

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Anthony Devos Johnstone
Anthony Cameron Johnstone

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

United States Circuit Judge for the Ninth Circuit

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

University of Montana
Blewett School of Law
32 Campus Drive
Missoula, Montana 59812

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

1973; Minneapolis, Minnesota

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

1996 – 1999, University of Chicago Law School; J.D. (with honors), 1999

1991 – 1995, Yale University; B.A., 1995

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

2015 – present
Johnstone PLLC
91 Campus Drive, #2505

Missoula, Montana 59801
Member-Manager

2007 – 2009; 2011 – present
University of Montana
Blewett School of Law
32 Campus Drive
Missoula, Montana 59812
Helen and David Mason Professor of Law (2019 – present)
Affiliated Professor of Public Administration (2017 – present)
Professor (2017 – present)
Associate Professor (2014 – 2017)
Associate Dean for Faculty Development (2013 – 2014)
Assistant Professor (2011 – 2014)
Adjunct Professor (2007 – 2009)

2004 – 2011
Montana Department of Justice
215 North Sanders Street, Third Floor
Helena, Montana 59620
State Solicitor (2008 – 2011)
Assistant Attorney General (2004 – 2008)

2006 – 2007
Carroll College
1601 North Benton Avenue
Helena, Montana 59625
Adjunct Professor

1998; 2000 – 2003
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Associate (2000 – 2003)
Summer Associate (1998)

1999 – 2000
United States Court of Appeals for the Ninth Circuit
P.O. Box 31478
Billings, Montana 59101
Law Clerk for the Honorable Sidney R. Thomas

1999
University of Chicago Law School
1111 East 60th Street

Chicago, Illinois 60637
Research Assistant to Professor Andrew Rosenfield

1997
Goetz, Madden & Dunn
35 North Grand Avenue
Bozeman, Montana 59715
Summer Associate

1996
Dain Rauscher (now RBC Wealth Management)
60 South 6th Street
Minneapolis, Minnesota 55402
Summer Analyst

1995 – 1996
Arnold & Porter
250 West 55th Street
New York, New York 10019
Paralegal

1995 – 2019
Johnstone Partnerships V & VII
(Dissolved in 2019 after sale of family farm)
Partner

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

I did not serve in the military. I registered for selective service upon turning 18.

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

Boone Law Faculty Scholarship Award (2013, 2016, and 2022)

Garlington, Lohn & Robinson Teaching Award (2021)

Montana Faculty Service Award (2019)

Law School Merit Award (2016, 2017, and 2019)

Howard W. and Jane S. Heman Memorial Award for Excellence in Teaching (2018)

Toelle-Bekken Family Memorial Fund Award (2018)

Native American Law Student Association Teaching Award (2016)

Robert & Pauline Poore Law Faculty Service Award (2015)

Curriculum & Instruction Partnership Award (2015)

Margery Hunter Brown Award for Teaching & Service (2012)

University of Chicago Law School, J.D. with Honors (1999)

Mulroy Prize, Excellence in Appellate Advocacy (1998)

Richter Fellowship (1994)

Ethics, Politics & Economics Fellowship (1994)

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

American Bar Association (2009 – present)

Section of Legal Education and Admissions to the Bar (2011 – present)

American Bar Foundation (2016 – present)

American Constitution Society (2012 – present)

State Attorneys General Project Advisory Committee (2017 – present)

American Law Institute (2009 – present)

Advisor, Principles of the Law, Government Ethics (2011 – present)

Members Consultative Group, Charitable Nonprofit Organizations (2009 – 2021)

Members Consultative Group, Election Administration (2010 – 2019)

Association of the Bar of the City of New York (2002 – 2003)

New York City Affairs Committee (2002 – 2003)

Federalist Society for Law and Public Policy Studies (1996 – 1999, 2013 – present)

Faculty Division (2013 – present)

Student Division (1996 – 1999)

Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure (2007 – 2011)

National Association of State Charities Officials, Board Member (2008 – 2011)

National Constitution Center (2015 – present)

National State Attorneys General Program, Columbia Law School (2010 – 2016)

State Bar of Montana (2004 – present)

Member, Law Related Education Committee (2014 – present)

Member, Public Lawyer Working Group (2014)

United States Court of Appeals for the Ninth Circuit, Appellate Lawyer Representative (2009 – 2011)

United States District Court for the District of Montana, Judicial Institute Coordinating Committee (2013 – 2019)

United States District Court for the District of Montana, Merit Selection Committee for Billings Magistrate Judge (2016)

10. **Bar and Court Admission:**

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

New York, 2001

Montana, 2004

There have been no lapses in membership. I am certified as exempt from New York Continuing Legal Education requirements because I do not practice there.

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

United States Supreme Court, 2008

United States Court of Appeals for the Ninth Circuit, 2004

United States District Court for the District of Montana, 2004

United States District Court for the Eastern District of New York, 2001

United States District Court for the Northern District of New York, 2007

United States District Court for the Southern District of New York, 2001

There have been no lapses in membership.

11. **Memberships:**

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

Humanities Montana

Conversations Speakers' Bureau, Presenter (2016 – 2018)

University of Montana

Member, University Conduct Board (2021 – present)

Member, Executive Committee of the Faculty Senate (2018 – 2020)

Senator, Faculty Senate (2018 – 2020)

Pedagogy Project Coordinating Committee (2017 – 2020)

University Constitution Day Planning Committee (2013 – present)

University Program Assessment Committee (2015 – 2016)

University Research Council (2013 – 2015)

University of Montana Blewett School of Law

Chair, ABA Self-Study Committee (2015 – 2017)

Chair, Curriculum Committee (2017 – 2020, 2022 - present)

Chair, Strategic Planning Committee (2013 – 2018)

Chair, Faculty Development Committee (2012 – 2014)

Member, Law Dean Search Committee (2021 – present)

Curriculum & Clinic Committee (2012 – 2014)

Pedagogy Project Coordinating Committee (2017 – 2020)

MPA Program Core Faculty (2016 – present)

Clerkship Committee (2011 – 2020)

Bar Exam Working Group (2015 – 2020)

Faculty Development Committee (2012 – 2014, 2018 – 2019)

University Constitution Day Planning Committee (2013 – present)

James A. Poore Law Student Scholarship Committee (2015 – present)

Dean's/Budget Advisory Committee (2012 – 2014, 2016 – present)

Admissions Committee (2014 – 2015)

Law Dean Search Committee (2013 – 2014)

Faculty Advisor, Montana Law Review (2013 – present)

Yale Alumni Schools Committee

Interviewer (2009 - 2018)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion

or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge none of the listed organizations currently discriminate or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

THE MONTANA CONSTITUTION IN THE STATE CONSTITUTIONAL TRADITION (Carolina Academic Press, 2022). Copy supplied.

“Integrating Mini-Briefs and Mini-Moots into Lectures and Seminars,” in Tammy Pettinato Oltz, ed., *Lawyering Skills in the Doctrinal Classroom* (Carolina Academic Press, 2020). Copy supplied.

A State Is a “They,” Not an “It”: *Intrastate Conflicts in Multistate Challenges to the Affordable Care Act*, 2020 B.Y.U. L. Rev. 1471 (2020). Copy supplied.

The Second Amendment comes first in teaching constitutional law, *The Conversation* (Apr. 18, 2018). Copy supplied.

Sessions suing California is the latest battle in a centuries-old war for power over immigration, *The Conversation* (Mar. 19, 2018) (reprinted in multiple sources). Copy supplied.

Hearing the States, 44 Pepp. L. Rev. 575 (2018). Copy supplied.

The Appeal of State Attorneys General in a Federal System (Review of Paul Nolette, *Federalism on Trial*), H-FedHist, H-Net Reviews (July 2017). Copy supplied.

4 ways the Supreme Court could rule on Trump’s travel ban, *The Conversation* (June 27, 2017) (reprinted in multiple sources). Copy supplied.

San Francisco is using a Montana sheriff’s playbook to sue Trump on sanctuary cities. *The Conversation* (Apr. 10, 2017) (reprinted in multiple sources). Copy supplied.

Confusion over sovereign immunity: What is Article II, Section 18 about?, Montana Lawyer (Mar. 2017). Copy supplied.

Montana judicial elections: Does the past hold lessons for future?, Montana Lawyer (Sept. 2016). Copy supplied.

The Federalist Safeguards of Politics, 39 Harv. J. L. & Pub. Pol. 415 (2016). Copy supplied.

“The State of the Republican Form of Government in the States,” Blog, American Constitution Society (Sept. 18, 2015). Copy supplied.

Foreword: The Future of Federalism, from the Bottom Up, 76 Mont. L. Rev. 1 (2015). Copy supplied.

A Past and Future of Judicial Elections: The Case of Montana, 16 J. App. Practice & Process 47 (2015). Copy supplied.

The Hercules of Helena: Justice James C. Nelson and the Jurisprudence of Principle, 75 Mont. L. Rev. 199 (2014). Copy supplied.

Recalibrating Campaign Finance Law, 32 Yale L. & Pol. Rev. 217 (2014). Copy supplied.

The System of Campaign Finance Disclosure, 99 Iowa L. Rev. Bull. 143 (2014). Copy supplied.

Outside Influence, 13 Election L. J. 117 (2014). Copy supplied.

Commandeering Information (and Informing the Commandeered), 161 U. Pa. L. Rev. Online 205 (2013). Copy supplied.

Foreword: The State of the Republican Form of Government in Montana, 74 Mont. L. Rev. 4 (2013). Copy supplied.

Politics and the Public Benefit Corporation, Colum. Nat’l St. Attys. Gen. Prog. (2013). Copy supplied.

A Madisonian Case for Disclosure, 19 Geo. Mason L. Rev. 413 (2012). Copy supplied.

Council of Appellate Lawyers, *The Appellate Practice Compendium* (Montana chapter) (Dana C. Livingston, ed., American Bar Association 2012). Copy supplied.

The Constitutional Initiative in Montana, 71 U. Mont. L. Rev. 325 (2010). Copy

supplied.

Captive Regulators, Captive Shippers: The Legacy of McCarty Farms, 70 U. Mont. L. Rev. 239 (2009). Copy supplied.

With Autumn Johnstone, *Gates of the Mountains* (personal blog) (Jan. 1, 2004 – June 16, 2005). Copy supplied.

Abuse of Process: How the Most Feared Law Firm in Corporate America Took On a Law Professor—and Lost., U. Chi. Phoenix (Apr. 1999). Copy supplied.

Peremptory Pragmatism: Religion and the Administration of the Batson Rule, 1998 U. Chi. Legal F. 441. Copy supplied.

Affirmative Action, Federalist Forum (Sept. 1997). Copy supplied.

From October 1993 to April 1995, I wrote a column for the Yale Daily News entitled *On the Fence*.

On the Fence, Yale Daily News, Apr. 21, 1995. Copy supplied.

Back to the Golden Age of Protest, Yale Daily News, Apr. 7, 1995. Copy supplied.

Watching Mother Yale Go on Without Us, Yale Daily News, Mar. 24, 1995. Copy supplied.

Thoughts on the Last Show and Self-Development, Yale Daily News, Mar. 3, 1995. Copy supplied.

The Yalie's Duty: A Tension Between Education and Action, Yale Daily News, Feb. 10, 1995. Copy supplied.

Love and Truth at the Core of the Yale Experience, Yale Daily News, Jan. 27, 1995. Copy supplied.

Bozeman, Montana, Yale Daily News, Jan. 13, 1995. Copy supplied.

The Last Game, Yale Daily News, Nov. 18, 1994. Copy supplied.

With Enemies Like Yale, New Haven Doesn't Need Any Friends, Yale Daily News, Nov. 4, 1994. Copy supplied.

Crying Wolf on Free Speech, Yale Daily News, Oct. 17, 1994. Copy supplied.

The Big Game, Yale Daily News, Oct. 5, 1994. Copy supplied.

Coming Forward with the Ugly Truth about Kappa, Yale Daily News, Sept. 16, 1994. Copy supplied.

For Art, Yale Daily News, Sept. 5, 1994. Copy supplied.

Hooked on D.C., Yale Daily News, Apr. 12, 1994. Copy supplied.

In Search of Understanding, Yale Daily News, Mar. 29, 1994. Copy supplied.

Can We Be Friends?, Yale Daily News, Mar. 1, 1994. Copy supplied.

Campus Alcohol Policies, Yale Daily News, Feb. 12, 1994. I am unable to locate a copy.

Keep Multiculturalism Inclusive, Yale Daily News, Feb. 1, 1994. Copy supplied.

Student Government, Yale Daily News, Jan. 18, 1994. Copy supplied.

On the Campus as Village, Yale Daily News, Nov. 21, 1993. Copy supplied.

Yale's Ranking as a 'Party School', Yale Daily News, Nov. 9, 1993. I am unable to locate a copy.

Levin Must Battle Administrative Bloat, Yale Daily News, Oct. 26, 1993. Copy supplied.

A New Perspective on New Haven, Yale Daily News, Oct. 13, 1993. Copy supplied.

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

Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure, Proposed Revisions to the Rules of Civil Procedure (Mar. 3, 2010). Copy supplied.

Committee on New York City Affairs, *Report on Ballot Proposals of the 2003 New York City Charter Revision Commission* (Oct. 2003). Copy supplied.

Special Committee, *Preliminary Comments on the Charter Revision Commission*, Association of the Bar of the City of New York (Aug. 20, 2003). Copy supplied.

Since 2009, I have been an elected member of the American Law Institute, which regularly publishes restatements, principles, and other reports on various areas of the law. As a member, I serve as an Adviser on the Principles of the Law, Government Ethics project, and served in the Members Consultative Group of both the Restatement of the Law, Charitable Nonprofit Organizations and the Principles of the Law, Election Administration. Although I have at times participated in meetings related to these projects, I have not prepared or contributed to the preparation of any particular provision of these reports.

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

I have searched my files and attempted to provide all responsive documents, but it is possible that I have not captured every responsive communication as I may have been called upon other times to provide informational testimony on behalf of the Montana Department of Justice.

Letter from Montana Lawyers to Senators Schumer, McConnell, Durbin, and Grassley in Support of the Confirmation of Ketanji Brown Jackson to the United States Supreme Court (Mar. 30, 2022). Copy supplied.

Letter from Yale College Classmates to Senators Grassley, Graham, and Feinstein in Support of the Confirmation of Neomi Rao to the United States Court of Appeals for the District of Columbia Circuit (Dec. 28, 2018). Copy supplied.

Letter from University of Chicago Law School Classmates to Senators Grassley, Feinstein, and Graham in Support of the Confirmation of Neomi Rao to the United States Court of Appeals for the District of Columbia Circuit (Dec. 18, 2018). Copy supplied.

Public Comment to Montana Supreme Court in support of keeping the Uniform Bar Exam and returning the passing score to 260, No. AF 11-0244, (May 20, 2016). Copy supplied.

Letter to Montana Commissioner of Political Practices with comments on draft proposed rules under the Disclose Act (July 15, 2015). Copy supplied.

Testimony before Senate Judiciary Committee, 63rd Montana Legislature, regarding Senate Bill 375 and its proposed revision to Montana campaign laws, (Mar. 14, 2013). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20130314/-1/18620#agenda>.

Testimony before United States Senate Judiciary Committee regarding “The *Citizens United* Court and the Continuing Importance of the Voting Rights Act” (Sept. 12, 2012). Copy of written testimony supplied, video available at <https://www.judiciary.senate.gov/meetings/the-citizens-united-court-and-the-continuing-importance-of-the-voting-rights-act>.

Testimony on behalf of the Montana Department of Justice before Senate State Administration Committee, 62nd Montana Legislature, regarding House Bill 483, a bill that would have revised campaign finance regulation of churches and community groups (Mar. 25, 2011). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/20737?agendaId=95119>.

Testimony on behalf of the Montana Department of Justice before House Judiciary Committee, 62nd Montana Legislature, regarding Senate Bill 106, a bill that would have compelled participation in lawsuit on health care reform (Mar. 8, 2011). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/28547?agendaId=108648#info>.

Testimony on behalf of the Montana Department of Justice before House State Administration Committee, 62nd Montana Legislature, regarding House Bill 483, a bill that would have revised campaign finance regulation of churches and community groups (Feb. 16, 2011). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21846?agendaId=99906#agenda>.

Testimony on behalf of the Montana Department of Justice before Senate Judiciary Committee, 62nd Montana Legislature, regarding Senate Bill 106, a bill that would have compelled participation in lawsuit on health care reform (Jan. 12, 2011). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21080?agendaId=96296#agenda>.

Testimony on behalf of the Montana Department of Justice before State Administration and Veterans’ Affairs Interim Committee, 61st Montana Legislature on *Western Tradition Partnership* Lawsuit (Mar. 19, 2010). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20100319/-1/22904>.

Testimony on behalf of the Montana Department of Justice before Montana Senate and Finance Claims Committee, 60th Montana Legislature, supporting supplemental appropriation for fees and costs in House Bill 3 (Mar. 30, 2009). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20090330/>

-1/24467.

Testimony on behalf of the Montana Department of Justice before House Committee on Business and Labor, 60th Montana Legislature, regarding House Bill 143, a bill that would have allowed transactions between public benefit corporations, (Jan. 15, 2009). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20090115/-1/22503>.

Testimony on behalf of the Montana Department of Justice before Senate Committee on Business, Labor, and Economic Affairs, 60th Montana Legislature, regarding House Bill 412, nonprofit corporation registry (Mar. 20, 2007). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20070320/-1/24701>.

Testimony on behalf of the Montana Department of Justice before House Judiciary Committee, 60th Montana Legislature, regarding House Bill 68, legislation to require charities to register with the state (Jan. 25, 2007). Recording available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20070125/-1/28414>.

Although I understand that they are not responsive to this Questionnaire, the following pre-selection letters of support were made public and so I am providing them here out of an abundance of caution.

Letter to the Montana Judicial Nomination Commission in Support of the Nomination of Michele Reinhart Levine to the Montana Eighth Judicial District Court (Sept. 21, 2020). Copy supplied.

Letter to the Montana Judicial Nomination Commission in Support of the Nomination of Martha Sheehy to the Montana Supreme Court (Oct. 31, 2017). Copy supplied.

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

June 26 – July 1, 2022: Co-facilitator, NAAG Leadership Institute Pilot Program,

National Association of Attorneys General, London, United Kingdom. I co-facilitated a retreat for attorneys general to build and nurture relationships studying foundational democratic and rule-of-law principles while discussing the responsibilities of public leadership. I have no notes, transcript, or recording. The address for the National Association of Attorneys General is 1850 M Street, Northwest, 12th Floor, Washington, DC 20036.

May 23, 2022: Panelist, The Montana Constitution's Preamble and Montana Values, Leadership Montana & The Mansfield Center, Missoula, Montana. Video available at <https://youtu.be/rucaomM73PY>.

May 20, 2022: Panelist, Interpreting State Constitutions: Lockstepping and Constitutional Fidelity, University of Wisconsin Law School, Madison, Wisconsin. Notes supplied.

May 13, 2022: Interviewee, Introduction to Chief Judge Emeritus Sidney R. Thomas Honorary Doctorate Ceremony, Montana State University, Bozeman, Montana. Video available at <https://youtu.be/He2fV2bCb4U?t=2795>.

April 22, 2022: Panelist, The Rule of Law, Montana State Bar Bench-Bar Conference (virtual). PowerPoint supplied.

November 16, 2021: Presenter, Parent (& Student) Rights in School Under the Constitution(s), Montana Office of Public Instruction School Law Conference (virtual). PowerPoint and press coverage supplied.

November 2, 2021: Panelist, Decoding Voting: Ranked Choice Voting in Montana, Burton K. Wheeler Center at Montana State University (virtual). PowerPoint supplied.

October 12, 2021: Panelist, A Modern Constitutional Convention? American Constitution Society Student Chapter, University of Wyoming School of Law (virtual). Notes supplied.

September 21, 2021: Moderator, Constitution Day 2021: Does the Constitution Establish a Democracy?, University of Montana Mansfield Center Dialogues (virtual). Recording at <https://youtu.be/Uy6Tp442sls>.

September 8, 2021: Commentator, *New York Rifle & Pistol Association v. Bruen*, Federalist Society Student Chapter, University of Montana Blewett School of Law, Missoula, Montana. Notes supplied.

August 3, 2021: Presenter, Resilience in Election Administration, University of Montana Public Service Academy, Missoula, Montana. PowerPoint supplied.

April 9, 2021: Panelist, OUTLaws Legislative Session Debrief, University of

Montana School of Law OUTLaws (virtual). PowerPoint supplied.

April 2, 2021: Panelist, Constitutional Rights After COVID, Wyoming State Bar Association (virtual). PowerPoint supplied.

February 19, 2021: Panelist, Teaching about State AGs: How Do Law Schools See Attorneys General, Georgetown Law School (virtual). Notes supplied.

February 10, 2021: Moderator, Rights and Responsibilities in the Time of COVID-19, University of Montana Mansfield Dialogues (virtual). Video available at <https://youtu.be/ujh-bAI4Cv8>.

January 28, 2021: Moderator, Prof. Sai Prakash: The Living Presidency, Federalist Society Student Chapter, University of Montana Blewett School of Law (virtual). Notes supplied.

November 4, 2020: Panelist, What's Goin' On with the Election? University of Montana Blewett School of Law (virtual). I discussed the possible legal implications of the 2020 election and answered student questions. I have no notes, transcript, or recording. The address for the University of Montana Blewett School of Law is 32 Campus Drive, Missoula, Montana 59812.

October 21, 2020: Presenter, What's Goin' On with the Supreme Court (Judge Barrett Nomination)?, University of Montana Blewett School of Law (virtual). PowerPoint supplied.

October 16, 2020: Discussant, *Espinoza v. Montana Department of Revenue*, 68th Montana Tax Institute (virtual). Notes supplied.

October 14, 2020: Moderator, Supreme Court Justice Candidate Forum, American Constitution Society & Federalist Society Student Chapters, University of Montana School of Law (virtual). PowerPoint supplied.

October 8, 2020: Moderator, The Legacy of Justice Ruth Bader Ginsburg with Prof. Elizabeth Porter, University of Montana Mansfield Dialogues (virtual). Recording at: <https://youtu.be/ZVaKRF9zklw>.

September 30, 2020: Moderator, Attorney General Candidate Forum, University of Montana American Constitution Society Student Chapter, Missoula, Montana. PowerPoint supplied.

September 17, 2020: Panelist, The Story of Citizenship, University of Montana Constitution Day Celebration (virtual). PowerPoint supplied.

September 15, 2020: Presenter, Protests, Public Safety, and First Amendment Protections, National Attorneys General Training and Research Institute (virtual).

We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided.

August 12, 2020: Moderator, The Elephant and Donkey in the Room: Maintaining Professional and Collegial Relationships in a Partisan World, National Association of Attorneys General Presidential Series (virtual). Notes supplied.

August 6, 2020: Moderator, How Elected and Non-elected Officials Can Effectively Work Together: Question and Answer Session, University of Montana Public Service Academy (virtual). Notes supplied.

August 4, 2020: Panelist, A Conversation with Montana Political Science and Public Policy Professors, Montana Districting and Apportionment Commission (virtual). Video available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20200804/-1/37774>.

July 30, 2020: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). Video available at https://us02web.zoom.us/rec/share/2cl3F7Lxz29IbdKX2XiDfac7T8fraaa81HMY_qUPyk0SortnTzumQpTAXYGF9X6I (password-protected). This recording was streamed online for the February 2021, July 2021, February 2022, and July 2022 Montana Law Seminars.

June 8, 2020: Moderator, How Elected and Non-elected Officials Can Effectively Work Together, University of Montana Public Service Academy (virtual). Notes supplied.

April 17, 2020: Moderator, Public Lawyering in a Pandemic, University of Montana Blewett School of Law Public Interest Law Coalition (virtual). I introduced the speakers and facilitated student questions and answers. I have no notes, transcript, or recording. The address for the Public Interest Law Coalition is 32 Campus Drive, Missoula, Montana 59812.

March 22, 2020: *Espinoza v. Department of Revenue* at the Supreme Court, Panelist, Federalist Society Student Chapter, University of Montana Blewett School of Law, Missoula, Montana. PowerPoint supplied.

February 27, 2020: Moderator, Attorney General Candidate Forum, University of Montana Blewett School of Law OUTLaws, Missoula, Montana. Notes supplied.

February 27, 2020: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners, Helena, Montana. I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

February 11, 2020: Presenter, The Story of Citizenship, University of Montana

Foundation Community Lecture Series, Missoula, Montana. PowerPoint supplied.

February 4, 2020: Presenter, What Does Title VII Mean?, Mansfield Seminar, Missoula, Montana. PowerPoint supplied.

November 11, 2019: Guest Lecturer, Montana Criminal Justice and Reform – Strategies and Venues, University of Montana, Missoula, Montana. PowerPoint supplied.

October 21, 2019: Panelist, Sexual Orientation and Gender Identity Under Title VII, Panelist, University of Montana Blewett School of Law OUTLaws, Missoula, Montana. Notes supplied.

October 10, 2019: Panelist, Will State ‘No Aid’ Provisions Survive *Espinoza*?, National Organization of Lawyers for Educational Associations, Seattle, Washington. PowerPoint supplied.

October 7, 2019: Discussant, Impeachment, University of Montana Blewett School of Law, American Constitution Society Student Chapter, Missoula, Montana. Notes supplied.

September 23, 2019: Facilitator, Revisiting the Founding Era, Missoula Public Library and the Gilder-Lehman Institute of American History, Missoula, Montana. Notes supplied.

September 17, 2019: Presenter, Constitution Day 2019: Citizenship Day, University of Montana and the Office of Public Instruction, Missoula, Montana (virtual). Notes supplied.

September 6, 2019: Panelist, The Right to Die: Four Years After *Baxter v. Montana*, Missoula, Montana. Notes supplied.

September 5, 2019: Guest Lecturer, Montana Criminal Justice and Reform - History, University of Montana, Missoula, Montana. PowerPoint supplied.

August 8, 2019: Presenter, The Trial Lawyers and the Montana Constitution, Montana Trial Lawyers Association Seminar of the Masters CLE, Missoula, Montana. PowerPoint supplied.

August 1, 2019: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). Recording supplied.

June 7, 2019: Presenter, American Democracy: Our Constitution, Mansfield International Program on Democracy & Citizenship, Missoula, Montana. I used the same notes that were supplied for the Mansfield International Program on Democracy & Citizenship on June 10, 2014. PowerPoint supplied.

June 5, 2019: Presenter, Educating Lawyers in and for Montana, Missoula Rotary Club, Missoula, Montana. PowerPoint supplied.

May 31, 2019: Presenter, The Origins of Judicial Elections in Montana, Jackrabbit Bar Association CLE, Butte, Montana. PowerPoint supplied.

April 15, 2019, Presenter, Understanding Law, Civics, and Politics, University of Montana Innovate High School, Missoula, Montana. Notes supplied.

April 11, 2019: Panelist, Stories of Migration from Central America, Mansfield Center, Missoula, Montana. Notes and press coverage supplied.

April 5, 2019: Presenter, Speaking for the States: A Tale of Three Briefs, Brigham Young University, J. Reuben Clark Law School, Provo, Utah. PowerPoint supplied.

March 21, 2019, Presenter, Dignity, Equality, & Anti-discrimination, Western Montana Bar CLE, Missoula, Montana. PowerPoint supplied.

February 28, 2019: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

February 25, 2019: Panelist, The Origins and Future of Dignity in the Montana Constitution, Montana Osher Lifelong Learning Institute, Missoula, Montana. PowerPoint supplied.

January 23, 2019: Panelist, What's Goin' On with the Government Shutdown?, University of Montana Blewett School of Law, Missoula, Montana. Notes and press coverage supplied.

January 8, 2019: Presenter, Constitutional Law, State Bar Law School for Legislators, 66th Montana Legislature, Helena, Montana. PowerPoint supplied.

January 4, 2019: Panelist, Teaching About State Attorneys General, American Association of Law Schools Annual Meeting, New Orleans, Louisiana. Notes supplied.

December 12, 2018: Panelist, Public Interest Law, University of Montana Prelaw Seminar with Soazig LeBihan, Missoula, Montana. I discussed government and public interest legal career options for pre-law students. I have no notes, transcript, or recording. The address for the University of Montana is 32 Campus Drive, Missoula, Montana 59812.

November 19, 2018: Commenter, Debate on President Trump's Travel Ban,

University of Montana Blewett School of Law Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

November 14, 2018: Facilitator, Great Conversation on the President and the Constitution, Helena Education Foundation, Helena, Montana. I facilitated a dinner table conversation on the presidential powers under the Constitution. I have no notes, transcript, or recording. The address for the Helena Education Foundation is P.O. Box 792, Helena, Montana 59624.

November 7, 2018: Panelist, What's Next? Polarization and Communicating with Diverse Constituencies, University of Montana Davidson Honors College, Missoula, Montana. Notes supplied.

October 18, 2018: Panelist, More Perfect? A Teach-in about Union, Division, and Our Nation's Future, University of Montana, Missoula, Montana. PowerPoint and press coverage supplied.

October 11, 2018: Moderator, Learning in Big Classes, University of Montana Pedagogy Project Microtalk, Missoula, Montana. I moderated a faculty discussion about improving instruction in big classes. I have no notes, transcript, or recording. The address for the University of Montana Pedagogy Project is 32 Campus Drive, Missoula, Montana 59812.

October 8, 2018: Panelist, First Monday: Current Issues in Civil Liberties, University of Montana, American Civil Liberties Union Student Chapter, Missoula, Montana. Notes supplied.

October 3, 2018: Presenter, The President and the Constitution, Montana Judicial Institute, Missoula, Montana. PowerPoint supplied.

September 20, 2018: Co-Presenter, Government Regulation and the Freedom of Speech, Montana State Bar Annual Meeting CLE, Kalispell, Montana. PowerPoint supplied.

September 18, 2018: Guest Lecturer, The Montana Constitution, Rob Saldin's Montana Politics and Government Course, Missoula, Montana. PowerPoint supplied.

September 14, 2018: Commenter, Debate on *Habeas*, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

September 13, 2018: Presenter, What's Goin' On with the Supreme Court?, University of Montana Blewett School of Law, American Constitution Society Student Chapter, Missoula, Montana. Video available at <https://youtu.be/2y-HZR793dE>.

September 10, 2018: Moderator, Supreme Court Justice & Clerk Candidate Forum, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

July 26, 2018: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). Recording supplied.

June 11, 2018: Presenter, American Democracy: Our Constitution, Mansfield International Program on Democracy & Citizenship, Missoula, Montana. I used the same notes that were supplied for the Mansfield International Program on Democracy & Citizenship on June 10, 2014.

April 6, 2018: Co-Introducer, *Espinoza v. Mont. Dept. of Revenue*, Montana Supreme Court Law Week Argument, Missoula, Montana. Video available at <https://www.facebook.com/MissoulaCommunityTelevision/videos/1858835277524145>.

March 6, 2018: Introducer, Judge Jay Bybee, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. I have no notes, transcript, or recording, but press coverage is supplied. The address for the University of Montana Blewett School of Law Federalist Society Student Chapter is 32 Campus Drive, Missoula, Montana 59812.

March 1, 2018: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners, Helena, Montana. I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

February 18, 2018: Panelist, Dark Money, Missoula Documentary Film Festival, Missoula, Montana. Notes and press coverage supplied.

February 3, 2018: Spark Talk, Outside Influence, Unrig the System Summit, New Orleans, Louisiana. Video available at <https://youtu.be/WvkJQn-nzfw>.

February 2, 2018: Panelist, From Russia with Facebook: Foreign Influence in American Elections, Unrig the System Summit, New Orleans, Louisiana. Video available at <https://www.c-span.org/video/?440345-4/russian-interference-us-elections>.

November 2, 2017: Panelist, Accountability and Ethics in Government, Armenian government transparency delegation to University of Montana, Missoula, Montana. Notes supplied.

October 12, 2017: Commenter, How Political Speech Laws benefit the Rich, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

October 11, 2017: Presenter, Constitutional Law, Citizens Law School, Missoula, Montana. PowerPoint supplied.

October 4, 2017: Presenter, Immigration and Separation of Powers, United States District Court for the District of Montana, Montana Judicial Institute, Missoula, Montana. PowerPoint supplied.

September 26, 2017: Presenter, Politics and the Public Benefit Corporation, Revisited, Montana Nonprofit Association CLE, Missoula, Montana. PowerPoint supplied.

September 18, 2017: Introducer, Constitution Day Speaker Caitlin Borgmann, University of Montana, Missoula, Montana. Notes supplied.

September 13, 2017: Moderator, Beyond the Trigger Warning, a Pedagogy Project Microtalk, University of Montana Faculty Development Office, Missoula, Montana. Notes supplied.

July 27, 2017: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

July 13, 2017: Presenter, The Constitution Goes to School, Montana School Boards Association, Polson, Montana. PowerPoint supplied.

July 7, 2017: Panelist, Outside Influences in U.S. Elections, Montana World Affairs Council, Missoula, Montana. Notes and press coverage supplied.

June 23, 2017: Moderator, Immigration and Federalism, National Association of Attorneys General, Big Sky, Montana. Notes supplied.

April 26, 2017: Presenter, The Freedom of Speech Today, Flathead Reservation Human Rights Coalition and Humanities Montana, St. Ignatius, Montana. PowerPoint supplied.

April 26, 2017: Presenter, What to Expect from Justice Gorsuch, University of Montana Blewett School of Law, American Constitution Society Student Chapter, Missoula, Montana. I used the same PowerPoint presentation that was provided for the Western Montana Bar Association CLE on April 20, 2017.

April 25, 2017: Panelist, Can there be a separation of church and state?, Veritas Forum, Missoula, Montana. Notes supplied.

April 20, 2017: Presenter, What to Expect from Justice Gorsuch, Western Montana Bar Association CLE, Missoula, Montana. PowerPoint supplied.

April 20, 2017: Presenter, Why the Bureaucracy Matters, University of Montana Masters of Public Administration Program, 40th Anniversary, Missoula, Montana. I discussed the relationship between law and public administration. I have no notes, transcript, or recording. The address for the University of Montana Masters of Public Administration Program is 32 Campus Drive, Missoula, Montana 59812.

April 19, 2017: Panelist, Minority Groups, Religious Communities, and Immigration in the Trump Era, 15th Annual International Conference on Central and Southwest Asia, University of Montana, Missoula, Montana. I discussed presidential powers over immigration policy. I have no notes, transcript, or recording. The address for the University of Montana is 32 Campus Drive, Missoula, Montana 59812.

April 8, 2017: Presenter, Hearing the States, Pepperdine Law Review Symposium on Politics and the Supreme Court, Malibu, California. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

April 7, 2017: Co-Introducer, *ARCO v. Mont. 2d Jud. Dist.*, Montana Supreme Court Law Week argument, Missoula, Montana. Notes supplied.

April 6, 2017: Presenter, We the People: Powers and Rights in Immigration Law, James Madison Legacy Project, Center for Civic Education, Missoula, Montana. I discussed the sources of immigration law and recent executive orders with high school students. I have no notes, transcript, or recording. The address for the James Madison Legacy Project, Center for Civic Education is 5115 Douglas Fir Road, Suite J, Calabasas, California 91302.

March 2, 2017: Guest, Current Legal Controversies, University of Montana Residence Life Office, Missoula, Montana. I answered student questions about current events and the law. I have no notes, transcript, or recording. The address for the University of Montana Residence Life Office is 32 Campus Drive, Missoula, Montana 59812.

March 1, 2017: Presenter, Freedom of Speech on Campus, Associated Students of the University of Montana, Missoula, Montana. Notes supplied.

March 1, 2017: Commenter, Do State Bar Associations Help or Hurt?, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

February 23, 2017: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners, Helena, Montana. I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

February 8, 2017: Panelist, The President's Executive Order and the Muslim Community in America, Central and Southwest Asian Studies Center. I discussed presidential powers over immigration policy. I have no notes, transcript, or recording. 32 Campus Drive, Missoula, Montana 59812.

February 7, 2017: Panelist, Hot Topics in Legal Research: Presidential Executive Orders and How to Research Them, University of Montana Jameson Law Library, Missoula, Montana. PowerPoint supplied.

January 30, 2017: Panelist, Environmental Law Changes in the Trump Administration, University of Montana Environmental Law Group, Missoula, Montana. Notes supplied.

January 3, 2017: Presenter, The Montana Constitution and Dual Sovereignty, 64th Montana Legislature, State Bar Law School for Legislators, Helena, Montana. Notes supplied.

November 29, 2016: Moderator, The Gavel Gap in Montana, University of Montana Blewett School of Law American Constitution Society Student Chapter and Native American Law Students Association, Missoula, Montana. Notes supplied.

November 22, 2016: Panelist, Dean's Post-Election Student Forum, University of Montana Blewett School of Law, Missoula, Montana. I answered student questions about possible legal implications of the 2016 election results. I have no notes, transcript, or recording. The address for the University of Montana Blewett School of Law is 32 Campus Drive, Missoula, Montana 59812.

November 4, 2016: Discussant, The Art of the Vote, Imagine Nation Brewing. I answered community member questions about the courts and elections. I have no notes, transcript, or recording. The address for Imagine Nation Brewing is 1151 West Broadway, Missoula, Montana 59801.

October 26, 2016: Panelist, Defining a 21st Century Education for a Vibrant Democracy: Fostering Engaged Citizens through General Education, University of Montana, Missoula, Montana. Notes supplied.

October 25, 2016: Panelist, Legal Implications of the Presidential Election, University of Montana Political Science Department, Missoula, Montana. PowerPoint supplied.

October 10, 2016: Moderator, Montana Supreme Court Candidates Forum, Moderator, University of Montana Blewett School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

October 5, 2016: Presenter, From Magna Carta to the Montana Constitution,

Montana Supreme Court CLE, Helena, Montana. Notes supplied.

September 30, 2016: Moderator, Title IX Panel, Montana Law Review Browning Symposium, Missoula, Montana. Notes supplied.

September 27, 2016: Panelist, Voting Rights in Indian Country, University of Montana Blewett School of Law American Constitution Society Student Chapter and Native American Law Student Association, Missoula, Montana. PowerPoint supplied.

September 26, 2016: Politics and the Public Benefit Corporation, Montana Nonprofit Association, Missoula, Montana. PowerPoint supplied.

July 28, 2016: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). PowerPoint supplied.

June 7, 2016: Presenter, American Democracy: Our Constitution, Mansfield International Program on Democracy & Citizenship, Missoula, Montana. I used the same notes that were supplied for the Mansfield International Program on Democracy & Citizenship on June 10, 2014.

May 6, 2016: Panelist, Balancing the Right to Know and the Right to Privacy Under the Montana Constitution, Montana State Bar CLE, Helena, Montana. PowerPoint supplied.

April 27, 2016: Introducer, *Krakauer v. Commissioner*, Montana Supreme Court Oral Argument, Bozeman, Montana. Notes and press coverage supplied.

April 27, 2016: Presenter, Politics and Pizza: Judicial Elections, Wheeler Center, Montana State University, Bozeman, Montana. Video available at <https://youtu.be/9K3S9RCLDfU>.

April 20, 2016: Presenter, Constitutional Law as Civics: Free Exercise of Religion and the Right to Refuse Service, Montana Judicial Institute, Missoula, Montana. PowerPoint supplied.

April 19, 2016: Panelist, Gun Rights, University of Montana Student Political Action, Missoula, Montana. Notes and press coverage supplied.

April 6, 2016: Presenter, Picking Judges After *Citizens United*, American Constitution Society Student Chapter, University of the District of Columbia Washington, DC. PowerPoint supplied.

April 6, 2016: Panelist, Impact of the Supreme Court Vacancy on the States, U.S. Senate Democratic Steering and Outreach Committee, Washington, DC. Video available at <https://youtu.be/tXOKEGaxlg8>.

April 2, 2016: Presenter, We the People: Free Speech and Money in Politics, James Madison Legacy Project, Center for Civic Education, Missoula, Montana. PowerPoint supplied.

March 24, 2016: Panelist, Legal and Political Implications of the Supreme Court Vacancy, University of Montana, American Constitution Society Student Chapter, Missoula, Montana. Video available at <https://youtu.be/2knLxJ115TA>.

March 22, 2016: Presenter, The President, the States, and the Clean Power Plan, Montana Chamber of Commerce Business & the Law Conference, Helena, Montana. PowerPoint supplied.

March 18, 2016: Panelist, State Law & Politics, Eccles Family Rural West Conference, Bill Lane Center for the American West, Stanford University, Missoula, Montana. Video available at <https://youtu.be/7zCOPE9flww>.

February 25, 2016: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners, Helena, Montana. I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

February 5, 2016: Presenter, We the People: How Equal Protection Changed the Constitution, James Madison Legacy Project, Center for Civic Education, Missoula, Montana. PowerPoint supplied.

October 29, 2015: Panelist, Money in Politics, Billings Library Foundation, Billings, Montana. Notes and press coverage supplied.

October 7, 2015: Presenter, Federal and State Constitutional Law, Citizens Law School, Missoula, Montana. PowerPoint supplied.

September 30, 2015: Presenter, Politics and the Public Benefit Corporation, Montana Nonprofit Association CLE, Billings, Montana. PowerPoint supplied.

September 10, 2015: Presenter, Origins and Future of the Dignity Clause, State Bar of Montana CLE, Missoula, Montana. PowerPoint supplied.

September 5, 2015: Panelist, The Federalist Safeguards of Politics, Campaign Finance and Political Parties, American Political Science Association Annual Meeting, San Francisco, California. Notes supplied.

July 30, 2015: Presenter, Montana Law Seminar: State Constitutional Law, Montana Board of Bar Examiners (virtual). I used the same PowerPoint supplied for the Montana Law Seminar on July 28, 2016.

June 11, 2015: Presenter, American Democracy: Our Constitution, Mansfield

International Program on Democracy & Citizenship, Missoula, Montana. I used the same notes that were supplied for the Mansfield International Program on Democracy & Citizenship on June 10, 2014.

June 2, 2015, Guest, Last Best Constitution in the Last Best Place: Looking Back, Evan Barrett's Crucible of Change, Helena, Montana. Video available at https://youtu.be/3Xf2_TWVHjg.

May 12, 2015: Affirmative, *Citizens United* Was Wrongly Decided, National Constitution Center Town Hall Debate, Boston, Massachusetts. Video available at <https://youtu.be/xecJ4MadEsM>.

April 23, 2015: Discussant, From Cravath to State Solicitor, Yale Law School American Constitution Society Student Chapter. New Haven, Connecticut. Notes supplied.

April 22, 2015: Guest Lecturer, Federal Courts, States, and the Federal System, Prof. Abbe Gluck, Yale Law School, New Haven, Connecticut. Notes supplied.

April 16, 2015: Panelist, Oversharing: Privacy in the Digital Age, MontPIRG, Missoula, Montana. Notes supplied.

April 11, 2015: Panelist, Ensuring Gender Equality: Women's Rights and the Constitution, Montana Equal Pay Summit, Butte, Montana. Notes supplied.

March 26, 2015: Introducer, Browning Lecture by Chief Judge Sidney Thomas, Montana Law Review, Missoula, Montana. Notes supplied.

February 27, 2015: Presenter, Independence & Accountability in Judicial Elections, Yellowstone Area Bar Association CLE, Billings, Montana. PowerPoint supplied.

January 6, 2015: Presenter, The Montana Constitution and Dual Sovereignty, 64th Montana Legislature, State Bar Law School for Legislators, Helena, Montana. Notes supplied.

November 17, 2014: Presenter, Constitutional Law, Montana Courts of Limited Jurisdiction Course, Missoula, Montana. PowerPoint supplied.

October 8, 2014: Presenter, Constitutional Law as Civics: *The Marriage Cases*, Montana Judicial Institute, Missoula, Montana. PowerPoint supplied.

September 23, 2014: Moderator, Montana Supreme Court Candidates Forum, University of Montana, Federalist Society & American Constitution Society Student Chapters, Missoula, Montana. Notes supplied.

June 10, 2014: Presenter, American Democracy: Our Constitution, Mansfield International Program on Democracy & Citizenship, Missoula, Montana. Notes supplied.

May 15, 2014: Panelist, The Corrupt Practices Act and Voting Rights, Montana League of Women Voters. Notes supplied.

May 6, 2014: Introducer, *Malcomson v. Liberty Northwest*, Montana Supreme Court Oral Argument, Butte, Montana. Notes supplied.

April 22, 2014: Panelist, Polygamy & *Brown v. Buhman*, University of Montana Student Involvement Network, Missoula, Montana. Notes supplied.

April 21, 2014: Introducer, Patrick Peel on Judicial Politics & Constitutionalism, University of Montana, Missoula, Montana. Notes supplied.

April 16, 2014: Introducer, Attorney General Tim Fox, Fight for Hope and Freedom: Human Trafficking, Montana & The World, Mansfield Center, Missoula, Montana. Notes supplied.

April 14, 2014: Moderator & Panelist, *Baxter v. Montana: Four Years Later*, University of Montana School of Law, American Civil Liberties Union Student Chapter, Missoula, Montana. Notes supplied.

April 11, 2014: Moderator & Panelist, The Constitution and Campaign Finance, Montana State University, Wheeler Center, Helena, Montana. Notes supplied.

March 10, 2014: Introducer, Prof. Richard Garnett, Hesburgh Lecture, Notre Dame Club of Western Montana, Missoula, Montana. Notes supplied.

November 20, 2013: Facilitator, Great Conversations on Online Privacy, Helena Education Foundation, Helena, Montana. Notes supplied.

September 14, 2013: Moderator, Law School Town Hall with Justice Sandra Day O'Connor, University of Montana School of Law, Missoula, Montana. Notes supplied.

April 17, 2013: Presenter, Constitutional Law as Civics: The Second Amendment, Montana Judicial Institute, Missoula, Montana. PowerPoint supplied.

March 20, 2013: Moderator, The Future of Health Care in Montana: Medicaid Expansion in the Big Sky State, Mansfield Conference, Missoula, Montana. Video available at <https://youtu.be/9nsj1n6FgH8>.

March 20, 2013: Moderator, The Future of Health Care in Montana: Should the Young Subsidize the Old, Mansfield Conference, Missoula, Montana. Video

available at <https://youtu.be/yGPnW9FHLbQ>.

January 8, 2013: Presenter, The Montana Constitution, 63rd Montana Legislature, State Bar Law School for Legislators, Helena, Montana. Notes supplied.

October 12, 2012: Presenter, What Citizens United Did and Didn't Change, Missoula Moves to Amend, Missoula, Montana. Notes provided.

October 12, 2012: Guest Lecturer, Campaign Finance, University of Montana School of Journalism, Missoula, Montana. Notes supplied.

September 28, 2012: Moderator, The Rules of a Republican Form of Government, Montana Law Review Browning Symposium, Missoula, Montana. Video available at <https://youtu.be/s8ToGtsE6FI>.

September 21, 2012: Introducer, *Kluver v. PPL Montana* and *State v. Fitzpatrick*, Montana Supreme Court Oral Argument, Billings, Montana. Notes supplied.

September 21, 2012: Presenter, Citizens United, State Bar of Montana Annual Meeting Hot Topics CLE, Billings, Montana. Notes supplied.

September 17, 2012: Presenter, Constitutional Amendments, Easy and Hard, University of Montana Constitution Day, Missoula, Montana. PowerPoint supplied.

June 27, 2012: Presenter, The Fate of Montana's Corrupt Practices Act (with a coda on the Health Care Cases), Missoula Rotary Club, Missoula, Montana. PowerPoint supplied.

June 16, 2012: Panelist, *Citizens United* Two Years Later: Money, Politics, and Democracy at Stake, American Constitution Society Annual Conference, Plenary Session, Washington, DC. Notes supplied.

May 30, 2012: Panelist, By the People: A Conversation About Corporate Influence on Our Democracy, MCAT Community Media, Missoula, Montana. Video available at <https://youtu.be/LM5IcTV38m0>.

April 21, 2012, Panelist, Sovereignty Under Two Constitutions, Humanities Montana's We the People: Conversations on the Montana and U.S. Constitutions, Helena, Montana. Videos available at <https://youtu.be/t1rPbznXtg> (presentation), <https://youtu.be/DIJET0UYuzY> (discussion), <https://youtu.be/btNcmL7UrEE> (discussion), <https://youtu.be/8XZNDvjrUIQ> (discussion).

April 13, 2012: Introducer, *Donaldson & Guggenheim v. State of Montana*, Montana Supreme Court. Missoula, Montana. Video available at <https://youtu.be/2fZ8SKN0NVE>.

April 5, 2012: Presenter, The Constitutional Politics of the Affordable Care Act, League of Women Voters, Billings, Montana. PowerPoint supplied.

April 3, 2012: Panelist, *PPL Montana v. Montana*, American Bar Association Section of Environment, Energy, and Resources Constitutional Law Committee, Missoula, Montana. Notes supplied.

March 8, 2012: Commentator, Personhood Amendments with Prof. Robin Wilson, University of Montana School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

November 5, 2011: Presenter, 2012 Election Law Preview, University of Montana School of Law CLE, Missoula, Montana. PowerPoint supplied.

October 25, 2011: Commentator, The Tea Party Constitution with Prof. Richard Duncan, University of Montana School of Law, Federalist Society Student Chapter, Missoula, Montana. Notes supplied.

October 7, 2010: Panelist, The Right to Dignity and *Baxter v. Montana*, University of Montana School of Law, Browning Symposium, Missoula, Montana. Notes and press coverage supplied.

October 7, 2010: Panelist, Amending the Montana Constitution, University of Montana School of Law, Browning Symposium, Missoula, Montana. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

September 16, 2010: Presenter, Constitutional Litigation and Its Limits, University of Montana Constitution Day, Missoula, Montana. Notes supplied.

April 19, 2010: Presenter, *Citizens United*, First Amendment, and the Supreme Court, University of Montana School of Law, American Constitution Society Student Chapter, Missoula, Montana. PowerPoint supplied.

April 10, 2010: Panelist, Legal Considerations of End of Life Choices, Carroll College, ACLU Montana and Humanities Montana, Helena, Montana. Notes supplied.

March 22, 2010: Panelist, An In-Depth Look at the *Citizens United* Decision, The Policy Institute, Helena, Montana. Notes supplied.

March 12, 2010: Panelist, Corporate Money in Politics – What the *Citizens United* decision means to Montana, Montana Conservation Voters, Helena, Montana. Notes and press coverage supplied.

May 1, 2009: Panelist, The Role of the State Solicitor General, University of Chicago Law School, Federalist Society Student Chapter, Chicago, Illinois. I discussed the role of the state solicitor general in general and in Montana. I have no notes, transcript, or recording. The address for the University of Chicago Law School, Federalist Society Student Chapter is 1111 East 60th Street, Chicago, Illinois 60637.

April 6, 2009: Panelist, Competition and Concentration in Agricultural Markets, University of Montana School of Law, Browning Symposium, Missoula, Montana. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

January 24, 2009: Panelist, Case Study: *The Bair Family Trust*, Columbia Law School, National State Attorneys General Program, New York, New York. I explained *In re The Charles M. Bair Family Trust*, 183 P.3d 61 (Mont. 2008). I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

June 6, 2001: Presenter, To the Cum Laudes of the Blake Class of 2001, Blake School, Minneapolis, Minnesota. Notes supplied.

June 11, 1999: Presenter, Award for Teaching Excellence: Professor Helmholtz, University of Chicago School of Law, Chicago, Illinois. Notes supplied.

Approximately 2011 – 2022: Except as listed above, I am unable to recall other events or informal discussions in which I spoke about legal issues with groups of students at the University of Montana. I have no notes, transcripts, or recordings of such events or discussions. The address for the University of Montana is 32 Campus Drive, Missoula, Montana, 59812.

Approximately 2000 – 2003: I participated in occasional discussions with high school students about law and citizenship at Cravath, Swaine & Moore. I have no notes, transcripts, or recordings of such discussions. The address for Cravath, Swaine & Moore is 825 Eighth Avenue, New York, New York, 10019.

Approximately 1996 – 1999: I participated in occasional discussions with high school students about law and citizenship in the Chicago Public Schools. I have no notes, transcripts, or recordings of such discussions. The address for the Chicago Public Schools is 42 West Madison Street, Chicago, Illinois, 60602.

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

New UM Department of Public Administration Programs Address Workforce

Needs, University of Montana Blewett School of Law (Mar. 17, 2022). Copy supplied.

Sam Wilson, *MT SupCo reverses AG decision, says river protection initiative can go out for signatures*, Missoulian (Mar. 16, 2022). Copy supplied.

Nick Mott & Mara Silvers, *The Politics of Death and Dying*, Shared State, MTPR (Mar. 7, 2022). Copy supplied.

Nick Ehli, *State Constitutions Vex Conservatives' Strategies for a Post-Roe World*, Kaiser Health News (Feb. 17, 2022). Copy supplied.

Dante Filupla-Ankney, *Youths suing Montana over climate change will have their day in court*, MTPR (Feb. 10, 2022). Copy supplied.

Arren Kimbel-Sannit, *Legislative GOP asks U.S. Supreme Court for review of subpoena power decision*, Daily Montanan (Dec. 7, 2021). Copy supplied.

Mara Silvers, *Legislature and AG ask U.S. Supreme Court to take separation of powers case*, Montana Free Press (Dec. 7, 2021). Copy supplied.

Peter Christian, *Two Local Views of Abortion Case Before the U.S. Supreme Court*, KGVO (Dec. 1, 2021). Copy supplied.

Austin Amestoy, Mariah Thomas & Addie Slinger, *District court permanently enjoins campus carry bill, state appeals*, Montana Kaimin (Dec. 1, 2021). Copy supplied.

Keila Szpaller, *AG will appeal HB102 order to Montana Supreme Court*, Daily Montanan (Dec. 1, 2021). Copy supplied.

Casey Conlon, *Explainer: 1st vaccine mandate deadlines approaching*, KTVQ (Nov. 29, 2021). Copy supplied.

Keith Schubert, *Meeting to protest Sidney Health Center vaccine mandate compliance to be held Monday*, Daily Montanan (Nov. 24, 2021). Copy supplied.

Addie Slinger, *In the war for control of Montana's universities, a lawsuit over guns is the first battle*, Montana Kaimin (Nov. 22, 2021). Copy supplied.

Jeanelle Slade, *University of Montana constitutional law expert says new federal Covid-19 vaccine rules should be decided soon*, KTVQ (Nov. 5, 2021). Copy supplied.

Legality of the federal COVID vaccine mandate, KULR8 (Nov. 4, 2021). Copy supplied.

Arren Kimbel-Sannit, *Legislative counsel requests AG's documents in St. Peter's dispute*, Daily Montanan (Nov. 1, 2021). Copy supplied.

Sam Wilson, *Montana joins lawsuit challenging Biden's vaccine mandate for federal contractors*, Helena Independent Record (Oct. 29, 2021). Copy supplied.

Tye Brown, *Clear bags or bulletproof ones: How will UM Athletics adapt if gun bill remains intact?*, Montana Kaimin (Oct. 28, 2021). Copy supplied.

Alex Miller, *Montana governor says Biden's vaccine order for federal contractors is 'unenforceable' in Montana*, Bozeman Daily Chronicle (Oct. 28, 2021). Copy supplied.

Max Ufberg, *Why states like Texas won't be able to stop Biden's vaccine mandates*, Fortune (Oct. 20, 2021). Copy supplied.

Sophie Quinton, *Red States Have Limited Options for Fighting Biden's Vaccine Rules*, Stateline (Oct. 8, 2021). Copy supplied.

Geneva Zoltek, *Law professor provides insight into new MT COVID-19 laws*, KPAX (Sept. 24, 2021). Video available at <https://www.kpax.com/news/montana-news/law-professor-provides-insight-into-new-mt-covid-19-laws>.

Geneva Zoltek, *Missoula community questions new state laws impacting COVID-19*, KPAX (Sept. 23, 2021). Copy supplied.

Jack Marshall, *UM athletics will not specify vaccination numbers among student athletes*, Montana Kaimin (Sept. 23, 2021). Copy supplied.

Andy Tallman & Emily Tschetter, *Missoula sees record-breaking COVID-19 surge, medical providers struggle to keep up*, Montana Kaimin (Sept. 19, 2021). Copy supplied.

Mike Dennison, *MT businesses, hospitals face dilemma with fed vaccine mandates*, KTVH (Sept. 17, 2021). Copy supplied.

Holly Michels, *Montana's AG signs onto letter threatening lawsuit over vax-or-testing requirement*, Helena Independent Record (Sept. 16, 2021). Copy supplied.

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

I have not held judicial office.

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

- i. Of these cases, approximately what percent were:

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

- ii. Of these cases, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

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

15. Public Office, Political Activities and Affiliations:

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

None.

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

None.

16. Legal Career: Answer each part separately.

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

From 1999 to 2000, I served as a law clerk to the Honorable Sidney R. Thomas, Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

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

2015 – present

Johnstone PLLC
91 Campus Drive, PMB #2505
Missoula, Montana 59801

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

2000 – 2003
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Associate (2000 – 2003)

2004 – 2011
State of Montana
Department of Justice
215 North Sanders, Third Floor
Helena, Montana 59620
State Solicitor (2008 – 2011)
Assistant Attorney General (2004 – 2008)

2007 – 2009; 2011 – present
University of Montana
Blewett School of Law
32 Campus Drive
Missoula, Montana 59812
Helen and David Mason Professor of Law (2019 – present)
Affiliated Professor of Public Administration (2017 – present)
Professor (2017 – present)
Associate Professor (2014 – 2017)
Associate Dean for Faculty Development (2013 – 2014)
Assistant Professor (2011 – 2014)
Adjunct Professor (2007 – 2009)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 2000 to 2003, after my clerkship, I practiced as an associate in the litigation department of Cravath, Swaine & Moore in New York. There I worked on small teams litigating complex civil cases involving antitrust, securities, and other commercial matters. I also participated in pro bono civil rights impact litigation involving the indigent defense system in Montana.

From 2004 to 2011, I practiced in the Legal Services Division of the Montana Department of Justice. There I began work with the Appellate Services Bureau handling criminal appeals before the Montana Supreme Court and the Civil Services Bureau defending the State of Montana in various civil cases before federal and state courts. In addition to a general litigation docket, I assumed subject matter duties for the Department's elections law, nonprofit supervision, and antitrust work. In 2008, Attorney General Mike McGrath designated me State Solicitor, a position I continued under Attorney General Steve Bullock in 2009. There I focused on major litigation on behalf of the State until I left the Department.

Since 2011, I have taught a range of public law courses at the University of Montana School of Law. I also supervise our judicial clinic, which places third-year students in the chambers of federal and state judges. As part of my public service obligations as a professor, I explain current legal issues to legal audiences and the general public.

Since 2015, I have provided legal services through Johnstone PLLC, primarily as a consultant and outside counsel to the State of Montana in various matters.

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

At Cravath, Swaine & Moore I primarily represented businesses in litigation with other businesses. I also represented a class of indigent criminal defendants in a pro bono case.

At the State of Montana, I represented the State and its agencies and officers. In doing so I often assisted Montanans and Montana businesses who were beneficiaries of our legal work.

Currently I continue to represent the State and occasionally consult for lawyers on appellate or constitutional matters, including through participation in moot courts. I also occasionally represent individuals pro bono.

- c. Describe the percentage of your practice that has been in litigation and whether

you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At Cravath, Swaine & Moore my practice consisted almost entirely of litigation, including counseling on potential litigation in transactions. I rarely appeared in court.

At the State of Montana approximately two-thirds of my practice was litigation. I occasionally appeared in court.

Currently my practice consists almost entirely of litigation. I occasionally appear in court.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 30% |
| 2. state courts of record: | 60% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 10% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 75% |
| 2. criminal proceedings: | 25% |

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

I have tried five cases to final decision as sole counsel, chief counsel, or co-counsel for the state. I recently completed a sixth trial, a retrial on remand of a case I previously tried, that has not yet reached final decision. I also have handled 29 cases on appeal, including 19 as sole counsel, chief counsel, or counsel of record, and ten as associate counsel. I have argued seven cases on appeal, including three before the Ninth Circuit. (The Montana Supreme Court, where I have handled 19 cases and argued four, decides nearly 98 percent of its cases on the briefs without oral argument.)

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 0% |
| 2. non-jury: | 100% |

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

Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (brief in opposition, 2019 WL 2176282; brief for respondent, 2019 WL 5887033).

American Tradition Partnership v. Attorney General, 567 U.S. 516 (2012) (brief in opposition, 2012 WL 1853622).

PPL Montana et al. v. State of Montana, 565 U.S. 576 (2012) (brief in opposition, 2010 WL 3875719; brief for respondent, 2011 WL 5126226).

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) (brief for 26 states as amici curiae in support of neither party, 2009 WL 2365205).

Brewer v. Nader, cert. denied, 556 U.S. 1104 (2009) (brief for 13 states as amici curiae in support of petitioner, 2008 WL 5328210).

Seven-Up Pete Venture v. State of Montana, cert. denied, 555 U.S. 885 (2008) (brief in opposition). Brief supplied.

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

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

1. *State of Montana v. Talen*, No. CV 16-35-H-DLC (D. Mont.) (judgment pending) (Christensen, J.), *on remand from PPL Montana v. State of Montana*, U.S. 576 (2012) (Roberts, C.J., Scalia, Kennedy, Thomas, Ginsberg, Breyer, Alito, Sotomayor, and Kagan, JJ.), *reversing in part* 2010 MT 64 (Leaphart, Nelson, Rice, and Cotter, JJ., Krueger, McLean, and Salvagni D.JJ.), *affirming* No. CDV-2004-846 (Mont. 1st Dist. June 13, 2008) (Honzel, D.J.)

From 2004 to present, I have represented the State of Montana in public land trust claims to the riverbeds of the Clark Fork, Madison, and Missouri Rivers currently occupied by hydroelectric projects. The State argues segments of these rivers are navigable for title and defendant hydropower companies (plaintiffs in the original declaratory judgment action) must pay full market value for their use of those river segments to operate hydropower projects. In the first phase of the case I served as lead counsel through

multiple rounds of summary judgment briefing in district court, successful settlement with two of three original counterclaim-defendants, and trial on damages resulting in a damages judgment in favor of the State, which the Montana Supreme Court affirmed. Defendants petitioned for certiorari and I wrote the brief in opposition. I was leaving the Montana Department of Justice when certiorari was granted and the State hired outside counsel to handle the merits briefing and argument before the Supreme Court of the United States, with which I assisted as co-counsel. Since remand I have assisted with pretrial litigation as a consultant, appeared as counsel of record for the trial proceedings, written the trial briefs, and served as trial co-counsel through a ten-day liability phase trial on remand, after which defendant Talen declared bankruptcy. The District Court has not issued its post-trial decision.

Co-Counsel (state courts)

Jon Ellingson (retired)

Candace West (retired)

Co-Counsel (Supreme Court)

Gregory Garre

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Co-Counsel (on remand)

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Counsel for PPL (state courts)

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Counsel for PPL (Supreme Court)

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Counsel for the United States

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U.S Department of Justice
Environment & Natural Resources Division
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2. *American Tradition Partnership v. Attorney General*, 567 U.S. 516 (2012) (*per curiam*) (Roberts, C.J., Scalia, Kennedy, Thomas, Ginsberg, Breyer, Alito, Sotomayor, and Kagan, JJ.), *reversing Western Tradition Partnership v. Attorney General*, 2011 MT 328 (McGrath, C.J., Nelson, Rice, Cotter, Morris, Baker, and Wheat, JJ.), *reversing* No. BDV-2010-238 (Mont. 1st Dist. Oct. 18, 2010) (Sherlock, D.J.)

From 2010 to 2012, I represented the State of Montana in a constitutional challenge to the Montana Corrupt Practices Act, a law prohibiting corporate expenditures in candidate campaigns. Plaintiff, a political campaign organization, argued the Corrupt Practices Act violated the Free Speech Clause. I served as lead counsel through summary judgment in district court and on the briefs on appeal. I left the Department of Justice before argument in the Montana Supreme Court. I assisted as co-counsel the Attorney General in his argument to the Montana Supreme Court and the brief in opposition to the petition for certiorari. The Montana Supreme Court upheld the Act, distinguishing *Citizens United*. The Supreme Court summarily reversed the Montana Supreme Court's decision, invalidating the Act.

Co-Counsel

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(406) 404-1728

Opposing Counsel (state court)

Margot Barg Ogburn (formerly with the Wittich Law Firm)
Ogburn Law Firm
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Opposing Counsel (Supreme Court)

James Bopp, Jr.
The Bopp Law Firm
1 South 6th Street
Terre Haute, IN 47807
(812) 232-2434

3. *Baxter v. State of Montana*, 2009 MT 449 (Nelson, Leaphart, Rice, Cotter, Warner,

and Morris, JJ., Hegel, D.J.), *affirming on alternate grounds* No. ADV 2007-787 (Mont. 1st Dist. Dec. 5, 2008) (McCarter, D.J.)

From 2007 to 2009, I represented the State of Montana in a constitutional challenge to homicide laws as applied to physician-assisted death of terminally ill persons. Plaintiff, a terminally ill person, argued the state constitutional rights to dignity and privacy provide a right of a competent, terminally ill patient to physician assistance in dying. I served as lead counsel through summary judgment in district court, on the briefs on appeal, and argued the case at the Montana Supreme Court. The Montana Supreme Court avoided the constitutional issue, holding instead that a statutory consent defense was available to physicians who aid in the deaths of their competent, terminally ill patients.

Co-Counsel

Jennifer Anders (retired)

Opposing Counsel

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Kathryn Tucker (formerly with Compassion & Choices)
Emerge Law Group
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(206) 595-0097

4. *Canyon Ferry Road Baptist Church v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009) (Pregerson, Canby, and Noonan, JJ.), *reversing* No. CV-04-24-H-DWM (D. Mont. Sept. 26, 2006) (Molloy, D.J.)

From 2004 to 2009, I represented the Montana Commissioner of Political Practices in facial and as-applied constitutional challenges to Montana's ballot issue campaign disclosure laws. Plaintiff, a church that held an event in connection with a state constitutional initiative banning same-sex marriage, argued state campaign disclosure laws violated the Free Speech and Free Exercise Clauses. I served as lead counsel through summary judgment in district court, on the briefs on appeal, and argued the case at the United States Court of Appeals for Ninth Circuit. The Court invalidated the application of disclosure laws to the church as a violation of the Free Speech Clause and did not reach the facial or Free Exercise Clause challenges.

Opposing Counsel

Dale Schowengerdt (formerly with the Alliance Defense Fund)
Crowley Fleck
900 North Last Chance Gulch

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(406) 457-2040

5. *In re: The Bair Family Trust*, 2008 MT 144 (Gray, C.J., Nelson, Leaphart, Rice, Cotter, Warner, and Morris, JJ.), *reversing* No. DV 29-04-39 (Mont. 13th Dist. June 30, 2006) (Baugh, D.J.)

From 2004 to 2008, I represented the State of Montana as intervenor in a breach of trust action arising from a charitable trust's closure of a rural art museum. Petitioners, a group of the museum's neighbors and supporters, argued the trust's trustee and board of advisors breached their fiduciary duties by closing the museum. I served as the State's sole counsel through summary judgment and trial in district court, on the briefs on appeal, and argued the case at the Montana Supreme Court. The Court decided for the State and petitioners, directed the appointment of a new board of advisors, and ordered the museum receive a fair opportunity to succeed.

Counsel for the Friends of the Bair Museum

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Robertta Anner-Hughes (formerly with Edwards, Frickle, Anner-Hughes & Culver Law Firm)
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Counsel for the Trust Board of Advisors

Carey Matovich
Matovich, Keller & Huso
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(406) 252-5500

Counsel for Trustee U.S. Bank

John Crist
Crist, Krogh, Alke & Nord
2708 1st Avenue North, Suite 300
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(406) 255-0400

6. *Seven-Up Pete Venture v. State*, 2005 MT 146, *cert. denied*, 546 U.S. 1170 (2008); *Seven-Up Pete Venture v. Brian Schweitzer*, 523 F.3d 948 (9th Cir.) (Canby, Graber,

and Gould, JJ.), *cert. denied*, 555 U.S. 885 (2008).

From 2006 to 2008, I represented the State of Montana in related constitutional challenges to an initiative banning a form of open-pit gold mining and processing. Plaintiff, a mining company, argued the initiative constituted a taking of its property interests without just compensation under the Montana and United States Constitutions. After the State prevailed in the Montana Supreme Court, I assisted on the brief in opposition to the petition for certiorari. The Supreme Court denied the petition. I also served as co-counsel in and argued a parallel proceeding's appeal to the United States Court of Appeals for the Ninth Circuit. The Circuit held the Eleventh Amendment precluded federal jurisdiction over an action seeking compensation for a taking of property by a State.

Co-Counsel

Chris Tweeten (formerly with Montana Department of Justice)
Tweeten Law PLLC
101 West Artemos Drive
Missoula, MT 59803
(406) 459-0255

Opposing Counsel

Daniel S. Hoffman (deceased)

Sean Connelly (formerly with Hoffman Reilly Pozner & Williamson LLP)
200 South Cherry Creek Drive, Suite 720
Denver, CO 80209
(303) 302-7849

7. *Montanans for Justice v. State of Montana*, 2006 MT 277 (Gray, C.J., Nelson, Leaphart, Cotter, and Morris, JJ., Honzel and Mizner, D.JJ.), *affirming* No. CDV-06-1162 (Mont. 1st Dist. Sept. 13, 2006) (Sandefur, D.J.)

In 2006, I represented the State of Montana in a challenge to three ballot issues qualified by a petitioning process involving deceptive practices. Plaintiffs argued that deceptive practices in the petitioning process required the disqualification of the ballot issues. I served as co-counsel at trial and as lead counsel on appeal to the Montana Supreme Court. Although the State was a nominal defendant, it argued for the disqualification of petition signatures obtained by deceptive practices. The Court decided for the plaintiffs, substantially agreeing with the State's legal arguments, and disqualified the ballot issues.

Co-Counsel

Pam Bucy (formerly with the Office of the Attorney General)
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Plaintiffs' Counsel

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Defendants' Counsel

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Intervenors' Counsel

Patrick Watt
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300 Central Avenue, 7th Floor
Great Falls, MT 59403
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8. *State v. Hill*, 2004 MT 184 (Nelson, Leahart, Rice, Cotter, and Warner, JJ.)

In 2004, I represented the State of Montana in an appeal from the denial of a motion to dismiss. The defendant argued the trial court should have granted his motion to suppress the search of a rental car the defendant lacked authority to possess. I reviewed the record in the district court, conducted legal research, and drafted the brief. The Montana Supreme Court held the search was authorized and affirmed the conviction.

Co-Counsel

The Honorable Jim Wheelis (retired)

Opposing Counsel

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9. *Caiola v. Citibank, on remand from 295 F.3d 312* (2002), No. 00-Civ-5439
(S.D.N.Y.) (Cote, J.)

From 2002 to 2003, I represented Citibank in federal securities fraud and state law claims arising from a former client's trading and hedging losses. The plaintiff, an entrepreneur and sophisticated investor, argued Citibank materially misrepresented the risks of his trading strategy in which Citibank was a counterparty. I conducted legal and factual

research, resolved discovery issues, prepared witnesses for and defended depositions, and prepared documents and witnesses for trial. The parties stipulated to dismiss the case.

Co-Counsel

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10. *White et al. v. Martz*, No. CDC-2002-133 (Mont. 1st Dist. July 24, 2002) (Honzel, J.)

From 2001 to 2003, I represented a class of indigent criminal defendants in a constitutional challenge to Montana's systems for providing the assistance of counsel. The plaintiff class argued the indigent defense systems violated their rights to counsel under the United States and Montana Constitutions and state statutes. I conducted legal research, engaged in discovery, and drafted pleadings and briefs. The district court denied the State's motion to dismiss, and after discovery the parties agreed to settle the case contingent on reforms to the state public defender system, which the legislature enacted.

Co-Counsel

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Robin Dahlberg (retired)

Opposing Counsel

The Honorable Brian Morris (formerly with the Montana Department of Justice)
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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activity I have pursued throughout my career is as a “public citizen” under the Model Rules of Professional Conduct (and Rule 7 of Montana’s Preamble) to “further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.” I began to fulfill this duty as an associate at Cravath, Swaine & Moore teaching civic and constitutional law to high school students in New York. I continued at the Montana Department of Justice through annual “Law Day” programs (memorably, my first was with a framer of the Montana Constitution), as well as opportunities to discuss important legal issues with legislators and other public officials. I now take this duty as my full-time job in teaching, scholarship, and public service, including biennial appearances at the State Bar of Montana’s “Law School for Legislators” at the beginning of every biennial legislative session (suspended in 2021 due to the pandemic).

As I worked to teach the rule of law in my practice, I now teach practice as a law professor. The University of Montana Blewett School of Law faculty brings substantial practice experience in our areas of expertise. It has the distinct mission to “prepare[]

students for the people-oriented practice of law by integrating theory and practice in a competency-based curriculum.” My teaching therefore draws upon my more than two decades of experience litigating cases from investigation and complaint, to pretrial discovery and trial, and to appeal and occasionally certiorari at the United States Supreme Court. Nearly all my courses require students to participate in weekly moot courts on current legal issues they bring to the classroom, for example. I only offer one final exam, with all other assessments focused on briefing and other legal writing. I also supervise our judicial clinic, which places third-year students in the chambers of federal and state judges.

Beyond my most significant cases, and a general emphasis on the theory and practice of law, my most significant advocacy and scholarship could be gathered into three areas. First, I have been both a student of, and a participant in, the states’ role in our constitutional order, including federalism, the office of state attorney general, and the dynamic between state constitutions and the United States Constitution. Second, I have litigated and studied the law of democracy, including questions involving the right to vote, free and fair campaigns, and government interests in election integrity. Third, as a Montana lawyer, I have worked on and taught issues of importance to our rural communities, from concentration in agricultural markets and preservation of cultural resources, to tribal sovereignty and the rights of Indigenous persons.

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

From 2013 through 2022, I taught Montana Constitutional Law at the University of Montana Blewett School of Law. The course is a general survey of Montana constitutional powers, duties, and rights. Syllabus for Fall 2022 supplied.

From 2013 through 2022, I taught Legislation at the University of Montana Blewett School of Law. The course is a three-part survey on election law, legislative process, and statutory interpretation. Syllabus for Fall 2022 supplied.

In 2022, I taught Native American Voting Rights at the University of Montana Blewett School of Law. The course is a one-week intensive seminar on the intersection of tribal sovereignty, voting rights, and Indigenous peoples. Syllabus for Summer 2022 supplied.

In 2022, I taught Regulatory Process: Legal Methods at the University of Montana Blewett School of Law. The course is an intensive introduction to law and legal reasoning for public administration and other non-law graduate students. Syllabus for Summer 2022 supplied.

In 2022, I taught Comparative Constitutional Law at the University of Blewett School of Law Irish Program hosted by University College Cork. The course is a comparative constitutional law module in a two-week collaborative course on international

constitutional and environmental law. Syllabus for May 2022 supplied.

From 2011 through 2022, I taught Constitutional Law at the University of Montana Blewett School of Law. The course is a general survey of federal constitutional powers and rights, required at the School of Law. Syllabus for Spring 2022 supplied.

In 2013, 2015, 2017, 2019, and 2021, I taught Advanced Constitutional Law at the University of Montana Blewett School of Law. The course is a seminar on methods of constitutional interpretation and various topic areas. Syllabus for Spring 2021 supplied.

In 2016, 2018, 2020, and 2022, I taught Philosophy of Law at the University of Montana Blewett School of Law. The course is a seminar on the nature of law, development of jurisprudence over time, and current critiques. Syllabus for Spring 2022 supplied.

From 2013 through 2021, I taught Supreme Court Practice at the University of Montana Blewett School of Law. The course is a one-week intensive practicum on appellate practice and procedure based on a student-selected case pending before the United States Supreme Court. Syllabus for Winter 2021 supplied.

From 2013 through 2022, I supervised Judicial Clinics at the University of Montana Blewett School of Law. The course is a four-credit student clinic placement in the chambers of several federal and state judges. Syllabus for Spring 2022 supplied.

In 2008 and 2012, I taught Election Law at the University of Montana Blewett School of Law. The course was a seminar on voting rights, election administration, campaign finance, and ballot issues. Syllabus for Fall 2012 supplied.

In 2012, 2014, and 2016, I taught First Amendment at the University of Montana Blewett School of Law. The course was a seminar on religious establishment and free exercise, and the freedom of speech and press. Syllabus for Spring 2016 supplied.

In 2007, 2009, and 2012, I taught Public Regulation of Business at the University of Montana Blewett School of Law. The course was a survey of laws regulating markets with emphasis on antitrust and securities law. Syllabus for Spring 2012 supplied.

In 2007 I taught Contemporary Legal Issues at Carroll College. The course was an undergraduate survey of current state and national legal issues of interest to students in the course. I do not have a syllabus for the course.

In 2006 and 2007 I taught Constitutional Law at Carroll College. The course was an undergraduate survey of constitutional law. Syllabus for Spring 2006 supplied.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

My representation of the State of Montana in *State of Montana v. Talen*, No. CV 16-35-H-DLC (D. Mont.) is under a contingent fee contract for outside counsel services. If the State recovers money from the defendants through judgment or settlement, the three firms serving as outside counsel (including mine) would collectively receive a percentage of the net recovery to the State after litigation costs. Judgment on liability remains pending, remaining litigation costs are uncertain, and one of the two defendants in the damages claims declared bankruptcy, which has stayed the case in district court. It is therefore difficult to estimate future benefits, if any, from this case. I have no other anticipated receipts, expected future benefits, or arrangements to be compensated in the future for any financial or business interest.

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

The only outside employment I might plan to pursue during my service with the court, if confirmed, would be teaching state or federal constitutional law, legislation, or philosophy of law at the University of Montana.

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

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. If confirmed, I

would evaluate the existence of a potential conflict of interest arising from any personal or former client relationships or financial interest on a case-by-case basis and determine appropriate action based on the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other applicable principles of judicial ethics, to determine whether to recuse.

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

If confirmed, I would evaluate the existence of a potential conflict of interest on a case-by-case basis and determine appropriate action based on the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other applicable principles of judicial ethics, to determine whether to recuse.

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

At Cravath, Swaine & Moore, I worked several hundred hours over several years on *White v. Martz*, a challenge to Montana's public defender system that resulted in significant reforms. I also taught several civics and constitutional law units to local high school students. These hours are estimates because I did not retain my billing records.

At the Montana Department of Justice, although I was restricted from cases that presented conflicts of interest with the State of Montana, I participated in the office's pro bono program. Specifically, I worked dozens of hours over several years on a complicated family law case. I also taught regularly in public legal education programs. These hours are estimates because I did not bill my time working for the State.

At the University of Montana, I participated in our pro bono clinic, working approximately ten hours with students to provide limited scope representation in family law cases. I recently have worked more than 70 hours with two former students on an asylum application for a refugee from Afghanistan who served alongside United States and allied forces. Over the past eleven years as a professor, I have participated in ten to twenty public legal education programs across Montana and beyond annually, each of which requires several hours to prepare and present. One highlight of this work is my planning and presentation work with the Montana Judicial Institute, a two-day training program for high school civics teachers in Montana sponsored by the United States District Court for the District of Montana. These hours are estimates because I do not bill my time working for the University.

26. **Selection Process**:

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

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

On March 21, 2022, Senator Jon Tester's staff contacted me regarding my interest in being considered for the vacancy on the United States Court of Appeals for the Ninth Circuit in Montana. On March 24, 2022, I submitted a resume to Senator Tester's staff. On May 24, 2022, I interviewed with staff for Senator Steve Daines. On June 9, 2022, I interviewed with attorneys from the White House Counsel's Office. On July 7, I interviewed with Senator Daines. Since July 15, 2022, I have been in contact with attorneys from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On September 2, 2022, the President announced his intent to nominate me.

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

No.