

**Nomination of Jason Pulliam to the United States District Court for the
Western District of Texas
Questions for the Record
Submitted May 29, 2019**

QUESTIONS FROM SENATOR FEINSTEIN

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

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

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

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

No. Circuit judges may write concurring opinions to address certain topics, including the possibility that the U.S. Supreme Court may, at some point, revisit one of its prior decisions. Lower courts do not have authority to depart from Supreme Court precedent.

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

The Supreme Court has made it clear that district court decisions are not binding precedent. *Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” (internal quotes and citation omitted)). A district judge is therefore free to disagree with a prior district court precedent whenever it becomes clear that the prior precedent was incorrect.

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

As a district court nominee, it would be inappropriate for me to advise when it is appropriate for the Supreme Court to overturn its own precedent. The Court itself determines when that is appropriate. See *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 484 (1989) (stating that only the Supreme Court has the prerogative of overruling its own decisions”).

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to

overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

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

All Supreme Court precedent is settled law from the perspective of a district court judge, entitled to controlling precedential weight and dispositive stare decisis effect. That includes *Roe*. If confirmed, I would faithfully follow all Supreme Court precedent.

b. Is it settled law?

Yes, please see my response to Question 2(a) above.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes. All Supreme Court precedent is settled law from the perspective of a district court judge, entitled to controlling precedential weight and dispositive stare decisis effect. That includes *Obergefell*. If confirmed, I would faithfully follow all Supreme Court precedent.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

a. Do you agree with Justice Stevens? Why or why not?

As a federal judicial nominee, it would be inappropriate for me to provide personal opinions about particular Supreme Court decisions or dissents from those decisions. If confirmed, I would faithfully apply all Supreme Court precedent.

b. Did *Heller* leave room for common-sense gun regulation?

The Supreme Court in *Heller* stated that “the right secured by the Second Amendment is not unlimited,” adding, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and

the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). The Court “also recognize[d] another important limitation on the right to keep and bear arms,” namely, “that the sorts of weapons protected were those in common use at the time.” *Id.* at 627 (internal quotation marks omitted).

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

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

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations’ independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals’ First Amendment rights?

The Supreme Court “has recognized that First Amendment protection extends to corporations.” *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 342 (2010). In *Citizens United* in particular, the Supreme Court held that “the Government may not suppress political speech on the basis of the speaker’s corporate identity.” *Id.* at 365. If confirmed, I will be bound by *Citizens United* and all Supreme Court precedents. The scope of corporations’ First Amendment rights is the subject of pending or impending litigation, therefore Canon(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

In *Citizens United*, the Supreme Court rejected what is called “the antidistortion rationale.” 558 U.S. at 348-356. If confirmed, I will be bound by *Citizens United* and all Supreme Court precedents. The scope of corporations’ First Amendment rights is the subject of pending or impending litigation, therefore Canon(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

In *Burwell v. Lobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Supreme Court provided some guidance regarding the rights of closely held corporations under the

Religious Freedom Restoration Act of 1993 and also noted the limits of its holding, *see, e.g., id.* at 2759-2760. If confirmed, I will be bound by *Hobby Lobby* and all Supreme Court precedent, and I will follow them faithfully. The existence and scope of corporations' religious freedom rights is the subject of pending or impending litigation, therefore Canon(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

6. You ran for judicial office in Texas in 2010, 2014, 2016, and 2018.

- a. How many questionnaires from outside groups did you respond to during the course of these campaigns? Please list all organizations to which you submitted questionnaire responses. Please provide copies of the questionnaire responses.**

I do not have a list of all endorsing organizations dating back to 2010. In my previous judicial elections, I have been endorsed by the following organizations: The San Antonio Express News, San Antonio Professional Firefighters Association, The San Antonio Police Officers Association, The Bexar County Adult Probation Association, and the Defense Counsel of San Antonio. I was invited to respond to questionnaires by the San Antonio Express News, San Antonio Black Lawyers Association (which does not endorse judicial candidates), the National Association of Women Business Owners (I am uncertain, but I believe this organization does not endorse judicial candidates), and the Defense Counsel of San Antonio. During the 2018 election, the Texas Home School Coalition Association invited me to complete a candidate questionnaire. Pursuant to the Texas Code of Judicial Conduct, I informed the organization that I could not answer questions related to political issues or policy matters. I provided the organization with my legal and judicial experience and ethical opinions interpreting the Code of Conduct. During the 2016 election, the Texas Leadership Institute for Public Advocacy invited me to complete a candidate questionnaire. Pursuant to the Texas Code of Judicial Conduct, I informed the organization that I could not answer questions related to political issues or policy matters. I provided the organization with my legal and judicial experience and some personal information. There are organizations, such as the League of Women Voters and Scene SA Magazine, that invite candidates to respond to questionnaires, but do not endorse candidates. I responded to such organizations request questions, but these groups did not provide an endorsement, but instead produced a voter guide. I have provided my partial response to the 2016 TLIPA survey.

- b. In 2016 and 2018, how many outside groups endorsed your candidacy? Please list all organizations that endorsed you and explain the process for securing their endorsement.**

I do not have a list of all endorsing organizations for the 2016 and 2018 elections. Please see my answer to Question 6(a) for endorsing organizations. In Texas, judicial candidates run in partisan elections. Organizations contact candidates and invite them to respond to candidate questionnaires. I responded to questionnaires to

the extent permitted by the Texas Code of Judicial Conduct. I have no knowledge of the decision-making process of endorsing organizations.

7. As we discussed at your hearing, the Texas Leadership Institute for Public Advocacy (TLIPA) endorsed your candidacy for judicial office. That organization states that it partially rates candidates based on responses to a “values” questionnaire that it distributes via mail, phone calls, and personal interviews.

a. Have you ever participated in a phone call with any individual affiliated with TLIPA in relation to any of your campaigns for judicial office?

No.

b. Have you ever participated in a personal or private interview with any individual affiliated with TLIPA in relation to any of your campaigns for judicial office?

No.

8. At your hearing, you stated that you “did not respond to a questionnaire for [TLIPA],” that you “did not seek out [TLIPA’s] endorsement,” and that you were “very unfamiliar with that endorsement.”

However, in a letter dated May 24, 2019, that you sent to the Judiciary Committee, you acknowledged that you did submit a “partial response to a questionnaire” sent to you by TLIPA in 2016. You then received an endorsement from the organization in both your 2016 and 2018 judicial campaigns.

a. Why did you submit a "partial response to a questionnaire" if you were unfamiliar with the organization?

In Texas, judicial candidates run in partisan elections. Organizations contact candidates and invite them to respond to candidate questionnaires. I responded to questionnaires to the extent permitted by the Texas Code of Judicial Conduct.

b. As a candidate for judicial office, did you respond, partially or otherwise, to questionnaires from other organizations with which you were unfamiliar?

Please see my response to Question 8(a).

c. As a candidate for judicial office, did you ever respond to questionnaires from organizations whose endorsement you did not seek?

Please see my response to Question 8(a).

d. Please provide a copy of the “partial response” you supplied to TLIPA in 2016

that you refer to in your May 24 letter.

Attached.

- e. Please provide all of your TLIPA questionnaire responses, regardless of the year you provided the responses or whether you provided the responses in full or in part.**

I have conducted an electronic search of my records for TLIPA questionnaire responses from other election cycles, but have located none.

- 9. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years..."

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

No.

- b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

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

My general understanding of administrative law is that it is guided by the Administrative Procedures Act as well as other rules including Supreme Court and U.S. Circuit Court precedent. If confirmed, I will faithfully follow all Supreme Court and Fifth Circuit Court precedent, including those applicable to administrative law.

- 10. When is it appropriate for judges to consider legislative history in construing a statute?

It is a well-settled rule of statutory construction that legislative history may be considered if the language of the statute is ambiguous. *See e.g. Gustafan v. Alloyd Co.*, 513 U.S. 561

(1995); *Exxon Mobil Corp. v. Allapattach Servs., Inc.*, 545 U.S. 546, 548 (2005). If confirmed, I will faithfully follow all Supreme Court and Fifth Circuit Court precedent.

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

No. My loyalty is to the United States Constitution, and, if confirmed, I will follow the law, faithfully, fully, and fairly.

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

I received these questions on Wednesday, May 29, 2019. I personally drafted the responses and shared those draft responses with the Department of Justice, Office of Legal Policy, which offered suggestions and comments. I revised my responses, as I thought appropriate, in light of those comments. My answers to each question are my own.

Attachment to question 8(d)

Jason Pulliam
Justice, Fourth Court of Appeals, Place 6
I am running in the 2016 general election to retain this seat.

1. Do you attend a church/synagogue? Where? How often do you attend religious services?

I am a member of Resurrection Baptist Church. I attend service approximately twice per month. I also visit churches throughout the greater San Antonio area as often as I can.

2. Who is the religious leader (Pastor/Rabbi) at your church/synagogue?

Reverend Ray D. Brown, Sr. is the Pastor of the church.

3. Do you tithe to your church/synagogue? If so, please state why.

I make financial contributions to my church and every church that I visit. I have also contributed by serving on the Christian Business Network within the church.

4. What organizations are you a member of, and/or been affiliated with, support financially and/or serve on the board, committees, or volunteer your time to?

I am a member of the San Antonio Downtown Rotary Club.

5. In what leadership positions (if any) have you served at a church/synagogue or organization you're a member of?

I have served as a member of the Christian Business Network.

6. Who is the person you most admire for his/her spirituality and virtue?
Please explain why.

As a Christian, I believe in Jesus as the Christ and Savior. Jesus' message of love, grace, and mercy are timeless. Jesus is the ultimate example of what is moral, good, and just in the world. His command to love your enemy, care for your fellow man, feed and clothe the poor, and help those who are less fortunate are limited by time or space.

7. Describe your educational background/academic degrees, certifications.

I graduated from Texas Southern University's Thurgood Marshall School of Law. I graduated cum laude in 2000. I was a senior staff member on the school's law review. I earned a M.A. in Political Science from Brooklyn College in 1997. I graduated with a B.A. in Political Science from Brooklyn College in 1995 (with honors).

8. Describe your professional career and list the areas of law you have practiced and are currently practicing. Current employment? Have you been a judge? If so what type of cases?

I currently serve as a Justice on the Fourth Court of Appeals (Place 6).

Appointed to serve as Justice, Fourth Court of Appeals, Place 6 on January 8, 2015.

Reelected as Judge of Bexar County, County Court at Law No. 5 in 2014.

Elected as Judge of Bexar County, County Court at Law No. 5 in 2010.

9. What do you consider your chief qualifications and goals for the position you are seeking?

My experience, competence, and qualifications provide me with the background to continue serving as a Justice on the Fourth Court of Appeals.

JUSTICE, FOURTH COURT OF APPEALS

January 2015-Present

Appointed by Governor Rick Perry on January 8, 2015 to serve as a Justice on a state intermediate appellate court covering a thirty-two county region of south Texas. Handles civil and criminal appeals from District Courts and County Courts at Law in the Fourth Judicial District.

JUDGE, BEXAR COUNTY, COUNTY COURT AT LAW No. 5 January 2011-January 2015

Criminal Cases

Handled criminal misdemeanor cases such as Driving While Intoxicated, Burglary of a Vehicle, Assault, Theft, Possession of Marijuana, Resisting Arrest, Criminal Trespass, Criminal Mischief, and other violations of the Texas Penal Code classified as Class A and B misdemeanors. Heard appeals from the Municipal Court and the Justice of the Peace Courts for the smaller towns and municipalities adjacent to and/or surrounding San Antonio for violations of the Texas Transportation Code.

Civil Cases

Handled civil cases with a jurisdictional maximum of \$200,000 such as negligence cases, including, but not limited to, automobile accident cases, premises liability cases, Deceptive Trade Practices Act cases, fraud cases, construction defect cases, and Landlord-Tenant Appeals from the Justice Courts.

Other Judicial Responsibilities

Presided over more than 70 trials (criminal and civil). Received civil cases from the two civil only county courts in Bexar County. Heard cases from the Civil District Courts (pursuant to an order signed by Judge David Peoples- the Administrative Judge for the Fourth Administrative Region – one of only three County Court Judges eligible to hear cases from the Civil District Courts pursuant to the above-referenced order).

Elected Administrative Judge of the Bexar County Statutory County Courts at Law in 2013. Worked with the County Clerk, County Commissioners, and the County Manager to reduce costs and ensure the best possible services were provided to Bexar County residents. Worked with the other judges and the Texas Indigent Defense Commission to manage indigent costs without sacrificing the constitutionally required representation each defendant is entitled to receive.

Served on the Texas Center for the Judiciary's DWI Curriculum Committee. As a committee member, I worked with judges from across the state to design courses for judges who preside over intoxication related cases.

Legal Experience prior to becoming Judge of Bexar County, County Court at Law No. 5 FORD & MASSEY, P.C. AND BALL & WEED, P.C.

Complex Commercial, Corporate, and Contractual Litigation

- Represented Plaintiffs and Defendants in complex contractual disputes, disputes between individuals, small companies, and Fortune 500 corporations;
- Disputes between Officers and Directors;
- Disputes involving General Partners and Limited Partners;
- Disputes involving corporate conversion from one form of corporate entity to another and the impact that change had on stakeholders, and individuals/entities holding collateral in the changed entity;
- Handled matters involving convoluted contractual terms with multiple parties including technical information maintained in title insurance databases, creation and ownership of intellectual and/or proprietary information;
- Represented Plaintiffs and Defendants in terminating contracts with ongoing contractual obligations concerning confidentiality, non-disparagement, intellectual property, and non-compete clauses.

Construction Litigation

- Handled cases involving claims against home builders, contractors, engineers, architects, subcontractors, and independent contractors;
- Cases involving claims of city, county, and/or state construction code violations;
- Cases involving interim and permanent financing for residential and commercial construction;
- Cases involving regulatory compliance for mortgage brokers and disputes between lenders and borrowers concerning the financing component of home building/purchasing;
- Cases involving foundation claims, construction defects, and faulty repairs, and major condominium construction projects.

Third Party Insurance Defense

- Represented individuals, small businesses, and large companies in cases involving claims made based upon premises liability, dram shop actions, general common law negligence claims, property damage and personal injury claims;
- Transportation litigation;
- Handled disputes between homeowners and insurers;
- Handled first party disputes between insured individuals and insurers including bad faith cases.

General Civil Litigation

- Specialized in complicated and unique cases involving intricate and multifaceted factual backgrounds and difficult questions of law;
- Handled fiduciary litigation cases including trustees, undue influence on grantors, claims by trust beneficiaries, mismanagement of trust funds, waste of personal assets, and devaluation of real property;
- Handled landlord tenant disputes including claims of violations of Chapter 92 of the Texas Property Code;
- Handled cases involving major public works projects requiring compliance with overlapping city, county, and state regulations;
- Handled civil cases with complex criminal law components;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

THE CARLSON LAW FIRM

Civil Litigation

- Worked in the firm's main office and handled a high volume caseload.
- Represented individuals in cases involving injuries sustained in automobile accidents, premises liability claims, and medical negligence cases;
- Handled Transportation cases involving catastrophic injuries based on violations of the Texas Transportation Code and the Federal Motor Carrier Regulations.

Criminal Law

- Represented individuals charged with misdemeanors and felonies under Texas Law in County Courts at Law and District Courts;

Handled criminal cases in Bell County, Coryell County, Williamson County, and Travis County. By way of example, clients were charged with assault, assault with battery on a family member, driving while intoxicated, burglary, theft, embezzlement, fraudulent check writing, sexual assault, possession and distribution of illegal substances;

- In addition, represented minors in the Bell County Juvenile Justice System.
- Drafted and argued all motions to challenge U.S. Constitutional and Texas Constitutional violations;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

United States Marine Corps

- Served as a criminal defense litigator at Camp Lejeune, North Carolina – the second most active legal section in the entire Department of Defense;
- Routinely carried extremely heavy caseload of 30-35 active cases in special courts-martial (misdemeanor level court) and general courts-martial (felony level court);
- Represented Marines and Sailors charged with criminal offenses, including attempted murder, armed robbery, kidnapping, assault, computer/cyber-crimes, drug possession and distribution, and military specific offenses (violation of orders, fraternization, maltreatment, hazing, desertion and unauthorized absence, and conduct unbecoming an officer);
- Lead Counsel in 12 fully contested cases tried to a judge or jury to a final verdict. Military trials, like civilian trials, have fully contested guilt/innocence phases and fully contested sentencing phases. Of the 12 fully contested cases, obtained four complete acquittals in which the Marine/Sailor was found not guilty. Of the remaining eight fully contested cases, Marines/Sailors were found not guilty of some charges and/or received sentences far below the maximum allowable punishment. Drafted and argued all motions including challenges to Fourth, Fifth, and Sixth Amendment violations.
- Military guilty pleas are distinct from civilian criminal pleas in that they involve a contested sentencing phase. Presented evidence and defended against prosecution evidence in these proceedings. Handled approximately 100 guilty pleas with contested sentencing proceedings.

Administrative Disciplinary Hearings

- Represented Sailors and Marines in over 50 fully contested administrative hearings alleging violations of the Uniform Code of Military Justice that were not sent to a Court-Martial (criminal trial). The administrative hearing was tried to a panel of

three senior Marines and/or Sailors. These hearings included the presentation of evidence, both testimonial and documentary, by government and defense counsel. These hearings were, in effect, mini-trials. Charges brought at these hearings included employment discrimination, sexual harassment, inappropriate relationships between senior and subordinate service-members, and dereliction of duty;

- Represented officers and senior enlisted Marines/Sailors in cases in which military benefits and military retirement benefits were subject to revocation.

Bail Type Hearings

- The military criminal justice system does not have bail to ensure an accused individual's presence at trial. Instead, the military conducts a probable cause hearing to determine whether a Marine/Sailor is a flight risk and/or a threat to others. Part of the hearing focuses on whether probable cause exists to show that the accused committed the offense. The second component involves the threat/flight risk determination.
- Represented approximately 500 Marines/Sailors at such hearings.

Non-Judicial Punishment Advice

- Provided advice to Marines/Sailors charged with offenses under the military's non-judicial framework. Service-members are required to receive legal advice so that they can make an informed decision prior to appearing at a non-judicial hearing. Service-members charged with criminal offenses have the right to receive advice about the offense(s) charged and the evidence supporting the charge(s).
- Provided advice to over 1000 Marines/Sailors in this context.

Article 32 Investigating Officer

- The military criminal justice system does not have a grand jury indictment process to charge felony offenses. Instead, the military uses an investigatory proceeding led by a military lawyer called an investigating officer. Normally, an investigating officer is a more senior officer (Major or Lieutenant Colonel). I was tasked with this function as a Captain. The role of the investigating officer is to determine whether probable cause exists that a crime was committed and that the accused committed the offense. The investigating officer hears evidence, much like a judge, from the prosecution and defense. The investigating officer hears and rules on all evidentiary objections. After all evidence has been presented, the investigating officer prepares a report and submits it to the accused service-member's commander (the commanding officer has criminal charging authority in the military).
- Served as investigating officer in complex cases involving rape, robbery, and other high level offenses.

Legal Assistance Attorney

- Provided legal advice to Marines and Sailors on a variety of civil matters including family law, wills, powers of attorney, contracts (credit card contracts, cell phone contracts, and automobile financing agreements with unreasonably high interest rates), military benefits, and financial advice and counseling.
- My service as a legal assistance attorney overlapped with my service as a criminal defense attorney.

2002 Defense Counsel of the Year

Recipient of 2002 Eastern Region Defense Counsel of the Year Award – top rated criminal defense lawyer from a pool of 30 attorneys.

10. List federal and state courts where you're licensed to practice law.

I am licensed in the State of Texas. I am also licensed in the Western District of Texas for federal cases.

11. How many cases have you tried?

Prior to serving as Judge of County Court at Law No. 5, I tried 17 cases as lead counsel. As a trial judge, I presided over more than 70 jury trials. As an Appellate Justice, I have authored over 100 opinions.

12. Have you ever been investigated, disciplined, or reprimanded for conduct as a judge or lawyer? If so, please explain.

No.

13. Have you ever been sued by a client, arrested, convicted of a crime? If so, please explain.

No.

14. Please identify the U.S. Supreme Court Justice (current or past) who most reflects your judicial philosophy?

John Marshall.

15. Please name a modern day former U. S. President who best represents your political philosophy.

The Code of Judicial Conduct prohibits judges from making political statements. Understanding that judges in Texas run for elective office as members of political parties, I am a member of the

Republican Party. The judicial philosophy of the Republican Party best represents my views concerning the role of a judge and the manner in which our laws should be interpreted. Judges should respect and follow the law as written. Judges should make their decisions based upon existing constitutional law, statutory law, and case law.

I will continue to base all of my decisions on the United States Constitution, the Texas Constitution, Texas statutory law, and the decisions of United States Supreme Court, the Fifth Circuit Court of Appeals, the Texas Supreme Court, and the Court of Criminal Appeals.

16. Please identify one Supreme Court decision in your opinion which most impacted American society. Please explain.

Marbury v. Madison (1803). I believe this is the most important case in the history of American Jurisprudence because it fully recognized the judicial branch as an equal branch of the federal government. Justice John Marshall authored the opinion. The U.S. Supreme Court determined that it had the power to decide whether a law complied with the constitution. This is known as the power of judicial review. Judges should also exercise judicial restraint so that they do not encroach upon the province of the legislative and executive branches of government.

17. Should judicial decisions be guided by the Natural and Moral law informed by the teachings found in Holy Scripture or by positive law when conflicts arise between moral and positive law? (Positive law as defined as enacted law—the codes, statutes, and regulations applied and enforced in the courts.) Please explain.

The United States Constitution established a republican form of government. The people elect representatives to enact laws, an executive branch to execute the laws, and a judicial branch to interpret the laws (judges are appointed at the federal level). The oath that I took upon assuming my current office requires me to preserve, protect, and defend the Constitution and laws of the United States and the State of Texas. I have honored that oath and will continue to do so. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

18. Free enterprise and private property rights turn man's natural self-interest into the fairest and most productive economic system, the key to national prosperity. Do you agree? Please explain.

The Code of Judicial Conduct prohibits me from answering question. I can answer questions regarding judicial philosophy and judicial temperament.

19. Briefly list one or two political issues of most concern to you, and explain why each is important to you.

The Code of Judicial Conduct prohibits me from answering question.

20. Where would you place yourself as a jurist on a scale between strict and broad constructionism? Please explain.

Judges should strictly interpret and/or construe laws. I strictly construe and/or interpret laws. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

Written Questions for Jason Pulliam
Submitted by Senator Patrick Leahy
May 29, 2019

1. Two organizations that are opposed to both abortion and same-sex marriage endorsed your 2018 campaign for the Fourth Court of Appeals. A woman's right to choose and the ability of two people of the same gender to marry are constitutional rights as determined by the Supreme Court.

(a) Do you acknowledge the legitimacy of *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Obergefell v. Hodges*? Will you make good faith efforts to accurately apply those holdings to any relevant case before you, regardless of any personal qualms?

Yes. As I stated at my hearing, I was unaware of the TLIPA endorsement for the 2018 election. *Roe*, *Casey*, and *Obergefell* are settled law, and if confirmed, I will faithfully follow them regardless of any personal views I may have on these issues. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code's provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the referenced subjects as a Texas judge or judicial candidate or as a federal district court nominee.

(b) Why do you believe you received anti-choice and anti-same sex marriage endorsements?

I cannot comment on the characterization of the organizations. I also cannot comment or explain the endorsements of these organizations.

2. In your letter to the Committee dated May 24, 2019, you stated that you submitted a "partial response" to a "Judicial Candidate Values Questionnaire" sent by the Texas Leadership Institute in 2016, during your reelection for the Fourth Court of Appeals. The 2016 questions asked about candidates' Judeo-Christian beliefs and practices, political philosophy, and legislative concerns. According to your May 24 letter, you "*principally* answered questions related to [your] personal and professional background" and did not answer "questions related to the legal and political topics Senator Feinstein quoted." Though the questionnaire was not filled out for the 2018 election cycle, your responses to the 2016 questions associated with your candidacy to the state appellate bench are just as relevant to this Committee's consideration of your nomination to the federal bench.

- (a) **Please provide your responses to the 2016 Texas Leadership Institute questionnaire. Please also identify questions to which you did not provide a response.**

Attached.

- (b) **Please describe your reasons for responding, or not responding, as applicable, to Questions 1-5 on the 2016 Questionnaire.**

I identified my church, my pastor, and my participation in certain church activities.

- (c) **Do you believe your religious practices and beliefs—including how often you attend religious services and whether you tithe to your church or synagogue—were relevant to whether a political organization should endorse your election for a state appellate judgeship in 2016?**

I cannot speak for the organization.

- (d) **Do you believe your religious practices and beliefs are relevant to your ability to serve as a federal judge today?**

I believe my nearly two decades of legal experience in civil and criminal law, my four years as a trial judge presiding over civil and criminal cases, my service as county court administrative judge, my two years as an appellate justice in which I authored over 200 opinions, service as a United States Marine Corps JAG lawyer, and my dedication to public service are relevant to my ability to serve as a federal judge.

3. Chief Justice Roberts wrote in *King v. Burwell* that

“oftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’ So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’ Our duty, after all, is ‘to construe statutes, not isolated provisions.’”

- (a) **Do you agree with the Chief Justice? Will you adhere to that rule of statutory interpretation – that is, to examine the entire statute rather than immediately reaching for a dictionary?**

The Supreme Court has stated that “[t]he definition of words in isolation ... is not necessarily controlling in statutory construction” and that “[i]nterpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.” *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). If confirmed, I will

follow all Supreme Court and Fifth Circuit precedent on the subject of statutory construction.

4. President Trump has issued several attacks on the independent judiciary. Justice Gorsuch called them “disheartening” and “demoralizing.”

(b) Does that kind of rhetoric from a President – that a judge who rules against him is a “so-called judge” – erode respect for the rule of law?

The framers of our Constitution envisioned a strong and independent judiciary. Having served as a Texas appellate justice and trial judge, I recognize the importance of judges discharging their duties independent of the legislative and executive branches.

(c) While anyone can criticize the merits of a court’s decision, do you believe that it is ever appropriate to criticize the legitimacy of a judge or court?

Please see my response to Question 4(b) above.

5. President Trump praised one of his advisers after that adviser stated during a television interview that “the powers of the president to protect our country are very substantial *and will not be questioned.*” (Emphasis added.)

(a) Is there any constitutional provision or Supreme Court precedent precluding judicial review of national security decisions?

The Supreme Court has reviewed certain presidential actions, including actions taken during a time of military conflict. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

6. Many are concerned that the White House’s denouncement of “judicial supremacy” was an attempt to signal that the President can ignore judicial orders.

(a) If this president, any future president, or any other executive branch official refuses to comply with a court order, how should the courts respond?

As a district court nominee, I do not think it would be appropriate for me to comment on what measures a court should or should not take to enforce an order or judgment in response to such a hypothetical scenario.

7. In *Hamdan v. Rumsfeld*, the Supreme Court recognized that the President “may not disregard limitations the Congress has, in the proper exercise of its own war powers, placed on his powers.”

- (a) **Do you agree that the Constitution provides Congress with its own war powers and Congress may exercise these powers to restrict the President – even in a time of war?**

In making the quoted statement, the Supreme Court cited Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). See *Hamdan v. Rumsfeld*, 548 U.S. 557, 593 n. 23 (2006). The Supreme Court has stated that, under the “familiar tripartite framework” set forth in that concurring opinion, “when ‘the President takes measures incompatible with the expressed or implied will of Congress ... he can rely only upon his own constitutional powers of Congress over the matter.’” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2016, 2083-84 (2015) (quoting *Youngstown*, 343 U.S. at 637 (Jackson, J. concurring)). If confirmed, I would faithfully apply the Constitution, any relevant statutes, and the applicable precedent of the Supreme Court in evaluating any challenge to a given exercise of Executive authority.

- (b) **In a time of war, do you believe that the President has a “Commander-in-Chief” override to authorize violations of laws passed by Congress or to immunize violators from prosecution?**

In making the quoted statement, the Supreme Court cited its prior decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952), which held unconstitutional a presidential order “directing the Secretary of Commerce to take possession of and operate most of the Nation’s steel mills.” *Id.* at 582. The Supreme Court has also stated that, “[i]n considering claims of Presidential power this Court refers to Justice Jackson familiar tripartite framework” from his concurring opinion in *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2016, 2083 (2015). If confirmed, I would faithfully apply the Constitution, any relevant statutes, and the applicable precedent of the Supreme Court in evaluating any challenge to a given exercise of Executive authority.

- (c) **Is there any circumstance in which the President could ignore a statute passed by Congress and authorize torture or warrantless surveillance?**

As a district court nominee, I do not think it would be appropriate for me to comment on this hypothetical scenario.

8. **How should courts balance the President’s expertise in national security matters with the judicial branch’s constitutional duty to prevent abuse of power?**

The Supreme Court has reviewed presidential power, including actions taken during time of military conflict. See, e.g., *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I will faithfully follow

all Supreme Court precedent, including precedent concerning the scope of presidential power.

9. In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women.

(a) Do you agree with that view? Does the Constitution permit discrimination against women?

The Supreme Court has held that, under the Equal Protection Clause, “[p]arties who seek to defend gender-based government action must demonstrate an ‘exceedingly persuasive justification’ for that action.” *United States v. Virginia*, 518 U.S. 515, 531 (1996). The Court explained that “[t]he State must show at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.* at 533 (citations and internal quotation marks omitted). If confirmed, I would faithfully apply *United States v. Virginia* and any other applicable Supreme Court and Fifth Circuit precedents.

10. **Do you agree with Justice Scalia’s characterization of the Voting Rights Act as a “perpetuation of racial entitlement?”**

The quoted comment was apparently made during oral argument in *Shelby County v. Holder*, and no such comment occurs in the opinion of the Supreme Court case. The Voting Rights Act is a significant and landmark piece of legislation, and if confirmed I would faithfully apply the relevant precedent concerning that Act, including *Shelby County v. Holder*, 580 U.S. 528 (2013).

11. **What does the Constitution say about what a President must do if he or she wishes to receive a foreign emolument?**

U.S. Const. art. I, § 9, provides that “no Person holding any Office of Profit or Trust under them [United States], shall without the Consent of the Congress, accept of any present, Emolument, Office, Title, of any kind whatever, from any King, Prince, or foreign State.” The applicability of this clause to the President is the subject of litigation before the federal courts. As a nominee, I do not think it would be appropriate for me to comment on matters that may be pending or impending in any court.” *See* Code of Conduct for United States Judges, Canon 3(A)(6).

12. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress’s findings in reaching its decision. As Justice Ginsburg’s dissent in *Shelby County* noted, the record supporting the

2006 reauthorization was “extraordinary” and the Court erred “egregiously by overriding Congress’ decision.”

(a) When is it appropriate for a court to substitute its own factual findings for those made by Congress or the lower courts?

In *Shelby County v. Holder*, 580 U.S. 528 (2013), the Supreme Court held that the “coverage formula” of Section 4(b) of the Voting Rights Act did not meet the applicable constitutional standards governing Congress’s exercise of its enforcement powers under the Fifteenth Amendment. *Shelby County* is binding precedent of the Supreme Court, and if I am confirmed, I would faithfully follow and apply all applicable Supreme Court precedents, including *Shelby County*.

13. How would you describe Congress’s authority to enact laws to counteract racial discrimination under the Thirteenth, Fourteenth, and Fifteenth Amendments, which some scholars have described as our Nation’s “Second Founding”?

Each of these three important constitutional amendments provides that “Congress shall have power to enforce” the respective provisions of these amendments “by appropriate legislation.” U.S. Const., art. XIII, § 2; U.S. Const., art. XIV, § 5; U.S. Const., art. XV, § 2.

14. Justice Kennedy spoke for the Supreme Court in *Lawrence v. Texas* when he wrote: “liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct,” and that “in our tradition, the State is not omnipresent in the home.”

(a) Do you believe the Constitution protects that personal autonomy as a fundamental right?

Lawrence v. Texas, 539 U.S. 558, 578 (2003), overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986), and held that the Texas criminal statute at issue “furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.” *Lawrence* is binding precedent of the Supreme Court, and if I am confirmed, I would faithfully follow and apply all applicable Supreme Court precedents, including *Lawrence*.

15. In the confirmation hearing for Justice Gorsuch, there was extensive discussion of the extent to which judges and Justices are bound to follow previous court decisions by the doctrine of stare decisis.

(a) In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court? Does the commitment vary depending on whether the question is one of statutory or constitutional interpretation?

It is never appropriate for lower courts to depart from directly controlling Supreme Court precedent. *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989).

16. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it is important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety.

(a) How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I'm interested in specific examples, not just a statement that you'll follow applicable law.

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

17. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding of the role of the courts and their responsibility to protect the constitutional rights of all individuals. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in *United States v. Carolene Products*. In that footnote, the Supreme Court held that “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.”

(b) Can you discuss the importance of the courts' responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?

Federal courts play an important role in protecting constitutional rights by fairly and impartially applying the relevant constitutional standards to the cases and controversies that properly come before them. As a district court nominee, it is not appropriate for me to further address abstract questions of law that might arise in future cases.

18. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into the administration's conflicts of interest and the events detailed in the Mueller report, we are fulfilling our constitutional role.

- (a) **Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?**

Yes.

19. **Do you believe there are any discernible limits on a president's pardon power? Can a president pardon himself?**

The Constitution gives the President "Power to grant Reprieves and Pardons for Offences against the United States, except in cases of impeachment." U.S. Const. art. II § 2. As a district court nominee, it would be inappropriate for me to comment on the scope of the pardon power because extent and scope of such power is a matter of ongoing political discourse.

20. **What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment?**

The Supreme Court observed long ago that "[t]he powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 176 (1803) (Marshall, C.J.). The Supreme Court has addressed the scope of Congress's enumerated powers under the Commerce Clause and under section 5 of the Fourteenth Amendment in a variety of cases, including *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would faithfully follow and apply all applicable Supreme Court precedents in evaluating any question presented on the subject of Congress's exercise of its enumerated powers.

21. In *Trump v. Hawaii*, the Supreme Court allowed President Trump's Muslim ban to go forward on the grounds that Proclamation No. 9645 was facially neutral and asserted that the ban was in the national interest. The Court chose to accept the findings of the Proclamation without question, despite significant evidence that the President's reason for the ban was animus towards Muslims. Chief Justice Roberts' opinion stated that "the Executive's evaluation of the underlying facts is entitled to appropriate weight" on issues of foreign affairs and national security.

- (a) **What do you believe is the "appropriate weight" that executive factual findings are entitled to on immigration issues? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?**

This question seeks a response that is inherently political in nature. As a district court nominee, it is not appropriate for me to further address abstract questions of law that might arise in future cases.

22. **How would you describe the meaning and extent of the “undue burden” standard established by *Planned Parenthood v. Casey* for women seeking to have an abortion? I am interested in specific examples of what you believe would and would not be an undue burden on the ability to choose.**

The Supreme Court has addressed the issue of laws that constitute an undue burden under *Casey* on numerous occasions. *Casey* is settled law, and if I am confirmed I will faithfully follow and apply all Supreme Court precedent, including *Casey*.

23. Federal courts have used the doctrine of qualified immunity in increasingly broad ways. For example, qualified immunity has been used to protect a social worker who strip searched a four-year-old, a police officer who went to the wrong house, without even a search warrant for the correct house, and killed the homeowner, and many other startling cases.

- (a) **Has the “qualified” aspect of this doctrine ceased to have any practical meaning? Do you believe there can be rights without remedies?**

The doctrine of qualified immunity requires a fact intensive analysis to determine whether it applies in a specific case. As a nominee, I will faithfully follow and apply all Supreme Court and Fifth Circuit precedent concerning the doctrine of qualified immunity.

24. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by Chief Justice Roberts, held that the third-party doctrine should not be applied to cellphone geolocation technology. The Court noted “seismic shifts in digital technology,” such as the “exhaustive chronicle of location information casually collected by wireless carriers today.”

- (a) **In light of *Carpenter* do you believe that there comes a point at which collection of data about a person becomes so pervasive that a warrant would be required? Even if collection of one bit of the same data would not?**

The scope of Fourth Amendment protection to ever-changing technological advances is the subject of litigation. As such, it would be inappropriate for me to comment on issues that are the subject of pending or impending litigation.

25. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because Congress, with the power of the purse, rejected the President's request to provide funding for the wall.

(a) With the understanding that you cannot comment on pending cases, are there situations in which you believe a president can lawfully allocate funds for a purpose previously rejected by Congress?

This is a matter of intense public debate and public discourse. It would be inappropriate for me to comment on this subject.

26. Can you discuss the importance of judges being free from political influence or the appearance thereof?

A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. The most important traits that a judge should possess are character and competence. Judges must possess the requisite integrity to perform their roles in a detached and neutral manner. If confirmed, I will faithfully apply the law to the facts of each case that comes before me.

Attachment to question 2(a)

Jason Pulliam
Justice, Fourth Court of Appeals, Place 6
I am running in the 2016 general election to retain this seat.

1. Do you attend a church/synagogue? Where? How often do you attend religious services?

I am a member of Resurrection Baptist Church. I attend service approximately twice per month. I also visit churches throughout the greater San Antonio area as often as I can.

2. Who is the religious leader (Pastor/Rabbi) at your church/synagogue?

Reverend Ray D. Brown, Sr. is the Pastor of the church.

3. Do you tithe to your church/synagogue? If so, please state why.

I make financial contributions to my church and every church that I visit. I have also contributed by serving on the Christian Business Network within the church.

4. What organizations are you a member of, and/or been affiliated with, support financially and/or serve on the board, committees, or volunteer your time to?

I am a member of the San Antonio Downtown Rotary Club.

5. In what leadership positions (if any) have you served at a church/synagogue or organization you're a member of?

I have served as a member of the Christian Business Network.

6. Who is the person you most admire for his/her spirituality and virtue?
Please explain why.

As a Christian, I believe in Jesus as the Christ and Savior. Jesus' message of love, grace, and mercy are timeless. Jesus is the ultimate example of what is moral, good, and just in the world. His command to love your enemy, care for your fellow man, feed and clothe the poor, and help those who are less fortunate are limited by time or space.

7. Describe your educational background/academic degrees, certifications.

I graduated from Texas Southern University's Thurgood Marshall School of Law. I graduated cum laude in 2000. I was a senior staff member on the school's law review. I earned a M.A. in Political Science from Brooklyn College in 1997. I graduated with a B.A. in Political Science from Brooklyn College in 1995 (with honors).

8. Describe your professional career and list the areas of law you have practiced and are currently practicing. Current employment? Have you been a judge? If so what type of cases?

I currently serve as a Justice on the Fourth Court of Appeals (Place 6).

Appointed to serve as Justice, Fourth Court of Appeals, Place 6 on January 8, 2015.

Reelected as Judge of Bexar County, County Court at Law No. 5 in 2014.

Elected as Judge of Bexar County, County Court at Law No. 5 in 2010.

9. What do you consider your chief qualifications and goals for the position you are seeking?

My experience, competence, and qualifications provide me with the background to continue serving as a Justice on the Fourth Court of Appeals.

JUSTICE, FOURTH COURT OF APPEALS

January 2015-Present

Appointed by Governor Rick Perry on January 8, 2015 to serve as a Justice on a state intermediate appellate court covering a thirty-two county region of south Texas. Handles civil and criminal appeals from District Courts and County Courts at Law in the Fourth Judicial District.

JUDGE, BEXAR COUNTY, COUNTY COURT AT LAW No. 5 January 2011-January 2015

Criminal Cases

Handled criminal misdemeanor cases such as Driving While Intoxicated, Burglary of a Vehicle, Assault, Theft, Possession of Marijuana, Resisting Arrest, Criminal Trespass, Criminal Mischief, and other violations of the Texas Penal Code classified as Class A and B misdemeanors. Heard appeals from the Municipal Court and the Justice of the Peace Courts for the smaller towns and municipalities adjacent to and/or surrounding San Antonio for violations of the Texas Transportation Code.

Civil Cases

Handled civil cases with a jurisdictional maximum of \$200,000 such as negligence cases, including, but not limited to, automobile accident cases, premises liability cases, Deceptive Trade Practices Act cases, fraud cases, construction defect cases, and Landlord-Tenant Appeals from the Justice Courts.

Other Judicial Responsibilities

Presided over more than 70 trials (criminal and civil). Received civil cases from the two civil only county courts in Bexar County. Heard cases from the Civil District Courts (pursuant to an order signed by Judge David Peoples- the Administrative Judge for the Fourth Administrative Region – one of only three County Court Judges eligible to hear cases from the Civil District Courts pursuant to the above-referenced order).

Elected Administrative Judge of the Bexar County Statutory County Courts at Law in 2013. Worked with the County Clerk, County Commissioners, and the County Manager to reduce costs and ensure the best possible services were provided to Bexar County residents. Worked with the other judges and the Texas Indigent Defense Commission to manage indigent costs without sacrificing the constitutionally required representation each defendant is entitled to receive.

Served on the Texas Center for the Judiciary's DWI Curriculum Committee. As a committee member, I worked with judges from across the state to design courses for judges who preside over intoxication related cases.

Legal Experience prior to becoming Judge of Bexar County, County Court at Law No. 5 FORD & MASSEY, P.C. AND BALL & WEED, P.C.

Complex Commercial, Corporate, and Contractual Litigation

- Represented Plaintiffs and Defendants in complex contractual disputes, disputes between individuals, small companies, and Fortune 500 corporations;
- Disputes between Officers and Directors;
- Disputes involving General Partners and Limited Partners;
- Disputes involving corporate conversion from one form of corporate entity to another and the impact that change had on stakeholders, and individuals/entities holding collateral in the changed entity;
- Handled matters involving convoluted contractual terms with multiple parties including technical information maintained in title insurance databases, creation and ownership of intellectual and/or proprietary information;
- Represented Plaintiffs and Defendants in terminating contracts with ongoing contractual obligations concerning confidentiality, non-disparagement, intellectual property, and non-compete clauses.

Construction Litigation

- Handled cases involving claims against home builders, contractors, engineers, architects, subcontractors, and independent contractors;
- Cases involving claims of city, county, and/or state construction code violations;
- Cases involving interim and permanent financing for residential and commercial construction;
- Cases involving regulatory compliance for mortgage brokers and disputes between lenders and borrowers concerning the financing component of home building/purchasing;
- Cases involving foundation claims, construction defects, and faulty repairs, and major condominium construction projects.

Third Party Insurance Defense

- Represented individuals, small businesses, and large companies in cases involving claims made based upon premises liability, dram shop actions, general common law negligence claims, property damage and personal injury claims;
- Transportation litigation;
- Handled disputes between homeowners and insurers;
- Handled first party disputes between insured individuals and insurers including bad faith cases.

General Civil Litigation

- Specialized in complicated and unique cases involving intricate and multifaceted factual backgrounds and difficult questions of law;
- Handled fiduciary litigation cases including trustees, undue influence on grantors, claims by trust beneficiaries, mismanagement of trust funds, waste of personal assets, and devaluation of real property;
- Handled landlord tenant disputes including claims of violations of Chapter 92 of the Texas Property Code;
- Handled cases involving major public works projects requiring compliance with overlapping city, county, and state regulations;
- Handled civil cases with complex criminal law components;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

THE CARLSON LAW FIRM

Civil Litigation

- Worked in the firm's main office and handled a high volume caseload.
- Represented individuals in cases involving injuries sustained in automobile accidents, premises liability claims, and medical negligence cases;
- Handled Transportation cases involving catastrophic injuries based on violations of the Texas Transportation Code and the Federal Motor Carrier Regulations.

Criminal Law

- Represented individuals charged with misdemeanors and felonies under Texas Law in County Courts at Law and District Courts;

Handled criminal cases in Bell County, Coryell County, Williamson County, and Travis County. By way of example, clients were charged with assault, assault with battery on a family member, driving while intoxicated, burglary, theft, embezzlement, fraudulent check writing, sexual assault, possession and distribution of illegal substances;

- In addition, represented minors in the Bell County Juvenile Justice System.
- Drafted and argued all motions to challenge U.S. Constitutional and Texas Constitutional violations;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

United States Marine Corps

- Served as a criminal defense litigator at Camp Lejeune, North Carolina – the second most active legal section in the entire Department of Defense;
- Routinely carried extremely heavy caseload of 30-35 active cases in special courts-martial (misdemeanor level court) and general courts-martial (felony level court);
- Represented Marines and Sailors charged with criminal offenses, including attempted murder, armed robbery, kidnapping, assault, computer/cyber-crimes, drug possession and distribution, and military specific offenses (violation of orders, fraternization, maltreatment, hazing, desertion and unauthorized absence, and conduct unbecoming an officer);
- Lead Counsel in 12 fully contested cases tried to a judge or jury to a final verdict. Military trials, like civilian trials, have fully contested guilt/innocence phases and fully contested sentencing phases. Of the 12 fully contested cases, obtained four complete acquittals in which the Marine/Sailor was found not guilty. Of the remaining eight fully contested cases, Marines/Sailors were found not guilty of some charges and/or received sentences far below the maximum allowable punishment. Drafted and argued all motions including challenges to Fourth, Fifth, and Sixth Amendment violations.
- Military guilty pleas are distinct from civilian criminal pleas in that they involve a contested sentencing phase. Presented evidence and defended against prosecution evidence in these proceedings. Handled approximately 100 guilty pleas with contested sentencing proceedings.

Administrative Disciplinary Hearings

- Represented Sailors and Marines in over 50 fully contested administrative hearings alleging violations of the Uniform Code of Military Justice that were not sent to a Court-Martial (criminal trial). The administrative hearing was tried to a panel of

three senior Marines and/or Sailors. These hearings included the presentation of evidence, both testimonial and documentary, by government and defense counsel. These hearings were, in effect, mini-trials. Charges brought at these hearings included employment discrimination, sexual harassment, inappropriate relationships between senior and subordinate service-members, and dereliction of duty;

- Represented officers and senior enlisted Marines/Sailors in cases in which military benefits and military retirement benefits were subject to revocation.

Bail Type Hearings

- The military criminal justice system does not have bail to ensure an accused individual's presence at trial. Instead, the military conducts a probable cause hearing to determine whether a Marine/Sailor is a flight risk and/or a threat to others. Part of the hearing focuses on whether probable cause exists to show that the accused committed the offense. The second component involves the threat/flight risk determination.
- Represented approximately 500 Marines/Sailors at such hearings.

Non-Judicial Punishment Advice

- Provided advice to Marines/Sailors charged with offenses under the military's non-judicial framework. Service-members are required to receive legal advice so that they can make an informed decision prior to appearing at a non-judicial hearing. Service-members charged with criminal offenses have the right to receive advice about the offense(s) charged and the evidence supporting the charge(s).
- Provided advice to over 1000 Marines/Sailors in this context.

Article 32 Investigating Officer

- The military criminal justice system does not have a grand jury indictment process to charge felony offenses. Instead, the military uses an investigatory proceeding led by a military lawyer called an investigating officer. Normally, an investigating officer is a more senior officer (Major or Lieutenant Colonel). I was tasked with this function as a Captain. The role of the investigating officer is to determine whether probable cause exists that a crime was committed and that the accused committed the offense. The investigating officer hears evidence, much like a judge, from the prosecution and defense. The investigating officer hears and rules on all evidentiary objections. After all evidence has been presented, the investigating officer prepares a report and submits it to the accused service-member's commander (the commanding officer has criminal charging authority in the military).
- Served as investigating officer in complex cases involving rape, robbery, and other high level offenses.

Legal Assistance Attorney

- Provided legal advice to Marines and Sailors on a variety of civil matters including family law, wills, powers of attorney, contracts (credit card contracts, cell phone contracts, and automobile financing agreements with unreasonably high interest rates), military benefits, and financial advice and counseling.
- My service as a legal assistance attorney overlapped with my service as a criminal defense attorney.

2002 Defense Counsel of the Year

Recipient of 2002 Eastern Region Defense Counsel of the Year Award – top rated criminal defense lawyer from a pool of 30 attorneys.

10. List federal and state courts where you're licensed to practice law.

I am licensed in the State of Texas. I am also licensed in the Western District of Texas for federal cases.

11. How many cases have you tried?

Prior to serving as Judge of County Court at Law No. 5, I tried 17 cases as lead counsel. As a trial judge, I presided over more than 70 jury trials. As an Appellate Justice, I have authored over 100 opinions.

12. Have you ever been investigated, disciplined, or reprimanded for conduct as a judge or lawyer? If so, please explain.

No.

13. Have you ever been sued by a client, arrested, convicted of a crime? If so, please explain.

No.

14. Please identify the U.S. Supreme Court Justice (current or past) who most reflects your judicial philosophy?

John Marshall.

15. Please name a modern day former U. S. President who best represents your political philosophy.

The Code of Judicial Conduct prohibits judges from making political statements. Understanding that judges in Texas run for elective office as members of political parties, I am a member of the

Republican Party. The judicial philosophy of the Republican Party best represents my views concerning the role of a judge and the manner in which our laws should be interpreted. Judges should respect and follow the law as written. Judges should make their decisions based upon existing constitutional law, statutory law, and case law.

I will continue to base all of my decisions on the United States Constitution, the Texas Constitution, Texas statutory law, and the decisions of United States Supreme Court, the Fifth Circuit Court of Appeals, the Texas Supreme Court, and the Court of Criminal Appeals.

16. Please identify one Supreme Court decision in your opinion which most impacted American society. Please explain.

Marbury v. Madison (1803). I believe this is the most important case in the history of American Jurisprudence because it fully recognized the judicial branch as an equal branch of the federal government. Justice John Marshall authored the opinion. The U.S. Supreme Court determined that it had the power to decide whether a law complied with the constitution. This is known as the power of judicial review. Judges should also exercise judicial restraint so that they do not encroach upon the province of the legislative and executive branches of government.

17. Should judicial decisions be guided by the Natural and Moral law informed by the teachings found in Holy Scripture or by positive law when conflicts arise between moral and positive law? (Positive law as defined as enacted law—the codes, statutes, and regulations applied and enforced in the courts.) Please explain.

The United States Constitution established a republican form of government. The people elect representatives to enact laws, an executive branch to execute the laws, and a judicial branch to interpret the laws (judges are appointed at the federal level). The oath that I took upon assuming my current office requires me to preserve, protect, and defend the Constitution and laws of the United States and the State of Texas. I have honored that oath and will continue to do so. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

18. Free enterprise and private property rights turn man's natural self-interest into the fairest and most productive economic system, the key to national prosperity. Do you agree? Please explain.

The Code of Judicial Conduct prohibits me from answering question. I can answer questions regarding judicial philosophy and judicial temperament.

19. Briefly list one or two political issues of most concern to you, and explain why each is important to you.

The Code of Judicial Conduct prohibits me from answering question.

20. Where would you place yourself as a jurist on a scale between strict and broad constructionism? Please explain.

Judges should strictly interpret and/or construe laws. I strictly construe and/or interpret laws. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

**Nomination of Jason K. Pulliam
to the United States District Court of the Western District of Texas
Questions for the Record
Submitted May 29, 2019**

QUESTIONS FROM SENATOR WHITEHOUSE

1. In connection with your nomination to the United States District Court of the Western District of Texas, you submitted a Questionnaire that we received on March 5, 2019. In response to Question 11, you indicated that you have been a member of the Prince Hall Masons – Noble Star Lodge No. 277. The question requests “dates of membership or participation,” but you did not provide this information for your involvement in the Prince Hall Masons.

- a. What are your dates of membership or participation in the Prince Hall Masons?

I do not have the exact dates of membership in the Prince Hall Masons.

- b. Have you donated or paid membership dues to the Prince Hall Masons?

I paid annual dues once when I became a member.

- c. If confirmed, do you plan to remain an active participant in the Prince Hall Masons?

No.

- d. If confirmed, do you plan to donate money to the Prince Hall Masons?

No.

- e. Have you had contacts with representatives of the Prince Hall Masons in preparation for your confirmation hearing? Please specify.

I contacted a member of the Prince Hall Masons to determine the exact dates of membership in responding Question 11 of the Senate Judicial Questionnaire. I was unable to determine the exact dates of my membership.

2. In your 2016 campaign for Texas’ Fourth District Court of Appeals, it was reported that you accepted \$11,000 in campaign contributions from law firms involved in three cases pending before you over a two-year period. You have been quoted as acknowledging that in “a state that elects judges in partisan elections, there is a legitimate public concern regarding the impact that campaign contributions have on the impartiality of judges.”

- a. You received \$2,500 from the firm Ford Murray, PLLC where you had previously been employed, and firm shareholder Mr. William H. Ford attended our hearing

on May 22nd in support of your nomination. You called him your “good friend.” Is it correct that you were part of the panel that reversed a Texas district court decision and awarded Mr. Ford’s firm’s client nearly \$2 million?

I have never been employed by Ford Murray, PLLC. I worked for the law firm of Ford & Massey, P.C. until I was elected Judge of Bexar County, County Court at Law No. 5 in the 2010 election. I was sworn in on January 3, 2011. I have not worked for Mr. Ford since that time. After I assumed my judicial duties on January 3, 2011, Mr. Mark Murray joined the firm, and the firm changed its name. I never worked for, or with, Mr. Mark Murray. Your question refers to *Diathegen, LLC v. Phyton Biotech, Inc.*, No. 04-14-00267-CV, 2015 WL 5037645 (Tex. App.—San Antonio Aug. 26, 2015, pet. denied). Mr. Murray was local counsel for Diathegen. He did not write any portion of the briefs, and although present, he did not participate in the appellate oral argument. Mr. Ford was not involved in the case at all. Further, I did not author the opinion, but rather sat on a panel that unanimously reversed the trial court’s partial vacatur of the arbitration panel’s damages award. The Ford Murray firm contributed to my 2016 campaign to retain my seat on the Fourth Court of Appeals.

- b. Another firm that contributed to you was involved with the *Cash Biz* case in which you wrote the majority opinion over the dissent of a colleague and ruled that the company had not waived its right to force arbitration despite having filed criminal complaints against its borrowers. If confirmed for this lifetime appointment, how can you assure me that you will not rule in favor donors or other big money special interests?

The *Cash Biz* opinion was based on existing Texas Supreme Court precedent on the issue of waiving arbitration by substantial invocation of the judicial process. I followed Texas law in reaching the result in my opinion. The opinion was unanimously affirmed by the Texas Supreme Court. I have had the privilege of serving Texans as a trial judge and intermediate appellate justice. Every ruling of mine was made without regard to the identity or status of the parties. I developed a reputation for being competent, scholarly, knowledgeable, fair, and impartial. In addition, I ranked near the top of every judicial poll and I have been recognized by my peers for my outstanding legal work. If confirmed, I will faithfully follow all Supreme Court and Fifth Circuit precedent.

3. Recent reporting in the Washington Post (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts,” May 21, 2019) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

No.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

I have not read the article and cannot comment on the subject matter of the article.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

I have not read the article and cannot comment on the subject matter of the article.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

I have not read the article and cannot comment on the subject matter of the article.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

I have not read the article and cannot comment on the subject matter of the article.

4. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

A judge should always be cognizant that litigation is not an academic exercise, and a judge’s decisions can have a profound impact on the lives of real people. At the same time, a judge takes an oath to “administer justice without respect to persons.” 28 U.S.C. § 453.

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

A judge’s experiences should have prepared him or her to discharge judicial duties competently, thoughtfully, honestly, and impartially.

- c. Do you believe you can empathize with “a young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

Yes. As an African American who was born and raised in Brooklyn, New York during the 1980s, I am fully aware of the challenges that some members of minority groups encounter. I have experienced racial discrimination, and I have observed the violence often associated with inner-city life (especially violence connected to the crack-cocaine epidemic that ravaged so many communities). After my parents divorced, I remember both of them working hard to meet their respective financial obligations. Life was incredibly difficult. I have vivid memories of horrible racial encounters as a junior high school student. I have been called every racially insensitive epithet you can imagine. I also remember the violence in my neighborhood when I returned from school every day. I am quite familiar with some of the issues that racial/ethnic minorities and people from underprivileged communities face in their daily lives. From my very humble background, I was able to become the first college graduate, lawyer, armed forces officer, and judge in my family.

5. You authored the majority opinion in *In re Sandoval*, a case involving parenting rights for a transgender person. In that case, the dissent charged the majority with finding that a person understood to be male under state law might legally be found to not be a man “unless and until he seeks to unite in matrimony.”

- a. What is the basis for distinguishing between an individual who is a man for the purposes of marriage but not for the purposes of a custody dispute?

The issue in the *Sandoval* case was whether the party had state statutory standing to initiate a parentage action. My opinion determined that the party did not satisfy standing under the state statute.

- b. Where in the text of the Texas Family Code is such a distinction explicitly called for?

The issue in the *Sandoval* case was whether the party had state statutory standing to initiate a parentage action. My opinion determined that the party did not satisfy standing under the state statute.

- c. Do you believe such a distinction to have been the intent of the Texas legislature?

The issue in the *Sandoval* case was whether the party had state statutory standing to initiate a parentage action. My opinion determined that the party did not satisfy standing under the state statute.

6. In the hearing on May 22nd, you told Senator Feinstein that you were unfamiliar with an endorsement from the Texas Leadership Institute for Public Advocacy, which lists “five primary ‘non-negotiable’ intrinsic moral evils that have plunged our nation into deep moral crisis” as including “legalization of abortion, abortion-inducing drugs . . . [and] acceptance of deviant sexual unions as marriage.”

- a. Do you believe that the legalization of abortion is a moral evil?

Roe is settled law, and if confirmed, I will faithfully follow it. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code’s provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- b. Do you believe that abortion inducing drugs have plunged our nation into moral crisis?

Roe is settled law, and if confirmed, I will faithfully follow it. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code’s provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- c. Do you believe that same-sex unions are deviant?

Obergefell is settled law, and if confirmed, I will faithfully follow it. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code’s provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- d. Do you believe that transgender people are deviant?

Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code's provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- e. If confirmed, will you uphold the law as drafted, or, where there is a divergence, assert your personal values?

Yes. If confirmed, I will faithfully follow and apply all Supreme Court and Fifth Circuit precedent.

7. Justice Stevens wrote in *Massachusetts v. E.P.A.* that “[t]he harms associated with climate change are serious and well recognized.” You have spoken in support of STEM education and discussed “environmental concerns such as the water and marine life in the gulf of Mexico.” Do you accept the scientific findings that support the existence of climate change?

My comments were offered to encourage students to study in the fields of science, technology, engineering, and mathematics, and not to offer an opinion on a matter of public debate. As a Texas state judge and/or judicial candidate, it would have been inappropriate for me to comment on matters of public debate under the Texas Code of Judicial Conduct. Similarly, pursuant to the Code of Conduct for United States Judges, it is inappropriate for me to opine on matters of public debate.

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

No, it is not appropriate for a lower court to disregard the order of a superior court.

9. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts' metaphor? Why or why not?

Judges should strive to discharge their duties fairly and impartially. Judges cannot be advocates for either side in any litigation.

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

Practical considerations may be relevant in some areas of the law, such as scope of injunctive relief. In such cases, a court's application of the relevant legal standards requires consideration of the practical consequences of a particular order. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Generally, however, judges must apply the relevant legal standards faithfully and impartially, even if the practical consequences of following the law are undesirable from a policy perspective.

10. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a trial judge to make a subjective determination?

No, summary judgment standards call for judges to make objective determinations.

11. The Seventh Amendment ensures the right to a jury “in suits at common law.”
a. What role does the jury play in our constitutional system?

The right to a jury trial is vital and indispensable to the American system of justice.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

The enforceability of pre-dispute arbitration clauses is the subject of ongoing litigation. As a judicial nominee, it would be inappropriate for me to comment on issues that may come before me as a judge. If confirmed, I will follow and apply all Supreme Court and Fifth Circuit precedent regarding the interpretation and enforceability of arbitration provisions in contracts.

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to Question 11(b).

12. What do you believe is the proper role of an appellate court with respect to fact-finding?

I have been nominated to serve as a district court judge. It is appropriate for district court judges to function in a fact-finding capacity. As a state appellate justice, I am aware that appellate courts ordinarily defer to the findings of fact of the trial courts.

13. Do you believe fact-finding, if done by appellate courts, has the potential to undermine the adversarial process?

I have been nominated to serve as a district court judge. It is appropriate for district court judges to function in a fact-finding capacity. As a state appellate justice, I am aware that appellate courts ordinarily defer to the findings of fact of the trial courts.

14. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The Supreme Court has addressed, in a variety of contexts, whether congressional findings have been sufficient to support particular exercises of Congress's enumerated powers. *See, e.g., Shelby County v. Holder*, 570 U.S. 529 (2013); *United States v. Morrison*, 529 U.S. 598 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997). If confirmed, I will faithfully follow all applicable precedent on this subject.

15. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?
- i. Determining whether the seminar or conference specifically targets judges or judicial employees.

If confirmed, I will make a determination about participation in any programs referenced in Advisory Opinion #116. The Advisory Opinion states that "it is essential for judges to assess each invitation to participate or attend a seminar on a case-by-case basis," and it further states that "a judge's determination whether to attend a particular seminar should be made considering the totality of the circumstances."

- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

Please see my answer to Question 15(b)(i).

- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

Please see my answer to Question 15(b)(i).

- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

Please see my answer to Question 15(b)(i).

- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Please see my answer to Question 15(b)(i).

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

If confirmed, I will comply with the Code of Conduct for United States Judges and I will consider the guidance referenced in Advisory Opinion #116.

Questions for the Record for Jason Pulliam
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:
 - a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.
 - b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

No.

2. During your 2018 campaign to become a state court judge, you received an endorsement from the Texas Leadership Institute for Public Advocacy. By contrast, several other judicial candidates during that election received a “no endorsement,” “unopposed,” or simply “favor” rating from the Texas Leadership Institute for Public Advocacy. This organization bases its endorsements on a “‘values’ questionnaire” addressing “five primary ‘non-negotiable’ intrinsic moral evils.” You testified at your hearing that you knew nothing about the endorsement and that you have not completed any questionnaire by this organization. After the hearing you sent a letter dated May 24, 2019, stating that you did submit a questionnaire to the Texas Leadership Institute for Public Advocacy in 2016.
 - a. Please provide a copy your responses to the 2016 questionnaire that you submitted to the Texas Leadership Institute for Public Advocacy.

Attached.
 - b. Have you ever made any commitments, written or oral, to the Texas Leadership Institute for Public Advocacy?

No.
 - c. Have you spoken about the five topics that the Texas Leadership Institute for Public Advocacy refers to as the “five primary ‘non-negotiable’ intrinsic moral evils” – the “legalization of abortion, abortion-inducing drugs, euthanasia, acceptance of deviant sexual unions as marriage, human cloning, and destruction of human embryos for research” – with anyone in that organization or anyone affiliated with that organization?

No.

- d. Please identify all the endorsements you received during your 2018 judicial campaign.

I do not have a list of all endorsing organizations for the 2018 election. In Texas, judicial candidates run in partisan elections. In my previous judicial elections, I have been endorsed by the following organizations: The San Antonio Express News, San Antonio Professional Firefighters Association, The San Antonio Police Officers Association, The Bexar County Adult Probation Association, and the Defense Counsel of San Antonio.

3. The Texas Leadership Institute for Public Advocacy states it bases its endorsement on a candidate's views on five "intrinsic moral evils." I'd like to ask about three of them. What are your views on:

- a. The "legalization of abortion"?

Roe is settled law, and if confirmed, I will faithfully follow it. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code's provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- b. "Abortion-inducing drugs"?

Roe is settled law, and if confirmed, I will faithfully follow it. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code's provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

- c. "Acceptance of deviant sexual unions as marriage"?

I am unsure the exact meaning of that phrase as used by that organization. But any relevant Supreme Court decisions are settled law, and if confirmed, I will faithfully follow them. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code's provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial

Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the subject.

4. Do you agree with the Texas Leadership Institute for Public Advocacy that abortion and same-sex marriage are “‘non-negotiable’ intrinsic moral evils”?

Roe and *Obergefell* are settled law, and if confirmed, I will faithfully follow them regardless of any personal views I may have on these issues. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code’s provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the referenced subjects as a Texas judge/judicial candidate or district court nominee.

5. In 2016, the San Antonio Express News reported that when you were a state appeals court judge, you accepted \$11,000 in campaign contributions from law firms that were handling three cases pending before you. One example was a class action against a payday lender accused of predatory lending practices. You accepted \$500 in campaign contributions from the law firm representing the payday lender after you heard oral arguments in the case. You then reversed the lower court’s decision and ruled in favor of the payday lender.

- a. Regardless of whether it is legal in Texas to accept such contributions, do you think it is proper for a judge to receive campaign contributions from a law firm representing a party in a case that is pending before the judge?

In Texas, judges are required to run in partisan elections. Texas judges and judicial candidates are must comply with the Texas Code of Judicial Conduct. The Express News article referenced in your question clearly stated that I did not violate any Texas law, rule, or regulation regarding campaign contributions. The *Cash Biz* opinion was based on existing Texas Supreme Court precedent on the issue of waiving arbitration by substantial invocation of the judicial process. I followed Texas law in reaching the result in my opinion, without consideration of external factors or the status of the parties. The opinion was unanimously affirmed by the Texas Supreme Court.

- b. Do you think judges should recuse themselves if they accept a gift from a law firm representing a party in a case that they are deciding?

It would be inappropriate for me to comment on the policy the state of Texas should implement regarding recusals for campaign contributions. If confirmed, when deciding whether I should recuse from any case, I will consult the recusal

statute, 28 U.S.C. § 455, as well as the Code of Conduct for United States Judges and make a case-by-case determination of the proper course of action.

6. In *Joeris General Contractors v. Cumpian*, you overturned a jury verdict finding that a construction company was “grossly negligent” and awarding a construction worker \$5 million in punitive damages for his injury. You ruled that the general contractor had no duty to protect a subcontractor’s worker from work hazards, even though the general contractor retained control over all safety aspects of the jobsite and had reached an agreement with the subcontractor to keep the unsafe worker who had caused the injury out of the jobsite.

a. The dissenting judge in this case wrote that your opinion “glosses over the egregious facts of this case” and “supports a ‘perverse rule’ that makes accidents more likely to occur in the future.” Do you believe judges should consider whether a legal ruling creates perverse incentives or leads to absurd results?

In deciding this case, I applied well-settled and longstanding Texas precedent regarding the duties of a general contractor with respect to the employees of a subcontractor. The absurd results doctrine is a rule of statutory construction that applies when implementing the language of an unambiguous statute leads to an absurd result. That canon of construction did not apply in this case because I applied Texas case law precedent to an undisputed set of facts. There was no evidence that the general contractor was aware of the subcontractor’s employees’ failure to comply with the safety regulations.

b. Under your ruling, why wouldn’t general contractors ignore safety precautions to save costs and simply rely on subcontractors?

Please see my response to Question 6(b) above.

Attachment to question 2(a)

Jason Pulliam
Justice, Fourth Court of Appeals, Place 6
I am running in the 2016 general election to retain this seat.

1. Do you attend a church/synagogue? Where? How often do you attend religious services?

I am a member of Resurrection Baptist Church. I attend service approximately twice per month. I also visit churches throughout the greater San Antonio area as often as I can.

2. Who is the religious leader (Pastor/Rabbi) at your church/synagogue?

Reverend Ray D. Brown, Sr. is the Pastor of the church.

3. Do you tithe to your church/synagogue? If so, please state why.

I make financial contributions to my church and every church that I visit. I have also contributed by serving on the Christian Business Network within the church.

4. What organizations are you a member of, and/or been affiliated with, support financially and/or serve on the board, committees, or volunteer your time to?

I am a member of the San Antonio Downtown Rotary Club.

5. In what leadership positions (if any) have you served at a church/synagogue or organization you're a member of?

I have served as a member of the Christian Business Network.

6. Who is the person you most admire for his/her spirituality and virtue?
Please explain why.

As a Christian, I believe in Jesus as the Christ and Savior. Jesus' message of love, grace, and mercy are timeless. Jesus is the ultimate example of what is moral, good, and just in the world. His command to love your enemy, care for your fellow man, feed and clothe the poor, and help those who are less fortunate are limited by time or space.

7. Describe your educational background/academic degrees, certifications.

I graduated from Texas Southern University's Thurgood Marshall School of Law. I graduated cum laude in 2000. I was a senior staff member on the school's law review. I earned a M.A. in Political Science from Brooklyn College in 1997. I graduated with a B.A. in Political Science from Brooklyn College in 1995 (with honors).

8. Describe your professional career and list the areas of law you have practiced and are currently practicing. Current employment? Have you been a judge? If so what type of cases?

I currently serve as a Justice on the Fourth Court of Appeals (Place 6).

Appointed to serve as Justice, Fourth Court of Appeals, Place 6 on January 8, 2015.

Reelected as Judge of Bexar County, County Court at Law No. 5 in 2014.

Elected as Judge of Bexar County, County Court at Law No. 5 in 2010.

9. What do you consider your chief qualifications and goals for the position you are seeking?

My experience, competence, and qualifications provide me with the background to continue serving as a Justice on the Fourth Court of Appeals.

JUSTICE, FOURTH COURT OF APPEALS

January 2015-Present

Appointed by Governor Rick Perry on January 8, 2015 to serve as a Justice on a state intermediate appellate court covering a thirty-two county region of south Texas. Handles civil and criminal appeals from District Courts and County Courts at Law in the Fourth Judicial District.

JUDGE, BEXAR COUNTY, COUNTY COURT AT LAW No. 5 January 2011-January 2015

Criminal Cases

Handled criminal misdemeanor cases such as Driving While Intoxicated, Burglary of a Vehicle, Assault, Theft, Possession of Marijuana, Resisting Arrest, Criminal Trespass, Criminal Mischief, and other violations of the Texas Penal Code classified as Class A and B misdemeanors. Heard appeals from the Municipal Court and the Justice of the Peace Courts for the smaller towns and municipalities adjacent to and/or surrounding San Antonio for violations of the Texas Transportation Code.

Civil Cases

Handled civil cases with a jurisdictional maximum of \$200,000 such as negligence cases, including, but not limited to, automobile accident cases, premises liability cases, Deceptive Trade Practices Act cases, fraud cases, construction defect cases, and Landlord-Tenant Appeals from the Justice Courts.

Other Judicial Responsibilities

Presided over more than 70 trials (criminal and civil). Received civil cases from the two civil only county courts in Bexar County. Heard cases from the Civil District Courts (pursuant to an order signed by Judge David Peoples- the Administrative Judge for the Fourth Administrative Region – one of only three County Court Judges eligible to hear cases from the Civil District Courts pursuant to the above-referenced order).

Elected Administrative Judge of the Bexar County Statutory County Courts at Law in 2013. Worked with the County Clerk, County Commissioners, and the County Manager to reduce costs and ensure the best possible services were provided to Bexar County residents. Worked with the other judges and the Texas Indigent Defense Commission to manage indigent costs without sacrificing the constitutionally required representation each defendant is entitled to receive.

Served on the Texas Center for the Judiciary's DWI Curriculum Committee. As a committee member, I worked with judges from across the state to design courses for judges who preside over intoxication related cases.

Legal Experience prior to becoming Judge of Bexar County, County Court at Law No. 5 FORD & MASSEY, P.C. AND BALL & WEED, P.C.

Complex Commercial, Corporate, and Contractual Litigation

- Represented Plaintiffs and Defendants in complex contractual disputes, disputes between individuals, small companies, and Fortune 500 corporations;
- Disputes between Officers and Directors;
- Disputes involving General Partners and Limited Partners;
- Disputes involving corporate conversion from one form of corporate entity to another and the impact that change had on stakeholders, and individuals/entities holding collateral in the changed entity;
- Handled matters involving convoluted contractual terms with multiple parties including technical information maintained in title insurance databases, creation and ownership of intellectual and/or proprietary information;
- Represented Plaintiffs and Defendants in terminating contracts with ongoing contractual obligations concerning confidentiality, non-disparagement, intellectual property, and non-compete clauses.

Construction Litigation

- Handled cases involving claims against home builders, contractors, engineers, architects, subcontractors, and independent contractors;
- Cases involving claims of city, county, and/or state construction code violations;
- Cases involving interim and permanent financing for residential and commercial construction;
- Cases involving regulatory compliance for mortgage brokers and disputes between lenders and borrowers concerning the financing component of home building/purchasing;
- Cases involving foundation claims, construction defects, and faulty repairs, and major condominium construction projects.

Third Party Insurance Defense

- Represented individuals, small businesses, and large companies in cases involving claims made based upon premises liability, dram shop actions, general common law negligence claims, property damage and personal injury claims;
- Transportation litigation;
- Handled disputes between homeowners and insurers;
- Handled first party disputes between insured individuals and insurers including bad faith cases.

General Civil Litigation

- Specialized in complicated and unique cases involving intricate and multifaceted factual backgrounds and difficult questions of law;
- Handled fiduciary litigation cases including trustees, undue influence on grantors, claims by trust beneficiaries, mismanagement of trust funds, waste of personal assets, and devaluation of real property;
- Handled landlord tenant disputes including claims of violations of Chapter 92 of the Texas Property Code;
- Handled cases involving major public works projects requiring compliance with overlapping city, county, and state regulations;
- Handled civil cases with complex criminal law components;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

THE CARLSON LAW FIRM

Civil Litigation

- Worked in the firm's main office and handled a high volume caseload.
- Represented individuals in cases involving injuries sustained in automobile accidents, premises liability claims, and medical negligence cases;
- Handled Transportation cases involving catastrophic injuries based on violations of the Texas Transportation Code and the Federal Motor Carrier Regulations.

Criminal Law

- Represented individuals charged with misdemeanors and felonies under Texas Law in County Courts at Law and District Courts;

Handled criminal cases in Bell County, Coryell County, Williamson County, and Travis County. By way of example, clients were charged with assault, assault with battery on a family member, driving while intoxicated, burglary, theft, embezzlement, fraudulent check writing, sexual assault, possession and distribution of illegal substances;

- In addition, represented minors in the Bell County Juvenile Justice System.
- Drafted and argued all motions to challenge U.S. Constitutional and Texas Constitutional violations;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

United States Marine Corps

- Served as a criminal defense litigator at Camp Lejeune, North Carolina – the second most active legal section in the entire Department of Defense;
- Routinely carried extremely heavy caseload of 30-35 active cases in special courts-martial (misdemeanor level court) and general courts-martial (felony level court);
- Represented Marines and Sailors charged with criminal offenses, including attempted murder, armed robbery, kidnapping, assault, computer/cyber-crimes, drug possession and distribution, and military specific offenses (violation of orders, fraternization, maltreatment, hazing, desertion and unauthorized absence, and conduct unbecoming an officer);
- Lead Counsel in 12 fully contested cases tried to a judge or jury to a final verdict. Military trials, like civilian trials, have fully contested guilt/innocence phases and fully contested sentencing phases. Of the 12 fully contested cases, obtained four complete acquittals in which the Marine/Sailor was found not guilty. Of the remaining eight fully contested cases, Marines/Sailors were found not guilty of some charges and/or received sentences far below the maximum allowable punishment. Drafted and argued all motions including challenges to Fourth, Fifth, and Sixth Amendment violations.
- Military guilty pleas are distinct from civilian criminal pleas in that they involve a contested sentencing phase. Presented evidence and defended against prosecution evidence in these proceedings. Handled approximately 100 guilty pleas with contested sentencing proceedings.

Administrative Disciplinary Hearings

- Represented Sailors and Marines in over 50 fully contested administrative hearings alleging violations of the Uniform Code of Military Justice that were not sent to a Court-Martial (criminal trial). The administrative hearing was tried to a panel of

three senior Marines and/or Sailors. These hearings included the presentation of evidence, both testimonial and documentary, by government and defense counsel. These hearings were, in effect, mini-trials. Charges brought at these hearings included employment discrimination, sexual harassment, inappropriate relationships between senior and subordinate service-members, and dereliction of duty;

- Represented officers and senior enlisted Marines/Sailors in cases in which military benefits and military retirement benefits were subject to revocation.

Bail Type Hearings

- The military criminal justice system does not have bail to ensure an accused individual's presence at trial. Instead, the military conducts a probable cause hearing to determine whether a Marine/Sailor is a flight risk and/or a threat to others. Part of the hearing focuses on whether probable cause exists to show that the accused committed the offense. The second component involves the threat/flight risk determination.
- Represented approximately 500 Marines/Sailors at such hearings.

Non-Judicial Punishment Advice

- Provided advice to Marines/Sailors charged with offenses under the military's non-judicial framework. Service-members are required to receive legal advice so that they can make an informed decision prior to appearing at a non-judicial hearing. Service-members charged with criminal offenses have the right to receive advice about the offense(s) charged and the evidence supporting the charge(s).
- Provided advice to over 1000 Marines/Sailors in this context.

Article 32 Investigating Officer

- The military criminal justice system does not have a grand jury indictment process to charge felony offenses. Instead, the military uses an investigatory proceeding led by a military lawyer called an investigating officer. Normally, an investigating officer is a more senior officer (Major or Lieutenant Colonel). I was tasked with this function as a Captain. The role of the investigating officer is to determine whether probable cause exists that a crime was committed and that the accused committed the offense. The investigating officer hears evidence, much like a judge, from the prosecution and defense. The investigating officer hears and rules on all evidentiary objections. After all evidence has been presented, the investigating officer prepares a report and submits it to the accused service-member's commander (the commanding officer has criminal charging authority in the military).
- Served as investigating officer in complex cases involving rape, robbery, and other high level offenses.

Legal Assistance Attorney

- Provided legal advice to Marines and Sailors on a variety of civil matters including family law, wills, powers of attorney, contracts (credit card contracts, cell phone contracts, and automobile financing agreements with unreasonably high interest rates), military benefits, and financial advice and counseling.
- My service as a legal assistance attorney overlapped with my service as a criminal defense attorney.

2002 Defense Counsel of the Year

Recipient of 2002 Eastern Region Defense Counsel of the Year Award – top rated criminal defense lawyer from a pool of 30 attorneys.

10. List federal and state courts where you're licensed to practice law.

I am licensed in the State of Texas. I am also licensed in the Western District of Texas for federal cases.

11. How many cases have you tried?

Prior to serving as Judge of County Court at Law No. 5, I tried 17 cases as lead counsel. As a trial judge, I presided over more than 70 jury trials. As an Appellate Justice, I have authored over 100 opinions.

12. Have you ever been investigated, disciplined, or reprimanded for conduct as a judge or lawyer? If so, please explain.

No.

13. Have you ever been sued by a client, arrested, convicted of a crime? If so, please explain.

No.

14. Please identify the U.S. Supreme Court Justice (current or past) who most reflects your judicial philosophy?

John Marshall.

15. Please name a modern day former U. S. President who best represents your political philosophy.

The Code of Judicial Conduct prohibits judges from making political statements. Understanding that judges in Texas run for elective office as members of political parties, I am a member of the

Republican Party. The judicial philosophy of the Republican Party best represents my views concerning the role of a judge and the manner in which our laws should be interpreted. Judges should respect and follow the law as written. Judges should make their decisions based upon existing constitutional law, statutory law, and case law.

I will continue to base all of my decisions on the United States Constitution, the Texas Constitution, Texas statutory law, and the decisions of United States Supreme Court, the Fifth Circuit Court of Appeals, the Texas Supreme Court, and the Court of Criminal Appeals.

16. Please identify one Supreme Court decision in your opinion which most impacted American society. Please explain.

Marbury v. Madison (1803). I believe this is the most important case in the history of American Jurisprudence because it fully recognized the judicial branch as an equal branch of the federal government. Justice John Marshall authored the opinion. The U.S. Supreme Court determined that it had the power to decide whether a law complied with the constitution. This is known as the power of judicial review. Judges should also exercise judicial restraint so that they do not encroach upon the province of the legislative and executive branches of government.

17. Should judicial decisions be guided by the Natural and Moral law informed by the teachings found in Holy Scripture or by positive law when conflicts arise between moral and positive law? (Positive law as defined as enacted law—the codes, statutes, and regulations applied and enforced in the courts.) Please explain.

The United States Constitution established a republican form of government. The people elect representatives to enact laws, an executive branch to execute the laws, and a judicial branch to interpret the laws (judges are appointed at the federal level). The oath that I took upon assuming my current office requires me to preserve, protect, and defend the Constitution and laws of the United States and the State of Texas. I have honored that oath and will continue to do so. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

18. Free enterprise and private property rights turn man's natural self-interest into the fairest and most productive economic system, the key to national prosperity. Do you agree? Please explain.

The Code of Judicial Conduct prohibits me from answering question. I can answer questions regarding judicial philosophy and judicial temperament.

19. Briefly list one or two political issues of most concern to you, and explain why each is important to you.

The Code of Judicial Conduct prohibits me from answering question.

20. Where would you place yourself as a jurist on a scale between strict and broad constructionism? Please explain.

Judges should strictly interpret and/or construe laws. I strictly construe and/or interpret laws. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

Nomination of Jason K. Pulliam
United States District Court for the Western District of Texas
Questions for the Record
Submitted May 29, 2019

QUESTIONS FROM SENATOR BOOKER

1. In 2018, when you ran for a seat on the Fourth Court of Appeals you were endorsed by the Texas Leadership Institute for Public Advocacy and the San Antonio Family Association. During your nomination hearing before the Senate Judiciary Committee, Ranking Member Feinstein asked you whether you filled out a questionnaire from the Texas Leadership Institute for Public Advocacy.¹ You responded that you did not seek an endorsement from the Texas Leadership Institute for Public Advocacy and you did not fill out a questionnaire.² Later, on May 24, 2019, you sent a letter to the Committee clarifying that you “did submit a partial response to a questionnaire that the organization sent [you] in 2016. . . .”³

- a. Will you turn over your partial response to the questionnaire to the Senate Judiciary Committee you referenced in your May 24, 2019 letter? If not, please explain why.

Attached.

- b. Of the 12 questions in the questionnaire, what questions did you respond to? Please provide the answers to the questions you responded to.

As referenced in my May 24, 2019 letter, I provided personal information and information related to my legal and judicial experience. I did not answer any question or express an opinion on any Supreme Court precedent or policy issue.

- c. One of the questions in the questionnaire asked, “Do you believe that judicial decisions should be guided by the Natural and Moral law informed by the teachings found in Holy Scripture?” Did you answer this question? If so, what was the response you provided?

I informed the organization that the oath I took to serve as a Fourth Court of Appeals justice was to the preserve, protect, and defend the Constitution and laws of the United States and the state of Texas.

- i. Do you believe it was appropriate for the Texas Leadership Institute for Public Advocacy to ask that question of someone running to be elected as a judge?

I cannot comment on the manner in which an organization exercises its First Amendment rights.

- d. In your partial response to the questionnaire, did you convey your position on abortion? If so, what did you state your position to be?

I did not express a position on the issue of abortion.

2. You authored the majority opinion in *In re Sandoval*, a case involving the adjudication of parentage for a transgender individual.⁴ The transgender person obtained an Order Granting Change of Identity from female to male, but you said that was “not sufficient to confer statutory standing to maintain a suit to adjudicate parentage.”⁵ Two judges dissented in the case and one wrote that your opinion

“fail[ed] to consider the effect of its rationale on the plethora of unique circumstances involving transgendered individuals in custody disputes.”⁶

- a. What is your response to your colleague’s criticism?

As stated in your question, I authored the majority opinion in the Sandoval case. There were not two dissenting opinions. There was a concurring opinion which agreed with my interpretation of the law, and a dissent.

¹ *Nominations Hearing Before the S. Comm. on the Judiciary*, 116th Cong. (2019) (question from Sen. Feinstein, Ranking Member, Senate Comm. on the Judiciary).

² *Id.*

³ Letter from Jason K. Pulliam to the Senate Comm. on the Judiciary (May 24, 2019) (on file with the Senate Comm. on the Judiciary).

⁴ *In re Sandoval*, No. 04-15-00244 CV at *1 (Tex. App. – San Antonio 2016) 2016 WL 353010.

⁵ 2016 WL 353010 at *3.

⁶ 2016 WL 353010 at *7.

3. In 2015, you wrote an article urging family courts to increase drug and alcohol testing arguing that it could help further the best interests of the children.⁷ You wrote the testing could “serve to deter drug or alcohol abuse because individuals who know they will be tested may be less likely to use.”⁸

- a. Why do you believe drug and alcohol testing is a deterrent for people who suffer from a substance abuse disorder?

The focus of the article was on protecting children from parents who abuse alcohol and/or other substances when their children are in their possession and/or custody. The focus on protecting children is a statutory mandate in Texas family law cases. Treatment and/or counseling should be considered to assist parents in addressing any substance abuse issues.

- b. Do you believe substance abuse counseling and/or treatment to be a good method of helping some with a substance abuse disorder?

Please see my response to Question 3(a) above.

- c. Between substance abuse counseling/treating and drug testing, which method do you believe has a higher success rate of helping people with substance abuse disorders?

Please see my response to Question 3(a) above.

4. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.⁹ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.¹⁰ These shocking statistics are reflected in our nation’s prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.¹¹ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.¹²

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

Yes.

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

Yes.

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

As a Texas trial judge, I attended a continuing legal education course on Implicit Bias presented by the Texas Center for the Judiciary. The course took place on March 25-26, 2013. I also attended a class on implicit bias during the 2019 Fifth Circuit Judicial Conference.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.¹³ Why do you think that is the case?

I have not studied this issue.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men are to be charged with federal offenses that carry harsh mandatory minimum sentences.¹⁴ Why do you think that is the case?

I have not studied this issue.

⁷ Jason Pulliam, *Drug and Alcohol Monitoring Considerations for Family Courts*, SAN ANTONIO LAWYER, Nov.-Dec. 2015 (SJQ Attachment 12(a) at p. 34).

⁸ *Id.*

⁹ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

¹⁰ *Id.*

¹¹ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

¹² *Id.*

¹³ U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

¹⁴ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Racial discrimination cannot be tolerated in our courts. I am aware that racial bias exists, and racial discrimination still occurs in our country. Judges can ensure that decisions regarding pretrial release or confinement, probation conditions, incarceration in a penal institution, and jury selection are free from racial prejudice, bias, or discrimination.

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.¹⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹⁶

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

I have not studied this issue.

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

I have not studied this issue.

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

Yes.

7. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

The Supreme Court has looked to the original public meaning and considered it relevant when performing constitutional interpretation. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will faithfully follow whatever approach the Supreme Court dictates in constitutional interpretation.

8. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

Justice Elena Kagan said in a recent speech that "we're all textualists now." *Harvard Law School, The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, (Nov. 25, 2015). The Supreme Court has repeatedly stated that statutory interpretation begins with the text and that when the text is clear, the inquiry ends. *See, e.g., Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). If confirmed, I will faithfully follow the precedents of the Supreme Court, including its approach to statutory interpretation.

9. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key

congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court has said that it may be appropriate to consider legislative history when the text of a statute is ambiguous. *See, e.g., Matal v. Tam*, 137 S. Ct. 144, 1756 (2017); *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995). If confirmed, I will faithfully follow the precedents of the Supreme Court, including the use of legislative history.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

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

10. Would you honor the request of a plaintiff, defendant, or witness in your courtroom, who is transgender, to be referred in accordance with their gender identity?

If confirmed, I commit to treating each and every person who appears before me, whether as a litigant, lawyer, or witness, with the utmost dignity and respect.

11. Do you believe that *Brown v. Board of Education*¹⁷ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

The Supreme Court's 1954 unanimous decision in *Brown v. Board of Education*, which overturned the 1896 *Plessy v. Ferguson* opinion was one of the most important decisions in American Jurisprudence. By striking down separate but equal as a violation of the Equal Protection clause of the Fourteenth Amendment, the Court ended legal discrimination and closed a dark chapter in our nation's history. Although it is inappropriate for judicial nominees to discuss the correctness of legal opinions, I have a great appreciation for *Brown's* significance. In addition, *Brown* is the result of the tireless work of dedicated lawyers who spent their careers seeking the equality that is referenced in the text of Fourteenth Amendment. As you may know, the architect of the strategy to dismantle the separate but equal doctrine was Charles Hamilton Houston. Houston, the former Howard Law School Dean and NAACP Chief Legal Counsel, was a true American hero. Houston, along with his young protégé and future Supreme Court Justice, Thurgood Marshall challenged state ~~separate but equal laws as~~ violations of the Equal Protection Clause. I am a proud graduate of the Thurgood Marshall School of law. I recognize that I would not be a federal district court judicial nominee today without the courageous work of Charles H. Houston and Thurgood Marshall, and the contributions of countless others. If confirmed, I will fully and faithfully apply *Brown* and all Supreme Court precedents.

¹⁵ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates>

-continue-to-fall.

¹⁶ *Id.*

¹⁷ 347 U.S. 483 (1954).

12. Do you believe that *Plessy v. Ferguson*¹⁸ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Plessy upheld racial segregation, and was struck down by the Supreme Court's decision in *Brown*.

13. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Based on my review of the Texas Code of Judicial Conduct and the Code of Conduct for United States Judges, it is my understanding that commenting on the correctness of Supreme Court precedent is simply improper. I relied on my own understanding of Canons 2, 3(a)(6), and 5 of the Code of Conduct for United States Judges in reaching a decision on this subject.

14. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict" in presiding over civil fraud lawsuits against Trump University because he was "of Mexican heritage."¹⁹ Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

I cannot comment on the political matter you described. However, if confirmed, I will be independent of the president and Congress, and I will work to ensure that the rights of all are protected regardless of race, ethnicity, or national origin.

15. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."²⁰ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Yes. The Supreme Court has resolved this issue. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Because this matter relates to a matter of pending or impending litigation, it would be inappropriate for me to comment further, according to Canons 2, 3(a)(6), and 5 of the Code of Conduct for United States Judges

¹⁸ 163 U.S. 537 (1896).

¹⁹ Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

²⁰ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

Attachment to question 1(a)

Jason Pulliam
Justice, Fourth Court of Appeals, Place 6
I am running in the 2016 general election to retain this seat.

1. Do you attend a church/synagogue? Where? How often do you attend religious services?

I am a member of Resurrection Baptist Church. I attend service approximately twice per month. I also visit churches throughout the greater San Antonio area as often as I can.

2. Who is the religious leader (Pastor/Rabbi) at your church/synagogue?

Reverend Ray D. Brown, Sr. is the Pastor of the church.

3. Do you tithe to your church/synagogue? If so, please state why.

I make financial contributions to my church and every church that I visit. I have also contributed by serving on the Christian Business Network within the church.

4. What organizations are you a member of, and/or been affiliated with, support financially and/or serve on the board, committees, or volunteer your time to?

I am a member of the San Antonio Downtown Rotary Club.

5. In what leadership positions (if any) have you served at a church/synagogue or organization you're a member of?

I have served as a member of the Christian Business Network.

6. Who is the person you most admire for his/her spirituality and virtue?
Please explain why.

As a Christian, I believe in Jesus as the Christ and Savior. Jesus' message of love, grace, and mercy are timeless. Jesus is the ultimate example of what is moral, good, and just in the world. His command to love your enemy, care for your fellow man, feed and clothe the poor, and help those who are less fortunate are limited by time or space.

7. Describe your educational background/academic degrees, certifications.

I graduated from Texas Southern University's Thurgood Marshall School of Law. I graduated cum laude in 2000. I was a senior staff member on the school's law review. I earned a M.A. in Political Science from Brooklyn College in 1997. I graduated with a B.A. in Political Science from Brooklyn College in 1995 (with honors).

8. Describe your professional career and list the areas of law you have practiced and are currently practicing. Current employment? Have you been a judge? If so what type of cases?

I currently serve as a Justice on the Fourth Court of Appeals (Place 6).

Appointed to serve as Justice, Fourth Court of Appeals, Place 6 on January 8, 2015.

Reelected as Judge of Bexar County, County Court at Law No. 5 in 2014.

Elected as Judge of Bexar County, County Court at Law No. 5 in 2010.

9. What do you consider your chief qualifications and goals for the position you are seeking?

My experience, competence, and qualifications provide me with the background to continue serving as a Justice on the Fourth Court of Appeals.

JUSTICE, FOURTH COURT OF APPEALS

January 2015-Present

Appointed by Governor Rick Perry on January 8, 2015 to serve as a Justice on a state intermediate appellate court covering a thirty-two county region of south Texas. Handles civil and criminal appeals from District Courts and County Courts at Law in the Fourth Judicial District.

JUDGE, BEXAR COUNTY, COUNTY COURT AT LAW No. 5 January 2011-January 2015

Criminal Cases

Handled criminal misdemeanor cases such as Driving While Intoxicated, Burglary of a Vehicle, Assault, Theft, Possession of Marijuana, Resisting Arrest, Criminal Trespass, Criminal Mischief, and other violations of the Texas Penal Code classified as Class A and B misdemeanors. Heard appeals from the Municipal Court and the Justice of the Peace Courts for the smaller towns and municipalities adjacent to and/or surrounding San Antonio for violations of the Texas Transportation Code.

Civil Cases

Handled civil cases with a jurisdictional maximum of \$200,000 such as negligence cases, including, but not limited to, automobile accident cases, premises liability cases, Deceptive Trade Practices Act cases, fraud cases, construction defect cases, and Landlord-Tenant Appeals from the Justice Courts.

Other Judicial Responsibilities

Presided over more than 70 trials (criminal and civil). Received civil cases from the two civil only county courts in Bexar County. Heard cases from the Civil District Courts (pursuant to an order signed by Judge David Peoples- the Administrative Judge for the Fourth Administrative Region – one of only three County Court Judges eligible to hear cases from the Civil District Courts pursuant to the above-referenced order).

Elected Administrative Judge of the Bexar County Statutory County Courts at Law in 2013. Worked with the County Clerk, County Commissioners, and the County Manager to reduce costs and ensure the best possible services were provided to Bexar County residents. Worked with the other judges and the Texas Indigent Defense Commission to manage indigent costs without sacrificing the constitutionally required representation each defendant is entitled to receive.

Served on the Texas Center for the Judiciary's DWI Curriculum Committee. As a committee member, I worked with judges from across the state to design courses for judges who preside over intoxication related cases.

Legal Experience prior to becoming Judge of Bexar County, County Court at Law No. 5 FORD & MASSEY, P.C. AND BALL & WEED, P.C.

Complex Commercial, Corporate, and Contractual Litigation

- Represented Plaintiffs and Defendants in complex contractual disputes, disputes between individuals, small companies, and Fortune 500 corporations;
- Disputes between Officers and Directors;
- Disputes involving General Partners and Limited Partners;
- Disputes involving corporate conversion from one form of corporate entity to another and the impact that change had on stakeholders, and individuals/entities holding collateral in the changed entity;
- Handled matters involving convoluted contractual terms with multiple parties including technical information maintained in title insurance databases, creation and ownership of intellectual and/or proprietary information;
- Represented Plaintiffs and Defendants in terminating contracts with ongoing contractual obligations concerning confidentiality, non-disparagement, intellectual property, and non-compete clauses.

Construction Litigation

- Handled cases involving claims against home builders, contractors, engineers, architects, subcontractors, and independent contractors;
- Cases involving claims of city, county, and/or state construction code violations;
- Cases involving interim and permanent financing for residential and commercial construction;
- Cases involving regulatory compliance for mortgage brokers and disputes between lenders and borrowers concerning the financing component of home building/purchasing;
- Cases involving foundation claims, construction defects, and faulty repairs, and major condominium construction projects.

Third Party Insurance Defense

- Represented individuals, small businesses, and large companies in cases involving claims made based upon premises liability, dram shop actions, general common law negligence claims, property damage and personal injury claims;
- Transportation litigation;
- Handled disputes between homeowners and insurers;
- Handled first party disputes between insured individuals and insurers including bad faith cases.

General Civil Litigation

- Specialized in complicated and unique cases involving intricate and multifaceted factual backgrounds and difficult questions of law;
- Handled fiduciary litigation cases including trustees, undue influence on grantors, claims by trust beneficiaries, mismanagement of trust funds, waste of personal assets, and devaluation of real property;
- Handled landlord tenant disputes including claims of violations of Chapter 92 of the Texas Property Code;
- Handled cases involving major public works projects requiring compliance with overlapping city, county, and state regulations;
- Handled civil cases with complex criminal law components;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

THE CARLSON LAW FIRM

Civil Litigation

- Worked in the firm's main office and handled a high volume caseload.
- Represented individuals in cases involving injuries sustained in automobile accidents, premises liability claims, and medical negligence cases;
- Handled Transportation cases involving catastrophic injuries based on violations of the Texas Transportation Code and the Federal Motor Carrier Regulations.

Criminal Law

- Represented individuals charged with misdemeanors and felonies under Texas Law in County Courts at Law and District Courts;

Handled criminal cases in Bell County, Coryell County, Williamson County, and Travis County. By way of example, clients were charged with assault, assault with battery on a family member, driving while intoxicated, burglary, theft, embezzlement, fraudulent check writing, sexual assault, possession and distribution of illegal substances;

- In addition, represented minors in the Bell County Juvenile Justice System.
- Drafted and argued all motions to challenge U.S. Constitutional and Texas Constitutional violations;
- Handled cases at the Justice of Peace/Small Claims Court, County Court at Law, and District Court levels.

United States Marine Corps

- Served as a criminal defense litigator at Camp Lejeune, North Carolina – the second most active legal section in the entire Department of Defense;
- Routinely carried extremely heavy caseload of 30-35 active cases in special courts-martial (misdemeanor level court) and general courts-martial (felony level court);
- Represented Marines and Sailors charged with criminal offenses, including attempted murder, armed robbery, kidnapping, assault, computer/cyber-crimes, drug possession and distribution, and military specific offenses (violation of orders, fraternization, maltreatment, hazing, desertion and unauthorized absence, and conduct unbecoming an officer);
- Lead Counsel in 12 fully contested cases tried to a judge or jury to a final verdict. Military trials, like civilian trials, have fully contested guilt/innocence phases and fully contested sentencing phases. Of the 12 fully contested cases, obtained four complete acquittals in which the Marine/Sailor was found not guilty. Of the remaining eight fully contested cases, Marines/Sailors were found not guilty of some charges and/or received sentences far below the maximum allowable punishment. Drafted and argued all motions including challenges to Fourth, Fifth, and Sixth Amendment violations.
- Military guilty pleas are distinct from civilian criminal pleas in that they involve a contested sentencing phase. Presented evidence and defended against prosecution evidence in these proceedings. Handled approximately 100 guilty pleas with contested sentencing proceedings.

Administrative Disciplinary Hearings

- Represented Sailors and Marines in over 50 fully contested administrative hearings alleging violations of the Uniform Code of Military Justice that were not sent to a Court-Martial (criminal trial). The administrative hearing was tried to a panel of

three senior Marines and/or Sailors. These hearings included the presentation of evidence, both testimonial and documentary, by government and defense counsel. These hearings were, in effect, mini-trials. Charges brought at these hearings included employment discrimination, sexual harassment, inappropriate relationships between senior and subordinate service-members, and dereliction of duty;

- Represented officers and senior enlisted Marines/Sailors in cases in which military benefits and military retirement benefits were subject to revocation.

Bail Type Hearings

- The military criminal justice system does not have bail to ensure an accused individual's presence at trial. Instead, the military conducts a probable cause hearing to determine whether a Marine/Sailor is a flight risk and/or a threat to others. Part of the hearing focuses on whether probable cause exists to show that the accused committed the offense. The second component involves the threat/flight risk determination.
- Represented approximately 500 Marines/Sailors at such hearings.

Non-Judicial Punishment Advice

- Provided advice to Marines/Sailors charged with offenses under the military's non-judicial framework. Service-members are required to receive legal advice so that they can make an informed decision prior to appearing at a non-judicial hearing. Service-members charged with criminal offenses have the right to receive advice about the offense(s) charged and the evidence supporting the charge(s).
- Provided advice to over 1000 Marines/Sailors in this context.

Article 32 Investigating Officer

- The military criminal justice system does not have a grand jury indictment process to charge felony offenses. Instead, the military uses an investigatory proceeding led by a military lawyer called an investigating officer. Normally, an investigating officer is a more senior officer (Major or Lieutenant Colonel). I was tasked with this function as a Captain. The role of the investigating officer is to determine whether probable cause exists that a crime was committed and that the accused committed the offense. The investigating officer hears evidence, much like a judge, from the prosecution and defense. The investigating officer hears and rules on all evidentiary objections. After all evidence has been presented, the investigating officer prepares a report and submits it to the accused service-member's commander (the commanding officer has criminal charging authority in the military).
- Served as investigating officer in complex cases involving rape, robbery, and other high level offenses.

Legal Assistance Attorney

- Provided legal advice to Marines and Sailors on a variety of civil matters including family law, wills, powers of attorney, contracts (credit card contracts, cell phone contracts, and automobile financing agreements with unreasonably high interest rates), military benefits, and financial advice and counseling.
- My service as a legal assistance attorney overlapped with my service as a criminal defense attorney.

2002 Defense Counsel of the Year

Recipient of 2002 Eastern Region Defense Counsel of the Year Award – top rated criminal defense lawyer from a pool of 30 attorneys.

10. List federal and state courts where you're licensed to practice law.

I am licensed in the State of Texas. I am also licensed in the Western District of Texas for federal cases.

11. How many cases have you tried?

Prior to serving as Judge of County Court at Law No. 5, I tried 17 cases as lead counsel. As a trial judge, I presided over more than 70 jury trials. As an Appellate Justice, I have authored over 100 opinions.

12. Have you ever been investigated, disciplined, or reprimanded for conduct as a judge or lawyer? If so, please explain.

No.

13. Have you ever been sued by a client, arrested, convicted of a crime? If so, please explain.

No.

14. Please identify the U.S. Supreme Court Justice (current or past) who most reflects your judicial philosophy?

John Marshall.

15. Please name a modern day former U. S. President who best represents your political philosophy.

The Code of Judicial Conduct prohibits judges from making political statements. Understanding that judges in Texas run for elective office as members of political parties, I am a member of the

Republican Party. The judicial philosophy of the Republican Party best represents my views concerning the role of a judge and the manner in which our laws should be interpreted. Judges should respect and follow the law as written. Judges should make their decisions based upon existing constitutional law, statutory law, and case law.

I will continue to base all of my decisions on the United States Constitution, the Texas Constitution, Texas statutory law, and the decisions of United States Supreme Court, the Fifth Circuit Court of Appeals, the Texas Supreme Court, and the Court of Criminal Appeals.

16. Please identify one Supreme Court decision in your opinion which most impacted American society. Please explain.

Marbury v. Madison (1803). I believe this is the most important case in the history of American Jurisprudence because it fully recognized the judicial branch as an equal branch of the federal government. Justice John Marshall authored the opinion. The U.S. Supreme Court determined that it had the power to decide whether a law complied with the constitution. This is known as the power of judicial review. Judges should also exercise judicial restraint so that they do not encroach upon the province of the legislative and executive branches of government.

17. Should judicial decisions be guided by the Natural and Moral law informed by the teachings found in Holy Scripture or by positive law when conflicts arise between moral and positive law? (Positive law as defined as enacted law—the codes, statutes, and regulations applied and enforced in the courts.) Please explain.

The United States Constitution established a republican form of government. The people elect representatives to enact laws, an executive branch to execute the laws, and a judicial branch to interpret the laws (judges are appointed at the federal level). The oath that I took upon assuming my current office requires me to preserve, protect, and defend the Constitution and laws of the United States and the State of Texas. I have honored that oath and will continue to do so. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

18. Free enterprise and private property rights turn man's natural self-interest into the fairest and most productive economic system, the key to national prosperity. Do you agree? Please explain.

The Code of Judicial Conduct prohibits me from answering question. I can answer questions regarding judicial philosophy and judicial temperament.

19. Briefly list one or two political issues of most concern to you, and explain why each is important to you.

The Code of Judicial Conduct prohibits me from answering question.

20. Where would you place yourself as a jurist on a scale between strict and broad constructionism? Please explain.

Judges should strictly interpret and/or construe laws. I strictly construe and/or interpret laws. I believe that judges should strictly interpret laws passed by the legislature and signed by the executive. The clearest expression of the legislature's intent is set forth in the language of a statute. Strict construction of our laws serves two purposes: (1) it ensures a clear separation of constitutional powers so that judges do not encroach upon the province of the legislative and executive branches; and (2) it ensures clarity, certainty, and consistency of the law.

Questions for the Record from Senator Kamala D. Harris
Submitted May 29, 2019
For the Nomination of

Jason K. Pulliam, to the U.S. District Court for the Western District of Texas

1. In 2018, you ran for re-election to the Texas Fourth Court of Appeals. Your candidacy was endorsed by the Texas Leadership Institute for Public Advocacy (TLIPA), which states on its website that candidates are rated based on “five primary ‘non-negotiable’ intrinsic moral evils that have plunged our nation into deep moral crisis: legalization of abortion, abortion-inducing drugs, euthanasia, acceptance of deviant sexual unions as marriage, human cloning, and destruction of embryos for research.”
 - a. **Do you believe that reproductive rights, marriage equality, and the other matters mentioned on TLIPA’s website are “moral evils that have plunged our nation into deep moral crisis”?**

As I stated at my hearing, I was unaware of the TLIPA endorsement for the 2018 election. *Roe* and *Obergefell* are settled law, and if confirmed, I will faithfully follow them regardless of any personal views I may have on these issues. Pursuant to the Texas Code of Judicial Conduct and the ethical opinions interpreting the Code’s provisions, it is inappropriate for state judicial candidates to comment on matters of public policy or public debate. When I ran for judicial office, I complied with the Texas Code of Judicial Conduct. Pursuant to the Code of Conduct for United States Judges, it is also inappropriate for a judicial nominee to comment on U.S. Supreme Court precedent and his or her personal views on matters of public policy or debate. Therefore, I have not offered any comment or answered any question on the referenced subjects as a Texas judge/judicial candidate or district court nominee.

2. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

- a. **What is the process you would follow before you sentenced a defendant?**

If confirmed, I would consider all relevant factors to ensure that any sentence I impose is “sufficient, but not greater than necessary, to comply with the purposes” of federal sentencing set forth by Congress. 18 U.S.C. § 3553(a). I would consider the relevant statutes and applicable precedent, the presentence report of the probation officer, *see* 18 U.S.C. § 3552, the advisory Sentencing Guidelines and other factors listed in § 3553(a), the arguments of the attorneys for the defendant and the United States, the statements of witnesses and victims, and the defendant’s allocution, if any. I appreciate the gravity and weighty nature of the judicial responsibility to sentence a defendant.

- b. **As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

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

- c. **When is it appropriate to depart from the Sentencing Guidelines?**

Supreme Court precedent and the advisory Sentencing Guidelines explain the circumstances and considerations that can justify a departure or variance from the Guidelines. Part K of Section 5 of the Guidelines identifies specific circumstances that can justify a departure from the advisory Guidelines range. Under Supreme Court precedent, the factors listed in 18 U.S.C. § 3553(a) may also call for varying from the advisory Guidelines range.

- d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹

- i. **Do you agree with Judge Reeves?**

Any discussion of mandatory minimum sentences is left to Congress's wisdom. As a judicial nominee, it would be inappropriate for me to comment on the matter. *See* Code of Conduct for United States Judges, Canons 2, 3(A)(6), and 5. If confirmed, I would follow the law regarding mandatory minimum sentences regardless of my personal view on the deterrent effect of such minimum sentences.

- ii. **Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my response to Question 1(d)(i) above.

- iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to Question 1(d)(i) above.

- iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² **If**

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

² *See, e.g.*, “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

Mandatory minimums have been the subject of much public debate. Judges have been criticized for expressing their disagreement with the law in their opinions. If confirmed, I will impose sentences on a case-by-case basis and with thoughtful consideration of my ethical obligations.

2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?

The power and authority to charge individuals with criminal offenses rests exclusively with the Executive Branch. If confirmed, I would respect this separation of powers.

3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?

The clemency power is reserved to the Executive Branch. If confirmed, I would respect this separation of powers.

- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

If confirmed, I plan to take into account all applicable sentencing options.

3. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. Does a judge have a role in ensuring that our justice system is a fair and equitable one?

Yes.

b. Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.

Yes. I am aware that racial bias exists, and racial discrimination still occurs in our country. Judges can ensure that decisions regarding pretrial release or confinement, probation conditions, incarceration in a penal institution, and jury selection are free from racial prejudice, bias, or discrimination.

4. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes.

b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

If confirmed, I will work to ensure that all qualified candidates are considered for positions.