, 2013: Panelist, “*Hobby Lobby & Obamacare*,” Federalist Society for Law & Public Policy Studies, Louisiana State University Law Chapter, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

August 22, 2013: Presenter, “Religious Liberty,” Legatus, New Orleans, Louisiana. I have no notes, transcript, or recording. The address of Legatus is P.O. Box 444, Ann Arbor, Michigan 48106.

August 17–18, 2013: Panelist, “Religious Liberties Roundtable,” EWTN Global Catholic Network, Birmingham, Alabama. Recording supplied.

August 10, 2013: Presenter, “The Status of Conscience Protection in the U.S. and Current Topics in Bioethics” and “Legal Issues in a Culture of Life Practice,” Annual Meeting of American Academy of FertilityCare Professionals, New Orleans, Louisiana. I have no notes, transcript, or recording of the first talk. Recording of second talk supplied. The address of the American Academy of FertilityCare Professionals is 11700 Studt Avenue, Suite C, St. Louis, Missouri 63141.

July 11, 2013: Presenter, “*Obamacare*, the HHS Mandate, and Liberty of

Conscience,” Federalist Society for Law & Public Policy Studies, South Carolina Lawyers Chapter, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

April 18, 2013: Presenter, “Obamacare’s HHS Mandate and Religious Liberty,” Federalist Society for Law & Public Policy Studies, Charlotte Lawyers Chapter, Charlotte, North Carolina. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

February 28, 2013: Panelist, “Life, Liberty, and the Pursuit of Happiness,” Catholic Information Center, Washington, District of Columbia. I have no notes, transcript, or recording. The address of the Catholic Information Center is 1501 K Street, N.W., Suite 175, Washington, District of Columbia 20005. Press coverage supplied.

February 21, 2013: Presenter, “A Hobby Lobby Exception to Religious Freedom? The Business Challenges to the HHS Mandate,” Federalist Society for Law & Public Policy Studies, Milwaukee Lawyers Chapter, Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

February 20, 2013: Presenter, “Henry Forum Lecture: The HHS Mandate and Challenges to Religious Liberty,” The Becket Fund for Religious Liberty, Capitol Hill Baptist Church, Washington, District of Columbia. Recording supplied.

February 9, 2013: Presenter, “Religious Liberty / HHS Mandate Litigation,” Legatus 2013 Annual Summit, Scottsdale, Arizona. I have no notes, transcript, or recording. The address of Legatus is P.O. Box 444, Ann Arbor, Michigan 48106.

November 6, 2012: Panelist, “European and American Models of Religious Freedom: The Future of Religious Autonomy,” Berkley Center for Religion, Peace, and World Affairs, Georgetown University, Washington, District of Columbia. Recording supplied.

October 25, 2012: Presenter, “HHS Contraceptive Mandate: Litigation Update,” Federalist Society Religious Liberties Practice Group Podcast. Recording supplied.

October 24, 2012: Presenter, “Religious Liberty,” Legatus, Mobile, Alabama. I have no notes, transcript, or recording. The address of Legatus is P.O. Box 444, Ann Arbor, Michigan 48106.

October 11, 2012: Panelist, “European and American Models of Religious Freedom: The Future of Religious Autonomy,” Berkeley Center for Religion,

Peace & World Affairs Religious Freedom Project and Brigham Young University's School of Law International Center for Law and Religion Studies, Washington, District of Columbia. Recording supplied.

September 28, 2012: Presenter on Religious Liberty Issues and HHS Mandate Litigation, Fellowship of Catholic Scholars Convention, Washington, DC. I have no notes, transcript, or recording. The address of the Fellowship of Catholic Scholars is P.O. Box 495, Notre Dame, Indiana 46556.

August 14, 2012: "The HHS Mandate and the Proper Role of Religious Groups in Civil Society," Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

July 2, 2012: Participant, "Roundtable: When you really want to read and hear the truth, where do you go?," Festival for Freedom, Roman Catholic Diocese of Rochester, Canandaigua, New York. I have no notes, transcript, or recording. The address of the Diocese of Rochester is 1150 Buffalo Road, Rochester, New York 14624. Press coverage supplied.

July 2, 2012: Presenter, "The Becket Fund's Role in the Pursuit of Religious Freedom," Festival for Freedom, Roman Catholic Diocese of Rochester, Canandaigua, New York. I have no notes, transcript, or recording. The address of the Diocese of Rochester is 1150 Buffalo Road, Rochester, New York 14624.

June 22, 2012: Presenter, "When Church and State Collide," Chicago Bar Association, Chicago, Illinois. I have no notes, transcript, or recording. The address of the Chicago Bar Association is 321 South Plymouth Court, Chicago, Illinois 60604.

June 12, 2012: Presentation on Religious Liberty issues to San Antonio Catholic Lawyers' Guild, San Antonio, Texas. I have no notes, transcript, or recording. The address of the San Antonio Catholic Lawyers' Guild is Northbrook Drive, Suite 200, San Antonio, Texas 78232.

February 29, 2012: Panelist, "Religious Liberty & Healthcare," DeSales University, Center Valley, Pennsylvania. I have no notes, transcript, or recording. The address of DeSales University is 2755 Station Avenue, Center Valley, Pennsylvania 18034. Press coverage supplied.

February 11, 2012: Presenter, "Legal Challenges to Religious Liberty," Belmont Abbey College, Charlotte, North Carolina. Recording supplied.

February 8, 2012: Panelist, "Health Care Law Contraceptive Rule," C-SPAN, Washington, District of Columbia. Recording supplied.

January 14, 2012: Panelist, “Connick v. Thompson, Santa Barbara Bench & Bar Conference, Santa Barbara, California. I have no notes, transcript, or recording. The address of the Santa Barbara County Bar Association is 15 West Carrillo Street, Suite 106, Santa Barbara, California 93101.

September 20, 2011: Presenter: “Appellate Practice,” Louisiana Department of Justice Continuing Legal Education Seminar, Baton Rouge, Louisiana. Recording supplied.

January 12, 2011: Presenter, “Absolute Prosecutorial Immunity,” Louisiana District Attorneys Association Capital Litigation Seminar, Lafayette, Louisiana. I have no notes, transcript, or recording. The address of the Louisiana District Attorneys Association is 1645 Nicholson Drive, Baton Rouge, Louisiana 70802.

November 2, 2010: Panelist, “*Schwarzenegger v. Entertainment Merchants Ass’n* (U.S. No. 08-1448),” SCOTUSblog Podcast, <http://www.scotusblog.com/2010/11/argument-day-podcasts-schwarzenegger-v-entertainment-merchants/>.

November 12, 2009: Speaker, “Cert Petitions / Oppositions in the U.S. Supreme Court,” Louisiana District Attorneys Association, New Orleans, Louisiana. I have no notes, transcript, or recording. The address of the Louisiana District Attorneys Association is 1645 Nicholson Drive, Baton Rouge, Louisiana 70802.

August 4, 2009: Panelist, “The Road to Passionate and Principled Service in the Academy,” Blackstone Legal Fellowship Program, Scottsdale, Arizona. I have no notes, transcript, or recording. The address of the Alliance Defending Freedom is 15100 North 90th Street, Scottsdale, Arizona 85260.

October 15, 2008: Panelist, “Election Law,” Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Chapter, University, Mississippi. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

September 17, 2008: Panelist, “Powers of the Executive Branch Under the U.S. Constitution,” University of Mississippi, University, Mississippi. I have no notes, transcript, or recording. The address of the University is P.O. Box 1848, University, Mississippi 38677.

September 4, 2008: Panelist, “What *Roe* Wrought: Abortion & the Supreme Court,” Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Chapter, University, Mississippi. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

July 1, 2008: Presenter, “Free Exercise and the Roberts Court: Emerging Trends,” National Litigation Academy, Alliance Defending Freedom, Half Moon Bay, California. I have no notes, transcript, or recording. The address of the Alliance Defending Freedom is 15100 North 90th Street, Scottsdale, Arizona 85260.

April 17, 2008: Debater, “The Constitution: Christian, Secular, or Neither?,” Federalist Society for Law & Public Policy Studies, Lewis & Clark Law School Chapter, Portland, Oregon. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

October 11, 2007: Presenter, “Hot Topics and the Roberts Court: Making Sense of Religious Liberty,” National Litigation Academy, Alliance Defending Freedom, Laguna Beach, California. I have no notes, transcript, or recording. The address of the Alliance Defending Freedom is 15100 North 90th Street, Scottsdale, Arizona 85260.

March 21, 2007: Presenter, “Structure of Power in the Constitution,” Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Chapter, University, Mississippi. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

April 19, 2006: Presenter, Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Chapter, University, Mississippi. I have no recollection of the topic of my presentation, nor any notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

April 4, 2006: Speaker, Prosecutorial Responses to Internet Victimization Symposium, National Association of Attorneys General and the National Center for Justice and the Rule of Law, Oxford, Mississippi. I have no notes, transcript, or recording. The address of the National Association of Attorneys General is 12th Floor, 1850 M Street N.W., Washington, District of Columbia 20036, and the National Center for Justice and the Rule of Law is P.O. Box 1848, University, Mississippi 38677. Press coverage supplied.

January 18, 2006: Panelist, “Religion in the Public Square,” Federalist Society for Law & Public Policy Studies, Memphis Lawyers Chapter, Memphis, Tennessee. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

October 11, 2005: Panelist, “Ten Commandments Cases,” American Civil Liberties Union, American Constitution Society, and Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Chapter,

University, Mississippi. I have no notes, transcript, or recording. The address of the American Civil Liberties Union is 125 Broad Street, 18th Floor, New York, New York 10004. The address of the American Constitution Society is 1333 H Street N.W., 11th Floor, Washington, District of Columbia 20005. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

- 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.

Mark Sherman, *Supreme Court Won't Say if Trans Teen Can Pick Bathroom*, ASSOCIATED PRESS, Mar. 7, 2017. Copy supplied (reprinted in multiple outlets).

Lydia Wheeler, *Transgender Fight Now in Supreme Court's Hands*, THE HILL, Feb. 25, 2017. Copy supplied.

Sandhya Somashekhar & Robert Barnes, *Court Weighs Bathroom Case In Light of Trump Decision*, WASH. POST, Feb. 24, 2017, at A04. Copy supplied (reprinted in multiple outlets).

Sheryl Gay Stolberg, *Teenage Voice Leads the Fight on Restrooms*, N.Y. TIMES, Feb. 24, 2017, at A1. Copy supplied.

Richard Wolf, *Supreme Court Could Pull Plug on Transgender Case*, COURIER-J., Feb. 24, 2017, at B3. Copy supplied.

David Saleh Rauf, *Voter ID Lawsuits Live on Despite Likely Trump Policy Shift*, NBC, Jan. 26, 2017. Copy supplied.

David Greene, *Supreme Court Will Hear Transgender Bathroom Case*, NAT'L PUB. RADIO, Nov. 2, 2016. Recording supplied.

Joan Frawley Desmond, *'Gender Identity': A Complex Battleground for Religious Freedom*, NAT'L CATHOLIC REG., June 1, 2016. Copy supplied.

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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; n/a
- b. a brief description of the asserted conflict of interest or other ground for recusal; n/a
- c. the procedure you followed in determining whether or not to recuse yourself; n/a
- 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. n/a

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

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

I have never been a candidate for or held an elective public office. Since law school, I have held one appointed position:

Appellate Chief, Louisiana Department, 2008 – 2012. Appointed in 2008 by then-Louisiana Attorney General James D. Caldwell, Jr.

- 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.

Poll watcher, Mitt Romney Presidential Campaign (2012).

Member, Religious Liberty Advisory Board, Marco Rubio Presidential Campaign (2016).

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 1997 to 1998, I served as a law clerk to the Honorable John M. Duhé, Jr., Circuit Judge of the United States Court of Appeals for the Fifth Circuit.

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

I was a solo practitioner in the firm of Duncan PLLC from 2012 to 2014. The firm was located at 1629 K St. NW, Suite 300; Washington, DC 20006. I primarily represented state governments, agencies, and officials in constitutional litigation in federal and state trial and appellate courts, including the U.S. Court of Appeals for the Fifth Circuit and the Supreme Court of the United States.

- 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.

1998 – 1999
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Summer Law Clerk; Associate

1999 – 2001
Office of the Attorney General
State of Texas
300 West 15th Street
Austin, Texas 78701
Assistant Solicitor General

2001 – 2002
Weil, Gotshal & Manges LLP
700 Louisiana Avenue, Suite 1700
Houston, Texas 77002
Associate (worked out of transitional office in Austin, TX)

2009 – 2012
Office of the Attorney General
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
Appellate Chief

2012 – 2014
The Becket Fund for Religious Liberty
1200 New Hampshire Avenue, Suite 700
Washington, District of Columbia 20036
General Counsel

2016 – present
Schaerr Duncan LLP
1717 K Street N.W., Suite 900
Washington, District of Columbia 20006
Co-founder and Managing Partner

- 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 never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Over the past twenty years, my law practice has focused primarily on appellate litigation and on issues of federal constitutional and statutory law. To a lesser extent, I have also engaged in trial-level litigation, and in litigation concerning state-law issues.

From approximately 1998 to 2001, I worked as an appellate lawyer both in private practice (Vinson & Elkins LLP) and in government practice (Texas Solicitor General's Office). In private practice, I worked on appeals concerning commercial disputes between private parties. In government practice, I worked primarily on statutory and constitutional challenges to state laws and policies.

From approximately 2002 to 2008, the focus of my career shifted to the legal academy. I was an Associate-in-law at Columbia Law School from 2000 to 2004, participating in an LL.M. program designed to allow aspiring law professors to obtain experience in legal scholarship and teaching. As a result of my studies at Columbia, I was hired as an Assistant Professor of Law at the University of Mississippi Law School, where I worked from 2004 to 2008. The principal focus of my teaching and scholarship during that time was the U.S. Constitution and the First Amendment, including both the religion clauses and the free speech clause.

In 2008, I shifted back to appellate practice when I was appointed the first Appellate Chief of the Louisiana Department of Justice. In that role, I fulfilled the functions of a state solicitor general, advising the Attorney General on general legal matters concerning appeals and taking the lead on briefing and argument of selected appeals. From 2008 to 2012, I handled a variety of civil and criminal constitutional matters, arguing cases in the U.S. Fifth Circuit, the Louisiana Supreme Court, and the Supreme Court of the United States.

In 2012, I was recruited by the Becket Fund for Religious Liberty to become its General Counsel. There, I lead the litigation team, which brings constitutional and statutory challenges around the country in defense of the free exercise of religion and often weighs in at the appellate level as an *amicus curiae* in favor of the free exercise of religion.

In 2014, I formed my own law firm in Washington, District of Columbia, a firm that has now become Schaerr Duncan LLP. The matters I handle in private practice are in the same genre as the ones I handled while in government practice and at Becket—namely, civil and criminal litigation,

typically concerning federal constitutional issues and primarily, but not exclusively, at the appellate level.

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

The typical clients I have represented are state government entities and officials; however, I have also represented private persons and entities in litigation. I represented primarily commercial entities during my first year of practice at Vinson & Elkins, before switching to the exclusive representation of Texas, its government entities and officials as an Assistant Solicitor General. I also exclusively represented Louisiana, its government entities and officials during my time as the Appellate Chief in the Louisiana Department of Justice. When I joined Becket, I returned to representing private persons and entities, often religious individuals, businesses, and institutions (such as religious colleges and universities) seeking to defend their rights to the free exercise of religion. Since starting my own firm, I have had a mix of government and private clients, but primarily governmental entities and officials.

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

Virtually all of my law practice has been in litigation, and most of that has been in appellate litigation. Because my practice typically involved appellate matters, I have appeared in court regularly, but not frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 80%
- 2. state courts of record: 20%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

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

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

Although the primary focus of my law practice has been appellate practice, I have acted as lead counsel in three trial-level matters: The first of those matters was resolved on summary judgment. The second went to final verdict after a bench

trial and is presently on appeal. The third is ongoing.

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.

I have had a fairly extensive practice before the Supreme Court of the United States.

I have argued two cases in that Court:

Montgomery v. Louisiana, 135 S. Ct. 718 (2016).
Connick v. Thompson, 563 U.S. 51 (2011).

I have filed briefs as Counsel of Record for a party or amicus curiae in the following cases:

North Carolina v. North Carolina State Conference of the NAACP, No. 16-833 (May 15, 2017).
Gloucester County Sch. Bd. v. G.G., No. 16-273 (Mar. 6, 2017).
Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016).
V.L. v. E.L., 136 S. Ct. 1017 (2016).
Zubik v. Burwell, 136 S. Ct. 1557 (2016).
Robicheaux v. George, No. 14-596 (Dec. 2, 2014).
Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
Schaefer v. Bostic, No. 14-225 (Oct. 6, 2014).
Corr v. Metropolitan Wash. Airports Auth., No. 13-1559 (Oct. 5, 2015).
Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).
Wagenfeald v. Gusman, No. 12-85 (Oct. 1, 2012).
Adar v. Smith, No. 11-46 (Oct. 11, 2011).
Perry v. New Hampshire, 565 U.S. 228 (2012).
Davenport v. American Atheists, Inc., No. 10-1297 (Oct. 31, 2011).
Thomas v. Louisiana Dept. of Soc. Servs., No. 10-1171 (June 27, 2011).
Quinn v. Judge, No. 10-821 (June 6, 2011).
S & M Brands, Inc. v. Caldwell, No. 10-622 (Mar. 7, 2011).
Pitre v. Cain, No. 09-9515 (Oct. 18, 2010).
Graham v. Florida, 560 U.S. 48 (2010).
Brown v. Entertainment Merchants Ass'n, 564 U.S. 786 (2011).

I have been supporting counsel in the following cases:

Oil States Energy Services, LLC v. Greene's Energy Group, LLC, No. 16-712 (case

pending)

Marilley v. Bonham, No. 16-1391 (Oct. 10, 2017).

Brewer v. Arizona Dream Act Coalition, No. 16-1180 (case pending).

Trinity Lutheran Church of Columbia Inc. v. Comer, 137 S. Ct. 2012 (2017).

Ravalli Cnty. Repub. Central Comm. v. McCulloch, No. 16-806 (May 15, 2017).

Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017).

Abbott v. Veasey, No. 16-393 (Jan. 23, 2017).

Stormans, Inc. v. Wiesman, No. 15-862 (June 28, 2016).

United States v. Texas, 136 S. Ct. 2271 (2016).

United States v. Bryant, 136 S. Ct. 1954 (2016).

Elmbrook Sch. Dist. v. Doe, No. 12-755 (June 16, 2014).

Big Sky Colony, Inc. v. Montana Dept. of Labor & Indus., No. 12-1191 (Oct. 07, 2013).

Brown v. Plata, 563 U.S. 493 (2011).

Padilla v. Kentucky, 559 U.S. 356 (2010).

Montejo v. Louisiana, 556 U.S. 778 (2009).

Boudreaux v. Louisiana, No. 08-1212 (June 29, 2009).

Cockrell v. Burdine, No. 01-0495 (June 3, 2002).

Alabama v. Shelton, 535 U.S. 654 (2002).

Texas v. Cobb, 532 U.S. 162 (2001).

Neinast v. Texas, No. 00-0263 (Feb. 26, 2001).

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). *Hobby Lobby Stores v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (en banc), *aff'd* *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)

I served as lead counsel for Plaintiffs-Appellants Hobby Lobby Stores, Mardel Christian, and the Green family in the U.S. Court of Appeals for the Tenth Circuit. My clients sought a preliminary injunction against enforcement of a federal mandate requiring their insurance to cover all FDA-approved contraceptive methods, based on the contention that the mandate violated their rights under the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the

Constitution. I was the principal author of the briefs, and I argued the case before the en banc court [Briscoe (C.J.), Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Matheson, and Bacharach]. I successfully obtained a decision from that court recognizing the rights of a closely held business to challenge the mandate under RFRA. I continued as counsel of record for those parties in the Supreme Court of the United States, serving as the principal author of the briefs at both the certiorari and merits stages. The Supreme Court [Roberts (C.J.), Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan] affirmed the entry of the preliminary injunction in a 5-4 decision.

Co-counsel for appellants:

Luke Goodrich
Mark Rienzi
Eric Baxter
Lori Windham
Adèle Auxier Keim
Becket Fund for Religious Liberty
1200 New Hampshire Avenue, Suite 700
Washington, District of Columbia 20036
(202) 955-0095

Paul D. Clement (in Supreme Court of the United States)
Kirkland & Ellis LLP
665 Fifteenth Street N.W.
Washington, District of Columbia 20005
(202) 878-5013

Opposing counsel:

Alisa Klein (in Tenth Circuit)
Civil Division
United States Department of Justice
950 Pennsylvania Avenue N.W.
Washington, District of Columbia 20530
(202) 514-1597

Donald Verrilli (in Supreme Court of the United States)
Office of the US Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20530
(202) 514-2203

- (2). *Thompson v. Connick*, 131 S. Ct. 1350 (2011)

I served as counsel of record for Petitioner Orleans Parish District Attorney's Office when it sought reversal of a \$20 million jury verdict on a failure-to-train theory of liability under 42 U.S.C. § 1983 for a single *Brady* violation by prosecutors in the office. I was the principal author of the Petitioner's briefs at both the certiorari and merits stages, and I argued the case. The Supreme Court [Roberts (C.J., Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan)] reversed the jury verdict in a 5-4 decision.

Co-counsel:

Ross Bergethon

[Then at Louisiana Department of Justice]

American Society for the Prevention of Cruelty to Animals

296 Vickers Drive N.E.

Atlanta, Georgia 20207

(347) 712-2784

Robert Abendroth

[Then at Louisiana Department of Justice]

United States Attorney's Office

Western District of Louisiana

800 Lafayette Street, Suite 2200

Lafayette, Louisiana 70501

(337) 262-6618

Graymond Martin

Orleans Parish District Attorney's Office

619 South White Street

New Orleans, Louisiana 70119

(504) 822-2414

Opposing counsel:

J. Gordon Cooney, Jr.

Morgan Lewis LLP

1701 Market Street

Philadelphia, Pennsylvania 19103

(215) 963-4806

Allyson N. Ho

Morgan Lewis LLP

1717 Main Street, Suite 3200

Dallas, Texas 75201

(214) 466-4180

Senator R. Ted Cruz

[Then at Morgan Lewis LLP]

Russell Senate Office Building 404
Washington, District of Columbia 20510
(202) 224-5922

(3). *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016)

I represented the State of Louisiana as counsel of record in this U.S. Supreme Court case addressing the retroactivity of *Miller v. Alabama*'s rule forbidding life sentences without parole for juveniles who commit murder. I was the principal author of Louisiana's briefs, and I argued the case on behalf of the State. The Court [Roberts (C.J.), Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan] decided 6-3 that *Miller* is to be applied retroactively.

Co-counsel:

Hillar C. Moore III
East Baton Rouge Parish District Attorney
222 St. Louis St., Suite 550,
Baton Rouge, Louisiana 70802
(225) 389-3500

Colin Clark
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
(225) 326-6079

Opposing Counsel:

Mark D. Plaisance
Mark D. Plaisance Attorney at Law
P.O. Box 796
Thibodeaux, LA 70302
(985) 227-4588

Richard Bernstein
Wilkie Farr & Gallagher LLP
1875 K Street N.W.
Washington, District of Columbia 20006
(202) 303-1108

Michael R. Dreeben
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, District of Columbia 20530

(202) 514-2203

- (4). *Gloucester County School Board v. G.G.*, 137 S. Ct. 1239 (Mar. 6, 2017)

I represented Petitioner Gloucester County School Board in this case concerning the deference due to guidance issued by an administrative agency interpreting Title IX to include discrimination on the basis of gender identity. As principal author of the School Board's briefs at the stay, certiorari, and merits stages in the U.S. Supreme Court, I obtained an emergency stay and a grant of certiorari. The Court [Roberts (C.J.), Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan] unanimously vacated the underlying decision before argument in light of changed administrative guidance.

Co-counsel:

Gene C. Schaerr
Stephen S. Schwartz
Schaerr Duncan LLP
1717 K Street N.W.
Washington, District of Columbia 20006
(202) 787-1060

David P. Corrigan
Harman, Claytor, Corrigan Wellman P.C.
4951 Lake Brook Drive, Suite 100
Glen Allen, Virginia 23060
(804) 762-8017

Opposing counsel:

Joshua Block
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2593

- (5). *Texas v. Cobb*, 532 U.S. 162 (2001)

As an attorney in the Office of the Solicitor General of Texas, I was given the opportunity to serve as counsel in this U.S. Supreme Court case concerning the circumstances under which the Sixth Amendment right to counsel attaches to police questioning of a suspect in a related but uncharged crime. Working under then-Solicitor General Gregory S. Coleman, I was the principal drafter of Texas's briefs at the certiorari and merits stages, arguing that the Sixth Amendment right to counsel is offense-specific and had not attached to the crime at issue. The Supreme Court [Rehnquist (C.J.), Stevens, O'Connor, Scalia, Kennedy, Thomas, Souter,

Ginsburg, Breyer] agreed and reversed the decision of the Texas Court of Criminal Appeals, in a 5-4 decision.

Co-Counsel:

Gregory S. Coleman
[Then at Office of the Texas Attorney General; last contact information]
Yetter Coleman LLP
Two Houston Center
909 Fannin, Suite 3600
Houston, Texas 77010
(713) 632-8000

Lisa Blatt
[Then at Office of the US Solicitor General]
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
Washington, District of Columbia 20001

Opposing Counsel:

Roy E. Greenwood
P.O. Box 163325
Austin, Texas 78716
(512) 329-5858

- (6). *United States v. North Carolina* (M.D.N.C. No. 16-cv-425); *Carcaño v. McCrory* (M.D.N.C. No. 16-cv-236) (2016-present)

I serve as lead trial and appellate counsel for Intervenor-Defendant North Carolina General Assembly in challenges by the U.S. Department of Justice and private plaintiffs to North Carolina's Public Facilities and Privacy Protection Act (commonly known as "HB2"). The cases concern whether North Carolina's HB2 law is valid under various federal statutes (such as Title VII, Title IX, and the Violence Against Women Act) and the federal Constitution (the Equal Protection and Due Process Clauses). The United States has voluntarily dismissed its case, but the suit by private plaintiffs is still pending before United States District Judge Thomas D. Schroeder in the Middle District of North Carolina.

Co-Counsel:

For North Carolina General Assembly:

Gene C. Schaerr
Schaerr Duncan LLP
1717 K Street N.W., Suite 900

Washington, District of Columbia 20006
(202) 787-1060

Robert D. Potter, Jr.
Attorney at Law
2820 Selwyn Avenue, #840
Charlotte, North Carolina 28209
(704) 552-7742

For State of North Carolina:

Karl S. Bowers
Bowers Law Offices
1419 Pendleton Street
Columbia, South Carolina 29201
(803) 753-1099

William W. ("Bill") Stewart, Jr.
Millberg Gordon Stewart PLLC
1101 Haynes Street, Suite 104
Raleigh, North Carolina 27604
(919) 836-0090

For University of North Carolina:

Noel Francisco
John Gore
[Then at Jones Day LLP]
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20530
(202) 514-2000

Kristen A. Lejniaks
Jones Day LLP
51 Louisiana Avenue, N.W.
Washington, District of Columbia 20001
(202) 879-3703

Opposing Counsel:

For United States:

Lori Kisch
Civil Rights Division
United States Department of Justice

950 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20530
(202) 514-4092

For private plaintiffs:

Scott B. Wilkens
Jenner & Block LLP
1099 New York Avenue, N.W., Suite 900
Washington, DC 20001
(202) 639-6072

- (7). *In re Katrina Canal Breaches Litigation*, 63 So.3d 955 (La. 2011), *on certification from U.S. Fifth Circuit*, 613 F.3d 504 (5th Cir. 2010).

I represented the State of Louisiana on appeal in this dispute involving the underpayment of billions of dollars in Hurricane Katrina-related insurance claims to persons who lost homes and property in the disaster. The appeal involved the key issue in the case—namely, whether the State could enforce thousands of individual property insurance claims by assignment from homeowners, which the State obtained in connection with its distribution of federal disaster relief funds through Louisiana’s “Road Home” program. The U.S. Court of Appeals of the Fifth Circuit [Fifth Circuit Judges Jones and Prado; Northern District of Texas Judge O’Connor, by designation] certified the question to the Louisiana Supreme Court. That court [Kimball (C.J.), Johnson, Guidry, Clark, Weimer, Victory, Knoll] accepted the certification and agreed with Louisiana that the State could enforce those claims against the insurance companies.

Co-Counsel:

Sallie Sanders
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
(225) 326-6705

Stacie deBlieux
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
(225) 326-6458

Opposing Counsel:

Ralph S. Hubbard III
Lugenbuhl, Wheaton, Peck, Rankin, & Hubbard

601 Poydras Street, Suite 2775
New Orleans, Louisiana 70130
(504) 568-1990

- (8). *Robicheaux v. Caldwell*, 2 F.Supp.3d 910 (E.D. La. 2014), *rev'd*, 791 F.3d 616 (5th Cir. 2015)

I represented the State of Louisiana at trial and on appeal in this constitutional challenge to Louisiana's marriage law. United States District Judge Martin L.C. Feldman of the Eastern District of Louisiana initially granted summary judgment in favor of Louisiana, but the U.S. Court of Appeals for the Fifth Circuit [Smith, Higginbotham, and Graves] reversed that judgment in light of the intervening decision of the Supreme Court in *Obergefell v. Hodges*.

Co-counsel:

Angelique Duhon Freel
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, Louisiana 70802
(225) 326-6017

Rep. James M. ("Mike") Johnson
[then in private practice]
327 Cannon House Office Building
Washington, District of Columbia 20515
(202) 225-2777

Opposing Counsel:

J. Dalton Courson
Stone Pigman Walther Wittmann LLC
546 Carondelet Street
New Orleans, Louisiana 70130
(504) 593-0812

Camilla Taylor
Lambda Legal Defense and Education Fund, Inc.
105 West Adams, Suite 2600
Chicago, Illinois 60603
(312) 663-4413

- (9). *State of North Carolina v. North Carolina NAACP*, U.S. No. 16-833 (petition for cert. filed Dec. 27, 2016), *cert. denied*, ___ S. Ct. ___, 2017 WL 2039439 (May 15, 2017)

I was counsel of record on a petition for writ of certiorari on behalf of the State of North Carolina in this challenge to various election reforms (including a photo identification law) enacted by the State in 2013. The U.S. Court of Appeals for the Fourth Circuit had invalidated those laws under section 2 of the Voting Rights Act and the Equal Protection Clause. The Supreme Court [Roberts (C.J.), Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch] denied the petition on May 15, 2017, with an accompanying statement from Chief Justice Roberts.

Co-counsel:

Gene C. Schaerr
Stephen S. Schwartz
Schaerr Duncan LLP
1717 K Street N.W., Suite 900
Washington, District of Columbia 20006
(202) 787-1060

Thomas A. Farr
Philip Strach
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
(919) 789-3174

Opposing counsel:

For NAACP of North Carolina et al.:

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

For United States:

Jeffrey B. Wall
Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20530
(202) 514-2203.

- (10). *June Medical Services v. Gee*, (M.D. La. No. 14-cv-525) (2014-present)

I represent the Louisiana Department of Health and Hospitals in this constitutional challenge to a Louisiana law requiring abortion providers to have

admitting privileges at local hospitals. I conducted all phases of documentary and witness discovery, six-day bench trial, and post-trial and appellate proceedings. The case has been handled by United States District Judge John de Gravelles in the Middle District of Louisiana, the U.S. Court of Appeals for the Fifth Circuit [Clement, Elrod, Southwick], and the U.S. Supreme Court [Roberts (C.J.), Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan]. Louisiana's appeal from the entry of a permanent injunction against the law is presently pending before the Fifth Circuit.

Co-counsel:

Steven H. Aden
Alliance Defending Freedom
15100 North 90th Street
Scottsdale, Arizona 85260
(480) 444-0020

Rep. James M. ("Mike") Johnson
[then in private practice]
327 Cannon House Office Building
Washington, District of Columbia 20515
(202) 225-2777

Opposing counsel:

Dimitra Doufekias
Morrison & Foerster LLP
2000 Pennsylvania Avenue N.W., Suite 6000
Washington, District of Columbia 20006
(202) 887-1553

Ilene Jaroslaw
[Then at Center for Reproductive Rights]
Hoguet Newman Regal & Kenney LLP
10 East 40th Street
New York, New York 10016
(212) 689-8808

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.)

In my law practice I have been a full-time litigator, and consequently I have not typically pursued significant legal activities that did not involve litigation or litigation that did not proceed to trial or appeal. (Here I am omitting teaching activities, which are covered elsewhere). However, in my capacity as Appellate Chief of the Louisiana Department of Justice, I was occasionally asked to advise the Louisiana Attorney General and his staff with respect to proposed legislation. To my recollection, the most significant of those matters involved a proposed amendment to the Louisiana Constitution modeled on the federal Religious Freedom Restoration Act. At the Attorney General's request, I served on a committee that considered the proposed amendment.

I have never performed lobbying activities.

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

I was an Assistant Professor of Law at the University of Mississippi School of Law from 2004 to 2008. During that time, I taught the following courses:

Admiralty Law (spring 2007, spring 2008). This course considered various topics in the law of admiralty, including admiralty jurisdiction, maritime tort law, the Jones Act, remedies for maritime workers, maritime liens, and limitation of liability. Syllabi supplied.

Comparative Law (fall 2006, fall 2007, fall 2008). This course considered civilian and common law legal systems from a comparative perspective, including the history, culture, and procedures of those systems. The course sometimes used the Louisiana Civil Code as a case study of a mixed legal system. Syllabi supplied.

Constitutional Law I (spring 2008). This course considered introductory subjects in the law of the United States Constitution, including the theory of judicial review, the structure of the federal court system and its relationship to the state court system, the structure of the federal government (including separation of powers), and the powers of the federal Congress under Article I. Syllabus supplied.

Constitutional Law II (fall 2004, summer 2005, spring 2006, spring 2007, summer 2007). This course considered various topics in the law of the First Amendment to the United States Constitution, including freedom of express, freedom of association, and freedom of religion. Syllabi supplied.

European Communities Law (fall 2008). This course considered the history, structure, and law of the European Union. Syllabus supplied.

Individual Study I (spring 2007, fall 2007, spring 2008). This course involved one-on-one work with a student in a constitutional law topic of the student's choosing,

culminating in a research paper. To my recollection, no syllabus was involved in this course.

Law and Economics (spring 2005). This course considered various topics in the economic analysis of legal rules and decisions. Syllabus supplied.

Legal Profession (spring 2005, spring 2006). This course considered various topics in the ethical and constitutional rules governing lawyers, including the formation of the attorney-client relationship, conflicts of interest, and freedom of speech principles as applied to the regulation of lawyers. Syllabi supplied.

Structures and Powers in the U.S. Constitution (fall 2005, fall 2006, fall 2007). This course considered the structure of the federal government under the United States Constitution through in-depth study of primary source documents and judicial decisions, culminating with a research paper on a topic of the student's choosing. Syllabus supplied.

UCC Sales (summer 2004; fall 2004). This course considered the law of sales under Article II of the Uniform Commercial Code. I have been unable to locate the syllabus for this course.

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.

My current firm represents a putative plaintiff class in litigation against the Metropolitan Washington Airports Authority. *Kerpen et al. v. MWAA et al.* (E.D. Va. No. 16-cv-01307), *appeal filed* (4th Cir. No. 17-1735). In the event the plaintiff class were to be certified and prevail, I would be contractually entitled to a percentage of the class award.

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.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Schaerr Duncan LLP, represents a party. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

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

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

I have always endeavored to fulfill the standard discussed in Canon 2, consistent with my other obligations. Notably, I was ethically precluded from taking on *pro bono* litigation while at the Texas Attorney General's Office from 1999 to 2001, and I was generally restricted by my superiors in doing so while at the Louisiana Attorney General's Office from 2008 to 2012.

While an Assistant Professor of Law at the University of Mississippi Law School from 2004 to 2008, however, I did work on behalf of the University while teaching which, in my view, constitutes work to improve the legal system recognized as important by the American Bar Association's Model Rule 6.1(b)(3). For example, I served on the Scholarship Committee, the Curriculum Committee, and the Ad-Hoc Committee on Non-

Academic Disciplinary Matters. I also served as a faculty advisor to the Catholic Student Association. Finally, in 2007 and 2008, I coached moot court teams in the ABA National Appellate Advocacy Competition, accompanying those teams to regional competitions in New York City and Boston.

Moreover, from 2012 to 2014, I served as General Counsel of a non-profit law firm, the Becket Fund for Religious Liberty, and while there both personally provided and also supervised the delivery of legal services to protect the civil rights of the disadvantaged within the meaning the American Bar Association's Model Rule 6.1(b)(1) and (b)(2). Although I was paid a salary while working there, Becket does not charge clients for legal services. As an example of Becket's services to the disadvantaged beyond those discussed elsewhere on this Questionnaire, I would point to three cases:

First, *Rich v. Secretary, Florida Department of Corrections*, 716 F.3d 525 (11th Cir. 2013), involved a challenge by a Jewish prison inmate to the Florida Department of Correction's failure to provide him with a Kosher diet in violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Becket attorneys represented the inmate on appeal and convinced the Eleventh Circuit to reverse the lower court decision, leading to a judgment in favor of the inmate and subsequently to a broad reform of Florida's system for providing Kosher meals to Jewish prisoners. I was closely involved in the litigation in a supervisory and strategic role.

Second, *Islamic Center of Murfreesboro v. Rutherford County*, No. 03:12-0737 (M.D. Tenn. 7/18/2012), involved a county land-use regulation that discriminated against the building and approval of a mosque. Becket Fund attorneys stepped in to represent the mosque and its imam, obtaining a temporary restraining order under RLUIPA that allowed the mosque to proceed with inspection and approval in time for the Ramadan holiday. Becket continued to represent the plaintiffs on appeal. This high-profile case attracted a letter of support from over 100 religious leaders, scholars, and advocates from a diverse array of faiths and political views (<http://s3.amazonaws.com/becketpdf/MM-FINAL-LIST-v6-1-2.docx.pdf>). Again, as Becket's General Counsel, I was closely involved in the litigation in a supervisory and strategic role.

Third, *Little Sisters of the Poor v. Sebelius*, 136 S. Ct. 446 (Mem.) (Nov. 6, 2015), *vacated and remanded sub nom. Zubik v. Burwell*, 136 S. Ct. 1557 (May 16, 2016), involved a religious order of nuns who serve the elderly poor and sought to vindicate their rights under the Religious Freedom Restoration Act against a federal mandate requiring their insurance to cover all FDA-approved contraceptive methods. As General Counsel of Becket, I directly assisted in obtaining and providing *pro bono* representation for the nuns and supervised their litigation while I remained at Becket. The nuns eventually won a reversal of the lower court decisions in the United States Supreme Court.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from

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

On or about February 6, 2017, I was contacted by staff for U.S. Senator Bill Cassidy of Louisiana regarding the Louisiana vacancy on the U.S. Court of Appeals for the Fifth Circuit. On February 13, 2017, I interviewed with Senator Cassidy and his staff. On or about February 16, 2017, I was also contacted by staff for U.S. Senator John Kennedy of Louisiana regarding the Louisiana vacancy on the U.S. Court of Appeals for the Fifth Circuit. On March 1, 2017, I interviewed with Senator Kennedy and his staff. On April 7, 2017, Senator Cassidy's office contacted me to request that I interview with his judicial advisory committee. I interviewed with that committee on May 9, 2017 in New Orleans, Louisiana and received a favorable recommendation. I met with Senator Kennedy for a second time on September 6, 2017.

Since February 27, 2017, I have also been in contact with officials from the White House Counsel's Office. On March 8, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C. On October 2, 2017, the President submitted my nomination to the Senate.

- 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.