

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jennifer Sung

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.

Office:

Oregon Employment Relations Board
528 Cottage Street, Northeast, Suite 400
Salem, Oregon 97301

Residence:

Portland, Oregon

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

1972; Edison, New Jersey

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.

2001 – 2004, Yale Law School; J.D., 2004

1990 – 1994, Oberlin College; B.A. (with honors), 1994

Summer 1993, Santa Fe Community College; no degree

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.

2017 – present
Oregon Employment Relations Board
528 Cottage Street, Northeast, Suite 400
Salem, Oregon 97301
Board Member

2013 – 2017
McKanna Bishop Joffe, LLP
1635 Northwest Johnson Street
Portland, Oregon 97209
Of Counsel (2017)
Partner (2016)
Associate (2013 – 2015)

2007 – 2013
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Associate

2005 – 2007
The Brennan Center for Justice at New York University School of Law
120 Broadway, Suite 1750
New York, New York 10271
Skadden Fellow, Counsel

2004 – 2005
United States Court of Appeals for the Ninth Circuit
1010 Fifth Avenue
Seattle, Washington 98104
Law Clerk for the Honorable Betty Binns Fletcher

Summer 2004
BarBri
1500 Broadway, Suite 808
New York, New York 10036
Student Representative

2002
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Research and Teaching Assistant for Professor Vicki Schultz

1998 – 2001

Service Employees International Union, Local 1199 New York (now 1199SEIU)
498 Seventh Avenue
New York, New York 10018
Organizer

1996 – 1998

Service Employees International Union, Local 74 (now United Service Workers Union
Local 74)
25-09 38th Avenue
Long Island City, New York 11101
Organizer

1995

Service Employees International Union, Local 200A (now Local 200United)
731 James Street, Suite 300
Syracuse, New York 13201
Organizer

1994 – 1995

Postal Services, Incorporated (now defunct)
1915 South Corgiat Drive
Seattle, Washington 98108
Mail Sorter

Summer 1994

AFL-CIO Organizing Institute
815 16th Street, Northwest
Washington, District of Columbia 20006
Organizing Intern

Uncompensated Affiliations:

2015 – present

Oregon State Bar, Labor and Employment Section
16037 Southwest Upper Boones Ferry Road
Tigard, Oregon 97224
Executive Committee Secretary (2021 – present)
Executive Committee Member (2015 – 2020)

2001 – 2004

The Brennan Center for Justice at New York University School of Law
120 Broadway, Suite 1750
New York, New York 10271
Legal Intern (Summer 2003)
Law Student Volunteer (2001 – 2002 and 2003 – 2004 academic years)

2002 – 2003

American Civil Liberties Union, Drug Policy Litigation Project (later, Drug Law Reform Project; now, Criminal Justice Project; current address of ACLU provided)

125 Broad Street, 18th Floor

New York, New York 10014

Legal Intern

1996 – 2001

Asian Pacific American Labor Alliance, AFL-CIO

815 16th Street, Northwest, Second Floor

Washington, District of Columbia 20006

New York Chapter, Executive Board Member

1994 – 1995

Teamsters Union, Local 174

14675 Interurban Avenue South, Suite 303

Tukwila, Washington 98168

Volunteer Organizer

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

I have not served in the military. I was not required to register for the selective service.

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.

Oberlin College

Graduated with Honors in Politics (1994)

Mittleman Prize for Outstanding Student in Comparative and International Politics (approximately 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

Oregon Asian Pacific American Bar Association

Oregon Minority Lawyers Association

Oregon State Bar, Labor & Employment Section

Executive Committee Secretary (2021 – present)

Executive Committee Member (2015 – 2020)

Oregon Women Lawyers

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, 2006
California, 2007 (inactive status)
Arizona, 2009 (voluntarily withdrawn)
Oregon, 2014

There have been no lapses in membership. I voluntarily withdrew my membership in the Arizona State Bar after I moved to Oregon in 2013, because I no longer had any intent to practice in Arizona. I also changed my California bar membership to inactive status after moving to Oregon, because I was no longer actively practicing law in California.

- 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 Court of Appeals for the Ninth Circuit, 2008
United States District Court for the District of Arizona, 2011 (inactive status)
United States District Court for the Central District of California, 2010
United States District Court for the Northern District of California, 2008
United States District Court for the District of Oregon, 2016

There have been no lapses in membership. I changed my membership in the District of Arizona to inactive status because I withdrew my membership in the Arizona State Bar.

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.

AFL-CIO Lawyers Coordinating Committee (now AFL-CIO Union Lawyers Alliance)
American Civil Liberties Union of Oregon
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

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

To the best of my knowledge, none of the organizations listed 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.

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.

I have searched my files and electronic databases in an effort to identify all published material responsive to this question. I have identified the materials listed below, but it is possible that there is an older publication that I have been unable to identify.

With Dana Goldblatt, Letter to the Editor, *Let's Take Levin's Contract Offer at Face Value*, Yale Daily News, Mar. 28, 2003. Copy supplied.

"The New Admissions Policy: The Implications of Becoming Non-Need-Blind," Collective (Winter 1993). I am unable to locate a copy of the article.

With other student participants in Oberlin College's Freshperson Orientation into Community Involvement Program, "FOCI: Oberlin is a town, too," The Oberlin Review, Sept. 21, 1990. 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.

Oregon State Bar, Labor & Employment Section Executive Committee, written comment regarding Proposed Rule 15.701 (April 14, 2021), submitted to Oregon

State Bar, Board of Governors, Policy & Governance Committee. The comment letter addressed a proposed amendment to the Oregon State Bar rule that governs section-funded stipends or fellowships for law students. Copy supplied.

In March 2007, as an attorney with the Brennan Center for Justice, I co-authored a report titled, "Analysis of Montana House Bill 492." Copy supplied.

In June 2006, as an attorney with the Brennan Center for Justice, I co-authored a policy analysis titled, "A D.C. Large Retailer Accountability Ordinance." Copy supplied.

Yale Law School Right to Organize Monitoring Committee, *When Bad Labor Relations Go Good: A Roadmap for Labor Peace at Yale* (2002), originally published at <http://islandia.law.yale.edu/wrp>. Executive summary supplied. I am unable to locate a copy of the full report.

- 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 electronic databases in an effort to locate all testimony, official statements, or other communications responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

On April 16, 2021, on behalf of the Oregon State Bar, Labor & Employment Section Executive Committee, I participated in a public meeting regarding Proposed Rule 15.701 to the Oregon State Bar, Board of Governors, Policy & Governance Committee. Copy of the related written comment previously supplied in response to Q12b.

On December 4 and 21, 2020, the Employment Relations Board held public meetings to provide information regarding recent changes to the Board's rules. Recordings supplied.

On October 5, 2020, the Employment Relations Board held a public meeting to deliberate and potentially vote on adopting final rule changes to Divisions 10 and 25 of the Board's rules. Recording supplied.

On September 21, 2020, I testified before the Oregon Senate Interim Committee on Rules and Executive Appointments, regarding my nomination for reappointment to the Employment Relations Board. Video available at <https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2020091187>.

On September 15, 2020, the Employment Relations Board held a public hearing to receive public comment regarding proposed changes to Divisions 10 and 25 of the Board's rules. Recording supplied.

On June 8, 2020, the Employment Relations Board held a public meeting to deliberate and potentially vote on proposing changes to Divisions 10 and 25 of the Board's rules. Recording supplied.

On March 20, 2020, the Employment Relations Board held a public meeting to deliberate and potentially vote on proposing changes to Divisions 10 and 25 of the Board's rules. I have no notes, transcript, or recording.

On February 4, 2020, the Employment Relations Board held a public meeting to deliberate and potentially vote on proposing changes to Divisions 10 and 25 of the Board's rules. Recording supplied.

On January 28, 2020, the Employment Relations Board held a public meeting to deliberate and potentially vote on proposing changes to Divisions 10 and 25 of the Board's rules. Recording supplied.

I signed an open letter addressed to the Oberlin College administration, which was titled, "Oberlin Alumni Say No to Union Busting," (Feb. 19, 2020). Copy supplied.

I signed an open letter addressed to the Yale Law School administration, which was titled, "Open Letter from Yale Law Students, Alumni, and Educators Regarding Brett Kavanaugh," (July 10, 2018). Copy supplied.

On May 11, 2018, the Employment Relations Board held a public meeting to deliberate and potentially vote on whether to propose adopting a permanent administrative rule, as petitioned for under ORS 183.390 and OAR 137-001-0080 by the Tedesco Law Group, LLC. Recording supplied.

On April 30, 2018, the Employment Relations Board held a public meeting for the purpose of an oral presentation (under OAR 137-001-0070(4)(b)) by the Tedesco Law Group, LLC, on its petition (under ORS 183.390 and OAR 137-001-0080) requesting that the Board adopt a new administrative rule, as well as potential deliberation and action on the petition, including denying the petition or initiating rule making proceedings. Recording supplied.

On March 18, 2017, I testified before the Oregon Senate Committee on Rules and Executive Appointments, regarding my nomination for appointment to the Employment Relations Board. I have no notes, transcript, or recording.

In or about November 2016, I signed an open letter addressed to House Speaker Paul Ryan, regarding the appointment of Stephen Bannon as White House Chief

Strategist (Nov. 23, 2016). Copy of letter text supplied. The list of signatories is available at <https://www.scribd.com/document/332098721/Attorneys-Against-Bannon-15000-Signatures>.

2015 - present: As a member of the Oregon State Bar, Labor and Employment Section Executive Committee, I have generally attended monthly committee meetings, at which I typically participate in discussions of section business and vote on motions. Minutes supplied where available.

In or about July 2006, as an attorney with the Brennan Center for Justice, I presented testimony to the Chicago City Council (or a committee thereof) regarding a proposed ordinance that would require large retailers in the city to pay their employees a minimum wage of \$10 an hour and benefits. I do not have a copy of the testimony, but I have supplied a copy of a Brennan Center press release regarding the proposed ordinance. I have also supplied press coverage of the proposed ordinance, which I believe refers to my testimony.

On or about March 7, 2006, as an attorney with the Brennan Center for Justice, I presented public comment to the Lawrence Township Council regarding a proposed ordinance that would require large retailers in the township to pay their employees a minimum wage of \$11.08 an hour and benefits of \$3.50 an hour. I do not have a copy of the public comment, but I have supplied press coverage.

In March 2004, as a law student intern with the Brennan Center for Justice, I co-authored a memorandum to the New York City Council regarding the legal authority of the city to enact a local service worker health benefits law. Copy supplied.

In or about February 2003, I signed an amicus brief filed on behalf of 13,922 then-current law students at accredited American law schools, which was filed in support of the respondents in *Grutter v. Bollinger*, 539 U.S. 306 (2003). Brief for Law Students at Accredited American Law Schools as Amici Curiae, 2003 WL 554404.

- 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.

I have searched my files and electronic databases in an effort to identify all events responsive to this question. I have identified the events listed below, but it is

possible that there are a few that I have no record of and thus was not able to identify.

January 12, 2021: Panelist, "Virtual Hearings before the ERB," Oregon Employment Relations Board, via videoconference only. Recording supplied.

October 23, 2020: Moderator, "Collective Bargaining Agreements and Police Accountability," Oregon State Bar Labor and Employment Section 2020 Annual Meeting and CLE, via videoconference only. The panel discussed legal collective bargaining issues that arise in the context of policing reforms. I have no notes, transcript, or recording. The address for the Oregon State Bar is 16037 Southwest Upper Boones Ferry Road, Tigard, Oregon 97224.

June 2, 2020: Panelist, "Leading Cases from the Oregon Employment Relations Board," Oregon Chapter of the Labor and Employment Relations Association (LERA), via videoconference only. Written materials supplied.

October 5, 2019: Panelist, "Leading Cases from the Oregon Employment Relations Board," Oregon State Bar Labor and Employment Section 2019 Annual Meeting and CLE, Gleneden Beach, Oregon. Written materials supplied.

April 25, and May 9, 14, and 21, 2019: Panelist, Oregon Employment Relations Board informational sessions, Medford, Pendleton, Portland, and Salem, Oregon. Handout supplied.

January 25, 2019: Panelist, "The Oregon Employment Relations Board," 2019 Oregon Labor Law Conference (OLLC), Portland, Oregon. The Employment Relations Board presented an overview of the agency and case procedures. Presentation supplied.

October 19, 2018: Panelist, "Leading Cases from the Oregon Employment Relations Board," Oregon State Bar Labor and Employment Section 2018 Annual Meeting and CLE, Portland, Oregon. Written materials supplied.

October 2, 2018: Panelist, "Leading Cases from the Oregon Employment Relations Board," Local Government Personnel Institute, 2018 Conference, Salem, Oregon. Written materials supplied.

May 30, 2018: Panelist, "Leading Cases from the Oregon Employment Relations Board," 2018 Public Employment Relations Conference, Salem, Oregon. Written materials supplied.

May 30, 2018: Panelist, "Your Unfair Labor Practice Case: What Happens Next?" 2018 Public Employment Relations Conference, Salem, Oregon. Presentation supplied.

April 25, 2018: Agency host of forum regarding the possible effects of *Janus v. AFSCME*, Salem, Oregon. The Employment Relations Board hosted a panel of labor and management representatives to discuss the possible effects of *Janus v. AFSCME* on public collective bargaining agreements in Oregon. The Board Chair introduced the panel, but the Board members did not make any substantive comments. I have no notes, transcript, or recording. The address for the Oregon Employment Relations Board is 528 Cottage Street, Northeast, Suite 400, Salem, Oregon 97301.

April 3 and 10, 2018: Panelist, Oregon Employment Relations Board, "Declaratory Ruling Petitions," Portland and Salem, Oregon. Handout supplied.

March 23, 2018: Keynote speaker, untitled speech, Diamond Law Training, Portland, Oregon. My speech was on my experiences as a labor lawyer and organizer. I have no notes, transcript, or recording. The address for Diamond Law Training is 3519 Northeast 15th Avenue, #273, Portland, Oregon 97212.

January 26, 2018: Panelist, "The Oregon Employment Relations Board," 2018 Oregon Labor Law Conference (OLLC), Portland, Oregon. Handout and presentation supplied.

October 27, 2017: Panelist, "Leading Cases from the Oregon Employment Relations Board," Oregon State Bar Labor and Employment Section 2017 Annual Meeting and CLE, Gleneden Beach, Oregon. Written materials supplied.

October 2017: Panelist, "Your Unfair Labor Practice Case is Before ERB. Now What?" 2017 Attorney General's Public Law Conference, Salem, Oregon. Presentation supplied.

August 10, 2017: Panelist, "Leading Cases from the Oregon Employment Relations Board," Local Government Personnel Institute, Salem, Oregon. Written materials supplied.

May 19, 2017: Keynote speaker, Diamond Law Training, Portland, Oregon. My speech was on my experiences as a labor lawyer and organizer. I have no notes, transcript, or recording. The address for Diamond Law Training is 3519 Northeast 15th Avenue #273, Portland, Oregon 97212.

November 3, 2012: Panelist, "Let's Do the Math: Computing Damages in Wage and Hour Class Actions," Sixth Annual American Bar Association Section of Labor and Employment Law Conference, Atlanta, Georgia. Written materials supplied.

November 5, 2010: Panelist, "Pay Up – What Do FLSA Violations Really Cost?" Fourth Annual American Bar Association Section of Labor and Employment Law Conference, Chicago, Illinois. Written materials supplied.

September 22, 2010: Panelist, "Compensable Work Time and Calculating Overtime," American Bar Association CLE, via teleconference and live audio webcast. Written materials supplied.

February 7, 2006: Guest presenter, forum regarding proposed living wage ordinance, hosted by LET's STOP Wal-Mart (citizens group), Lawrence Township, New Jersey. As an attorney from the Brennan Center for Justice's Economic Justice Project, I presented our legal and policy analysis of the living wage ordinance. I have no notes, transcript, or recording. The sponsor organization does not appear to have a physical address.

November 23, 1993 (approximately): As an Oberlin College student, I spoke at a vigil against racism. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oberlin College is 173 West Lorain Street, Oberlin, Ohio 44074.

November 16, 1993 (approximately): As an Oberlin College student, the college administration organized an open forum, and I made a comment when students were invited to speak. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oberlin College is 173 West Lorain Street, Oberlin, Ohio 44074.

November 11, 1993 (approximately): As an Oberlin College student, I spoke at a meeting involving students, faculty, and administrators. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oberlin College is 173 West Lorain Street, Oberlin, Ohio 44074.

November 8, 1993 (approximately): As an Oberlin College student, I spoke at a meeting convened by the college admissions office. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oberlin College is 173 West Lorain Street, Oberlin, Ohio 44074.

October 31, 1992 (approximately): As an Oberlin College student, I attended a Student Finance Committee meeting regarding revisions to its food policy. I have no notes, transcript, or recording, but press coverage is supplied. The address of Oberlin College is 173 West Lorain Street, Oberlin, Ohio 44074.

- 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.

I have searched my files and electronic databases in an effort to identify all interviews responsive to this question. I found the articles listed below, but it is possible that there was another interview that I have no record of and thus was not

able to identify.

Danny Hakim, *Wal-Mart Looms Over 2 Bills to Improve Worker Health Care*, The New York Times, Mar. 8, 2006. Copy supplied.

Lucette Lagnado, *Call it Yale v. Yale*, Wall Street Journal, Nov. 14, 2003. Copy supplied.

John Rafter, *Asian student takes credit for graffiti*, The Oberlin Review, Nov. 12, 1993. Copy supplied. *See also* John Rafter, *Graffiti sparks campus protests*, The Oberlin Review, May 27, 1994 (recap of earlier articles in year-end review).

Nicholas Riccardi, *Student faces fire after meeting*, The Oberlin Review, Nov. 12, 1993. Copy supplied.

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

I have been a member of the Oregon Employment Relations Board since March 15, 2017. I was nominated to serve as a Board Member by Governor Kate Brown and unanimously confirmed by the Oregon Senate in 2017 to complete an unexpired four-year term ending June 30, 2020. In 2020, I was reappointed to the Board with senate confirmation for a four-year term. The Board is a quasi-judicial body, comprising three members, and primarily responsible for adjudicating contested cases brought under Oregon's Public Employee Collective Bargaining Act, State Personnel Relations Law, and Private Employee Collective Bargaining Act (which covers private employers who are not subject to the jurisdiction of the National Labor Relations Act). In the majority of contested cases, an administrative law judge conducts an evidentiary hearing and issues a recommended order, and if one or both parties files objections, the Board reviews the case and issues the final order (typically after briefing and oral argument). In expedited cases, the Board typically conducts the evidentiary hearing and issues the final order in the first instance. The Board's final orders may be appealed directly to the Oregon Court of Appeals.

When drafting opinions, the Board writes collaboratively, and we do not identify the author of unanimous or majority opinions. In cases where an administrative law judge issued a recommended order, the Board generally adopts any undisputed findings of fact as written.

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

During my tenure on the Board, we have issued approximately 200 orders, including, for example, final orders after hearing; orders dismissing complaints without a hearing; certifications of representation petitions; and representation

costs awards. We have issued final orders in approximately 50 contested cases that we either heard on an expedited basis or reviewed after objections to an administrative law judge's recommended order were filed.

i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

ii. Of these cases, approximately what percent were:

civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

As noted above, the Employment Relations Board drafts opinions collaboratively, and we do not identify the author of unanimous or majority opinions. Accordingly, I have provided the citations only for my concurrences and dissents.

1. *Portland Fire Fighters Association, IAFF Local 43 v. City of Portland*, Case No. UP-059-13, 2020 OR PER LEXIS 63, at *16 (2020) (Order on Remand) (Member Sung, dissenting) (appeal pending)

2. *Oregon AFSCME Council 75, Local 189 v. City of Portland, Housing Bureau*, Case No. UC-007-19, 2020 OR PER LEXIS 28, at *26 (2020) (Member Sung, dissenting)

3. *Oregon AFSCME Council 75, Local 3997 v. Deschutes County Public Library District*, Case No. UP-005-18, 2020 OR PER LEXIS 23, at *36 (2020) (Member Sung, dissenting)

4. *Oregon School Employees Association (OSEA) v. Ashland School District*, Case No. UP-037-16, 2018 WL 2136991, at *33 (2018) (Member Sung, concurring in part, dissenting in part)

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).

1. *Oregon Military Department v. IAFF, Local 1660*, Case No. UP-048-20, 2021 OR PER LEXIS 15 (2021)

The Oregon Military Department filed an unfair labor practice complaint against the union that represents firefighters employed at the Portland Air National Guard Military Base. The state contended that the union's retirement benefits proposal violated the Oregon Pay Equity Act because it would create a compensation difference between firefighters employed at the Portland airbase and firefighters employed at a different airbase, and, in the state's view, the compensation difference was not based on any of the bona fide factors expressly authorized by the Act. The Board concluded that the union's retirement benefit proposal would not violate the Pay Equity Act because there was no allegation or evidence that the compensation difference discriminated between employees on the basis of a protected class, and the record established that the compensation difference was based on a bona fide factor, "workplace locations." The complaint was dismissed.

Counsel for Petitioner

Michael Tedesco
Julie Reading
1316 Northeast Broadway Street, Unit A
Portland, OR 97232
(866) 697-6015

Counsel for Respondent

Neil Taylor
Oregon Department of Justice
1162 Court Street, Northeast
Salem, OR 97301
(503) 947-4538

2. *Oregon Tech American Association of University Professors v. Oregon Institute of Technology*, Case No. UP-023-20, 2020 OR PER LEXIS 67 (2020) (appeal pending)

The complainant faculty union alleged that the university violated the duty to bargain in good faith when it unilaterally changed the faculty workload policy and eliminated stipends and release time for faculty serving as program directors. The Board heard the case on an expedited basis and concluded that the university committed unfair labor practices as alleged. The Board ordered the university to cease and desist from violating the duty to bargain in good faith, restore the status quo, make the affected employees whole, and post a notice.

Counsel for Complainant

Elizabeth A. Joffe
McKanna Bishop Joffe, LLP
1635 Northwest Johnson Street
Portland, OR 97209
(503) 226-6111

Counsel for Respondent

Jeffrey P. Chicoine
Taylor Richman
Miller Nash LLP
111 Southwest 5th Avenue, Suite 3400
Portland, OR 97204
(503) 205-2371

3. *Tri-County Metropolitan Transportation District of Oregon v. Amalgamated Transit Union, Division 757*, Case Nos. UP-001/003-20, 2020 OR PER LEXIS 45 (2020) (Reconsideration Order) (appeal pending)

The public employer and the transit workers' union filed complaints against each other, each alleging violations of the duty to bargain in good faith. The Board consolidated and expedited the cases for hearing and decision. The cases presented three issues: whether the employer's plan to eliminate its registered apprenticeship programs was a mandatory or permissive subject of bargaining; whether the union unlawfully conditioned bargaining on continuation of the apprenticeship programs; and whether the employer unilaterally changed the status quo by hiring outside applicants instead of apprenticeship graduates into diesel technician positions. The Board concluded that the union did not unlawfully condition bargaining on continuation of the apprenticeship programs, and as a result, did not reach the issue of whether that subject was mandatory or permissive for bargaining. The Board also concluded that the employer's unilateral change to its hiring standard was not unlawful, because the restriction against outside hiring was a permissive subject of bargaining. Both complaints were dismissed. On reconsideration, the employer asked the Board to resolve the issue of whether bargaining over the registered apprenticeship programs was mandatory or permissive. The Board concluded that the decision to deregister the programs was a permissive subject of bargaining, but that the decision to eliminate the programs was a mandatory subject. The Board adhered to its decision to dismiss both complaints.

Counsel for Complainant

Jeffrey P. Chicoine
Taylor Richman
Miller Nash LLP
111 Southwest 5th Avenue, Suite 3400
Portland, OR 97205
(503) 205-2371

Counsel for Respondent

Whitney Stark
Albies & Stark, LLC
1 Southwest Columbia Street
Portland, OR 97204

(503) 308-4770

4. *United Academics of Oregon State University v. Oregon State University*, Case No. UP-021-18, 2020 OR PER LEXIS 34 (2020) (appeal pending)

The faculty union filed a complaint alleging that the university violated the state statute that prohibits the use of public funds to support actions to assist, promote, or deter union organizing. The Board concluded that the employer's conduct constituted a prohibited use of public funds and did not fall within any of the statutory exceptions. The Board ordered the university to cease and desist from violating ORS 243.672(1)(i), post a notice, and pay the statutorily mandated civil penalty.

Counsel for Complainant

Jason M. Weyand
Tedesco Law Group
1316 Northeast Broadway Street, Suite A
Portland, OR 97232
(866) 697-6015

Counsel for Respondent

Jeffrey P. Chicoine
Miller Nash LLP
111 Southwest 5th Avenue, Suite 3400
Portland, OR 97204
(503) 205-2371

5. *Multnomah County Corrections Deputy Association v. Multnomah County*, Case No. UP-003-19, 2020 OR PER LEXIS 38 (2020) (Reconsideration Order) (appeal pending)

The corrections officers' union filed a complaint alleging that the county violated the duty to bargain by unilaterally implementing a new timekeeping and payroll system, and by refusing to bargain over safety issues. The Board concluded that the employer did not violate the duty to bargain when it changed the timekeeping and payroll system, because the record showed that the impacts on the officers' compensation and workload were temporary or de minimis. The Board also concluded that the county met its obligation to bargain over safety issues, notwithstanding its legal position that it had no duty to respond to the union's request to bargain over safety issues during the term of the parties' collective bargaining agreement. The Board dismissed the union's complaint. On reconsideration, the county asked the Board to address the issue of whether the employer was obligated to engage in mid-term bargaining under those circumstances. The majority concluded that, under Oregon's Public Employee Collective Bargaining Act, both unions and employers (as opposed to employers only) have the statutory right to initiate bargaining during the term of a collective

bargaining agreement, and that the county was obligated to bargain about safety issues under the circumstances presented. The Board also adhered to its conclusion that the county had satisfied that obligation and its decision to dismiss the complaint. Member Umscheid concurred in the conclusion that the county did not violate the duty to bargain, but declined to join the conclusion that the county had a duty to bargain.

Counsel for Complainant

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Counsel for Respondent

Kathryn Short
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6. *Oregon Tech American Association of University Professors v. Oregon Institute of Technology*, Case No. RC-007-18, 2019 OR PER LEXIS 80 (2019) (appeal pending)

The association filed a representation petition proposing a bargaining unit of faculty department chairs. The university objected to the petition, contending that the department chairs were statutory supervisors and therefore, not entitled to form a union under the Public Employee Collective Bargaining Act. The Board majority concluded that the department chairs did not fall within the statutory definition of “supervisor” applicable to university faculty. The Board certified the association as the exclusive representative of the petitioned-for bargaining unit.

Counsel for Petitioner

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7. *Treasure Valley Education Association v. Treasure Valley Community College*, Case No. UP-012-18, 2019 OR PER LEXIS 29 (2019)

The faculty association filed a complaint alleging that the college unlawfully retrenched (*i.e.*, laid off) three faculty members in retaliation for protected activity. The Board concluded that the college did not retaliate against the faculty members. Although there was no dispute that the faculty members had engaged in protected activity, the record established that the college's decision to retrench them was based on legitimate factors unrelated to their exercise of protected rights. The Board dismissed the complaint.

Counsel for Petitioner

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8. *Portland Police Commanding Officers Association and Portland Fire Fighters Association, IAFF, Local 43 v. City of Portland*, Case No. UP-029-17, 2019 OR PER LEXIS 108 (2019)

The associations of commanding officers and firefighters jointly filed a complaint alleging that the city violated the parties' contracts by refusing to arbitrate two grievances concerning retirement benefits for former bargaining unit members who left their respective bargaining units prior to retirement. The city contended that the grievances did not fall within the scope of the parties' arbitration agreements, and that the associations lacked standing to pursue such grievances on behalf of former bargaining unit members. The Board concluded that the parties' contracts required the city to arbitrate the grievances. The Board ordered the city to cease and desist from violating ORS 243.672(1)(g) and immediately submit the grievances to arbitration.

Counsel for Complainant

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9. *Service Employees International Union, Local 503, Oregon Public Employees Union v. University of Oregon*, Case No. UP-009-17, 2018 OR PER LEXIS 42 (2018)

The union filed a complaint alleging that the university violated the duty to bargain when it declined to provide the union with the name of a student who witnessed an incident that led to an employee's discipline. The Board concluded that the university did not commit an unfair labor practice. Although the student information was potentially relevant to a contractual matter, the university acted reasonably when it tried to reconcile its competing obligations and offered alternatives. The Board dismissed the complaint.

Counsel for Complainant

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1730 Commercial Street, Southeast
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Counsel for Respondent

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J. Chris Duckworth (formerly with Bullard Law)
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10. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-003-16, 2018 OR PER LEXIS 19 (2018)

The transit workers' union filed a complaint stating eleven unfair labor practice claims. The Board dismissed ten of the union's claims, concluding that the employer did not violate its duty to bargain, did not violate the parties' contract, and did not interfere with the exercise of protected rights as alleged. The

remaining claim concerned the employer's unilateral decision to cease scheduling new hires to attend union orientations on paid time. The employer contended that the subject of union orientations was either a prohibited or a permissive subject of bargaining, and therefore, the employer did not violate the duty to bargain by unilaterally ceasing to schedule them. The Board unanimously concluded that the practice of scheduling new hires to attend union orientation on paid time did not violate Oregon laws regarding union neutrality and use of public funds. The majority also concluded that paid time for such orientations is a mandatory subject of bargaining. The Board ordered the employer to cease and desist from violating ORS 243.672(1)(e), restore the status quo regarding orientations until the employer completed its bargaining obligation, schedule orientations for the affected employees, and post a notice.

Counsel for Complainant

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- 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.

As noted above, the Employment Relations Board drafts opinions collaboratively, and we do not identify the author of unanimous or majority opinions. Accordingly, I have provided the requested information only for my concurrences and dissents.

1. *Portland Fire Fighters Association, IAFF Local 43 v. City of Portland*, Case No. UP-059-13, 2020 OR PER LEXIS 63, at *16 (2020) (Order on Remand) (appeal pending) (Member Sung, dissenting)

Counsel for Complainant

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2. *Oregon AFSCME Council 75, Local 189 v. City of Portland, Housing Bureau*, Case No. UC-007-19, 2020 OR PER LEXIS 28, at *26 (2020) (Member Sung, dissenting)

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3. *Oregon AFSCME Council 75, Local 3997 v. Deschutes County Public Library District*, Case No. UP-005-18, 2020 OR PER LEXIS 23, at *36 (2020) (Member Sung, dissenting)

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4. *Oregon School Employees Association (OSEA) v. Ashland School District*, Case No. UP-037-16, 2018 WL 2136991, at *33 (2018) (Member Sung, concurring in part, dissenting in part)

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- e. Provide a list of all cases in which certiorari was requested or granted.

Final orders issued by the Employment Relations Board are subject to judicial review by the Oregon Court of Appeals and Oregon Supreme Court; during my tenure on the Board, certiorari has not been requested of, or granted by, the United States Supreme Court in any of our cases.

- 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.

The Oregon Court of Appeals has reversed three decisions issued during my tenure on the Board.

1. *Service Employees International Union Local 503, OPEU v. University of Oregon*, Case No. UP-014-17 (2018), *rev'd and remanded*, No. A170000, 2021 Ore. App. LEXIS 818 (Or. Ct. App. June 16, 2021): The Board determined that the university violated the duty to bargain in good faith when it sought to impose certain conditions on disclosure of a faculty record to the union. The Court of Appeals concluded that the Board erred when applying the standard for determining whether the record was subject to disclosure, namely, by failing to give proper consideration to the university's asserted confidentiality interest. The court remanded the case for the Board's reconsideration.

2. *Clackamas County Employees' Association v. Clackamas County*, Case No.

UP-010-18 (2019), *adh'd to on recons.* (2019), *rev'd and remanded*, 480 P.3d 993 (Or. Ct. App. 2020): The Board dismissed the union's complaint alleging that the city committed an unfair labor practice when it disciplined a union steward for acting unprofessionally in email correspondence with a manager and another employee. The Board concluded 1) that the steward was not engaged in protected activity when he sent the email; 2) that the employer did not discipline the steward because he engaged in protected activity; and 3) that the discipline did not interfere with employees in the exercise of protected rights. The Court of Appeals affirmed the Board's first two conclusions, but held that the Board erred by treating protected activity as an element of the claim that the employer interfered with employees in the exercise of protected rights. The court reversed and remanded for the Board to apply the appropriate legal test.

3. *Oregon AFSCME Council 75 v. State of Oregon, Oregon Judicial Department—Yamhill County*, Case No. RC-003-17 (2018), *rev'd*, 469 P.3d 812 (Or. Ct. App. 2020), *review denied*, 472 P.3d 268 (Or. 2020): The union filed a representation petition proposing a bargaining unit consisting of judicial department employees working in the Yamhill County Circuit Court. The judicial department objected, contending that the proposed unit was too small a segment of the workforce to be an appropriate bargaining unit. The Board majority concluded that the proposed unit was appropriate, with Member Umscheid dissenting. The Court of Appeals reversed, holding that the Board majority's determination that the proposed unit had a sufficiently distinct community of interest to constitute an appropriate unit was not supported by substantial evidence.

- 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.

All of the Employment Relations Board decisions issued since approximately 2004 are available on its website and Lexis. The Board does not issue unpublished opinions.

- 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.

During my tenure on the Employment Relations Board, the Board has not issued a significant opinion on federal constitutional issues. The Board has issued one opinion involving a state constitutional issue, *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-003-16, 2018 OR PER LEXIS 19 (2018).

- 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.

I have not sat by designation on a federal court of appeals.

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:
- 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.

The Oregon Employment Relations Board does not have an automatic recusal system. When I first joined the Board, I conferred with the other Board members regarding the standard for recusal in cases involving former clients or firms, and applying that standard, I have not found cause to recuse myself *sua sponte* in any case. To date, there has been no case in which a litigant or party requested that I recuse myself due to an asserted conflict of interest.

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

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

I have not held public office other than my position on the Oregon Employment Relations Board. I have not had unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

responsibilities.

I have not held any memberships or offices in any political party or election committee. In 2000, I was a volunteer ballot count observer for the Democratic Party. I have not held a position or played a role in a political campaign.

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

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

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

From 2004 to 2005, I clerked for the Honorable Betty Binns Fletcher of the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced alone.

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

2005 – 2007

The Brennan Center for Justice at New York University School of Law
120 Broadway, Suite 1750
New York, New York 10271
Skadden Fellow, Counsel

2007 – 2013

Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Associate

2013 – 2017

McKanna Bishop Joffe, LLP
1635 Northwest Johnson Street
Portland, Oregon 97209
Associate (2013 – 2015)
Partner (2016)
Of Counsel (2017)

2017 – present

Oregon Employment Relations Board
528 Cottage Street, Northeast, Suite 400
Salem, Oregon 97301
Board Member

- 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.

Generally, my law practice has involved civil litigation in federal and state courts, before administrative agencies, and in arbitrations.

In 2005, after completing my federal court of appeals clerkship, I completed a two-year Skadden fellowship and served as counsel in the Economic Justice Project of the Brennan Center for Justice at NYU School of Law. I provided legal and policy analyses of local and state laws aimed at raising wage standards, increasing access to healthcare, and improving working conditions for low-wage workers. I represented the petitioners of a local living wage initiative in state court litigation, and I drafted amicus briefs in cases involving issues affecting low-wage workers.

In 2007, I joined Altshuler Berzon LLP as a litigation associate. I engaged in complex civil litigation in state and federal court, including contractual disputes and class action employment cases. I represented litigants or amicus parties in several cases regarding the constitutionality of local, state, and federal laws. I also litigated numerous labor arbitrations and contested cases before various state and federal agencies, including the National Labor Relations Board. At times, I advised or represented organizational clients in internal governance and employment matters. At the district or trial court level, I briefed and argued various motions, including a motion for a preliminary injunction in a First Amendment case. As appointed pro bono counsel, I briefed and argued one appeal in the United States Court of Appeals for the Ninth Circuit.

In 2013, I joined McKanna Bishop Joffe, LLP, where my practice continued to primarily involve litigation in courts, administrative agencies, and arbitrations. Through a legal services program administered by the Oregon Education Association, I also represented numerous teachers and

other education professionals in a variety of employment and licensure matters.

Since 2017, I have served as a member of the Oregon Employment Relations Board, which is primarily responsible for adjudicating contested cases.

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

During my Skadden Fellowship at the Brennan Center for Justice, I generally did not represent clients, except as amici curiae. My project primarily involved drafting model bills and preparing legal and policy analyses, which we typically shared with community organizations involving or advocating for low-wage workers.

As a litigator in private practice, I primarily represented labor organizations and workers, including health care workers, teachers, skilled tradespeople, and grocery workers. In class actions, my clients included factory workers, construction workers, warehouse workers, bank tellers, and fast-food restaurant servers, cooks, and delivery drivers.

I do not have any clients in my role as a member of the Employment Relations Board.

- 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.

From 2005 to 2016 (before I was appointed to the Employment Relations Board), approximately 80% of my practice was in litigation, and approximately 20% involved advice, policy, and other non-litigation work. During that period, I estimate that I appeared in federal or state court seven times. When calculating the percentages listed below, I considered only my litigation practice in the listed forums; I did not include arbitrations.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 33%
 - 2. state courts of record: 33%
 - 3. other courts: 0%
 - 4. administrative agencies: 34%
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 100%
 - 2. criminal proceedings: 0%

- 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.

The cases I litigated in federal and state courts were decided without a trial (resolved after issuance of injunctive relief, or on motions for dismissal or summary judgment), or settled before final judgment.

I obtained a final decision from an administrative agency in approximately 10 contested cases that involved an evidentiary hearing before an administrative law judge. To the best of my recollection, I was associate counsel in two of those hearings, and the sole counsel in eight of those hearings.

I also obtained a final decision from an arbitrator in approximately 13 cases that involved an evidentiary hearing, and I acted as sole counsel in approximately seven of those cases.

- i. What percentage of these trials were:

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

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

I have not argued before the Supreme Court of the United States. I co-authored an amicus brief filed in litigation regarding the constitutionality of the Affordable Care Act, *Department of Health and Human Services v. Florida*, No. 11-398, which was decided with Nos. 11-393 and 11-400. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566 (2012) (amicus brief of Service Employees International Union and Change to Win, supporting petitioners, 2012 WL 242898).

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:

- the date of representation;
- 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. *UFCW Local 555/Fred Meyer, Inc.* (Grievance brought on behalf of employee, T.J.) (Award issued March 16, 2017; Arbitrator Kathryn T. Whalen)

From 2016 to 2017, I represented the union in this arbitration of a grievance that challenged the termination of a courtesy clerk who had worked for the company for approximately 20 years, with reasonable accommodations for his intellectual disability. The clerk had received numerous certificates for excellent service and appreciation for his devoted service. The company terminated him based solely on a vague statement he made to a coworker, claiming that it violated the company's workplace violence policy. The company misconstrued the statement as threatening, even though it contained no threat, because the clerk, due to his disability, had difficulty explaining his intent. The arbitrator concluded that the termination lacked just cause because the employer failed to conduct a fair and adequate investigation, and failed to prove that the clerk's statement violated the employer's policy. The remedy included reinstatement, backpay, and sensitivity training for managers and others working with the clerk.

Opposing counsel

Kathryn Walter (formerly with Allied Employers, Inc.)
Current contact information unknown

2. *Oregon Federation of Nurses and Health Professionals, Local 5017/Kaiser Foundation Health Plan of the Northwest* (Regular Days Off Grievance) (Award issued September 8, 2015; Arbitrator Janet L. Gaunt)

From 2014 to 2015, I represented the union in this arbitration of a grievance brought on behalf of registered nurses working in the employer's outpatient clinics. The arbitrator concluded that the employer violated the parties' contract by unilaterally scheduling nurses to work on their regular days off, without making any effort to meet staffing needs by other means. The remedy included an order requiring the employer to avoid scheduling nurses to work on their regular days off, unless the timing of an absence made it impossible to first seek an alternative means of addressing the staffing need.

Opposing counsel

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3. *Portland State University Chapter, American Association of University Professors v. Portland State University*, Case No. UP-013-14, 2015 OR PER LEXIS 90 (2015) (Chair Logan, Members Weyand and Rhynard)

From 2014 to 2015, I represented the association in this unfair labor practice case before the Oregon Employment Relations Board. The Board concluded that the university unlawfully interfered with faculty members in the exercise of protected rights, including the right to authorize a strike, when the University announced, two days before a strike vote, that it would disable striking faculty members' access to their university-provided email and other electronic accounts.

Opposing counsel

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4. *United Food & Commercial Workers Local 99 v. Bennett*, 817 F. Supp. 2d 1118 (D. Ariz. 2011); 934 F. Supp. 2d 1167 (D. Ariz. 2013) (Snow, J.)

From 2011 to 2013, I was on a litigation team that represented plaintiff-intervenor SEIU Arizona in an action that challenged the constitutionality of two state statutes, referred to as SB 1363 and SB 1365. SB 1363 regulated a wide variety of speech and expressive conduct, including picketing, assembly, and boycotting. SB 1365 restricted unions' ability to use for political purposes funds collected through voluntary paycheck deductions. I co-authored the plaintiff-intervenors' motion for a preliminary injunction against SB 1365, their motions for summary judgment regarding SB 1365 and SB 1363, and their responses to the defendants' motion to dismiss and discovery requests. I also represented SEIU Arizona at the hearing on the plaintiffs' and plaintiff-intervenors' respective motions for a preliminary injunction. The court granted the plaintiff-intervenors' motion for preliminary injunction after concluding that they were likely to succeed in demonstrating that SB 1365 violated the First Amendment. The court subsequently granted the plaintiffs' and plaintiff-intervenors' motions for summary judgment regarding SB 1365 and issued a permanent injunction. The court granted in part and denied in part the motion for summary judgment regarding SB 1363. The court held some sections of SB 1363 were not facially unconstitutional, but several other sections were facially unconstitutional because they were preempted by federal labor law or violated the First Amendment. The court issued a permanent injunction as to the unconstitutional and preempted portions of SB 1363.

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Opposing counsel (County defendants)

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5. *Gale v. First Franklin Loan Servs.*, 701 F.3d 1240 (2012) (9th Cir. 2012) (Thomas, McKeown, Fletcher, JJ.)

In 2012, Michael Rubin and I were appointed by the Ninth Circuit to represent Mr. Gale on appeal from the dismissal of his federal and state law claims. Representing himself, Mr. Gale had filed a complaint and amended complaint alleging violations of the Truth in Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”). Mr. Gale also alleged breach of contract, wrongful foreclosure, and other state law violations. I was the primary author of the appellate briefs and presented oral argument. Mr. Gale claimed that defendant First Franklin violated a provision of TILA, 15 USC § 1641(f)(2), by failing to respond to his written request for information regarding the owner of his promissory note. The court concluded that the duty to provide notice under § 1641(f)(2) applies only to a servicer-assignee, not a servicer who is the original creditor, such as First Franklin in this case. The court declined to consider the RESPA claim because it was pled against a different defendant. Regarding Mr. Gale’s state law claims, the court

noted that those claims were refined on appeal with the benefit of appointed counsel, vacated their dismissal, and directed the district court to consider Mr. Gale's argument in the first instance, or exercise its discretion to remand the claims to state court.

Co-counsel

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Opposing counsel

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6. *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040 (C.D. Cal. 2011) (Snyder, J.)

From 2011 to 2013, I was on a litigation team that represented the plaintiff warehouse workers in this class action brought against multiple defendants, including WalMart, its warehouse operator, and their labor services contractors. The plaintiffs sought injunctive relief, damages, and civil penalties for alleged state and federal wage-and-hour violations, including an unlawful group piece rate scheme, falsified records of hours worked and wages owed, and wrongful mass retaliatory termination. I played a significant role in investigating claims, conducting legal research, drafting the pleadings, and conducting discovery. I also researched, gathered supporting evidence for, or drafted sections of several motions, including an application for a temporary restraining order requiring the employers to come into compliance with federal and state recordkeeping and disclosure requirements, a motion for a preliminary injunction to stop the mass firing of warehouse workers shortly after the class action was filed, and a motion for class certification. After I moved to Oregon and withdrew from the case, the parties agreed to an approximately \$22.7 million class settlement.

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7. *Behaein v. Pizza Hut, Inc.*, No. BC384563 (Sup. Ct. of L.A. Cnty.) (Mohr, J.)

From 2009 to 2013, I was on a litigation team representing the plaintiff delivery drivers and restaurant workers in this class action, which alleged that the defendant failed to provide restaurant workers with legally compliant meal and rest breaks and failed to sufficiently reimburse drivers for their work-related business expenses. I played a significant role in conducting the factual investigation and discovery, and I co-authored the motion for class certification. After I moved to Oregon and withdrew from the case, the parties agreed to an approximately \$6 million class settlement.

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8. *Acevedo v. Building Materials Holding Corp.*, No. CV 08-06227 (C.D. Cal.) (Otero, J.)

In 2009, I was on a litigation team that represented the plaintiff construction workers from California, Arizona, and Nevada, who alleged that the defendants violated state and federal wage-and-hour laws, including by failing to compensate them for all hours worked, failing to pay required overtime premiums, and failing to provide required breaks. I co-authored the motion for class certification and played a significant role in factual investigation and discovery, including by representing the named plaintiffs in depositions. Although the employer filed for bankruptcy before the class was certified, the action resulted in a settlement that included approximately \$250,000 for the named plaintiffs, plus attorneys' fees.

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9. *SEIU UHW West United Healthcare Workers Union v. Fresno County IHSS Public Authority*, No. 09-CECG-02506 (Sup. Ct. of Fresno Cnty.) (Franson, J.)

In 2009, I was on a litigation team representing the plaintiff union, which sought immediate injunctive relief to prevent the county from implementing significant cuts to the wages and benefits of in-home supportive services workers. IHSS workers provide needed assistance to low-income individuals who are aged, blind, or disabled. The union

contended that implementation of the cuts would thwart the parties' collectively bargained arbitration process and cause substantial and irreparable harm to the workers and their clients, and that the county should be required to maintain the status quo pending expedited arbitration of the union's grievance challenging the compensation cuts. I played a significant role in researching and drafting the pleadings and gathering evidence. The court granted the union's application for an order to show cause and temporary restraining order, and the parties subsequently resolved the matter.

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10. *Martin v. New United Motor Mfg., Inc.*, No. 3:07-cv-3887 (N.D. Cal.) (Hamilton, J.)

From 2007 to 2009, I was on a litigation team that represented automobile manufacturing plant workers who alleged that the employer failed to compensate them for time spent donning and doffing protective gear. I played a significant role in the litigation, including by researching claims, gathering evidence, conducting discovery, drafting pleadings and briefs, and participating in mediation. We obtained a class settlement of approximately \$4.65 million.

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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 is my service as a member of the Oregon Employment Relations Board from 2017 to the present. As a Board member, I adjudicate contested cases, issue rulings in response to petitions for declaratory rulings, issue orders on representation petitions, decide motions, and engage in rulemaking. My Board colleagues and I also regularly present at continuing legal education seminars for lawyers, and conduct information sessions for human resource and labor relations professionals, managers, union representatives, and public employees.

When I was a practicing litigator, many of my cases were resolved through motion practice or settlement. I frequently negotiated settlement agreements, and I occasionally participated in mediations. I also co-authored several amicus briefs filed in federal and state appellate courts, addressing the constitutionality of local, state, or federal laws. I have also filed amicus briefs regarding labor law standards with the National Labor Relations Board and the Oregon Employment Relations Board.

When in private practice, my non-litigation legal activities primarily involved advising organizational clients regarding various matters, such as collective bargaining, internal governance procedures, and compliance with labor, employment, and other laws. I occasionally provided organizational clients with legal analysis of potential or proposed legislation, or helped them submit public comments on proposed rulemaking or environmental impact statements. I also represented numerous teachers in professional licensing and other employment-related matters.

As a Skadden Fellow and counsel at the Brennan Center for Justice, I also engaged in a variety of policy-related legal work, such as model bill and initiative drafting, legal and policy analysis, and testimony before legislative bodies. To the extent that such activities

constituted lobbying, I engaged in them as an attorney associated with the Brennan Center, not on behalf of a particular client.

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

I have not taught any courses.

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.

None.

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.

None.

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.

No family members or other persons, parties, categories of litigation or financial arrangements are likely to present potential conflicts of interest for me.

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

I do not anticipate any conflicts of interest. I would evaluate and resolve any potential conflicts of interest by applying the rules and standards set forth in 28 U.S.C. § 455 and the Code of Conduct for United States Judges. I would also consult relevant judicial decisions and opinions by the Judicial Conference of the United States.

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.

When I worked for the Brennan Center, the focus of my work was advocating for policies to improve low-wage workers' wages and access to healthcare and, as such, my practice primarily served the disadvantaged. Additionally, throughout my time in private practice, a substantial portion of my cases were brought on behalf of low-wage workers. Through the Ninth Circuit pro bono program, I represented a pro se litigant on appeal, in a case involving a Truth in Lending Act claim. I also occasionally volunteered at San Francisco's Legal Aid at Work clinic. As a member of the Oregon State Bar's Labor and Employment Section Executive Committee, I have been active in the section's programs to support under-resourced law students through scholarship and stipend programs.

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 5, 2021, staff for Senator Ron Wyden contacted me regarding the vacancy on the United States Court of Appeals for the Ninth Circuit. I submitted written materials, and on March 9, 2021, I was interviewed by a panel jointly convened by Senators Wyden and Merkley. On April 27, 2021, I was interviewed by attorneys from the White House Counsel's Office. Since April 28, 2021, I have

been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 30, 2021, 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.