

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Eric David Miller

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

United States Court of Appeals Judge for the Ninth 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.

Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101

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

1975; Oak Park, Illinois

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.

1996 – 1999, The University of Chicago Law School; J.D., 1999

1992 – 1996, Harvard University; A.B., 1996

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.

2012 – present  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Partner

2014, 2017  
University of Washington School of Law  
4293 Memorial Way, N.E.  
Seattle, Washington 98195  
Part-time Lecturer

2007 – 2012  
Office of the Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Assistant to the Solicitor General

2006 – 2007  
Office of General Counsel  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Deputy General Counsel

2004 – 2006  
Appellate Staff, Civil Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Attorney

2003 – 2004  
Office of Legal Counsel  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Attorney-Adviser

2001 – 2003  
Appellate Staff, Civil Division  
United States Department of Justice  
601 D Street, N.W.  
Washington, D.C. 20530  
Attorney

2000 – 2001  
Supreme Court of the United States  
1 First Street, N.E.  
Washington, D.C. 20543

Law Clerk to the Honorable Clarence Thomas

1999 – 2000

United States Court of Appeals for the District of Columbia Circuit

333 Constitution Avenue, N.W.

Washington, D.C. 20001

Law Clerk to the Honorable Laurence H. Silberman

Summer 1998

Covington & Burling LLP

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Summer Associate

Summer 1997

Office of the Marin County Public Defender

3501 Civic Center Drive, Suite 139

San Rafael, California 94903

Legal Intern

Summer 1996

Irongate, Inc.

7 Mount Lassen Drive, Suite C-126

San Rafael, California 94903

Summer Intern

Other Affiliation (Uncompensated):

2012 – present

TWB Investment Partnership II, L.P.

1201 Third Avenue, Suite 4900

Seattle, Washington 98101

Partner

*This is an investment vehicle operated by my law firm in which I am a purely passive investor.*

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 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.

Chambers USA, Nationwide ranking in “Appellate Law” (2014 – present)

Attorney General's Distinguished Service Award (2008)

Special Commendation for Outstanding Service in the Civil Division of the United States Department of Justice (2002, 2005)

The University of Chicago Law School

Order of the Coif (1999)

Graduated with Highest Honors (1999)

John M. Olin Fellowship in Law and Economics (1998 – 1999)

*The University of Chicago Law Review:*

Topics and Comments Editor (1998 – 1999)

Staff member (1997 – 1998)

Joseph Henry Beale Prize for excellence in legal writing (1997)

Floyd Russell Mechem Prize Scholarship (1996)

Harvard University degree conferred *magna cum laude* in physics (1996)

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

American Academy of Appellate Lawyers (2018 – present)

Edward Coke Appellate Inn of Court (2008 – approximately 2013)

Federal Bar Association of the Western District of Washington (2012 – present)

King County Bar Association (2015 – present)

Ninth Circuit Judicial Conference, Appellate Lawyer Representative (2017 – present)

Washington Appellate Lawyers Association (2015 – 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.

California (2002)

District of Columbia (2011)

Washington (2012)

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, 2007  
United States Court of Appeals for the First Circuit, 2002  
United States Court of Appeals for the Second Circuit, 2003  
United States Court of Appeals for the Third Circuit, 2018  
United States Court of Appeals for the Fourth Circuit, 2003  
United States Court of Appeals for the Fifth Circuit, 2005  
United States Court of Appeals for the Sixth Circuit, 2018  
United States Court of Appeals for the Seventh Circuit, 2012  
United States Court of Appeals for the Eighth Circuit, 2002  
United States Court of Appeals for the Ninth Circuit, 2002  
United States Court of Appeals for the Tenth Circuit, 2002  
United States Court of Appeals for the Eleventh Circuit, 2014  
United States Court of Appeals for the D.C. Circuit, 2002  
United States Court of Appeals for the Federal Circuit, 2015  
United States District Court for the Eastern District of Washington, 2015  
United States District Court for the Northern District of California, 2014  
United States District Court for the Western District of Washington, 2014

In 2011, my membership in the bar of the United States Court of Appeals for the Second Circuit lapsed because I did not renew it; I was readmitted in 2013. In 2010, my membership in the bar of the United States Court of Appeals for the Fifth Circuit lapsed because I did not renew it; I have not sought readmission. I am not aware of any other lapses in membership.

11. **Memberships:**

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

Federalist Society for Law and Public Policy Studies (1996 – 1999, 2000 – 2004, 2016 – 2017)

Nature Conservancy (2003 – 2010)

Ninth Judicial Circuit Historical Society (2017 – present)

Washington Trails Association (2016 – present)

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

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

To the best of my knowledge, none of the organizations listed in response to 11a 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.

“Commentaries on Washington Rules of Appellate Procedure,” in *Washington Court Rules Annotated* (Thomson Reuters ed. 2017-2018). A copy of my commentary as I provided it to the publisher is supplied.

*Questioning Appellate Time Limits at the High Court*, Law360 (Oct. 16, 2017). Copy supplied.

*When Are Appellate Time Limits Jurisdictional?*, Law360 (Aug. 16, 2017). Copy supplied.

*Washington Supreme Court Extends Medical-Device Manufacturers’ Duty to Warn*, Washington Legal Foundation, Legal Opinion Letter (June 30, 2017). Copy supplied.

“Commentaries on Washington Rules of Appellate Procedure,” in *Washington Court Rules Annotated* (Thomson Reuters ed. 2016-2017). A copy of my commentary as I provided it to the publisher is supplied.

*Supreme Court Given Opportunity to Clarify Specific Personal Jurisdiction*, Washington Legal Foundation, Legal Pulse (Nov. 22, 2016). Copy supplied.

With Kevin Hamilton and Bruce Cross, *Seattle’s New Secure Scheduling Ordinance*, Perkins Coie Updates (Sept. 20, 2016). Copy supplied.

With Pamela J. Anderson, Laura Godfrey Zagar, Alexandra Magill Bromer, I. Bobby Majumder, James W. McTarnaghan, and John F. Pierce, *Would the Supreme Court Stay EPA’s Clean Power Plan Today?*, Perkins Coie Updates (Feb. 17, 2016). Copy supplied.

“Commentaries on Washington Rules of Appellate Procedure,” in *Washington Court Rules Annotated* (Thomson Reuters ed. 2015-2016). A copy of my commentary as I provided it to the publisher is supplied.

*Supreme Court Clarifies 4th Amendment Protection for Business Records in Los Angeles v. Patel*, Washington Legal Foundation, Legal Opinion Letter (Oct. 9, 2015). Copy supplied.

“Commentaries on Washington Rules of Appellate Procedure,” in *Washington Court Rules Annotated* (Thomson Reuters ed. 2014-2015). A copy of my commentary as I provided it to the publisher is supplied.

“Commentaries on Washington Rules of Appellate Procedure,” in *Washington Court Rules Annotated* (Thomson Reuters ed. 2013-2014). A copy of my commentary as I provided it to the publisher is supplied.

With Donald Baur, *Second Circuit Holds That States May Tax Non-Indian Property on an Indian Reservation*, Perkins Coie Updates (July 19, 2013). Copy supplied.

*What We Learned from High Court's Driver Privacy Ruling*, Law360 (June 18, 2013). Copy supplied.

*Should Courts Consider 18 USC § 3501 Sua Sponte?*, 65 U. Chi. L. Rev. 1029 (1998). Copy supplied.

Letter to the Editor, *End University's Ties to ROTC*, Harvard Crimson, Feb. 23, 1994. Copy supplied.

While attending the University of Chicago Law School, I served on the *University of Chicago Law Review*, first as a staff member (1997 – 1998) and then as Topics and Comments Editor (1998 – 1999). As a staff member, I edited several articles, primarily for style and to ensure the accuracy of citations. As Topics and Comments Editor, I edited, for style and substance, all student-written comments published in the *Law Review*.

My law firm maintains a website ([www.perkinscoie.com](http://www.perkinscoie.com)). Most of the content is prepared by the firm's marketing staff, but I personally prepared some of the content, including some of that on the appellate page (<https://www.perkinscoie.com/en/practices/litigation-dispute-resolution/appellate-law/index.html>), the technology amicus practice page (<https://www.perkinscoie.com/en/practices/litigation-dispute-resolution/appellate-law/tech-amicus.html>), and my biographical page (<https://www.perkinscoie.com/en/professionals/eric-d-miller.html>). Copies 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.

I am aware of no such reports, memoranda, or policy statements.

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.

Letter to Sens. Grassley and Feinstein, *Nomination of Joseph H. Hunt to be Assistant Attorney General for the Civil Division* (Feb. 16, 2018). Copy supplied.

Letter to Sens. Grassley and Feinstein, *Nomination of Gregory G. Katsas to the United States Court of Appeals for the District of Columbia Circuit* (Oct. 13, 2017). Copy supplied.

Letter to Sens. Grassley and Feinstein, *Nomination of Stephanos Bibas to the United States Court of Appeals for the Third Circuit* (Aug. 15, 2017). Copy supplied.

Letter to Sens. Hatch and Wyden, *Nomination of Brent J. McIntosh to be General Counsel of the Department of the Treasury* (June 6, 2017). Copy supplied.

Letter to Sens. Grassley and Feinstein, *Nomination of Neil Gorsuch to be Associate Justice of the Supreme Court of the United States*, (Feb. 28, 2017). Copy 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.

May 16, 2018: Panelist, "Civil Appeals Before the Ninth Circuit," Federal Bar Association of the Western District of Washington and King County Bar Association, Seattle, Washington. Recording supplied.

Dec. 8, 2017: Speaker, "*United States v. Washington*: Tribal Treaties and Water Resources," Washington State Water Resources Association, Spokane, Washington. PowerPoint supplied.

Dec. 6, 2017: Moderator, "Public Accommodation Law and the Constitution," Federal Bar Association of the Western District of Washington, Seattle, Washington. Notes



supplied.

Nov. 13, 2017: Speaker, "2017 Supreme Court Preview," King County Bar Association, Seattle, Washington. Outline and recording supplied.

May 15, 2017: Panelist, "1L Appellate Advocacy Competition," University of Washington School of Law, Seattle, Washington. I served as a moot-court judge and offered comments about the advocates' performance. I have no notes, transcript, or recording. The address of the University of Washington School of Law is 4293 Memorial Way N.E., Seattle, Washington 98195.

Mar. 14, 2017: Speaker, "Judge Gorsuch: An Introduction," Puget Sound Lawyers Chapter, The Federalist Society for Law and Public Policy Studies, Seattle, Washington. PowerPoint supplied.

Nov. 14, 2016: "2016 Supreme Court Update," King County Bar Association, Seattle, Washington. Outline and recording supplied.

Oct. 21, 2016: Panelist, "8th Annual Supreme Court Watch: Strategies and Tactics: A Practical Review of Arguing Your Case in Front of the Supreme Court of the United States," Seattle University School of Law, Seattle, Washington. Recording supplied.

Mar. 4, 2016, Panelist: "Justice Scalia, His Legacy, and the Future of the Supreme Court," University of Washington School of Law, Seattle, Washington. Notes supplied.

Nov. 20, 2015: Speaker, "Federal Criminal Appeals," Federal Defender's Office of the Western District of Washington, Seattle, Washington. PowerPoint supplied.

Nov. 10, 2015: Panelist, "Supreme Court Review/Preview for State and Local Government Attorneys," American Association of Public Welfare Attorneys, Seattle, Washington. Notes supplied.

Oct. 9, 2015: Panelist, "7th Annual Supreme Court Watch: Representative Processes: Class Actions, Voting," Seattle University School of Law, Seattle, Washington. Recording supplied.

Sept. 16, 2015: Speaker, Washington Solicitor General's Office, Olympia, Washington. The presentation was to the state solicitor's office about the Office of the Solicitor General of the United States and litigation before the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the Washington Solicitor General's Office is Post Office Box 40100, Olympia, Washington 98504.

June 24, 2015: Panelist, "Due Process (Administrative Practice Across All Jurisdictions): How to Proceed Effectively?," Federal Circuit Bar Association, Dana Point, California. The panel addressed the requirements of due process in matters before the Patent Trial and Appeal Board, other administrative agencies, and non-Article III courts. I have no

notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street N.W., Suite 801, Washington, D.C. 20006.

Nov. 4, 2014: Speaker, "Supreme Court 2014 Preview," Puget Sound Lawyers Chapter, The Federalist Society for Law and Public Policy Studies, Seattle, Washington. I used the same outline that I used for the October 13, 2014 event.

Oct. 13, 2014: Speaker, "Supreme Court 2014 Preview," King County Bar Association, Seattle, Washington. Outline supplied.

July 15, 2014. Panelist, "*Hobby Lobby* and the Religious Rights of Corporations," American Law Institute, Seattle, Washington. PowerPoint and recording supplied.

Dec. 12, 2013. Panelist, "State Gaming Taxation: Indians Taxed or Not Taxed Per IGRA?," The Seminar Group, Seattle, Washington. PowerPoint and recording supplied.

Nov. 13, 2013, Panelist: "The Supreme Court in our Constitutional Culture," Seattle University School of Law, Seattle, Washington. This panel consisted of a lecture by Professor Andrew Siegel on his recent scholarship on the Supreme Court, followed by comments from the panelists. I have no notes, transcript, or recording. The address of Seattle University School of Law is 901 12th Avenue, Seattle, Washington 98122.

Jan. 14, 2013: Guest lecturer, University of Washington School of Law, Seattle, Washington. I addressed Professor Kathryn Watts's class on Supreme Court decision making; the subject of my presentation was merits briefing in the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the University of Washington School of Law is 4293 Memorial Way N.E., Seattle, Washington 98195.

Dec. 5, 2012: Panelist, "The Western District of Washington and the U.S. Supreme Court," Federal Bar Association of the Western District of Washington, Seattle, Washington. The panel discussed Supreme Court litigation involving the Western District of Washington as well as significant cases from the current Supreme Court Term. I have no notes, transcript, or recording. The address of the Federal Bar Association of the Western District of Washington is Post Office Box 21006, Seattle, Washington 98111.

Oct. 15, 2012: Panelist, "Supreme Court Review and Preview," University of Washington School of Law, Seattle, Washington. Transcript supplied.

Mar. 1, 2010: Guest Lecturer, Georgetown University Law Center, Washington, D.C. I addressed a seminar on the Office of the Solicitor General taught by Robert Long and Jonathan Marcus; the subject of my presentation was the Office of the Solicitor General of the United States and litigation before the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Washington, D.C. 20001.

Spring 2008 (approximate): Speaker, Office of the Solicitor General, Washington, DC. I spoke to students visiting the Department of Justice about the Office of the Solicitor General of the United States and litigation before the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the Office of the Solicitor General is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

Feb. 25, 2008: Guest Lecturer, Georgetown University Law Center, Washington, D.C. I addressed a seminar on the Office of the Solicitor General taught by Robert Long and Jonathan Marcus; the subject of my presentation was the Office of the Solicitor General of the United States and litigation before the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, Washington, D.C. 20001.

April 1994 (approximate): Speaker, American Association of Physics Teachers, Arlington, Virginia. I spoke on the subject of physics education and the International Physics Olympiad. I have no notes, transcript, or recording. The address of the American Association of Physics Teachers is 1 Physics Ellipse, College Park, Maryland 20740.

July 11, 1993: Speaker, "Opening Address to the XXIV International Physics Olympiad," American Association of Physics Teachers, Williamsburg, Virginia. Text supplied.

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

Nicole Narea, *Appellate Group of the Year: Perkins Coie*, Law360 (Jan. 22, 2018). Copy supplied.

Erin Coe, *The Cases Corporate America Will Be Watching*, Law360 (Oct. 2, 2017). Copy supplied.

Emily Field, *Top Privacy Cases of 2015: Midyear Report*, Law360 (June 30, 2015). Copy supplied.

Jeffrey D. Koelemay, *L.A. Hotels Can Refuse Registry Searches; Google, Others Take Note of SCOTUS Ruling*, Bloomberg Law (June 22, 2015). Copy supplied.

Emily Field, *Justices Boost Corporate Data Rights in Hotel Records Case*, Law360 (June 22, 2015). Copy supplied.

Kurt Ozreck, *Calif. High Court OKs Newspaper Carriers' Suit as Class Action*, Law360 (June 30, 2014). Copy supplied.

*Q&A with Perkins Coie's Eric Miller*, Law360 (May 1, 2013). Copy supplied.

Erin Coe, *Newspaper Carrier Case Could Bolster Class Bids in Calif.*, Law360 (Jan. 31, 2013). Copy supplied.

Juan Carlos Rodriguez, *Perkins Coie Snags Former Assistant to Solicitor General*, Law360 (Oct. 2, 2012). Copy supplied.

Christine Maguire, *A Supreme Career*, Marker (Spring 2008). Copy supplied.

Sandra Howze, *Student Profile: Eric Miller*, Phoenix (Apr. 30, 1997). Copy supplied.

Natasha H. Leland, *The Ad Board*, Harv. Crimson (Apr. 27, 1995). Copy supplied.

Charles C. Savage, *Ban the Banner Ban*, Harv. Crimson (Dec. 3, 1994). Copy supplied.

Jonathan N. Axelrod & Douglas M. Pravda, *Report Upholds ROTC Tie, But Without Direct Funding*, Harv. Crimson (Dec. 1, 1994). Copy supplied.

Maggie Piscane, *Group Questions Ban on Banners*, Harv. Crimson (Nov. 30, 1994). Copy supplied.

Olivia F. Gentile, *Would Male Voters Detract from RUS?*, Harv. Crimson (Mar. 21, 1994). Copy supplied.

Jafi A. Lipson, *CLUH Elects New Director*, Harv. Crimson (Dec. 18, 1993). Copy supplied.

John Wagley, *College Committee Targets Free Speech*, Harv. Crimson (Nov. 16, 1993). 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.

I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

From 2006 to 2007, I served as Deputy General Counsel of the Federal Communications Commission. I was appointed to that position by FCC Chairman Kevin J. Martin.

- 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.

I have never held any position in, rendered services to, or played a role in a political party, election committee, or political campaign.

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 1999 to 2000, I served as a law clerk to the Honorable Laurence H. Silberman, Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit.

From 2000 to 2001, I served as a law clerk to the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States.

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.

2001 – 2003

Appellate Staff, Civil Division  
United States Department of Justice  
601 D Street, N.W.  
Washington, D.C. 20530  
Attorney

2003 – 2004

Office of Legal Counsel  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Attorney-Adviser

2004 – 2006

Appellate Staff, Civil Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Attorney

2006 – 2007

Office of General Counsel  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Deputy General Counsel

2007 – 2012

Office of the Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Assistant to the Solicitor General

Winter Quarter 2014, Spring Quarter 2017  
University of Washington School of Law  
4293 Memorial Way, N.E.

Seattle, Washington 98195  
Part-time Lecturer

2012 – present  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

My law practice has focused heavily on appellate and Supreme Court litigation. Most of that practice has been with the federal government, with increasing levels of responsibility over time. I have handled a broad variety of legal issues.

From 2001 to 2003 and again from 2004 to 2006, I was an attorney on the Appellate Staff of the Civil Division of the U.S. Department of Justice. In that capacity, I represented the United States, federal agencies, and federal officials in civil cases in federal courts of appeals. I also prepared draft recommendations from the Civil Division to the Solicitor General about whether the government should appeal adverse decisions, intervene or make amicus filings in the courts of appeals, or seek rehearing en banc or certiorari review of adverse appellate decisions.

From 2003 to 2004, I was an attorney-adviser in the Office of Legal Counsel at the Department of Justice. In that capacity, I drafted formal opinion memoranda and provided informal legal advice to the Executive Branch, principally in the fields of administrative law, constitutional law, and foreign-affairs law. I also drafted Justice Department comments on pending legislation.

From 2006 to 2007, I was Deputy General Counsel of the Federal Communications Commission. In that capacity, I was responsible for supervising the litigation division of the FCC's Office of General Counsel. That division, which comprises about a dozen lawyers, conducts the FCC's litigation in cases over which the FCC has independent litigating authority. I assisted the General Counsel in the development of litigation strategy, reviewed and edited briefs filed



in defense of Commission orders, argued cases on behalf of the FCC, and supervised attorneys preparing for oral arguments.

From 2007 to 2012, I was an Assistant to the Solicitor General of the United States. In that capacity, I represented the United States, federal agencies, and federal officials in civil and criminal cases in the Supreme Court of the United States. I also made recommendations to the Solicitor General about whether the government should appeal adverse decisions, intervene or make amicus filings in the courts of appeals, or seek rehearing en banc or certiorari review of adverse appellate decisions.

Since October 2012, I have been a partner at Perkins Coie LLP, a large private law firm. I am currently the chair of the firm's appellate practice group. Most of my work involves representing clients in litigation in the Supreme Court of the United States, federal courts of appeals, or state appellate courts. I also represent clients in aspects of trial-court litigation that involve primarily legal issues, such as motions to dismiss and motions for summary judgment.

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

In the Justice Department, my clients were the United States, federal agencies, and federal officials sued in their official or individual capacities. At the Federal Communications Commission, my only client was the Commission itself. In private practice, my clients are corporations, individuals, state and local governments, trade associations, and non-profit organizations. Some of my significant clients in private practice have included Airlines for America, Alliant Energy, Antelope Valley Newspapers, the Association for Accessible Medicines, Boeing, CenturyLink, CollegeNET, Facebook, Google, Glassdoor, Intel, the Town of Ledyard (Connecticut), Mercer Ranches, Microsoft, Mylan, the State of New Mexico, Portland General Electric, Redbox Automated Retail, Twitter, United Parcel Service, Washington Realtors, and Zillow.

Except during my time at the Federal Communications Commission, when I focused on communications law, I have not specialized in a particular area of the law. In the Solicitor General's Office, I worked on the entire range of legal issues arising in civil and criminal litigation involving the federal government. In private practice, I have done significant work in administrative law, contracts, constitutional law, employment law, environmental law, Native American law, and torts.

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.

With the exception of my time in the Office of Legal Counsel, my practice has consisted almost entirely of litigation, and I have appeared in court occasionally to frequently. Over the course of my career, I have argued more than 60 appeals, including 16 in the Supreme Court, more than 30 in federal courts of appeals, and several in the state appellate courts of Washington and California.

i. Indicate the percentage of your practice in:

- |    |                          |     |
|----|--------------------------|-----|
| 1. | federal courts:          | 90% |
| 2. | state courts of record:  | 10% |
| 3. | other courts:            | 0%  |
| 4. | administrative agencies: | <1% |

ii. Indicate the percentage of your practice in:

- |    |                       |     |
|----|-----------------------|-----|
| 1. | civil proceedings:    | 85% |
| 2. | criminal proceedings: | 15% |

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

As primarily an appellate lawyer, I have not served as counsel in any case tried to verdict or judgment. In various cases tried to verdict, I have assisted counsel by briefing or reviewing important motions and ensuring the development and preservation of promising appellate arguments. I have also filed and argued dispositive motions in cases that were resolved before trial.

The percentages identified below refer to the proceedings described in the previous paragraph.

i. What percentage of these trials were:

- |    |           |     |
|----|-----------|-----|
| 1. | jury:     | 75% |
| 2. | non-jury: | 25% |

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.

During my time at Civil Appellate and at the Federal Communications Commission, I was occasionally involved in preparing drafts of Supreme Court briefs for the Solicitor General of the United States. While serving as an Assistant to the Solicitor General, my practice was focused on Supreme Court litigation. I prepared briefs at both the certiorari stage and the merits stage; I presented oral argument; and I assisted other attorneys in the

Office in preparing to present oral argument. In private practice, litigation before the Supreme Court has remained a significant component of my practice. In total, I have argued 16 cases before the Court and have filed briefs in many others.

Cases in which I presented oral argument:

*Abuelhawa v. United States*, 556 U.S. 816 (2009). Argument transcript and merits brief supplied.

*Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008). Argument transcript supplied.

*Astrue v. Capato*, 566 U.S. 541 (2012). Argument transcript, merits brief, merits reply brief, certiorari petition, and certiorari reply brief supplied.

*Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009). Argument transcript and merits-stage *amicus* brief supplied.

*Henderson v. Shinseki*, 562 U.S. 428 (2011). Argument transcript and merits brief supplied.

*Knight v. Commissioner*, 552 U.S. 181 (2008). Argument transcript and merits brief supplied.

*Lewis v. Clarke*, 137 S. Ct. 1285 (2017). Argument transcript, merits brief, merits reply brief, certiorari petition, and certiorari reply brief supplied.

*United States v. Marcus*, 560 U.S. 258 (2010). Argument transcript, merits brief, and merits reply brief supplied.

*NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010). Argument transcript, merits brief, and merits reply brief supplied.

*Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012). Argument transcript, merits brief, merits reply brief, certiorari petition, and certiorari reply brief supplied.

*Shinseki v. Sanders*, 556 U.S. 396 (2009). Argument transcript, merits brief, merits reply brief, certiorari petition, and certiorari reply brief supplied.

*South Carolina v. North Carolina*, 558 U.S. 256 (2010). Argument transcript supplied.

*Staub v. Proctor Hosp.*, 562 U.S. 411 (2011). Argument transcript, merits-stage *amicus* brief, and certiorari-stage *amicus* brief supplied.

*Talk Am., Inc. v. Michigan Bell Tel. Co.*, 564 U.S. 50 (2011). Argument transcript and

merits-stage *amicus* brief supplied.

*Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018). Argument transcript and merits brief supplied.

*Vartelas v. Holder*, 566 U.S. 257 (2012). Argument transcript and merits brief supplied.

Cases I did not argue but in which I filed briefs on the merits:

*Ashcroft v. al-Kidd*, 563 U.S. 731 (2011). Merits brief and merits reply brief supplied.

*al-Marri v. Spagone*, 555 U.S. 1220 (2009). Motion to dismiss and reply in support of motion to dismiss supplied.

*Boumediene v. Bush*, 553 U.S. 723 (2008). Merits brief and two supplemental briefs supplied.

*Bowles v. Russell*, 551 U.S. 205 (2007). Merits-stage *amicus* brief supplied.

*City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015). Merits-stage *amicus* brief supplied.

*Dolan v. United States*, 560 U.S. 605 (2010). Merits brief supplied.

*FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009). Merits brief, merits reply brief, certiorari petition, and certiorari reply brief supplied.

*Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45 (2007). Merits-stage *amicus* brief supplied.

*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006). Merits brief, motion to dismiss, reply in support of motion to dismiss, and brief in opposition to certiorari supplied.

*Maryland v. King*, 133 S. Ct. 1958 (2013). Merits-stage *amicus* brief supplied.

*Morgan Stanley Capital Grp. Inc. v. Public Util. Dist. No. 1*, 554 U.S. 527 (2008). Merits brief and merits reply brief supplied.

*Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 138 S. Ct. 1365 (2018). Merits-stage *amicus* brief supplied.

*Rehberg v. Paulk*, 566 U.S. 356 (2012). Merits-stage *amicus* brief supplied.

*Riley v. Kennedy*, 553 U.S. 406 (2008). Merits-stage *amicus* brief supplied.

*Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 845 (2015). Merits brief, brief in opposition to certiorari, opposition to application to recall and stay the mandate, and

opposition to second application to recall and stay the mandate supplied.

*Washington v. United States*, 138 S. Ct. 1832 (2018). Merits-stage *amicus* brief and certiorari-stage *amicus* brief supplied.

Cases in which I filed briefs only at the certiorari stage:

*Amalfitano v. Google LLC*, 138 S. Ct. 644 (2018). Brief in opposition to certiorari supplied.

*Aquino v. Suiza Dairy, Inc.*, 563 U.S. 1001 (2011). Certiorari-stage *amicus* brief supplied.

*Citizens Against Reservation Shopping v. Zinke*, 137 S. Ct. 1433 (2017). Certiorari petition and certiorari reply brief supplied.

*FCC v. CBS Corp.*, 556 U.S. 1218 (2009). Certiorari petition and certiorari reply supplied.

*Center for Nat'l Sec. Studies v. Department of Justice*, 540 U.S. 1104 (2004). Brief in opposition to certiorari supplied.

*Cheney v. United States Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367 (2004). Certiorari petition and certiorari reply supplied.

*Cleveland Clinic Found. v. True Health Diagnostics, LLC*, 138 S. Ct. 2691 (2018). Brief in opposition to certiorari supplied.

*Common Application, Inc. v. CollegeNET, Inc.*, 138 S. Ct. 1993 (2018). Brief in opposition to certiorari supplied.

*Compton Unified Sch. Dist. v. Addison*, 565 U.S. 1110 (2012). Certiorari-stage *amicus* brief supplied.

*United States v. Denedo*, 556 U.S. 904 (2009). Certiorari petition and certiorari reply supplied.

*EPA v. New Jersey*, 555 U.S. 1162 (2009). Certiorari petition supplied.

*Farina v. Nokia, Inc.*, 565 U.S. 928 (2011). Certiorari-stage *amicus* brief supplied.

*Friends of Amador County v. Jewell*, 135 S. Ct. 717 (2014). Certiorari petition and certiorari reply brief supplied.

*Google Inc. v. Arendi S.A.R.L.*, 137 S. Ct. 1329 (2017). Certiorari petition and certiorari reply brief supplied.

*Google, Inc. v. Pulaski & Middleman LLC*, 136 S. Ct. 2410 (2016). Certiorari-stage *amicus* brief supplied.

*Hatch v. Cellco P'ship*, 549 U.S. 975 (2006). Certiorari-stage *amicus* brief supplied.

*Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). Certiorari petition supplied.

*Jaffe v. Samsung Elecs. Co.*, 135 S. Ct. 66 (2014). Brief in opposition to certiorari supplied.

*La Cuna De Aztlan Sacred Sites Protection Circle Advisory Cmte. v. Department of the Interior*, 136 S. Ct. 2407 (2016). Brief in opposition to certiorari supplied.

*Leal Garcia v. Texas*, 564 U.S. 940 (2011). *Amicus* brief in support of applications for a stay supplied.

*Level 3 Commc'ns, LLC v. City of St. Louis*, 557 U.S. 935 (2009). Certiorari-stage *amicus* brief supplied.

*Nestle U.S.A., Inc. v. Doe*, 136 S. Ct. 798 (2016). Certiorari-stage *amicus* brief supplied.

*Northwest Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193 (2009). Motion to affirm supplied.

*Qassim v. Bush*, 547 U.S. 1092 (2006). Brief in opposition to certiorari supplied.

*Schultz v. Wescom*, 135 S. Ct. 869 (2014). Certiorari petition and certiorari reply brief supplied.

*Sprint Nextel Corp. v. National Ass'n of State Utility Consumer Advocates*, 552 U.S. 1165 (2008). Certiorari-stage *amicus* brief supplied.

*Sprint Telephony PCS, L.P. v. San Diego Cty.*, 557 U.S. 935 (2009). Certiorari-stage *amicus* brief supplied.

*STC.UNM v. Intel Corp.*, 135 S. Ct. 1700 (2015). Brief in opposition to certiorari supplied.

*Triple-S Mgmt. Corp. v. Municipal Revenue Collection Ctr.*, 561 U.S. 1037 (2010). Certiorari-stage *amicus* brief supplied.

*Young v. Fitzpatrick*, 133 S. Ct. 2848 (2013). Supplemental brief supplied.

As an Assistant to the Solicitor General, I also assisted with briefs in opposition to certiorari that were filed on behalf of the federal government and its agencies. Those

briefs were initially drafted by other attorneys, who signed their names to the briefs, and they were subsequently reviewed and revised by attorneys in the Solicitor General's Office, whose work was not credited.

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. *Lewis v. Clarke*, 137 S. Ct. 1285 (2017) (No. 15-1500)

I argued this case in the Supreme Court on behalf of petitioners, and I was principally responsible for preparing the petition for a writ of certiorari and petitioners' merits briefs. The case presented the question whether the sovereign immunity of an Indian tribe bars individual-capacity damages actions against tribal employees for torts committed within the scope of their employment. Petitioners were two individuals who were injured in an automobile accident caused by the negligence of an employee of an Indian tribe. The Supreme Court agreed with our position that tribal sovereign immunity did not bar the Lewises' tort action against the employee. Justice Sotomayor authored the opinion, which was joined by Chief Justice Roberts and Justices Kennedy, Breyer, Alito, and Kagan. Justices Thomas and Ginsburg filed opinions concurring in the judgment. Justice Gorsuch did not participate. The dates of my representation were 2016 to 2017.

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2. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*,  
567 U.S. 209 (2012) (Nos. 11-246 and 11-247)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of petitioner the Secretary of the Interior, and I was principally responsible for preparing the petition for a writ of certiorari and petitioner's merits briefs. Respondent Patchak had brought an action under the Administrative Procedure Act to challenge the Secretary's decision to take land into trust for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians. After the district court dismissed the case, the D.C. Circuit reversed. Together with the Band, which filed a parallel petition, we argued (1) that the Quiet Title Act's reservation of the sovereign immunity of the United States in cases involving "trust or restricted Indian lands" precludes an APA action seeking to strip the United States' title to trust land and (2) that Patchak lacked prudential standing to



challenge the trust acquisition. The Supreme Court held that the Quiet Title Act's reservation of immunity applies only to cases in which the plaintiff claims a legal interest in the land and that Patchak had prudential standing. Justice Kagan authored the opinion, which was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, and Alito. Justice Sotomayor dissented. The dates of my representation were 2011 to 2012.

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3. *Astrue v. Capato*, 566 U.S. 541 (2012) (No. 11-159)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of petitioner the Commissioner of Social Security, and I was principally responsible for preparing the petition for a writ of certiorari and petitioner's merits briefs. The case presented the question whether a child conceived after the death of a biological parent is eligible for child survivor benefits under the Social Security Act. The Commissioner took the position that an individual is eligible for child survivor benefits only if he or she would be eligible to inherit property from the decedent under state intestacy law. In a unanimous opinion authored by Justice Ginsburg, the Supreme Court agreed. The dates of my representation were 2011 to 2012.

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4. *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 564 U.S. 50 (2011)  
(Nos. 10-313 and 10-329)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of the United States as *amicus curiae*, and I was principally responsible for preparing the government's brief. The case presented the question whether the Telecommunications Act of 1996 gives a competitive local exchange carrier a right to use entrance facilities for interconnection at cost-based rates. The government supported the petitioners—a competitive local exchange carrier and the members of the Michigan Public Service Commission—who argued that the answer was yes. The Supreme Court

agreed. Justice Thomas authored the opinion, which was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Ginsburg, Breyer, Alito, and Sotomayor. Justice Scalia filed a concurring opinion. Justice Kagan did not participate. The dates of my representation were approximately 2010 to 2011.

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5. *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011) (No. 09-400)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of the United States as *amicus curiae*, and I was principally responsible for preparing the government's briefs at both the petition stage and the merits stage. The case presented the question whether an employer is liable under the Uniformed Services Employment and Reemployment Rights Act when an unbiased decisionmaker takes an adverse action against an employee based on information provided by a supervisor with a discriminatory motive. Supporting the position of the employee, the government argued that when supervisory authority is exercised in a discriminatory manner and causes an adverse employment action, the employer is liable for the supervisor's misconduct. The Supreme Court agreed that if a supervisor performs an act motivated by discriminatory animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable. Justice Scalia authored the opinion, which was joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, and Sotomayor. Justice Alito filed an opinion concurring in the judgment, which Justice Thomas joined. Justice Kagan did not

participate. The dates of my representation were 2009 to 2011.

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6. *United States v. Marcus*, 560 U.S. 258 (2010) (No. 08-1341)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of the United States, and I was principally responsible for preparing the government's merits briefs. Respondent Marcus was convicted of engaging in forced labor and sex trafficking between 1999 and 2001. On appeal, he pointed out for the first time that the statutes he violated did not become law until 2000. The Second Circuit vacated his conviction, concluding that a retrial was required if there was "any possibility, no matter how unlikely, that the jury could have convicted based exclusively on pre-enactment conduct." We argued that the Second Circuit had erred in departing from principles of plain-error review under Federal Rule of Criminal Procedure 52, and that because petitioner had not raised the error at trial, he could obtain reversal only by showing that it affected his substantial rights and the fairness, integrity or public reputation of judicial proceedings. The Supreme Court agreed. Justice Breyer authored the opinion, which was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Ginsburg, and Alito. Justice Stevens dissented. Justice Sotomayor did not participate. The dates of my representation were 2009 to 2010.

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7. *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010)  
(No. 08-674)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of the Federal Energy Regulatory Commission, and I was principally responsible for preparing the government's merits briefs. The case presented the question whether the *Mobile-Sierra* doctrine governs a third-party challenge to electricity rates established under a settlement of a proceeding before the Federal Energy Regulatory Commission. That doctrine requires the Commission to presume that an electricity rate set by a freely negotiated wholesale-energy contract meets the Federal Power Act's "just and reasonable" standard; the presumption may be overcome only if the Commission concludes that the contract seriously harms the public interest. The Court agreed with the Commission's position that the *Mobile-Sierra* doctrine applies to any review of rates set by contract, whether the challenger is a contracting party or a third party. Justice Ginsburg authored the opinion, which was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, Alito, and Sotomayor. Justice Stevens dissented. The dates of my representation were approximately 2009 to 2010.

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The Honorable Richard Blumenthal  
(then Attorney General of Connecticut)  
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8. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009) (No. 08-305)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of the United States as *amicus curiae*, and I was principally responsible for preparing the government's brief. The case presented the question whether the Individuals with Disabilities Education Act permits an award of private-school tuition reimbursement to a student who did not previously receive special education in a public school. Supporting the parents of a disabled child who were seeking reimbursement for a private-school placement, we argued that the statute permits reimbursement for private special-education services when a public school fails to provide a free appropriate public education and the private-school placement is appropriate, whether or not the child previously received special-education services through the public school. The Supreme Court agreed. Justice Stevens authored the opinion, which was joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, and Alito. Justice Souter filed a dissenting opinion, which Justices Scalia and Thomas joined. The date of my representation was 2009.

Co-Counsel:

The Honorable Elena Kagan  
(then Solicitor General)  
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Principal counsel for respondent:

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9. *Shinseki v. Sanders*, 556 U.S. 396 (2009) (No. 07-1209)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of petitioner the Secretary of Veterans Affairs, and I was principally responsible for preparing the petition for a writ of certiorari and petitioner's merits briefs. The Federal Circuit had held that certain types of procedural errors in administrative proceedings before the Department of Veterans Affairs are presumptively prejudicial and require reversal unless the Department could show a lack of prejudice. We argued that the Federal Circuit's rule of presumptive prejudice was erroneous and that appeals from the Department are governed by the same principles of harmless error applicable to civil cases. The Supreme Court agreed. Justice Breyer authored the opinion, which was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito. Justice Souter filed a dissenting opinion, joined by Justices Stevens and Ginsburg. The dates of my representation were 2007 to 2009.

Co-Counsel:

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Principal counsel for respondent Simmons:

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10. *Knight v. Commissioner*, 552 U.S. 181 (2008) (No. 06-1286)

As an Assistant to the Solicitor General, I argued this case in the Supreme Court on behalf of respondent the Commissioner of Internal Revenue, and I was principally responsible for preparing respondent's brief. The case presented the question whether investment-advice fees incurred by a trust or estate are subject to the 2% floor on miscellaneous itemized deductions. In a unanimous opinion authored by Chief Justice Roberts, the Supreme Court agreed with the Commissioner's argument that such fees are subject to the 2% floor unless they are for services of a kind that would not commonly or customarily be incurred by individuals. The dates of my representation were 2007 to 2008.

Co-Counsel:

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The Honorable Richard T. Morrison

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Principal counsel for petitioner:

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(then at Georgetown University Law Center)  
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(617) 725-8106

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.)

As explained above, my practice has been heavily focused on appellate litigation. I have briefed hundreds of appellate cases and have argued more than 60 appeals, including 16 in the Supreme Court, more than 30 in federal courts of appeals, and several in the state appellate courts of Washington and California.

While in the Office of Legal Counsel, I participated in drafting formal opinion memoranda and in giving informal legal advice to the Executive Branch. I also drafted Justice Department comments on pending legislation. Those activities involved a variety of areas of law, including administrative law, constitutional law, and foreign-affairs law.

While at the Federal Communications Commission, I occasionally advised the Commission's staff on pending rulemakings and enforcement actions.

In private practice, I have occasionally advised clients on potential litigation and have also provided general legal advice. That advice has involved a variety of areas of law, including contract law, constitutional law, and federal and state statutory law. I have also been involved in the management of my law firm, serving as chair of the appellate practice.

I have never acted or registered as a lobbyist.

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

In 2014 and again in 2017, I taught a seminar at the University of Washington School of Law entitled "Supreme Court Decision Making." The seminar covered all aspects of Supreme Court practice, including the certiorari process, briefing, and argument. It also examined five cases from the Court's merits docket in the then-current Term. The syllabus of each course is supplied.

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

I have contributed to the Perkins Coie deferred compensation plan, which will be paid out to me by March 15 of the year following my departure from the firm. In addition, I currently have capital paid into the firm, which will be returned to me the later of 120 days after my departure from the firm or upon closure of my cash balance account. I am also a participant in a firm-sponsored investment entity, TWB Investment Partnership II, L.P.; if I were to leave Perkins Coie, my ownership in that entity would continue until all the underlying investments have been disposed of, unless I assign my interest to Perkins Coie.



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.

If confirmed, I hope that I will be able to continue to teach a law school seminar from time to time. I have no commitments or agreements to do so, and I have no other plans for outside employment.

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 myself in any litigation in which I have ever played a role, and for a period of time, I anticipate recusing in all cases in which my current firm, Perkins Coie LLP, has represented any party. My wife, Teal Luthy Miller, is an Assistant United States Attorney in the Western District of Washington. I will recuse myself in any case in which she participated at any stage of the proceedings.

I will evaluate any other real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of the 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 am strongly committed to pro bono representation and, during my time at Perkins Coie, I have averaged more than 150 hours per year of pro bono work. Much of that work has been in the Supreme Court of the United States, where my most significant pro bono matters have included *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018) (representing homeowners seeking to protect their property from encroachment by a neighboring Indian tribe; I devoted approximately 300 hours to this matter); *Lewis v. Clarke*, 137 S. Ct. 1285 (2017) (representing individuals injured in an automobile accident caused by an employee of an Indian tribe; I devoted approximately 375 hours to this matter); and *Maryland v. King*, 133 S. Ct. 1958 (2013) (representing a veterans' organization as amicus curiae arguing that the Fourth Amendment prohibits warrantless collection of DNA samples; I devoted approximately 75 hours to this matter). I have also participated in numerous pro bono matters by conducting moot courts for other attorneys at my firm to assist them in preparing for oral arguments in appellate courts.

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 August 15, 2017, a member of the White House Counsel's Office called me and asked me to provide a resume if I wished to be considered for a seat on the United States Court of Appeals for the Ninth Circuit. On August 16, 2017, I provided a resume. On September 21, 2017, I interviewed at the White House with attorneys from the Counsel's Office and the Justice Department's Office of Legal Policy. Since then, I have been in contact with officials from the Counsel's Office and the Office of Legal Policy. On July 19, 2018, 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.