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# PENDING NOMINATIONS

# HEARING

BEFORE THE

## COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

NOMINATIONS OF HON. PATRICK PIZZELLA, NOMINEE TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY, JULIE H. BECKER, NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, STEVEN N. BERK, NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, AND ELIZABETH WINGO, NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

MARCH 2, 2016

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# NOMINATIONS HEARING

**WEDNESDAY, MARCH 2, 2016**

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. James Lankford, presiding.

Present: Senators Lankford, Ayotte, Ernst, Carper, Heitkamp, and Peters.

## OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Good morning. Today we will consider the nominations of Ms. Julie Becker, Mr. Steven Berk, and Ms. Elizabeth Wingo for the position of Associate Judge on the Superior Court of the District of Columbia, as well as the nomination of Mr. Patrick Pizzella to be a member of the Federal Labor Relations Authority (FLRA). The Committee takes these nominations extremely seriously, so we are pleased to have strong nominees before us today.

The Superior Court for the District of Columbia is a busy place, with more than 100,000 cases heard each year. I am proud to say that these three superior court nominees will mark the 5th, 6th, and 7th that the Committee has considered in just the past year. This is more than triple the number of nominees who received hearings during the entire 113th Congress.

Julie Becker is a native of Detroit, Michigan. She received her Bachelor of Arts degree from the University of Michigan and her law degree from Yale Law School. After graduation, Ms. Becker clerked for then-Judge Sonia Sotomayor on the Second Circuit Court of Appeals. Currently, Ms. Becker is a supervising attorney at Legal Aid where she has spent the past 14 years.

Steven Berk is originally from Chicago, Illinois. He received his undergraduate degree from Washington University in St. Louis. He has a Master's degree from the London School of Economics and a law degree from Boston College Law School. Mr. Berk has worked at the Securities and Exchange Commission (SEC), as an Assistant U.S. Attorney for the District of Columbia, and practiced at several prestigious law firms.

Elizabeth Wingo is a native of Washington, D.C. She received her Bachelor of Arts from Dartmouth College and her law degree from Yale Law School. Following law school, she clerked for Judge T.S. Ellis in the Eastern District of Virginia. Ms. Wingo worked as a prosecutor at the U.S. Attorney's Office in the District of Columbia

and for the District of Columbia's Attorney General's (AG) office before being appointed as a magistrate for the superior court in 2006.

In addition to these impressive resumes, Ms. Becker, Mr. Berk, and Ms. Wingo possess the necessary legal skills and judgment to serve the District of Columbia.

Mr. Pizzella is a native of Rochelle, New York. Rochelle?

Mr. PIZZELLA. Rochelle.

Senator LANKFORD. Rochelle. Thank you. Sorry, an Oklahoman trying to pronounce a New York name. I will just take it under advisement.

He received his Bachelor of Arts degree from the University of South Carolina. After graduation, he served in a variety of government entities, including the General Services Administration (GSA), the Small Business Administration (SBA), the Department of Education, and the Department of Labor (DOL). In 2013, he was appointed to the Federal Labor Relations Authority.

Committee staff has reached out to a variety of these nominees' colleagues and affiliates, who all spoke highly of them. You would be very impressed at the kind of things many people that were interviewed said about each of you.

Committee staff has also had the opportunity to be able to interview Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella on an array of issues, ranging from notable cases to community service and pro bono work. They have thoughtfully and competently answered each of the questions to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated to, and I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

With that, I would recognize the Ranking Member of the Committee, Senator Carper, for any opening statement he would like to make.

## OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Senator Lankford. I want to thank you and I want to thank your staff for moving these nominations forward. We are, I think, fortunate—the people of the District of Columbia are fortunate to have men and women with the kind of credentials as the three of you bring, and they would probably be pleased about the other credentials for the fourth person, too.

So thank you for moving these along. I like to say justice delayed is justice denied, and I am happy to see us moving these forward. I want to welcome not only the nominees but certainly members of their families that are here, including some very young ones. And we are happy that you have joined us, and we appreciate the parents who have raised at least one of these young people, and the children and the spouses that are willing to share your loved ones with the folks of this town.

I want to start by welcome Patrick—is it Pizzella?

Mr. PIZZELLA. Correct, sir.

Senator CARPER. Pizzella, OK. Who has been renominated to be a member, as we heard, of the Federal Labor Relations Authority. That is an Authority that plays an important role, as we know, in

promoting constructive relationships between management and unions and, in turn, helps improve the effectiveness and the efficiency of the Federal Government.

Mr. Pizzella has had a long career in public service, including the past few years serving in the position to which he has been now renominated, and we are grateful for his service and his willingness to continue to serve in this very important role.

I am also pleased today that we are considering three nominees for the Superior Court of the District of Columbia. Julie Becker, Steven Berk, and Elizabeth Wingo all have very impressive backgrounds and legal careers that I believe make them extremely well qualified to serve as judges on the Superior Court. And we thank you all for joining us and for your willingness to serve.

Before I close so we can hear from our nominees, I just want to note again how pleased I am that, in the last months of last year, the Senate finally moved to confirm nominees to fill four other vacancies on the D.C. Superior Court.

That said, I thought it was shameful that it took us 2 years to get two of those judges confirmed. But I am delighted that we have started to move nominees more quickly now, and I hope we can continue that momentum with these three nominees and others to the Superior Court as we go forward.

Most Americans probably do not know that local judges in the District of Columbia must be confirmed by the U.S. Senate. I will have to admit I did not know that a number of years ago. But while these judgeships are comparable to the State courts that each of us is familiar with in our respective States, the D.C. Superior Court and Court of Appeals are operated by the Federal Government, not by the local government here. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a nonpartisan nomination commission. They must then be confirmed by the Senate in order to serve 15-year terms.

But these courts do not handle Federal matters. They are the local courts for the District of Columbia and hear cases related to local crimes and domestic and civil disputes between the people who live here in the District.

I know of no other jurisdiction in our country that must have its local judges approved by the Congress. And no other State or locality is denied the representation here in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I continue to believe that we ought to seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges, as we have for some other positions that also have required Senate confirmation in the past but do not anymore.

In the meantime, I hope that the Senate will move forward quickly on the nominees we are considering today. I believe that the people of the District of Columbia are fortunate that men and women as impressive as you are willing to go through a protracted nominating process, a great deal of scrutiny, and a full measure of uncertainty—which can stretch out in some cases for years—all for the possibility that they may one day serve on the bench in the

District of Columbia. In this case, it has not taken that long. Mr. Chairman, to you and your staff and others who worked hard, and my staff, we thank you all.

Senator LANKFORD. Thank you.

It is the custom of this Committee to swear in all witnesses that appear before us, so if you do not mind, if you would please stand, raise your right hand. Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PIZZELLA. I do.

Ms. BECKER. I do.

Mr. BERK. I do.

Ms. WINGO. I do.

Senator LANKFORD. Thank you. You may be seated, and let the record reflect all the witnesses answered in the affirmative.

We will all do opening statements on this. I would ask you a favor, that when you do your oral opening statements you all introduce your family. I have had the opportunity to be able to meet your family, but many people in this room have not. So if you could, when you make your opening statements, also introduce your family, that would be a great honor for everyone here in the room as well.

Mr. Pizzella, since you are the experienced one on this, if you want to be able to make any opening statement—you have been through this rigor before—we would receive your oral testimony if you have any at this point.

**TESTIMONY OF THE HONORABLE PATRICK PIZZELLA,[1] NOMINEE TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. PIZZELLA. Thank you. Unfortunately, I am unable to introduce my family because my wife is taking care of a family matter—but thank you, Mr. Chairman and Chairman Lankford and Senator Carper and Members of the Committee. I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing. Given the seriousness of the issues that presently confront you, I am especially appreciative of the time you have taken to ensure that the Federal Labor Relations Authority operates at full strength.

This is the fourth time I have had the privilege of being nominated by a President for a position of public trust. I am honored that the President nominated me once again to be a member of the Federal Labor Relations Authority, and, if confirmed, I will continue to dedicate myself to discharging the responsibilities of the FLRA in accordance with laws, rules, and regulations.

I began my tenure in Federal service in the early 1980s, and I believe my 23 years of experience in the Executive Branch will continue to be an asset to the FLRA.

I enjoyed the past 2 years as a member of the FLRA and with your support hope to continue in that role.

I am looking forward to answering any questions you may have. Thank you.

[1] The prepared statement of Hon. Pizzella appears in the Appendix on page 33.

Senator LANKFORD. Thank you. Ms. Becker.

**TESTIMONY OF JULIE H. BECKER,[1] NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. BECKER. Thank you. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today as a nominee to be an Associate Judge of the District of Columbia Superior Court. It is a great honor to be nominated and considered for this position. I would like to thank the Judicial Nomination Commission and its Chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I thank the President for nominating me.

I am here today with my parents, sitting behind me, Allan and Patricia Becker, and my husband, Alan Silverleib. I am immeasurably grateful for their love and support and for the joy I receive every day from my 3-year-old daughters, Anna and Rebecca, who are at school today. I am also fortunate to be joined by a number of friends, mentors, and colleagues who have encouraged me not only during this process, but throughout my career as an attorney. I would not be here today without them.

I have spent the past 15 years at the Legal Aid Society of the District of Columbia. I have been privileged to work with hundreds of individuals and families to secure and maintain decent, safe, and affordable housing. I have represented clients in every ward of the city, and I have dedicated my career to the goal of ensuring that all members of our community have meaningful access to the legal system.

The vast majority of my work as an attorney has taken place in D.C. Superior Court. I have tried cases in its courtrooms, spent time in the clerks' offices, and negotiated settlements in the hallways. I have served on two of the court's Rules Committees, helping to write and revise rules of procedure for the Landlord and Tenant Branch and the Housing Conditions Calendar. These experiences have given me the opportunity to think critically about every aspect of court proceedings and to help create a better, more efficient process for all parties.

Over the years, I have learned a great deal from judges on the Superior Court bench about the skill, patience, and dedication that the job requires. I look forward to the challenge of living up to their example. If I am confirmed, I will work every day to ensure that the law is applied fairly in every case, and that all parties appearing in court are treated with the dignity and respect they deserve.

Thank you again for the honor of considering my nomination. I look forward to answering any questions you may have.

Senator LANKFORD. Thank you. Mr. Berk.

[1] The prepared statement of Ms. Becker appears in the Appendix on page 73.

**TESTIMONY OF STEVEN N. BERK,[1] NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. BERK. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, I am honored and truly humbled to appear before you today as a nominee for the position of Associate Judge of the Superior Court for the District of Columbia. I would like to thank the D.C. Judicial Nomination Commission, and in particular its Chairman, Federal District Court Judge Emmet Sullivan, who was nice enough to come here today.

Senator CARPER. Would you raise your hand, please? Higher? Welcome. Good to see you.

Judge SULLIVAN. Thank you.

Mr. BERK. I would like to thank the White House and I would like to thank the President for nominating me. And I would like to acknowledge my colleagues, friends, and family who are here today and have been with me throughout this journey.

I would like to recognize first my two sons, Corey and Jacob, who are actually twins—it may not seem like that, but you can try to guess who is older. And I would like to recognize my mother, who is here from Chicago, sitting right behind me. She raised me to always strive for excellence in whatever I did and whatever I chose to pursue.

And, finally, to my wife, Jenny, who is also behind me, who has never wavered in her support of me, picking me up when my spirits lagged, and believing in me sometimes more than I believed in myself.

Someone who I wish were here today is my father, who died last year after a long and valiant battle with cancer. At the close of World War II, American soldiers liberated my dad from the Dachau concentration camp in Germany. He was days from death, suffering from profound malnutrition and typhus. He eventually regained his health and came to the United States as an orphan in 1948. Two years later, he was a member of the United States Army serving two tours of duty on the front lines in Korea before returning to Chicago, marrying my mom, and eventually becoming a successful entrepreneur. He loved this country, and I miss him very much today.

I attended law school because I was interested in public service. That interest brought me to Washington in 1989 where I worked as a prosecutor at the Securities and Exchange Commission and the United States Attorney's Office for the District of Columbia. After leaving the U.S. Attorney's Office, I went on to become a partner at the law firm of Jenner & Block. In more recent days, I have been representing individuals such as defrauded investors, consumers, small business owners, and whistleblowers. I have had a 30-year career in the law, and in those 30 years, I have appeared in courtrooms throughout the country in administrative proceedings, Federal court, State courts, and legislative bodies.

Over the past 5 years, I have continued to demonstrate a commitment to public service by volunteering for and being elected to leadership positions at the D.C. Bar. I served as a member of and

[1] The prepared statement of Mr. Berk appears in the Appendix on page 111.

later chair of the Judicial Evaluations Committee. I have also been elected treasurer and currently sit as a member of the Board of Governors.

If I am fortunate enough to be confirmed, I will commit to having everyone in my courtroom treated with dignity and respect. I will be decisive and make timely and thoughtful decisions. And I will be prepared each day to dispense with justice.

Thank you for your consideration of my nomination, and I will be pleased to answer any of your questions.

Senator LANKFORD. Thank you. Ms. Wingo.

**TESTIMONY OF ELIZABETH C. WINGO,[1] NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. WINGO. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I would like to thank President Obama for nominating me. In addition, I would like to express my thanks and appreciation to the Committee Members and the Committee staff for their hard work and for considering my nomination so expeditiously.

I would also like to acknowledge and thank Chief Judge Lee Satterfield for his leadership, his support, and his presence here today.

Senator CARPER. Would he raise his hand—Lee Satterfield? Thank you, sir. Welcome.

Judge SATTERFIELD. Thank you.

Ms. WINGO. I am also very fortunate to have a number of members of my family, who have been very supportive, here with me to today, and I would like to introduce and thank them: my husband, Harry Wingo; my children, Alexandra and Natalie Wingo——

Senator LANKFORD. Which, by the way, I discussed with them possibly them doing testimony later as well. [Laughter.]

And they declined that.

Ms. WINGO. I also have here my parents, Tony and Judy Carroll; my brother and sister-in-law, Tom and Katherine Carroll; my sister and brother-in-law, Michaela and Ted Lizas, and their children, my nieces Amy and CC Lizas.

Senator CARPER. Is that all? [Laughter.]

Ms. WINGO. I would also like to acknowledge and thank my stepdaughter, Hailey, who is a junior in high school and was unable to be here today.

Finally, I would also like to thank the many friends and current and former colleagues who have supported me over the years, some of whom are also present here today.

I was born and raised in the District of Columbia and have spent most of my legal career serving the citizens of the District. After clerking for the Honorable T.S. Ellis in the Eastern District of Virginia, I spent 4 years at the U.S. Attorney's Office for the District

[1] The prepared statement of Ms. Wingo appears in the Appendix on page 132.

of Columbia, prosecuting a wide variety of crimes, from misdemeanor simple assaults to homicides. Following my time at the U.S. Attorney's Office, I continued to work on behalf of the people of the District at the Office of the Attorney General for the District of Columbia, where I served as the Chief of the Criminal Section and then as the Assistant Deputy Attorney General for Public Safety.

Since 2006, I have had the honor of serving as a magistrate judge in the Superior Court, where I have had the opportunity to preside over calendars in the Criminal and Civil Divisions, as well as in the Family Court and Domestic Violence Unit. It would be a privilege and an honor for me to continue my public service as an associate judge in the Superior Court.

Thank you for your consideration, and I look forward to answering your questions.

Senator LANKFORD. I thank all of you.

There are three questions that I am going to ask for this entire group, and I am going to need an oral yes or no on this. What I will do is I will ask the question and then we will just go down the row. It will be very informal. Sorry about that. These are questions that we find extremely important to be able to ask every candidate as they come through.

First—and I will ask all four of you to answer this question yes or no—is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Pizzella.

Mr. PIZZELLA. No, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. No.

Senator LANKFORD. Mr. Berk.

Mr. BERK. No.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. No.

Senator LANKFORD. Second question: Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Pizzella

Mr. PIZZELLA. No, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. No, sir.

Senator LANKFORD. Mr. Berk.

Mr. BERK. No, sir.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. No, sir.

Senator LANKFORD. Thank you.

Third, do you agree without reservation to comply with any request or summons to appear and to testify before any duly constituted committee of Congress if you are confirmed? Mr. Pizzella.

Mr. PIZZELLA. Yes, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. I do.

Senator LANKFORD. Mr. Berk.

Mr. BERK. Yes, sir.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. Yes.

Senator LANKFORD. Thank you. I recognize Ranking Member Carper for any questions.

Senator CARPER. Mr. Chairman, thank you. Thank you so much.

Those were wonderful testimonies. I was especially touched, Mr. Berk, by the story you told us about your dad and shared that with us. What a guy. What a life he lived. And I appreciated the lovely comments that you have made about your mom and about your wife. Those are lovely—and all of you for introducing your family and friends. It is one of my very favorite parts of these hearings, so we are glad that you are all here.

I just want to start with a quick question, if I can, for you, Ms. Wingo. The role of a magistrate judge is a bit different, as you know better than anybody else, the role of an associate judge. Just take 30 seconds and describe some of the differences.

Ms. WINGO. One of the primary differences is that an associate judge has a broader range of responsibilities. There are calendars that associate judges are assigned to that magistrate judges do not handle. There is also a broader range of types of things that an associate judge can do, the biggest one being jury trials. A magistrate judge does not handle jury trials, so we, generally speaking are limited to misdemeanors; whereas, an associate judge can handle the jury trials and, therefore, can handle anything in the court.

Senator CARPER. Take another 30 seconds and just give these two people closest to you, Mr. Berk and Ms. Becker, just give them some friendly advice. [Laughter.]

Ms. WINGO. Well——

Senator CARPER. Unfriendly advice. [Laughter.]

Ms. WINGO. Truly, the friendly advice that I would give is to rely on your colleagues, because I have found at the court that there is no greater resource and that there is no greater willingness anywhere in any employment for your colleagues to help you out. The other judges, the staff, the clerks—everyone is very supportive of each other, and everybody is working toward the same goal, which is to ensure that there is equal justice for all. And so you should feel free to rely on those folks if you need them.

Senator CARPER. All right. Thanks. Thanks for that advice.

I would note that our judicial nominees come from very different legal backgrounds and have focused on certain areas of the law throughout your career. That is not uncommon. However, if confirmed, I understand that you will preside over time over cases arising under many different areas of the law. And we have a similar situation with the Federal district court judges in Delaware. But how has your career prepared each of you to handle the wide range of legal issues that you will confront as an associate judge? And how will you ensure that you are prepared to preside over cases in areas of law which you may be not as familiar with? Ms. Becker, do you want to lead off on that one? Then Mr. Berk.

Ms. BECKER. Thank you, Senator. I certainly would have a lot to learn, particularly in divisions in which I have not frequently appeared, and I will say I look forward to the challenge of learning new areas of the law.

I think what I would come in with is that the folks that I have been representing during my career are, by and large, the litigants

who appear in D.C. Superior Court. And I have had quite a lot of experience working with individuals of all education levels and, by and large, people who are not familiar with and not comfortable with the legal system.

And so what I have gained from those experiences is I think primarily communication skills. I can listen to the story that a person tells and be able to extract from that story what are the legally relevant facts for deciding the case. And I have also become good at communicating sometimes complex legal concepts in a way that is accessible to people who are not lawyers.

Senator CARPER. OK, good.

Mr. Berk, same question. How will you ensure that you are prepared to preside over cases in areas that you are not as familiar with?

Mr. BERK. If I may, Senator, let me just say that Ms. Wingo has been terrifically generous with both of us in terms of giving us the insights for today's hearing.

Senator CARPER. No kidding.

Mr. BERK. She has been great.

Senator CARPER. Isn't that against the rules? [Laughter.]

Senator LANKFORD. No. But that does mean the harder questions will gear toward her then the rest of the day.

Senator CARPER. OK. [Laughter.]

Mr. BERK. I am sorry if I got you in trouble.

Senator CARPER. You are OK.

Mr. BERK. I have been practicing law 30 years. It goes quickly. And I have been fortunate, very lucky to be able to practice in jurisdictions all over the country and to do different types of cases. It has been heartening. I will get phone calls from people, and they will say, "Have you done something like this?" And I will be, like, "No, but I am willing to try." And I think on the Superior Court there will be things that I have not seen before, certain areas of the law that I am not as familiar with.

But I am very familiar with getting up to speed quickly on matters, and I am confident that those skills can be used by me if I am lucky enough to be confirmed.

There are areas where there is probate and there is tax and there is property and landlord-tenant. I have not done those areas. But I have applied facts to law, and at the end of the day, that is what lawyers do and judges do, is apply facts to the law and respect the rule of law. And so regardless of the type of case it is, I think those basic sort of tenets are with you, and I am confident I can provide good judging on a wide array of cases.

Senator CARPER. The situation you face as a new associate judge will be not unlike what we face in coming here as a new Senator. We end up with assignments to committees. Some of us come as attorney generals. Some of us come as leaders in our State. Senator Lankford has an incredible background, a military background and other things. But I ended up on this Committee, and I could barely spell "cybersecurity," and I ended up as the Chairman of the Committee a couple of years ago. And there was a profile done of the new Chairman of the Committee, and they noted that I was the Senate expert on cybersecurity at the time. And I showed this to my staff, and I said, "Look at this. Now I am the expert on

cybersecurity." And they said, "In the land of the blind, the one-eyed man is king." [Laughter.]

So do not get too puffed up.

A question for you, Mr. Pizzella.

Mr. PIZZELLA. Yes.

Senator CARPER. Could you just discuss with our colleagues here how you and your fellow members of the FLRA achieved the goal of significantly reducing the backlog—you had a huge backlog, and I think you now have reduced the amount of time that it takes to issue a timely decision. Just briefly, how did you do it? How did you guys do it?

Mr. PIZZELLA. Well, the backlog was acquired because for a period of about a year there was a lack of a quorum. That was primarily what did it. And the Senate, when we had nominations made by the President, moved rather quickly to get a quorum in place. Both my colleagues, each had served as Chairman of the Federal Labor Relations Authority at one time or another before, and so they had much more experience than I did. And it took me a little while to get up to speed, but once we got going, we got going. And in the first year, for instance, 70 percent of the cases that we issued decisions on were unanimous. And that pattern has continued because the law is the law.

So we worked cooperatively and collegially and shared resources when necessary among offices, and we were able to put the backlog behind us.

Senator CARPER. Oh, good. My time has expired. I have to go to another meeting. I will stay here for a while and hear some of the questions, but I have to leave. But I want to thank you again for being here and for all who have joined you. Thank you.

Senator LANKFORD. Senator Ernst.

**OPENING STATEMENT OF SENATOR ERNST**

Senator ERNST. Thank you, Mr. Chairman, and thanks to all of you for your great service. You all have many years of valuable experience that you will take into these positions, so thank you for that. And thanks for the lovely introduction of all of your family and friends. And, Mr. Berk, to you, that was a great introduction of your family and many blessings to your family in the absence of your father. He sounds like an extraordinary man, so thank you for that. I appreciate that very much.

To Ms. Wingo, Ms. Becker, and Mr. Berk, a very easy question, actually. Please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence. Ms. Wingo, if we could start with you, please.

Ms. WINGO. Judicial independence means that a judge is able to make decisions based on the evidence in the case before it and the law as applied to that evidence free from outside pressures, free from outside considerations. I think that it is essential to achieving the goal of equal access to justice for all, and that is one of the fundamental goals of the judicial system, and in the Superior Court in particular.

Senator ERNST. Very good. Thank you. Mr. Berk.

Mr. BERK. Yes, I think about the time that I spent being the chair of the Judicial Evaluations Committee here at the D.C. Bar

and looking at what lawyers would say about judges. And, by and large, judges are rated quite highly, but there are some that are not. And it is because of some—not so much a flaw but a perception that they are not being independent, that they are flawed by preconceived ideas or notions or where they came from. And I hope to think that because my perspective is broad, because I have been on all sides of the table—I have been on the government side of the table, the defense side of the table, the plaintiff side of the table—that I can be independent because I understand everyone's perspective.

Senator ERNST. Very good.

Mr. BERK. And I think that will be helpful.

Senator ERNST. Thank you very much. Ms. Becker.

Ms. BECKER. Thank you. I think that independence is really inherent, possibly central to the role of the judge. A judge has to be able to make decisions based on the facts that are presented in that individual case and applying the law that is governing to those facts, free from any outside pressures of any kind. And if a judge cannot do that, then we have a problem.

Senator ERNST. Exactly. Thank you. Very good.

And, Mr. Pizzella, a little tougher one for you. You dissented in a July 2014 opinion regarding a union grievance about U.S. Immigration and Customs Enforcement's (ICE) decision to block access to personal email on government computers without first offering an opportunity for collective bargaining. And to paraphrase your dissent, you suggested that Federal agencies should not be required to bargain with the union before they can act to secure the integrity of the Federal information technology (IT) systems. This became an issue again last year when, following the devastating breach at the Office of Personnel Management (OPM), the agency attempted to block access from government computers to certain websites that they deemed security risks. But the union threatened a lawsuit, and, ironically, then the union also sued OPM for failing to protect Federal Government employees' information. And just a note. My husband and I were also included in those that had information that was leaked.

I have great concerns about how the 2014 FLRA decision could be used to inhibit Federal agencies' efforts to enhance their cyber defenses. As OPM Acting Director Beth Cobert acknowledged during her recent confirmation hearing before this Committee, personal email accounts are the way a lot of threats come in.

So, accordingly, for the Committee's benefit, could you elaborate on your dissent from that 2014 case? And if you can provide us with any update on that situation as well.

Mr. PIZZELLA. Yes, thank you, Senator. I did feel strongly about that at the time. The dissent pre-dated the now well acknowledged security breach at OPM. In my capacity as Assistant Secretary of Labor for almost 8 years, from 2001 to 2009, I also had the role of the Chief Information Officer (CIO), so I had some knowledge—far from an expert, not a technology guru, but I had some knowledge about the sensitivity of protecting data, particularly from outside sources getting in. And I felt that the head of an agency, if determining after consultation with the technology experts at his or her department, felt the need to shut down access to personal

websites and email, then that should be a decision that the head of that agency should be able to make without wasting time on anything, but to get to the core of the matter, which was obviously preventing and protecting us from cybersecurity attacks.

I still believe strongly about that. As a matter of fact—you mentioned the OPM instance—I, too, was notified of my exposure in that.

Senator ERNST. Many of us were.

Mr. PIZZELLA. About a month after the OPM incident, Acting Director Cobert unilaterally shut down access to web email and Gmail without even informing the employees. And I know of no action that the union took in response to that, because I think common sense has caught up with perhaps this deference to needing to consult when there is something that could be called sort of an emergency or sensitive situation.

So I do think it is important for agency heads to have that authority to act quickly and to do so without having to consult with unions or other third parties.

Senator ERNST. Well, thank you. I appreciate that. Whenever there is an active threat out there, I think it is very important that those department heads are able to respond to those threats. But I appreciate it. Thank you all very much for being here today. I truly do appreciate it.

Thank you, Mr. Chairman.

Senator LANKFORD. I recognize Senator Carper.

Senator CARPER. I am not going to ask any more questions. I would like to note—and thanks for giving me this chance—that Congresswoman Norton wanted to be here, expected to be here to introduce you, Ms. Becker, Mr. Berk, and Ms. Wingo. She is in a markup over in the House of Representatives offering an amendment or amendments at the markup, so that is her day job. That is her job. And she wishes she could be here, be in two places at once, but she sends her best.

Senator LANKFORD. Senator Heitkamp.

**OPENING STATEMENT OF SENATOR HEITKAMP**

Senator HEITKAMP. Thank you, Mr. Chairman.

I am always struck by how remarkably well qualified folks are who come in front of us and by the fact that all of you really in the prime of your careers could be making, six, probably seven figures doing something else, and you are willing to step up and serve the public and serve this community, which has unique challenges, being in the District, and use your enormous talents and your remarkable academic credentials for the betterment of the community. And so I think I start out by just saying thank you, thank you, thank you, thank you for everything that you do and for being willing to go through this process, which not a lot of what I would say State courts judges are required to do, but still willing to serve.

And so I do not have a lot of questions, but I was struck, Ms. Becker, by your comments about the skills that you have learned serving the public the way you do right now. I recently had an encounter with somebody who was looking for the court, the D.C. court, and they were mistaken and ended up here looking at the Supreme Court and looking quite confused. I think this man was

probably homeless. He had a roller board with him. And I thought—I did not ask him why—I was trying to help him find the court he was going to, and I did not ask him why he was seeking out the court, but I thought when he left—and I offered to get him a ride on Uber, and he said, no, he would walk, he still had an hour. And I was struck with I hope when he gets there—and I do not care what his crime is—that he is treated with respect and that he is given an opportunity to really understand why he is there, because he seemed quite confused to me.

And I want to really applaud your answer and say how difficult it is. You are not dealing at the Supreme Court level with very sophisticated jurists and lawyers who, are at the peak, the pinnacle. You are dealing with people who are homeless, who may have done something that, as a result of mental illness or extreme poverty, seemed like the only choice at the time.

So I guess when you look at that—and my question is to you, Ms. Wingo. You look at the kind of folks who come into the court—because you have seen them—and you realize that if we are going to have a judicial system, it has to be accessible to people at all levels, as you have said.

So what changes would you make or recommend once you get into this next step on making the court more accessible, making the court function better to better serve all the people of the district? I know there are some real judges out there, so do not worry about them. They will never know what you said. [Laughter.]

Ms. WINGO. Well, I do not know that I can count on that, but I think that I would answer on two levels.

One, I think—and this is not precisely a change, but on an individual level, I think individual judges have an obligation to make sure that they are treating every individual with respect, making sure that they do understand the process, that they are taking the time to explain it, and that they are explaining it in language that anybody can understand.

Senator HEITKAMP. What percentage of people who appear in the court appear pro bono—without counsel?

Ms. WINGO. That depends on what courtroom you are in. So, for example, when I was in a small claims courtroom, it was everybody.

Senator HEITKAMP. Sure.

Ms. WINGO. Pretty much everybody. In the criminal courtrooms, they have a right to counsel, and so the court appoints counsel for almost everybody. In the traffic courtroom, there are some cases that are immediately diverted where they are trying to seek a resolution that is not heading toward trial and conviction but, for example, doing community service and getting your case dismissed. Those folks are not necessarily assigned counsel. There are counsel for the courtroom who can assist everybody in that kind of category. So it really depends on what kind of courtroom you are in, I think, what the percentage would be.

Senator HEITKAMP. So I did not mean to interrupt, but how can we make the court more accessible, more understandable to everybody who comes there, whether you are in small claims or whether you are in, some kind of diversion program?

Ms. WINGO. So for the second part, once you are out of the individual level, when you look at it from an institutional level, this is something that the Superior Court has focused on a lot. And so continuing some of the things that they are already doing and expanding them, for example, we have resource centers or self-help centers in many divisions—the family court self-help center, there is a consumer law resource center, there is a small claims resource center. All of those programs could always be expanded because there is more that you could do for folks. But they are places where people can go when what folks need is more than what a judge can do without stepping outside their role as a neutral arbiter.

Senator HEITKAMP. I think that is an excellent answer, and as we look at criminal justice reform, whether we are able to do it or not, that is going to involves courts at all levels kind of reexamining the kinds of people who are entering the criminal justice system who also—if you ask many people in my State do we do a pretty good job giving people access to the courts on the criminal side, yes, because we have Gideon v. Wainwright. But, if they come in and they have a spouse who is able to afford a lawyer in a family matter, they are really disadvantaged.

And so I am curious about all of your opinions about mediation, whether you think that is a diversion that we should use more, about restitution and other kinds of new judicial tools that could, in fact, make the court more accessible, reform the court in ways that it is not, a judge sitting on a dais and looking down at the citizens who are seeking justice. Ms. Becker.

Ms. BECKER. I am a supporter of mediation. Over the years that I have been practicing—my area is primarily landlord-tenant law, and the court has shifted to requiring mediation at some point in all landlord-tenant cases. And I have found that to be a very useful process because most cases do settle. Probably most cases should settle. And mediation is a chance for the parties to reach a settlement that is in their own control. That is sort of the mantra of the mediation center, that "The power is in your hands" in a way that it is not if the case goes to trial.

I think that mediation can pose problems if one side is represented and the other is not, because obviously there is an imbalance in information, there is an imbalance in bargaining power. And so I think one of the ways that the court can address that is to make the mediators aware of that and sensitive to it, and also make it easier, as they have done in recent years, for unrepresented individuals going into mediation to connect with counsel on some level to advise them about their rights.

Senator HEITKAMP. Thank you. Mr. Berk.

Mr. BERK. It is a difficult question, because I think that the judge has to be—it is a balancing act, if you will. On the one hand, you do not want the judge being too active in the litigants' dispute. The judge has to be a referee. The judge has to be calling balls and strikes, so to speak.

On the other hand, for efficiency purposes, you cannot give everyone—there is just not enough time in the day nor is there the need for everyone to have a trial. A lot of things can be resolved through people of good faith coming together and realizing what the issues are and making a decision based on that.

So I think in my practice I would say 75 percent of the cases start with mediation, and it is a good vehicle, but it is not a perfect vehicle. I can only tell you that on an individual basis in a courtroom, if I was confirmed, that I would want to set the tone for respect for everybody, not just the litigants but the court clerk and the police officers that come in and every individual so that there is a tone of respect. And I think once people have that, they are more willing to consider options and consider settlements and consider resolutions, whereas if they feel they are in an adversarial proceeding or an adversarial room or an adversarial forum.

I am not yet familiar with the larger policy issues. I have not been in the court to that extent. But I know on an individual issue or in individual cases you can set the tone in your courtroom for a place that is welcoming, if you will, to resolution of cases and not the adversarial system. And what I have seen too much in my career—and I am sorry to go—is, lawyers that get angry at each other and there is a lot of vitriol that does not accomplish anything.

Senator HEITKAMP. My apologies. My time is up, so thank you so much.

Senator LANKFORD. Senator Peters.

**OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman, and thank you to the nominees for your statements and for appearing here today this morning.

I certainly know that your families and friends are all very proud of you, as they should be with your distinguished career and accomplishments. And, Ms. Becker, I am particularly pleased to see you as a native Michigander. I know that you will definitely represent the State of Michigan with great distinction should you be confirmed. You do already, but should you be confirmed, that track record will continue.

There are certainly a number of qualities that I believe and I think most of the folks on this panel believe every judicial nominee should have, and that would include a strong legal background, experience handling a variety of cases, as well as a fair approach to legal issues.

So maybe if I could ask each of the judicial candidates to give me a little sense of what is your view of the appropriate temperament of a judge, what elements of temperament do you believe are essential to fairly considering cases? And take a moment to describe how your experience working with diverse roles has helped you develop what you consider to be this appropriate judicial temperament. We will start down here. Ms. Becker.

Ms. BECKER. Thank you, Senator. I think that in order to be a good judge, a judge has to possess the qualities of patience, of integrity, and a true interest in what I would characterize as the intellectual and human challenges of the law. Sitting as a trial court judge, you really see the gamut of human experience coming in through the courthouse doors every day. And some of the cases present challenging, difficult factual issues. Some of the cases present challenging legal issues. And I think a judge really has to want to delve into those issues and be excited about trying to fig-

ure out what the answers are. And I believe that I would be suited to that role.

Senator PETERS. Mr. Berk.

Mr. BERK. Thank you, Senator. I think the first quality of a good judicial temperament is somebody who listens. And that may seem really basic, but I always will tell folks that you learn more from listening, and so you really need to listen to your witnesses, you need to listen to the litigants. If a defense attorney or an attorney comes in and wants their third extension and comes up with some excuse, you want to listen to that and really determine whether they are telling you the truth or not. So listening is key.

I think that you have to be decisive. The worst thing that can happen to you as a litigant is that the judge does not decide, that you are asked to come back in 6 weeks, 8 weeks, or 9 weeks. You have to have the courage to be decisive, and I think that that is part of the temperament.

And I guess the last one—and I do not mean to sound trite at all, but you need to be fair. And when I talk about fairness, I talk about fairness in a procedural way so that I know when I have argued an appeal or argued a motion or argued something, you want to know why the judge is going to rule against you. "Mr. Berk, you have not made the fourth element," or something to that effect, so that the judge is fair to you and you respect that decision more afterwards because you have gotten that opportunity to know what you were missing.

So it is decisiveness, it is fairness, and it is listening, I think, for me that would be the three.

Senator PETERS. Thank you.

Ms. WINGO. I think that I would echo the comments of Ms. Becker and Mr. Berk to some degree. I definitely agree that fairness is the first and foremost quality, and by that, you have to be calm, you have to be able to treat everyone in front of you with a dignity and respect so that you can hear what they are saying, so that you actually get the information from all sides, so that you can make an appropriate decision.

I think you need to add to that a substantive knowledge of the law that you are deciding and a willingness to do the work to get the answer if you do not already know it.

I think also, as Mr. Berk said, you need to be decisive because as the saying goes, justice delayed in justice denied. And it is not enough to come to the correct decision. You need to do it efficiently so that you can handle the high volume of cases that our court has.

And then, finally, I think you really need to be someone who is articulate in a way that you can talk to everyone who comes before you, whether they have a law school background or no background at all, so that everyone who walks in the door walks out feeling like they have had an opportunity to be heard, they understand what happened, and they know why it happened.

Senator PETERS. Great. Well, thank you.

A followup question to Ms. Becker. First off, I want to say I have had an opportunity to talk with you prior to this hearing, and I appreciated that opportunity. And I am certainly impressed by your background, first and foremost, of course, from the University of Michigan, which is a great educational background, but then going

off to Yale University. You were an individual who was on a fast track that could have gone any way with your legal career but chose to help those who often do not have a voice, which I commend you for your career. And given that, and given your previous work focusing on helping and representing low-income District of Columbia residents at Legal Aid Society, you helped clients challenge the termination of housing subsidies, assisted tenant associations in preserving affordable housing, and a variety of other areas that you worked on.

Could you describe the importance of your work and your experience working with low-income populations and how that makes you particularly well qualified to serve on the D.C. Superior Court?

Ms. BECKER. Thank you, Senator. Let me answer that in two ways.

First, I want to talk a little bit about housing because that has been my primary focus. I think that although I have been focusing on that area, I think the reality is that housing is really critical to every aspect of an individual's life, and particularly a low-income individual's life. Housing is critical to maintaining family stability, which is critical to retaining custody. Housing is critical to allowing children to get a good education. Housing is critical to giving citizens returning from incarceration the stability that they need to avoid recidivism and become productive members of society. And so through my housing work, I have really come to understand all of the other factors that impact the litigants who are appearing in Superior Court.

And then more generally, I think that because I have spent such a long time in Superior Court, because I have appeared in so many of the courtrooms and had a chance to observe so many of the things that happen there, I think that I would be well prepared to join the bench there. I am excited by the prospect of doing that, and I think that my experience has prepared me to communicate with individuals at all levels, with attorneys, with individuals who are not represented by counsel, with individuals who know something about the law and individuals who do not, because I have had practice in doing all of those things throughout my career.

Senator PETERS. All right. Thank you. My time has expired, Mr. Chairman.

Senator LANKFORD. Thank you.

We blocked off about an hour an a half for this, which means the last round of questions I get 35 minutes, and we will go from there. [Laughter.]

I will quick run through a series of questions, but I do have quite a few questions, and we will go through several of these.

Mr. Pizzella, you previously indicated you would bring the taxpayer viewpoint to your responsibility as well. Can you help me understand a little bit about that, what you have done already as you think about the taxpayer in your decisions? How does that affect you? And how do you use that as a filter?

Mr. PIZZELLA. Two items come to mind. One deals with the subject of union official time and the need, at least I believe, to have a lot of transparency in that, current data about its usage, because union official time is paid for by the taxpayer. So I have pointed

that out in a variety of decisions, and I think it will be a recurring issue.

Senator LANKFORD. In your view, how should official time be used in the transparency you describe?

Mr. PIZZELLA. Well, No. 1, I think it should be limited to collective bargaining activities. But, No. 2, I think that there should be timely information provided to Members of Congress and to the public as to how much is being utilized. The most recent information available is from, I believe, fiscal year (FY) 2012, and my recollection as a former Assistant Secretary at the Department of Labor is that we collected information on official time in the payroll system. So it was done every other week. A person who was in official time status, that would be recognized in the payroll system. So I do not think it is a rather cumbersome thing to accumulate. But since there is no requirement on OPM or any other agency to provide that information to Members of Congress or the public in general, it is only obtained through a persistent Member of Congress or a congressional hearing sometimes. So I think that would be much more helpful in the area of transparency so we really know what is being spent. The last time they released information on this, I think it was $159 million, but that is now at least 3-year-old information.

Senator LANKFORD. OK. So tell me about an example when an agency action or instruction is non-negotiable, so when some agency or some action that they have taken you would say that is non-negotiable, that is going to be outside of the relationship and bargaining.

Mr. PIZZELLA. Well, there are certain things that are statutorily non-negotiable: wages and benefits of Federal employees, any type of agency shop type of recognition. Then there are other things that the collective bargaining agreement itself may not specify as negotiable, which then can be subject to debate between the parties, which often ends up in arbitration and sometimes comes to the FLRA.

Some things could be rather serious; some things could be rather trivial. We have had cases where employees felt aggrieved because the temperature in their worksite was 3 degrees below what the contract required and it did not get fixed until later in the day. But a case like that reached all the way to the Federal Labor Relations Authority. So that is an example, I guess.

Senator LANKFORD. Yes, kind of a tough example on that.

Let me ask a question that is a process question for us. It is very difficult for Members of the Senate or Members of the House to get information from agencies about recommendations for statutory changes that are needed. You and the folks that are around you understand more than anyone else the needed changes in things like the Federal Service Labor-Management Relations Statute. You get it because you experience it and you see the problems.

The problem is you see the problems but are often not permitted to tell us what the problems are. We cannot fix a problem that we cannot see when you are dealing with it day to day. How do we get information and clarity on those issues so we do not have problems persist because we did not know about it and you are not allowed to tell us?

Mr. PIZZELLA. Well, I guess I would use two examples. One would be this very issue that we discussed earlier regarding cybersecurity. Certainly through any dissent or opinion of the Federal Labor Relations Authority, you can glean from that what might be wrong and needs corrective action. And I believe I read just the other day, I think it might have been the House has moved some legislation that deals with this issue of cybersecurity and the responsibility in the head of the agency to make the final decision rather than have it subject to collective bargaining. So that is one.

And the other thing that, again, is recently in the news was on the issue of recording official time, and once again I thought I just read just the other day that your counterparts in the House, at least at the committee level, have adopted a proposal to require more transparency in that.

So I guess the best answer is our decisions speak for themselves.

Senator LANKFORD. OK. That is good to note. There is a lot more mediation that is happening now, which is a good thing. But that also reduces the caseload obviously since you are caught up at that point. There are other entities that also deal with relationship issues. Are there any recommendations or ideas that you would have to be able to combine any functions of what currently happens with any other agency?

Mr. PIZZELLA. Well, I have often commented to my colleagues in jest that, if labor peace breaks out, we are no longer necessary.

Senator LANKFORD. And so Lord come.

Mr. PIZZELLA. Yes. But I do not know if there is anything in particular——

Senator LANKFORD. Not fishing for a particular answer, by the way, so——

Mr. PIZZELLA. Right. I would say from a generic standpoint that the statute that governs the Federal workforce and labor-management disputes and all is about 38 years old now. It has had very little in the way of changes or tweaking in that time period, and like many pieces of legislation that old, it is probably useful for a thorough review. The world has changed. Just in the example of cybersecurity, the legislation was passed before we had cell phones and the Internet and all that. So it probably could be updated into the 21st Century, and I would encourage Congress to maybe consider that.

Senator LANKFORD. All right. Good word.

Ms. Becker, let me ask you, you and I have had this conversation before about civil versus criminal, that the preponderance of your background is civil in nature, and that the criminal side of it is a learning curve for you that you can jump into. I have no doubt based on your own mental aptitude that you can get up to speed on that quickly.

How does that happen for you as you are facing your earliest days of criminal cases that you do not get so overwhelmed with the number of cases coming at you, you do not have time to be able to study and be well prepared for the issues at hand?

Ms. BECKER. Thank you, Senator. I think the best way that I can answer that is that I would work as hard as I possibly could on my own to understand the governing law and the rules of procedure in the courtroom, and I would seek out guidance and

mentorship from more senior judges on the Superior Court. I think that any person not coming from a criminal background has had the same challenge, has had to get up to speed on the law and the procedure without sort of taking that learning curve out on the litigants, so to speak.

And so I would look forward to getting their advice and making sure that I was as prepared as I possibly could be walking into the courtroom to know the law and to apply it to what is before me.

Senator LANKFORD. OK. I am going to ask this of all three of the judicial nominees as well, and we will just kind of walk through this. And since, Ms. Wingo, you have given advice to the other two, we will start with you and go from there since they will base their comments off yours, anyway, so we will go from there.

The challenge every judge has, regardless of their role, is setting aside your own biases, which all of us have our own biases from our own background and everything else, and applying the law equally and fairly. In Washington, D.C., that gets ramped up to a different volume because in front of your bench at any given point, you may have any ethnicity, you may have elected officials and unelected officials, you may have powerful folks downtown, and you may have folks that cannot find downtown. At any given time, you have this wide variety of individuals that are in front of you from multiple classes and backgrounds. To equally apply the law to all individuals is a tremendous challenge for you on a day-to-day basis.

So my question is not, yes or no, will you do it, because I assume you are going to say yes, you will. It is how do you manage that personally and how do you manage that from your own background of making sure that the person in front of you now versus the person in front of you at 3 o'clock this afternoon, regardless of background, gets an equal application of the law. How do you manage that?

Ms. WINGO. I think the place you start is by treating each case individually. You really have to look at each case, listen to the person who is before you, and then respond to that case. You really cannot be looking out over your courtroom and seeing who else is there. And when you are dealing with people as individuals, I think it is a much easier prospect to treat them without bringing any of your own experiences.

And I do think as a judge, and particularly as a trial judge, you get used to doing that. There are things that you have to do as a trial judge when, for example, you are excluding evidence. You know that the evidence is out there. You ignore it because you have excluded it. So you really get used to looking and limiting yourself very carefully to what is on the record, what is the evidence before you, and what is the law.

Senator LANKFORD. Mr. Berk.

Mr. BERK. I have talked about my father, but I think I would like to bring him up again because he has informed so much of who I am. We used to go to lunch together a lot, and when we would go to lunch, he knew the guy who parked the car, and he knew the busboy, and he knew the server, and he knew the owner of the restaurant, always loved to know the owner of the restaurant. And he treated them all the same way. He asked them how they were doing. In some ways he treated the guy who parked the car better

than the restaurant owner. And I guess I just learned at an early age that, folks are the same and you treat everybody the same way.

I am the son of immigrants. I am not very far away from the experience of some of the people that will appear before me in court. And so those are sort of core values that I think I would bring to the bench and will always sort of be at my heart.

Senator LANKFORD. How do you fight your own biases on that, not to defer to that immigrant—because you have walked that experience—or defer to that individual that you so closely relate to? Because, again, that is our natural bias. If a redhead comes in front of me, they are always treated—— [Laughter.]

But how do you process that?

Mr. BERK. I think, Senator, you acknowledge it. I think you acknowledge it to yourself, and then, to come back to it, I mean, we are governed by the rule of law, and we can always fall back on that. And in my mind, yes, sure, an immigrant, their story has to make sense. It has to have the ring of truth to it.

So while in some instances it could be difficult, I do think that when you are governed by the rule of law and you are governed by your good judgment, you can get over those kinds of things?

Senator LANKFORD. Ms. Becker.

Ms. BECKER. Thank you, Senator. I think the way to ensure that people are treated equally primarily is to apply the law to the facts presented in each individual case, because although the facts are different in each case, the law is not. And so the best way to ensure that people with similar facts are given similar treatment is to apply the law to those facts.

I think as attorneys one of the things we are best at is making analogies and making distinctions. Every time we argue in court, we are trying to persuade the judge that our case is like this other case in relevant ways or is not like this other case in relevant ways. And I think that is just as important a skill for a judge, if I am making a decision that is different from one I made in another case with similar facts, I have to be able to justify, first to myself and then to the litigants in front of me, the reasoning for that different judgment and why I am ruling differently in this case than the one that came before. And I think that that has to be sort of a constant thread running through the work that you do as a judge.

Senator LANKFORD. Mr. Berk, let me ask a question of you as well on this. What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area? I know there are lots of civil issues and everything else, but just focusing on the criminal issues, some of the most significant criminal issues we face in D.C., and as a judge, what is your best use of being able to help in that area?

Mr. BERK. Well, I think the best thing you can do is move cases and not delay. There unfortunately are too many crimes committed, and if all these cases go to trial, they back up the system.

I know Judge Sullivan is here, and I remember back in the day when Judge Sullivan was on the Superior Court—that was before he was on the Federal bench—and I know he moved his cases. And I think that is the best you can do as an individual judge.

Senator LANKFORD. Ms. Becker, same question for that. Crime within the D.C. area, what you can do as a judge, the best thing to be able to help?

Ms. BECKER. So I will echo some of what Mr. Berk said. I think that one of the greatest challenges facing the Criminal Division is just that there is a high volume of cases moving through the system because, unfortunately, there is a lot of crime of various kinds here in the District of Columbia. And so I think the greatest challenge for a judge in that situation is not only moving the cases through, but while doing so making sure that he or she is trying to strike the right balance between a system that is fair to defendants but also accounts for the experiences of victims and, of course, the predominant need for community safety, because that is overall what is going to benefit all the residents of the District.

Senator LANKFORD. Ms. Wingo, you have a unique perspective on this, already serving as a magistrate judge. What do you see as one of the most significant crime issues we are currently facing in D.C.? And as a judge, what is the best thing you can do to be able to help in that role?

Ms. WINGO. Well, I do think that, as a judge, your role is to handle the cases that come before you, and so that is really what you do in order to address the criminal issues.

I also think that as a judge, we have a fair number of resources, and one of the things that I think is quite clear leads to criminal activity is drug use. And utilizing those resources in order to help people address their problems so that they are not going to recidivate is one of the things that you can do as a judge.

Senator LANKFORD. Any other tools for recidivism that you can use or express as a judge or ideas of things that you would like to bring at some point to say that this is an issue for this individual, this is the third time I have seen him, things that you can do from the bench?

Ms. WINGO. Well, that is one of the things that you do. When you are trying to sentence someone, you are trying to come up with a sentence that will make it the least likely that they will appear before you again. And so it depends a little bit on what the kind of crime is. For example, in a traffic court, you are going to order traffic alcohol programs and victim impact panels so people understand the impact of what they did, even if they did not cause any harm this time, that they really could have killed somebody.

When you structure your probations, that is what you try to do.

Senator LANKFORD. I appreciate all of your answers and the conversation today. The only comment that I would make for anyone's responses is for you, Mr. Berk, on a previous question that was spoken to you when you mentioned when that attorney comes to you with the third extension and to treat him fairly, I would say do not. If it is a third extension—— [Laughter.]

They just need to get their work done and bring it to you.

Other than that, I appreciate very much what you all have said today and what you bring to it and the experience. I know this is a difficult process to go through. I am fully aware. You all are much more aware of the length of the process. Mr. Pizzella, you have been through this several times now, so I appreciate what

this means to you and your families and such. So, with that, I would like to be able to move things along. Give me just a moment.

[Pause.]

Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella have filed responses to a biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and have had financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which is on file and available for public inspection in the Committee offices.

The hearing record will remain open until 12 p.m. tomorrow, March 3, 2016, for the submission of statements and questions for the record.

With that, unless there are any other comments, this hearing is adjourned. Thank you very much.

[Whereupon, at 11:12 a.m., the Committee was adjourned.]

# APPENDIX

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SENATOR JAMES LANKFORD, CHAIRMAN SENATOR HEIDI HEITKAMP, RANKING MEMBER

**March 2, 2016**

## Opening Statement of Senator James Lankford

**Homeland Security and Governmental Affairs Subcommittee Hearing:**

**Nominations of Hon. Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie Becker, Steven Berk, and Elizabeth Wingo to be Associate Judges, D.C. Superior Court**

Good morning. Today we will consider the nominations of Ms. Julie Becker, Mr. Steven Berk, and Ms. Elizabeth Wingo for the position of Associate Judge on the Superior Court for the District of Columbia, as well as the nomination of Mr. Patrick Pizzella to be a member of the Federal Labor Relations Authority. The Committee takes these nominations very seriously, and so we are pleased to have strong nominees before us.

The Superior Court for the District of Columbia is a busy place, with more than 100,000 cases heard each year. I am proud to say that these three Superior Court nominees will mark the 5th, 6th, and 7th that the committee has considered in just the past year. This is more than triple the number of nominees who received hearings during the entire 113th Congress.

Julie Becker is a native of Detroit, Michigan. She received her Bachelor of Arts degree from the University of Michigan, and her law degree from Yale Law School. After graduation, Ms. Becker clerked for then-Judge Sonia Sotomayor on the 2nd Circuit Court of Appeals. Currently, Ms. Becker is a supervising attorney at Legal Aid where she has spent the past fourteen years.

Steven Berk is originally from Chicago, Illinois. He received his undergraduate degree from Washington University in St. Louis, he has a master's degree from the London School of Economics, and a law degree from Boston College Law School. Mr. Berk has worked at the SEC, as an Assistant U.S. Attorney for the District of Columbia and practiced at several prestigious law firms.

Elizabeth Wingo is a native of Washington, D.C. She received her Bachelor of Arts from Dartmouth College, and her law degree from Yale Law School. Following law school, she clerked for Judge T.S. Ellis in the Eastern District of Virginia. Ms. Wingo worked as a prosecutor at the U.S. Attorney's Office in the District of Columbia and for the District of Columbia's Attorney General's office before being appointed as a magistrate for the Superior Court in 2006.

In addition to these impressive resumes, Ms. Becker, Mr. Berk, and Ms. Wingo possess the necessary legal skills and judgement to serve the District of Columbia.

Mr. Pizzella is a native of Rochelle, New York. He received his Bachelor of Arts degree from the University of South Carolina. After graduation, he served in a variety of government entities, including: GSA, the Small Business Administration, the Department of Education, and the Department of Labor. In 2013, he was appointed to the Federal Labor Relations Authority.

Committee staff reached out to a variety of these nominees' colleagues and affiliates, who spoke highly of them. Committee staff also had the opportunity to interview Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella on an array of issues, ranging from notable cases to community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated, I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

**Statement of Ranking Member Tom Carper**
**"Nomination of the Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia."**
**Wednesday, March 2, 2016**

*As prepared for delivery:*

I want to thank all of our nominees and their families for being here today. My thanks as well to Senator Lankford for chairing this hearing and for the good work that he and his staff have done in enabling us move forward in considering these nominees.

First, let me welcome Patrick Pizzella, who has been re-nominated to be a Member of the Federal Labor Relations Authority, or FLRA. The FLRA plays an important role in promoting constructive relationships between management and unions and, in turn, helps improve the effectiveness and efficiency of the federal government.

Mr. Pizzella has had a long career in public service, including the past few years serving in the position to which he has been re-nominated. We are grateful for his service and his willingness to continue to serve in this very important role.

I'm also pleased that we are also considering three nominees for the Superior Court of the District of Columbia today. Julie Becker, Steven Berk, and Elizabeth Wingo all have very impressive backgrounds and legal careers that I believe make them extremely well-qualified to serve as judges on the Superior Court. Thank you all for joining us and for your willingness to serve.

Before I close so we can hear from our nominees, I want to note that I am also pleased that, in the last months of last year, the Senate finally moved to confirm nominees to fill four other vacancies on the D.C. Superior Court.

That said, it is shameful that it took us two years to get two of those judges confirmed. I am delighted that we have started to move these nominees more quickly, and I hope we can continue that momentum with these three nominees and other nominees to the Superior Court going forward.

Most Americans probably don't know that local judges in the District of Columbia must be confirmed by the U.S. Senate. While they are comparable to the state courts that each of us is familiar with in our respective states, the D.C. Superior Court and Court of Appeals are operated by the federal government. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a non-partisan nomination commission. They must then be confirmed by the Senate in order to serve 15 year terms.

But these courts don't handle federal matters. They are the local courts for the District of Columbia and hear cases related to local crimes and domestic and civil disputes between the people who live here in the District.

No other jurisdiction in our country must have its local judges approved by Congress. And, no other state is denied the representation here in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I continue to believe that we should seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges.

In the meantime, I hope that the Senate will move forward quickly on the nominees we are considering today. I believe that the people of the District of Columbia are fortunate that men and women as impressive as these nominees are willing to go through a protracted nominating process, a great deal of scrutiny and a full measure of uncertainty, all for the possibility that they might one day serve on the bench in the District of Columbia.

Again, I thank you all for being here, for your testimony and for your responses to our questions.

U.S. SENATOR PAUL STRAUSS
DISTRICT OF COLUMBIA (SHADOW)

JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVE, NW
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WASHINGTON, D.C. 20004
(202) 727-7890
(202) 727-0278

**Prepared Statement of**

**THE HONORABLE PAUL STRAUSS**
**UNITED STATES SENATOR**
**DISTRICT OF COLUMBIA (Shadow)**

**On the Nomination of**

**Ms. Julie H. Becker, Esq.,**

**Mr. Steven N. Berk, Esq.,**

**and**

**Magistrate Judge Elizabeth C. Wingo, Esq.**

**To be Associate Judges on the**
**District of Columbia Superior Court**

**Before the**

**United States Senate**

**Committee on Homeland Security & Governmental Affairs**

**Dirksen Senate Office Building, Room 342**

**March 2, 2016, 10:00 AM**

Senator Lankford, Ranking Member Carper, and other Members of the United States Senate Committee on Homeland Security & Governmental Affairs, I am Paul Strauss, a U.S. Senator elected by the voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I am also an attorney practicing in our local courts. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my enthusiastic and wholehearted support of the three candidates nominated by President Barack Obama to be Associate Judges of the Superior Court of the District of Columbia. The nominees – Ms. Julie H. Becker, Esq.; Mr. Steven N. Berk, Esq.; and Judge Elizabeth C. Wingo, Esq. – are all distinguished members of the legal profession and long-time practitioners in the District of Columbia. I have taken the time over the last several weeks to study their career records, and I have spent time to get to know them on an individual and personal basis. As a result of these efforts, I am confident that these three distinguished lawyers possess excellent qualifications to be judges and that they all would be exceptional additions to the District of Columbia Superior Court bench.

I would like to take this opportunity to address the specific qualifications of each nominee.

**Ms. Julie H. Becker, Esq.**

I begin with Ms. Julie H. Becker, a supervising attorney at the Housing Law Unit of the Legal Aid Society of the District of Columbia. Ms. Becker's practice includes representing tenants in D.C. Superior Court and the D.C. Court of Appeals; helping clients challenge the termination or reduction of housing subsidies; and representing tenant associations in cases involving the preservation of secure and affordable rental housing. Ms. Becker also supervises staff attorneys, loaned associates, and fellows in the Housing Law Unit. In addition, she serves on the D.C. Superior Court Advisory Subcommittee on Landlord-Tenant Rules and is active in policy advocacy at the Council of the District of Columbia and the D.C. Housing Authority, including drafting and commenting on legislation and administrative rulemaking.

In 2006, Ms. Becker received the National Housing Law Project's Housing Justice Award, given nationally to an advocate for success in "tackling the systemic and often hostile obstacles that stand in the way of safe, decent, and affordable housing for low-income and marginalized people." In 2009, the National Law Journal named Ms. Becker as one of Washington's "Rising Stars" in its article captioned "40 Under 40."

Ms. Becker received her A.B. with highest distinction, from the University of Michigan and her J.D. from Yale Law School. While in law school, she served as an editor on the Yale Law Journal and won the Cardozo Prize for Best Brief in the Morris Tyler Moot Court of Appeals competition. The President has clearly chosen wisely in nominating Ms. Julie H. Becker to the bench.

**Mr. Steven N. Berk, Esq.**

Mr. Steven N. Berk is a veteran trial lawyer and litigator whose experience includes work in both the public and private sectors. He began his government service with the Securities and Exchange Commission in the Office of the General Counsel. At the Commission, Mr. Berk prosecuted cases against professionals (accountants and attorneys) and represented the SEC in federal court on a number of administrative matters. In 1994, Mr. Berk was appointed an

assistant U.S. Attorney for the District of Columbia. As a federal prosecutor, he served as lead trial counsel in more than 25 jury trials in the Federal District Court and Superior Court for the District of Columbia.

After his tenure in the government, Mr. Berk became a partner in the Washington, D.C., office of Jenner & Block, a top 100 firm. At the firm, he was lead trial counsel in a number of commercial cases in both federal and state courts. His substantive expertise includes federal and state regulatory issues, antitrust litigation and counseling; internal corporate investigations; and white-collar criminal defense.

Over the past 10 years, Mr. Berk has developed a considerable expertise in class action litigation. He has been named lead counsel or has had a substantial leadership position in several nationwide cases seeking to protect the rights of consumers and investors.

In May 2009, Mr. Berk opened his own firm, Berk Law PLLC. In addition to prosecuting class action cases, the firm has been retained in an array of litigation and counseling matters in state and federal courts throughout the country. The firm has counseled nominees in connection with Senate confirmation hearings, represented investors and corporations in arbitration proceedings and filed claims on behalf of whistleblowers in connection with the False Claims Act, Sarbanes-Oxley, Dodd-Frank, and the Internal Revenue Service's Whistleblower program.

In September 2011, Mr. Berk became an adjunct professor of law at Boston College Law School where he teaches a seminar in Federal Court Litigation. He was also recently elected and serves as treasurer and as a member of the Board of Governors of the District of Columbia Bar Association. In October 2013, he was selected by the District of Columbia's Judicial Nomination Commission and recommended to the White House for a vacancy on the District of Columbia Superior Court.

Mr. Berk holds an A.B. with honors from Washington University and a Master's degree in international relations from the London School of Economics. He received his law degree from the Boston College Law School, where he served as managing editor of the Law Review.

In addition, Mr. Berk launched a unique youth hockey program serving the needs of children with autism and other special needs. He served as the Chairman of the Board of Directors and Founder of the Montgomery Cheetahs from 2006 until 2012. The program has grown to include 6,075 special needs families and more than 100 student mentors who participate in a nine-month season. The Cheetahs have received numerous awards including recognition from the Governor of Maryland in 2010 and the City of Rockville, Maryland, in 2008.

Thus, I most sincerely recommend that the Committee confirm Mr. Steven N. Berk's nomination.

**Magistrate Judge Elizabeth C. Wingo, Esq.**

It is with great enthusiasm that I endorse the nomination of Judge Elizabeth C. Wingo, who was appointed by Chief Judge Rufus G. King, III and installed as Magistrate Judge on August 18, 2006.

Judge Elizabeth Wingo was born and raised in Washington, D.C. Judge Wingo received her Bachelor's degree from Dartmouth College *magna cum laude* and her law degree from Yale Law School, where she served as Notes Editor of the Yale Law Journal and Co-Director of the Temporary Restraining Order Project. As Co-Director, Judge Wingo coordinated law student volunteers who assisted victims of domestic violence in obtaining temporary restraining orders, by explaining the process, assisting in filling out paperwork, and providing support while waiting for, and during, the TRO hearing.

Prior to law school, Judge Wingo worked as a paralegal at Wilmer, Cutler and Pickering prior to joining the Jesuit Volunteers Corps. During her JVC year, Judge Wingo served as volunteer coordinator for the Pediatric AIDS Program in New Orleans, Louisiana, supervising work with children infected by HIV and their siblings. After law school graduation, she worked as an associate in the Washington office of the law firm of Sullivan and Cromwell, and then clerked for the Honorable T.S. Ellis, III in the U.S. District Court for the Eastern District of Virginia. Judge Wingo then joined the U.S. Attorney's Office for the District of Columbia.

As an Assistant U.S. Attorney, Judge Wingo served in the Appellate, General Felony, Sex Offense/Domestic Violence and Homicide/Major Crimes Sections. She tried more than 50 bench and jury trials and argued several cases before the U.S. Court of Appeals for the D.C. Circuit and the D.C. Court of Appeals. Judge Wingo received a number of Special Achievement awards while working in different sections of the U.S. Attorney's Office. She then joined the Office of the Attorney General for the District of Columbia and served for two years as Chief of the Criminal Section, and then briefly as Deputy of the Public Safety Division of the Office, prior to joining the Courts.

Judge Wingo has volunteered since 2005 with the D.C. Rape Crisis Center Hotline, helping to counsel survivors of sexual assault. Judge Elizabeth C. Wingo greatly deserves to be elevated to the position of Associate Judge at this time.

In conclusion, I would like to state again for the record that upon examining the information made available to my office and having the opportunity to meet each candidate personally, I am confident that each will uphold the honor of our justice system. I look forward to their prompt investiture on the Court.

There is no doubt that if anyone is deserving of the prestige that comes from a Presidential appointment and Senate confirmation, it is these three nominees. Yet, I am obligated by the very nature of the proceedings here today to point out that despite all the honor that comes with the ceremony of federal oversight, the fact that these nominees and all residents of the District of Columbia lack autonomy over our judiciary diminishes our collective dignity. As I am not seated with the full rights and privileges of a U.S. Senator, I am not able to cast a vote in favor of these nominations. Today I ask that you extend to me a degree of Senatorial courtesy and cast your vote in support of these nominees for the residents of the District of Columbia who do not have anyone in this body who may cast a vote on their behalf.

Statement – Patrick Pizzella – 3/2/2016

Senate Homeland Security & Government Affairs Committee

Thank You Mr. Chairman.

Chairman Johnson, Senator Carper and Members of the Committee, I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing. Given the seriousness of the issues that presently confront you, I am especially appreciative of the time you have taken to ensure the Federal Labor Relations Authority operates at full strength.

This is the fourth time I have had the privilege of being nominated by a President for a position of public trust. I am honored the President nominated me once again to be a member of the Federal Labor Relations Authority and, if confirmed, I will continue to dedicate myself to discharging the responsibilities of the FLRA in accordance with laws, rules and regulations.

I began my tenure in federal service in the early 1980's and I believe my 23 years of experience in the executive branch will continue to be an asset to the FLRA.

I enjoyed the past 2 years as a member of the FLRA and with your support hope to continue in that role.

I would be happy to answer any questions you may have.

Thank you.

REDACTED

# HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

## 1. Basic Biographical Information

**Please provide the following information.**

| *Position to Which You Have Been Nominated* | |
|---|---|
| **Name of Position** | **Date of Nomination** |
| Member, Federal Labor Relations Authority | November 19, 2015 |

| *Current Legal Name* | | | |
|---|---|---|---|
| **First Name** | **Middle Name** | **Last Name** | **Suffix** |
| Patrick | | Pizzella | |

| *Addresses* | | | | | |
|---|---|---|---|---|---|
| **Residential Address** (do not include street address) | | | **Office Address** (include street address) | | |
| [redacted] | | | Street: 1400 K., St NW | | |
| City: Alexandria | State: VA | Zip: 22302-1813 | City: Washington | State: DC | Zip: 20424 |

| *Other Names Used* | | | | | | |
|---|---|---|---|---|---|---|
| **First Name** | **Middle Name** | **Last Name** | **Suffix** | Check if Maiden Name | **Name Used From** (Month/Year) (Check box if estimate) | **Name Used To** (Month/Year) (Check box if estimate) |
| Pat | | Pizzella | Jr. | | 5/54 Est ☐ | 5/71 Est ☒ |
| | | | | | Est ☐ | Est ☐ |

| *Birth Year and Place* | |
|---|---|
| **Year of Birth (Do not include month and day.)** | **Place of Birth** |
| 1954 | New Rochelle, NY |

| *Marital Status* | | | | | |
|---|---|---|---|---|---|
| **Check All That Describe Your Current Situation:** | | | | | |
| **Never Married** | **Married** | **Separated** | **Annulled** | **Divorced** | **Widowed** |
| ☐ | X | ☐ | ☐ | ☐ | ☐ |

| *Spouse's Name (current spouse only)* | | | |
|---|---|---|---|
| **Spouse's First Name** | **Spouse's Middle Name** | **Spouse's Last Name** | **Spouse's Suffix** |
| Mary | Joy | Pizzella | |

| *Spouse's Other Names Used (current spouse only)* | | | | | | |
|---|---|---|---|---|---|---|
| **First Name** | **Middle Name** | **Last Name** | **Suffix** | Check if Maiden Name | **Name Used From** (Month/Year) (Check box if estimate) | **Name Used To** (Month/Year) (Check box if estimate) |
| | | Jameson | | | October 1955 Est ☐ | February 2005 Est ☐ |
| | | | | | Est ☐ | Est ☐ |

| *Children's Names (if over 18)* | | | |
|---|---|---|---|
| First Name | Middle Name | Last Name | Suffix |
| | | | |

## 2. Education

**List all post-secondary schools attended.**

| Name of School | Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school) | Date Began School (month/year) (check box if estimate) | Date Ended School (month/year) (check box if estimate) (check "present" box if still in school) | Degree | Date Awarded |
|---|---|---|---|---|---|
| University of South Carolina | University | 8/72 Est ☐ | Present 12/75 Est ☐ ☐ | B.S. Business Adminis-tration | 12/75 |
| | | Est ☐ | Present Est ☐ ☐ | | |

## 3. Employment

**(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.**

| Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other | Name of Your Employer/ Assigned Duty Station | Most Recent Position Title/Rank | Location (City and State only) | Date Employment Began (month/year) (check box if estimate) | Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed) |
|---|---|---|---|---|---|
| Federal Employment | Federal Labor Relations Authority | Member | Washington, DC | Nov, 2013 | "present" |
| Self-Employed | Patrick Pizzella, LLC | Principal | Alexandria, VA | Feb. 2009 | August, 2013 |

| | | | | | |
|---|---|---|---|---|---|
| Federal Employment | U.S. Department of Labor | Assistant Secretary for Administration & Management | Washington, DC | May 9, 2001 | Jan. 20, 2009 |
| Federal Employment | U.S. Department of Labor | Senior Advisor to the Secretary | Washington, DC | March 26, 2001 | May 8, 2001 |
| Federal Employment | U.S. Office of Personnel Management | Chief of Staff | Washington, DC | Jan. 22, 2001 | March 25, 2001 |
| Volunteer | Bush-Cheney Presidential Transition | Policy Coordinator, GSA Team | Washington, DC | Dec. 2000 | Jan. 2001 |
| Non-Government Employment | Preston Gates Ellis & Rouvelas Meeds | Government Affairs Counselor | Washington, DC | Jan. 1998 | Jan. 2001 |
| Non-Government Employment | Preston Gates Ellis & Rouvelas Meeds | Director of Coalitions | Washington, DC | March 1996 | Dec. 1997 |
| Unemployment | | | | July 1995 | Feb. 1996 |
| Federal Employment | Federal Housing Finance Board | Director, Office of Administration | Washington, DC | May 1990 | June 1995 |
| Unemployment | | | | Oct. 1989 | April 1990 |
| Federal Employment | U.S. Environmental Protection Agency | Full-time expert/consultant | Washington, DC | March 24, 1989 | Sept. 23, 1989 |
| Federal Employment | U.S. Department of Education | Deputy Under Secretary for Management | Washington, DC | Sept. 1988 | March 23, 1989 |
| Federal Employment | U.S. Department of Education | Administrator for Management Services | Washington, DC | Sept. 1986 | August 1988 |
| Federal Employment | U.S. Small Business Administration | Director of Intergovernmental & Regional Affairs | Washington, DC | May 1986 | Sept. 1986 |
| Federal Employment | U.S. Small Business Administration | Special Assistant to the Associate Deputy Administrator | Washington, DC | July 1985 | May 1986 |
| Federal Employment | U.S. General Services Administration | Special Assistant to the | Washington, DC | Nov. 1982 | July 1985 |

| | | | | | |
|---|---|---|---|---|---|
| | | Administrator | | | |
| Non-Government Employment | Irick for Governor | Campaign Director | Albuquerque, NM | July 1982 | Nov. 1982 |
| Federal Employment | U.S. General Services Administration | Special Assistant to the Administrator | Washington, DC | Nov. 1981 | June 1982 |
| Federal Employment | U.S. General Services Administration | Confidential Assistant to the Administrator | Washington, DC | April 1981 | Nov. 1981 |
| Volunteer | Reagan Transition | GSA Team | Washington, DC | Jan. 1981 | March 1981 |
| Non-Government Employment | Delaware Citizens for Right to Work | Executive Director | Dover, DE | April 1979 | Sept. 1980 |
| Non-Government Employment | New Mexico Citizens for Right to Work | Executive Director | Santa Fe, NM | Dec. 1976 | Dec. 1980 |
| Non-Government Employment | Burger for U.S. Senate Committee | Youth Coordinator/ Special Groups Coordinator | Billings, MT | May 1976 | Nov. 1976 |
| Non-Government Employment | Citizens for Reagan | Youth Fieldman | Washington, DC | Jan. 1976 | May 1976 |

**(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.**

| Name of Government Entity | Name of Position | Date Service Began (month/year) (check box if estimate) | Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving) |
|---|---|---|---|
| U.S. Overseas Private Investment Corporation | Board Director (appointed by President George W. Bush) | Jan. 2004 | April 2005 |
| | | Est ☐ | Est ☐ Present ☐ |
| | | Est ☐ | Est ☐ Present ☐ |

## 4. Potential Conflict of Interest

(A) **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

In connection with the 2013 nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

**(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.**

Over the years, I have attended a variety of seminars and meetings hosted by public policy and educational organizations on issues such as healthcare reform, employee free-choice act, financial regulatory reform, and religious liberty where the possible impact of pending legislation or enacted law was debated and/or analyzed and information by subject matter experts was shared. My purpose was to provide my clients with timely and authoritative information and to be able to discuss current issues with potential clients.

## 5. Honors and Awards

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Top Doers, Dreamers and Drivers award by *Government Technology* (GT) magazine and Center for Digital Government (March 2005)

Outstanding Leadership Award in Support of Federal Government Management Excellence from President's Council on Management Improvement (September 1988)

OPM Director Constance Horner appointed to OPM Senior Executive Service Advisory Board (March 1987)

America's Top Forty Performers in Public Service -- 40 years of age and younger—by Management Magazine a publication of the U.S. Office of Personnel Management (March 1987)

GSA Administrator's Public Service Award (February 1984)

## 6. Memberships

**List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.**

**Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of $1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).**

| Name of Organization | Dates of Your Membership (You may approximate.) | Position(s) Held |
|---|---|---|
| President's Council on Management Improvement (PCMI) (former) | 1987-1989 | Member |
| Federal Administrative Managers Association (former) | 1986-1988 | Member |
| Reagan Deputy Assistant Secretaries organization (former) | 1987-1989 | President |
| Army-Navy Country Club. Arlington, VA | 2005-2007 | Member |
| Pinehurst Country Club, Pinehurst, NC | 2012--present | Member |

| | | |
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## 7. Political Activity

**(A) Have you ever been a candidate for or been elected or appointed to a political office?**

No.

| Name of Office | Elected/Appointed/ Candidate Only | Year(s) Election Held or Appointment Made | Term of Service (if applicable) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

**(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.**

None.

| Name of Party/Election Committee | Office/Services Rendered | Responsibilities | Dates of Service |
|---|---|---|---|
| | | | |
| | | | |

**(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.**

| Name of Recipient | Amount | Year of Contribution |
|---|---|---|
| Friends of John Boehner | $250 | 2015 |
| Friends of John Boehner | $250 | 2015 |
| Mitch McConnell Senate Committee | $250 | 2015 |
| The President's Club (RNC) | $250 | 2014 |
| Barbara Comstock for Congress | $500 | 2014 |
| Friends of Scott Walker | $250 | 2014 |
| Mitch McConnell Senate Committee 2014 | $2600 | 2014 |
| Ed Gillespie for Senate | $1000 | 2014 |
| The President's Club (RNC) | $250 | 2014 |
| Friends of Scott Walker | $250 | 2014 |
| McConnell Senate Committee 2014 | $500 | 2014 |
| Ed Gillespie for Senate | $1000 | 2014 |
| Adam Laxalt for Attorney General (Nevada) | $500 | 2014 |
| Americans for Murray | $250 | 2012 |
| George Allen for U.S. Senate | $500 | 2012 |
| Romney for President | $2500 | 2012 |
| Tim Scott for Congress | $250 | 2012 |

| | | |
|---|---|---|
| Romney for President | $2500 | 2012 |
| Wilson for Senate | $1000 | 2012 |
| Club for Growth Action | $250 | 2012 |
| The Freedom Project | $1000 | 2012 |
| Friends of Scott Walker | $250 | 2012 |
| Madison PAC for Constitutional Limited Government | $1000 | 2012 |
| Gary Glenn for U.S. Senate | $500 | 2011 |
| Republican National Committee | $250 | 2011 |
| The President's Club (RNC) | $250 | 2011 |
| Madison PAC for Constitutional Limited Government | $1000 | 2011 |
| Friends of John Boehner | $250 | 2011 |
| Ted Cruz for Senate | $500 | 2011 |
| Friends of Scott Walker | $250 | 2011 |
| Republican National Committee | $250 | 2011 |
| The President's Club (RNC) | $250 | 2011 |
| Republican National Committee | $250 | 2011 |
| Club for Growth | $250 | 2011 |

| | | |
|---|---|---|
| The President's Club (RNC) | $250 | 2011 |
| Senate Conservatives Fund | $250 | 2011 |
| Marco Rubio for Senate | $200 | 2010 |
| Americans for Murray | $250 | 2010 |
| Republican Party of Virginia | $250 | 2010 |
| Club for Growth Action | $250 | 2010 |
| Lollar for Congress | $250 | 2010 |
| Findley for Iowa (AG) | $250 | 2010 |
| Senate Conservatives Fund | $250 | 2010 |
| Findley for Iowa (AG) | $250 | 2010 |

## 8. Publications and Speeches

**(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.**

I have done my best to identify titles, publishers and dates of books, articles, reports or other published materials, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

| Title | Publisher | Date(s) of Publication |
|---|---|---|
| Ruling on IG Investigations is a Victory for Good Government | Government Executive | September 29, 2014 |

| | | |
|---|---|---|
| How To Cut The Budget, For Real | Washington Examiner.com | September 1, 2011 |
| 'Card Check'--A Time to Reflect, But Not Rest | The American Spectator | April 7, 2011 |
| It's Still Ronald Reagan's World | WashingtonExaminer.com | February 5, 2011 |
| GovBenefits.gov: E-government vision realized | GCN.com | February 11, 2009 |
| Commentary: Staying Power: Continuity led to successes at Labor | Federal Times | February 1, 2009 |
| Good Management, Good Policy | American Society for Public Administration, PA Times | December 2008 |
| DOL CIO Talks Federal E-Government | www.Govtech.com | December 29, 2008 |
| ADVICE & DISSENT: A Beneficial Union – Better Technology Combined with Open Labor Relations Can Cut the Cost of Official Time | Government Executive Magazine | October 2008 |
| THE HR EXECUTIVE'S VIEWPOINT: Employees Aid One Another – Leave Bank Programs Benefit Labor Employees in Need | Federal Times | August 18, 2008 |

| | | |
|---|---|---|
| PROVIDING THE LATEST WORKERS' COMPENSATION NEWS AND TRENDS MONTHLY: Controlling Federal Workers' Comp Costs: A Case Study | Workers' Compensation Educational Conference eNewsletter | May 5, 2008 |
| THE HR EXECUTIVE'S VIEWPOINT: Bringing New Skills to Labor – MBA Fellows Program Bolsters Work Force | Federal Times | July 30, 2007 |
| THE HR EXECUTIVE'S VIEWPOINT: Managing Leave – Monitoring, Counseling Reduce AWOL at Labor | Federal Times | April 23, 2007 |
| TENDING TO E-GOV: How Labor Got to Green on the PMA | FedTech magazine | November 2005, Vol. 2, Number 4 |
| Labor's Successes Prove Value of Political Appointees | Federal Times | November 28, 2005 |
| VIEWPOINT: Shedding Light – Annual Reports Must Include the Bad with the Good to be Effective | Government Executive Magazine | October 1, 2005 |
| Pizzella: Labor Models Getting 'Green' | Federal Computer Week | December 13, 2004 |

| | | |
|---|---|---|
| THE HR EXECUTIVE'S VIEWPOINT: Cutting Costs on Workers' Comp – Labor Reduces Injuries, Illnesses, Returns Employees to Work | Federal Times | October 11, 2004 |
| THE HR EXECUTIVE'S VIEWPOINT: Top Score for Human Capital – Planning, Coordination Brought Labor to Green | Federal Times | June 7, 2004 |
| COMMENTARY: Senior Executive Pay: Raise, However Small, is Critical Now | Federal Times | January 19, 2004 |
| SPOTLIGHT: Making the Best Use of Government's Best Resource | Federal Times | November 24, 2003 |
| The CIO VIEWPOINT: The Digital Department: Labor Creates a Focused E-Government Plan | Federal Times | April 21, 2003 |
| | | |

**(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.**

| Title/Topic | Place/Audience | Date(s) of Speech |
|---|---|---|
| NOMINATIONS OF HON. CAROL W. POPE., HON. ERNEST E. DUBESTER, | HEARING before the COMMITTEE ON HOMELAND | SEPTEMBER 25, 2013 |

| | | |
|---|---|---|
| AND PATRICK PIZZELLA | SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENTATE<br><br>One Hundred Thirteenth Congress | |
| REDUCING THE PAPERWORK BURDEN ON THE PUBLIC: ARE AGENCIES DOING ALL<br><br>THEY CAN? | HEARING before the<br><br>SUBCOMMITTEE ON REGULATORY AFFAIRS<br><br>of the<br><br>COMMITTEE ON GOVERNMENT REFORM<br><br>HOUSE OF REPRESENTATIVES | JUNE 14, 2005 |
| | Serial No. 109-42<br><br>Available via the World Wide Web:<br>http://www.gpoaccess.gov/congress/<br><br>index.html<br><br>http://www.house.gov/reform | |

**(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.**

None.

| Title | Place/Audience | Date(s) of Speech |
|---|---|---|
| | | |

## 9. Criminal History

**Since (and including) your 18th birthday, has any of the following happened?**

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than $300 and did not include alcohol or drugs.)

  Yes.

- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

  No.

- Have you been charged, convicted, or sentenced of a crime in any court?

  No.

- Have you been or are you currently on probation or parole?

  No.

- Are you currently on trial or awaiting a trial on criminal charges?

  No.

- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

  No .

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

A) Date of offense:

   a. Is this an estimate (Yes/No): April 11, 2014.

B) Description of the specific nature of the offense:

   Reckless driving excess 20 mph over posted (81)

C) Did the offense involve any of the following?
   1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
   2) Firearms or explosives: Yes / No
   3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

   Petersburg, VA, 23803, USA

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:
Department of State Police (summons)

2) Location of the law enforcement agency (city, county, state, zip code, country):
Petersburg, VA 23803, USA

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country): General District Court, Petersburg, VA 23803, USA

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

Original Charge: Reckless driving excess 20 mph over posted (81).

Plead guilty to lesser offense: traffic infraction, improper driving.

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
N/A

L) If conviction resulted in probation or parole, provide the dates of probation or parole:
N/A

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No

N) Provide explanation:

## 10. Civil Litigation and Administrative or Legislative Proceedings

**(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.**

Yes.

| Date Claim/Suit Was Filed or Legislative Proceedings Began | Court Name | Name(s) of Principal Parties Involved in Action/Proceeding | Nature of Action/Proceeding | Results of Action/Proceeding |
|---|---|---|---|---|
| August 1998 | Fairfax County General District Court | Patrick Pizzella & Fox Seko Construction | Payment/billing dispute | Judgement for Fox-Seko on Feb. 5, 1999 for $1,762.93 |
| | | | | |
| | | | | |
| | | | | |

**(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.**

None.

| Date Claim/Suit Was Filed | Court Name | Name(s) of Principal Parties Involved in Action/Proceeding | Nature of Action/Proceeding | Results of Action/Proceeding |
|---|---|---|---|---|
| | | | | |

**(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.**

## 11. Breach of Professional Ethics

**(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.**

| Name of Agency/Association/ Committee/Group | Date Citation/Disciplinary Action/Complaint Issued/Initiated | Describe Citation/Disciplinary Action/Complaint | Results of Disciplinary Action/Complaint |
|---|---|---|---|
| FLRA Inspector General | June, 2015 | Allegation of improper use of Government resources | IG advised, no "violation of standards of conduct for employees of the Executive Branch, nor was it otherwise improper." |
| Office of Special Counsel (OSC) | 1993 OSC file No. MA-92-1647 | Allegation of a prohibited personnel practice brought by an employee of the Federal Housing Finance Board (FHFB) who worked for me | OSC Associate Special Counsel for Prosecution stated in July 8, 1993 letter to FHFB Chairman that file was closed due to insufficient evidence |
| FHFB Inspector General | April, 1992 Grievance Procedures/Reprisal allegation | Allegation that a performance rating review lacked impartiality | IG advised compliant to avail himself of administrative remedies |

**(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?**

No.

## 12. Tax Compliance

**(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

REDACTED

REDACTED

## 13. Lobbying

**In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).**

No.

## 14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

**For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.**

| Name of Organization | Address of Organization | Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution) | Position Held | Position Held From (month/year) | Position Held To (month/year) |
|---|---|---|---|---|---|
| Reagan Alumni Association | 904 Vicar Lane, Alexandria, VA 22302 | Non-Profit | Executive Committee, Board of Directors | 10/90 | 10/15 |
| | | | | | |

## 15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

**As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.**

**Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.**

| Status and Terms of Any Agreement or Arrangement | Parties | Date (month/year) |
|---|---|---|

| | | |
|---|---|---|
| | | |
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| | | |
| | | |

## 16. Additional Financial Data

**All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

REDACTED

**SIGNATURE AND DATE**

**I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.**

_____

**This** 2nd **day of** Dec, 2015

UNITED STATES OFFICE OF
**GOVERNMENT ETHICS**

DEC - 1 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Patrick Pizzella, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol
General Counsel

Enclosures REDACTED

1201 New York Avenue, NW, Suite 500 | Washington, DC 20005
www.oge.gov

November 30, 2015

Fred B. Jacob
Solicitor
Federal Labor Relations Authority
1400 K Street, NW Suite 300
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I am the sole proprietor of Patrick Pizzella, LLC, a management consulting firm. This firm ceased engaging in business in 2013 and remains inactive. During my appointment to the position of Member of the Federal Labor Relations Authority, Patrick Pizzella, LLC will remain dormant and will not advertise. I will not perform any services for the firm, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the firm while it is in an inactive status. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Patrick Pizzella, LLC, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13490) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Sincerely

Patrick Pizzella

**Post-Hearing Questions for the Record**
**Submitted to Patrick Pizzella**
**From Senator Claire McCaskill**

**Nomination Hearing to Consider**
**The Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia**
**March 2, 2016**

Pursuant to 41 U.S.C. 1710 and 10 U.S.C. 2461, agencies are precluded from converting, in whole or in part, functions performed by federal employees to contract performance absent public-private competition. I am concerned that this practice, also known as "direct conversion," is occurring on a regular basis without the necessary cost comparison analysis.

Q. Do you believe that the laws, guidance and regulations are sufficiently clear on direct conversion?

Based on my experience as the Assistant Secretary of Labor for Administration and Management at the U.S. Department of Labor from 2001 to 2009, wherein I served as the Department's "competitive sourcing official," I believe that the rules concerning "direct conversion" as they are set forth in 41 U.S.C. § 1710 and 10 U.S.C. § 2461 are sufficiently clear.

Q. Do you believe that there is sufficient awareness among managers and contracting officers to effectively enforce the prohibition against direct conversions?

Based on my experience as the Department of Labor's "competitive sourcing official" (detailed in the preceding answer), the federal managers and contracting officers from within the Department of Labor and from other federal agencies with whom I engaged on these matters, I believe that federal managers and contracting officers are sufficiently aware of their responsibilities and the prohibitions and restrictions enumerated in 41 U.S.C. § 1710 and 10 U.S.C. § 2461

Q. Does the FLRA have the authority to adjudicate disputes over direct conversions, and, if not, should it?

As a general rule, the Authority does not have the authority to adjudicate disputes concerning direct conversions. The United States Court of Appeals for the District of Columbia Circuit has determined that specific wording in Circular A-76 – "[n]oncompliance with [A-76] shall not be interpreted to create a substantive or procedural basis to challenge agency action or inaction" – "preclude[s] bargaining over a union proposal to subject alleged violations of A-76 to the negotiated grievance procedure." *U.S. Dep't of the Treasury, IRS v. FLRA*, 996 F.2d 1246, 1250 (D.C. Cir. 1993).

Nonetheless, in several instances, federal unions have raised through negotiated grievance procedures and the negotiability procedures of the Federal Service Labor-Management Relations Statute various matters concerning agency determinations on contracting out.

For example, in a 2006 grievance and arbitration, a federal union argued that the agency did not comply with "applicable laws" – e.g. 10 U.S.C. § 2461 and Circular A-76 – when the agency made its contracting-out decision. In resolving exceptions filed by the union, the Authority determined that "even assuming that the legal and regulatory provisions relied on by the [u]nion constitute enforceable 'applicable laws' . . . the [u]nion failed to demonstrate that the [a]gency violated those laws and regulations." *NFFE Local 1442 and U.S. Dep't of the Army, Letterkenny Army Depot, Chambersburg, Pa.*, 61 FLRA 857, 858-59 (2006).

In a 2011 negotiability dispute (which predated my appointment as a Member of the Authority in 2013), the union asked to bargain over a proposal which would give to bargaining-unit employees, who would be "potentially adversely affected by a decision to contract out work," a "right of first refusal." *NTEU and U.S. Dep't of the Treasury, Bureau of the Public Debt, Washington, D.C.*, 65 FLRA 509, 518 (2011). The Authority determined, in that case, that neither "the plain wording of A-76[,] [*IRS v. FLRA*], [nor] Authority decisions support a conclusion that the parties are precluded from agreeing to, and enforcing in arbitration, contract provisions that independently impose on agencies obligations that are the same as, or similar to, the requirements set forth in A-76." *Id.* at 519.

Thank you.

**Opening Statement of Julie H. Becker**
**Nominee to be an Associate Judge of the Superior Court of the District of Columbia**
**March 2, 2016**

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today as a nominee to be an Associate Judge of the District of Columbia Superior Court. It is a great honor to be nominated and considered for this position. I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I thank the President for nominating me. I am also grateful to Congresswoman Eleanor Holmes Norton for introducing me this morning.

I am here today with my parents, Allan and Patricia Becker, and my husband, Alan Silverleib. I am immeasurably grateful for their love and support, and for the joy I receive from my three-year-old daughters, Anna and Rebecca, who are at school today. I am also fortunate to be joined by a number of friends, mentors and colleagues who have encouraged me not only during this process, but throughout my career as an attorney. I would not be here today without them.

I have spent the past fifteen years at the Legal Aid Society of the District of Columbia. I have been privileged to work with hundreds of individuals and families to secure and maintain decent, safe, and affordable housing. I have represented clients in every ward of the city, and I have dedicated my career to the goal of ensuring that all members of our community have meaningful access to the legal system.

The vast majority of my work as an attorney has taken place in D.C. Superior Court. I have tried cases in its courtrooms, spent time in the clerks' offices, and negotiated settlements in the hallways. I have served on two of the court's Rules Committees, helping to write and revise rules of procedure for the Landlord and Tenant Branch and the Housing Conditions Calendar. These experiences have given me the opportunity to think critically about every aspect of court proceedings, and to help create a better, more efficient process for all parties.

Over the years, I have learned a great deal from judges on the Superior Court bench about the skill, patience, and dedication that the job requires. I look forward to the challenge of living up to their example. If I am confirmed, I will work every day to ensure that the law is applied fairly in every case, and that all parties appearing in court are treated with the dignity and respect they deserve.

Thank you again for the honor of considering my nomination. I look forward to answering any questions you may have.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

Julie Helene Becker

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

I am a United States citizen.

3. **Current office address and telephone number.**

Legal Aid Society of the District of Columbia
1331 H Street, N.W.
Suite 350
Washington, D.C. 20036
(202) 661-5946

4. **Date and place of birth.**

November 10, 1974; Detroit, Michigan.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Alan Jay Silverleib, a Public Affairs Specialist with the U.S. State Department, Bureau of Diplomatic Security.

1801 North Lynn Street
21st Floor
Rosslyn, VA 22209

6. **Names and ages of children. List occupation and employer's name if appropriate.**

[redacted]

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to**

**earliest.**

Yale Law School; 1996 to 1999; Juris Doctor, May 1999.

University of Michigan; 1992 to 1996; Bachelor of Arts (highest distinction), May 1996.

Renaissance High School; 1988 to 1992; High School Diploma, June 1992.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

September – December 2008
Professor Peter Schuck
Yale Law School
127 Wall Street
New Haven, CT 06520
Coker Teaching Fellow

July – August 2008
Legal Aid Society of the District of Columbia
1331 H Street, N.W.
Suite 350
Washington, D.C. 20005
Legal Intern

June – July 2008
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005
Summer Associate

September – December 2007
Professor Robert Ellickson
Yale Law School
127 Wall Street
New Haven, CT 06520
Research Assistant

June – August 2007
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, N.W.
Suite 400

Washington, D.C. 20005
Legal Intern

9. **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.**

- *National Law Journal*, "40 under 40: Washington's Rising Stars" (2009)
- National Housing Law Project, Housing Justice Award (2006): Given nationally to an advocate for success in "tackling the systemic and often hostile obstacles that stand in the way of safe, decent and affordable housing for low-income and marginalized people."
- Skadden Fellowship (2000 – 2002)
- National Appellate Advocacy Competition, Northeast Region (1999)
    - Best Brief
    - Finalist for Best Team Advocacy
- Yale Law School, Morris Tyler Moot Court of Appeals Competition (1997)
    - Cardozo Prize for Best Brief
    - Prize Finalist for Best Oral Advocate
- Graduated with Highest Distinction, High Honors in History, and Phi Beta Kappa from University of Michigan (1996)
- University of Michigan, John A. Williams Award for Best Thesis in American History (1996)
- University of Michigan, Voss Award for Excellence in Journalism Writing (1996)
- University of Michigan, Otto Graf Scholarship for General Academic Excellence (1995)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

Yale Law School Executive Committee (1999 – 2002)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

- District of Columbia Bar, Courts, Lawyers, and Administration of Justice Steering Committee (2005 – 2008)

- District of Columbia Bar, Judicial Evaluation Committee (2012 – present)
- District of Columbia Housing Authority, Advisory Stakeholders' Group (2001 – present)
- District of Columbia Landlord-Tenant Casehandlers Group
  - Member (2001 – present)
  - Chair (2001 – 2006)
- George Washington University Law School First-Year Mock Trial Program, Volunteer Judge (2009 – 2010)
- George Washington University Law School Van Vleck Moot Court Competition and First-Year Moot Court Competition, Volunteer Judge (2009 – 2012)
- Howard University School of Law Supreme Court Moot Court Program, Volunteer Judge (2014 – present)
- National Housing Law Project, Housing Justice Network Conference Planning Committee and workshop planner (2006, 2008, 2011)
- Superior Court Advisory Committee on Landlord and Tenant Rules (2006 – present)
- Superior Court Housing Conditions Calendar Advisory Committee (2011 – present)
- Washington Council of Lawyers, Litigation Skills Training Facilitator (2011 – present)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

    - Congressional Chorus (2002 – 2004)
    - Makela (a cappella group) (2001)

    None of these organizations currently discriminates or formerly discriminated on the basis of race, sex, or religion.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

    Connecticut, October 2000 (retired in 2005)
    District of Columbia, June 2001

New York, March 2003
United States Court of Appeals for the District of Columbia Circuit, December 2007

There have been no lapses in membership, although as indicated, my membership in Connecticut was retired in 2005.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

Co-Author, *D.C. Circuit Says that Enhanced-Voucher Tenants Have "Right to Remain" and Landlord's "Benign Motive" Does Not Justify Source-of-Income Discrimination*, Clearinghouse Review of Poverty Law and Policy, May – June 2009

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

I have not delivered any formal speeches in the past five years. I have testified on behalf of the Legal Aid Society several times before the Council of the District of Columbia and the District of Columbia Housing Authority on housing and poverty-related issues. Copies of the following written testimony have been provided:

- February 18, 2015: Testimony Regarding the Low-Income Home Energy Assistance Program, Agency Performance Oversight Hearing for the District Department of the Environment, Council of the District of Columbia
- October 14, 2014: Testimony Regarding Six Rental Housing Bills, Committee on Economic Development, Council of the District of Columbia
- April 11, 2014: Testimony Regarding the Rent Control Hardship Petition Limitation Act of 2013, Committee on Economic Development, Council of the District of Columbia
- March 9, 2011: Testimony Regarding the Achieving Your Best Life Program, District of Columbia Housing Authority Board of Commissioners
- April 1, 2010: Testimony Regarding the Rent Increase Amendment Act of 2009, Committee on Housing and Workforce Development, Council of the District of Columbia

16. **Legal career.**

A. **Describe chronologically your law practice and experience after graduation from law school, including:**

(1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I clerked for the Honorable Sonia Sotomayor on the United States Court of Appeals for the Second Circuit from June 1999 to June 2000.

(2) **Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

(3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

2000 – present
Legal Aid Society of the District of Columbia
1331 H Street, N.W.
Suite 350
Washington, D.C. 20005
Supervising Attorney (2007 – present)
Senior Staff Attorney (2005 – 2007)
Staff Attorney (2002 – 2005)
Skadden Fellow (2000 – 2002)

1999 – 2000
Chambers of the Honorable Sonia Sotomayor
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007
Law Clerk

**B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

After law school, I served as a clerk to the Honorable Sonia Sotomayor, then of the United States Court of Appeals for the Second Circuit, in New York, New York. I clerked from June 1999 to June 2000.

Following my clerkship, I received a Skadden Fellowship to work at the Legal Aid Society of the District of Columbia. My fellowship focused on representing residents of public and subsidized housing, particularly in cases involving recent changes in federal housing law. My fellowship lasted for two years, from 2000 to 2002. At the conclusion of my fellowship, Legal Aid hired me as a Staff Attorney. I was promoted to Senior Staff Attorney in 2005 and to Supervising Attorney in 2007.

In each of my roles at Legal Aid – from Skadden Fellow through my current position as supervisor – my practice has been intensively litigation-focused. I appear on a regular basis in D.C. Superior Court, primarily in the Landlord-Tenant and Civil Actions branches of the Court. I also handle administrative matters at the D.C. Housing Authority and the D.C. Office of Administrative Hearings.

As my practice developed, I also began litigating cases in the D.C. Court of Appeals. I have served as counsel in a number of appellate cases, either representing a party or representing Legal Aid and other organizations as *amicus curiae*. I have also provided frequent technical assistance, such as reviewing briefs and serving in moot courts, to attorneys at Legal Aid and other legal services organizations and to law firm attorneys working *pro bono*. As part of my appellate work, I have gained exposure to numerous areas of law affecting low-income citizens, including unemployment compensation, child support, and guardianship.

Since 2007, when I was promoted to Supervising Attorney, I have dedicated a significant portion of my time to supervising newer and mid-level attorneys in Legal Aid's housing unit, including staff attorneys and "loaned associates" who rotate in from the law firms of Arnold & Porter, Crowell & Moring, and Skadden for six-month assignments. I regularly accompany attorneys to court, provide feedback on their performance, review and comment on written work product, and co-counsel hearings and trials. With junior attorneys and loaned associates, I am involved at every stage of the case, from initial pleadings to trial or settlement; with more senior lawyers, I consult on complex cases, review dispositive motions, and co-counsel if the case proceeds to trial. My role as unit supervisor also includes managing Legal Aid's housing "intakes," *i.e.*, the ten to twenty applications we receive each week for representation in housing matters. After consultation with my colleagues, I am the final decision-maker on which cases to accept for representation and on which attorneys are assigned to those cases.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

I have spent the past fifteen years representing indigent residents of the District of Columbia in civil matters, primarily in D.C. Superior Court. My practice has centered on housing cases, but over the years has also incorporated elements of criminal, family, public benefits, tax, and probate law. The work has afforded me the opportunity to appear in the Superior Court's Civil Division, Probate Division, and Domestic Violence Unit; the D.C. Court of Appeals; the federal district court and D.C. Circuit; and various administrative agencies. My clients are individuals and families of all ages, from early adulthood to senior citizens. Although there are exceptions, the overwhelming majority of my clients have been low-income D.C. residents with incomes of up to twice the federal poverty level. A significant percentage of my individual clients experience physical or mental disabilities, and several have limited proficiency in English.

On occasion, I have represented the Legal Aid Society of the District of Columbia

as *amicus curiae*. I have also represented other groups in *amicus* briefs, including Bread for the City, AARP Legal Counsel for the Elderly, and University Legal Services.

*Subject matter and types of cases*: I appear often in Landlord-Tenant Court, where I defend tenants against eviction, typically asserting defenses of poor housing conditions, improper rent and fee charges, and problems relating to the tenant's housing subsidy. I have also litigated a number of eviction cases involving alleged criminal activity, either by the tenant or by a member of the household, and in that context have gained significant exposure to criminal law and procedure.

In the Civil Actions Branch, I represent plaintiffs suing to enforce the housing code or to assert their rights under federal and local housing law. I have also represented, both as defendants and plaintiffs, a number of individuals whose physical and/or mental disabilities impair their ability to access and maintain affordable housing. In those cases, I have raised and litigated claims under the Fair Housing Act, the D.C. Human Rights Act, and other federal laws protecting persons with disabilities.

I also frequently represent tenants in administrative challenges to the loss or reduction of their housing subsidies, either separate from or in connection with their landlord-tenant cases. Over the years, I have developed particular expertise in federally subsidized housing and the interplay of federal and local housing law, most notably in rent and criminal activity cases.

In addition to working with individual tenants, I represent a number of tenant associations and other large tenant groups. These cases often involve suing affirmatively to challenge substantial rent increases, poor housing conditions, and/or the loss of federal housing assistance.

*Courthouse Representation*: In 2007, Legal Aid, together with other legal services partners and the court, implemented the Court-Based Legal Services Project ("Courthouse Project") in Landlord and Tenant Court. The purpose of the project is to provide same-day representation to low-income tenants in housing matters. Tenants are referred to the Courthouse Project either from a resource center staffed by volunteer lawyers or by judges and/or other court personnel. As a Courthouse Project attorney, I regularly meet with tenants and, in a compressed time period, gather facts about the case; determine appropriate next steps; and then help the tenant carry out those steps. Those next steps may include obtaining a continuance, filing pleadings, negotiating a settlement, or representing the tenant in a hearing or a trial. Because of the rapid, same-day demands, work on the Courthouse Project requires deep substantive knowledge of the law along with the ability to make quick and accurate judgments in order to present cases to the court with very little preparation.

**D. Describe the general nature of your litigation experience, including:**

**(1) Whether you have appeared in court frequently, occasionally, or not at**

**all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

I have appeared in court frequently – on average, two to three times per week – during the entirety of my career.

(2) **What percentage of these appearances was in:**

(a) **Federal courts (including Federal courts in D.C.);**
(b) **State courts of record (excluding D.C. courts);**
(c) **D.C. courts (Superior Court and D.C. Court of Appeals only);**
(d) **other courts and administrative bodies.**

Approximately 90% of my appearances have been in D.C. Superior Court and the D.C. Court of Appeals. Most of the remainder has been in the D.C. Office of Administrative Hearings. I have been counsel of record in three cases before the United States District Court for the District of Columbia; one case before the U.S. Court of Appeals for the D.C. Circuit; and one case in the U.S. Bankruptcy Court for the District of Columbia.

(3) **What percentage of your litigation has been:**

(a) **civil;**
(b) **criminal.**

My practice is exclusively civil.

(4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

I have conducted seven trials as lead counsel or lead co-counsel and one trial as sole counsel. I have conducted at least eleven trials as supervisory co-counsel.

In addition, I have served as sole or supervising counsel in dozens of extended evidentiary hearings, which are essentially mini-bench trials within the course of lengthier litigation. I have also served as sole or supervisory counsel in at least twenty-five dispositive evidentiary hearings at the D.C. Housing Authority (DCHA). Hearings at DCHA, although it is not a "court of record," have all the hallmarks of bench trials; they are tried to an administrative hearing officer and involve opening, closing, direct and cross-examination, briefing, and a written decision.

As lead counsel, I have obtained decisions granting summary judgment or dismissal upon written motion in at least a dozen cases involving extended litigation. This does not include many matters in which I achieved dismissal on oral motion or brief written pleadings, at an early stage in the case, through Legal Aid's Court-Based Legal Representation Project.

**(5) What percentage of these trials was to**

**(a) a jury;**
**(b) the court (include cases decided on motion but tabulate them separately).**

I have conducted two jury trials, one as lead counsel and one as supervisory co-counsel. All of my remaining trials and evidentiary hearings have been tried to the court.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1) *Feemster, et. al. v. BSA Limited Partnership*, 548 F.3d 1063 (D.C. Cir. 2008); 471 F. Supp. 2d 87 (D.D.C. 2007).

The *Feemster* case concerned two issues of first impression in the District of Columbia: 1) the extent of a tenant's "right to remain" in her home when the owner ceases participating in a federal subsidy program; and 2) whether refusal to accept rent paid by a housing voucher constitutes source-of-income discrimination under the D.C. Human Rights Act. I served as co-counsel for ten residents of the Bates Street Townhomes, which until 2004 were subsidized by the federal Section 8 program. When the owner withdrew from the program, the tenants attempted to use different subsidies, known as vouchers, to pay rent at (and thus continue living in) their Bates Street homes. The owner refused to accept the new subsidies, and the tenants filed suit in federal district court in October 2004.

After a split summary judgment decision at the trial level (Reggie Walton, J.), the D.C. Circuit (Douglas Ginsburg, Merrick Garland, and Thomas Griffith, JJ.) ruled for the tenants on all counts, finding that federal law protects a tenant's "right to remain" using a voucher regardless of the owner's future plans for the property. The court further held that

a refusal to accept rent paid through the voucher program is *per se* discrimination based on source of income. On remand, the case settled with monetary payments to the tenants along with costs and attorney's fees. The final payments were made, and the case concluded in 2012.

I served as co-counsel in this case, with a lead role in identifying and arguing the legal issues. I authored the motion for summary judgment and the appellate brief submitted to the D.C. Circuit, and I performed the oral argument before the D.C. Circuit panel.

Co-Counsel:

Antonia Fasanelli (Formerly at Washington Legal Clinic for the Homeless)
Homeless Persons Representation Project
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Isabelle Thabault (retired)

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Opposing Counsel:

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Thomas Murphy
Friedlander Misler PLLC
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Washington, D.C. 20015
(202) 872-0800

2) *1433 T Street Assocs., LLC v. Tenants of 1433 T Street NW*, No. 2011-DHCD-HP 20,858 (D.C. Office of Administrative Hearings – ALJ Erika L. Pierson); *1433 T Street Assocs., LLC v. Tenants of 1433 T Street NW*, No. RH-SR-08-20115 (D.C. Office of Administrative

Hearings – ALJ Mary Masulla); *1433 T Street Tenants' Ass'n v. 1433 T Street Assocs., LLC*, No. RH-TP-09-29664 (D.C. Office of Administrative Hearings – ALJ Caryn L. Hines); *1433 T Street Assocs., LLC v. Tessema et. al.* Nos. 2009 LTB 21057; 2009 LTB 21058; 2009 LTB 21059; 2009 LTB 21060; 2009 LTB 21061; 2009 LTB 21062; 2009 LTB 21063; Case No. 2009 LTB 21064; 2009 LTB 21065; 2009 LTB 26257 (D.C. Superior Court).

The *T Street* litigation involved a multi-year dispute involving multiple parties over the landlord's efforts to empty its building of tenants. The matters began in 2008, with what eventually became three separate cases at the D.C. Office of Administrative Hearings concerning the owner's desire to 1) to renovate the building and 2) increase the rent by 161%. While the three administrative cases were pending, the landlord sued all the remaining tenants for eviction in D.C. Superior Court based on their failure to pay the rent increase. The eviction litigation required multiple hearings before Judge Neal Kravitz and Judge Todd Edelman, primarily over the amount of rent to be paid while the litigation was pending and how the landlord could use those funds.

The parties entered a global settlement in 2011, with the tenants relinquishing possession and withdrawing their opposition to the rent increases in exchange for payments of $45,000 per family. In representing the tenants in these matters, I authored briefs and motions to the trial court, argued at several hearings and cross-examined the landlord's principal and only witness in the hearing regarding release of funds from the court registry.

Co-counsel:

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Noel Symons (Formerly at Skadden Arps Slate Meagher & Flom LLP)
McGuireWoods LLP
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Washington, D.C. 20006

(202) 857-2929

Opposing Counsel:

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Thomas Donnelly
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Washington, D.C. 20036
(202) 503-1700

3) *Pajic v. Foote Properties LLC*, 72 A.3d 140 (D.C. 2013).

I represented Mr. Pajic in an appeal from a decision of the D.C. Superior Court in favor of his former landlord, Foote Properties, for $8,200 in damages for unpaid rent and over $44,000 in attorney's fees. The appeal presented one principal legal question: whether the attorney's fees clause in Mr. Pajic's lease was enforceable given a provision of D.C. law that prohibits fee-shifting terms in residential leases. The Court of Appeals (Oberly, Easterly, and Beckwith, JJ.) held that it was not, finding that the language of the law clearly prohibited fee-shifting at any stage, whether during or after the tenancy. The court also noted the policy underlying the law and the importance of protecting tenants – the vast majority of whom have neither counsel nor any bargaining power in lease negotiations – from unreasonable lease terms.

I was lead counsel on the case. After successfully opposing a motion for summary affirmance, I authored the brief and performed the oral argument before the D.C. Court of Appeals.

Co-counsel:

John C. Keeney (retired)

Opposing Counsel:

Laina Lopez
Berliner, Corcoran & Rowe, L.L.P.
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(202) 293-5555

4) *Gelman Management Co. v. Mohamed Hussein Mohamud*, Civil Action No. 2011 LTB 21210 (D.C. Superior Court).

I represented Mr. Mohamud, a disabled immigrant from Somalia, in a landlord-tenant action in 2011 that presented important questions regarding the intersection between a criminal prosecution and an eviction action based on the same allegations. Mr. Mohamud was charged in March 2011 with Possession with Intent to Distribute a Controlled Substance. While his grand jury proceedings were pending, his landlord brought suit to evict him based on the search, findings, and arrest underlying his criminal case. I made two separate efforts – the first unsuccessful, the second more productive – to protect Mr. Mohamud's tenancy while preserving his Fifth Amendment right against potential self-incrimination. I moved to stay the eviction action entirely until the criminal case concluded, a motion the court denied based on a policy of expediting drug-related evictions. I then moved successfully for a protective order shielding Mr. Mohamud from having to answer any discovery questions regarding the criminal matter. The landlord ultimately dismissed the drug haven action before trial, shortly before the criminal matter was dismissed without an indictment. The motions in this case were heard before Judge Franklin Burgess (for the motion to stay) and Judge Todd Edelman (for the motion seeking a protective order). I served as sole counsel for these proceedings.

Opposing Counsel:

John Raftery
Offit Kurman
4800 Montgomery Lane
9th Floor
Bethesda, MD 20814
(240) 507-1700

5) *Arnita Lowery v. District of Columbia Housing Authority*, No. 04-1868, 2006 U.S. Dist. LEXIS 13319 (D.D.C. March 14, 2006).

I represented Ms. Lowery in her 2004 challenge to the D.C. Housing Authority's ("DCHA") refusal to provide her with a "reasonably expeditious" hearing prior to terminating her from the Housing Choice Voucher Program. When Ms. Lowery came to Legal Aid, she was homeless, having served sixteen months in prison and had been released to a short-term transitional housing program. While she was incarcerated, DCHA terminated her family's housing assistance. Ms. Lowery requested a hearing when she returned home, but DCHA refused to provide one. The Court (Rosemary Collyer, J.) ruled that DCHA had violated Ms. Lowery's due process rights and her rights under federal housing regulations. The court enjoined DCHA to provide her with a hearing, which ultimately resulted in the reinstatement of her voucher, and held that she had a viable claim for money damages. The case settled in 2006.

I served as lead counsel in the *Lowery* matter, authoring all pleadings and motions and arguing the motion for preliminary injunction.

Co-counsel:

Eric Angel
Legal Aid Society the District of Columbia
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Washington, D.C. 20005
(202) 661-5957

Jonathan Smith (Formerly at Legal Aid Society)
University of the District of Columbia David A. Clarke School of Law
4200 Connecticut Ave, N.W.
Washington, D.C. 20008
(202) 274-7320

Opposing Counsel:

Frederick Douglas
Douglas & Boykin PLLC
1850 M Street, N.W.
Suite 640
Washington, D.C. 20036
(202) 599-4391

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

In addition to my litigation practice, approximately 20% or more of my time has been devoted to systemic work related to low-income rental housing and utility assistance. Since 2006, I have served on the D.C. Superior Court Advisory Subcommittee on Landlord and Tenant Rules. The task of this standing committee is to create and revise rules for the Landlord and Tenant Branch and to advise on procedures to improve the functioning of the court. Since 2011, I have also served on an *ad hoc* Superior Court committee charged with overseeing the new Housing Conditions Calendar and writing rules of procedure for that calendar.

I also serve a leadership role in a group of advocates concerned with the rules, regulations, and functioning of the D.C. Housing Authority ("DCHA"), which administers the vast majority of the District's public and subsidized housing units. Over the past

decade, DCHA has engaged in a wholesale overhaul of both the regulations for administering the Section 8 Housing Choice Voucher Program and the lease and regulations governing its public housing units. Together with a small group of other attorneys, I provided comments on hundreds of regulations and on the 28-page draft public housing lease. Through months of negotiation and multiple rounds of comments, our group succeeded in creating and changing rules to improve due process and other protections for program participants. *See* 14 D.C.M.R. Chap. 49-59, Chap. 64-65.

In addition to these major projects, I have assisted in many smaller regulatory efforts, including new rules concerning termination for criminal activity; regulations establishing a pilot homeownership program; and ongoing negotiations over rules for the Low-Income Home Energy Assistance Program (LIHEAP). I am also part of a group that meets regularly with DCHA officials to discuss policy matters affecting the agency's clients and applicants.

Finally, I have worked on several legislative efforts at the D.C. Council. I was part of an advisory group tasked with revising several aspects of the District's rent control law; this effort culminated in passage of the Rental Control Reform Amendment Act of 2006 (D.C. Act 16-391, June 15, 2006). I helped draft a set of legislative proposals in 2008 to 2009 that led to improvements in enforcement of the housing code. I have recently been involved in efforts to reform the "hardship petition" process, a method of imposing significant rent increases with little opportunity for the tenants to contest the charges.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

    A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

    I have never held judicial office.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

    I have not ever been a candidate for elective, judicial, or any other public office.

21. **Political activities and affiliations.**

    - **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

    None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  None.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

    No.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

    No.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

    No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   I have testified several times on behalf of the Legal Aid Society before the District of Columbia Council on bills related to housing matters. I have also testified on Legal Aid's behalf regarding the performance of various District of Columbia agencies that administer the city's low-income housing and energy assistance programs. On occasion, as noted in my response to Question 18 in Part I, I have provided technical assistance to Councilmembers and their staff regarding the language of housing-related bills and the functioning of the city's housing agencies.

   In addition, as discussed in my response to Question 18 in Part I, I regularly communicate with leadership at the District of Columbia Housing Authority ("DCHA") about systemic issues regarding the administration of DCHA's programs. I also regularly comment on, and engage in discussions about, proposed regulations governing the agency's operations and programming. I have engaged in the same type of communication and activity with respect to the D.C. Department of Consumer and Regulatory Affairs, the agency charged with housing code enforcement, and the D.C. Department of the Environment, which administers utility assistance for low-income D.C. residents.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   I do not expect any conflicts of interest to arise based on my personal or professional history, dealings, or interests. If any such conflicts do occur, I will resolve them according to the District of Columbia Code of Judicial Conduct.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

## III. FINANCIAL DATA

**All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

REDACTED

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

**Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.**

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to practice on June 4, 2001.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**
   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**
   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**
   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. I also have been a bona fide resident of the District of Columbia itself since July 2014 and resided in the District from 2000 through 2010.

   July 2014 – present
   [redacted]

July 2010 – July 2014

[redacted]

January 2009 – July 2010

[redacted]

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Four copies have been provided.

**AFFIDAVIT**

Julie Helene Becker, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 1 day of May 2015.

Notary Public

PATRICIA D. ROULHAC
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2016

**Testimony of Julie Becker**
**Legal Aid Society of the District of Columbia**

**Agency Performance Oversight Hearing**
**for the District Department of the Environment**

**Committee on Transportation and Environment**
**Council of the District of Columbia**
**February 18, 2015**

The Legal Aid Society of the District of Columbia[1] submits this testimony regarding the performance of the Department of the Environment (DDOE) in administering the Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP helps thousands of District residents each year with heating and air-conditioning bills, helping to keep families safe and healthy by avoiding utility shutoffs or addressing those shutoffs as quickly as possible.

On the whole, the District's LIHEAP program functions well and provides critical assistance to our client community. But, as we have expressed previously, we are concerned about the program's lack of transparency and accountability on both the individual and policy level. In assisting clients with LIHEAP problems, and in our work as advocates on public benefits issues, we find that the LIHEAP program is something of a black box – it generally helps our clients, but we cannot understand or explain the rules by which it does so. And when something goes wrong, it takes an unreasonable investment of resources to figure out what has happened and how to fix it.

The District, unlike most states, operates its LIHEAP program without any statutory or regulatory framework. DDOE relies on broad federal requirements and a state plan that provides few specifics as to how the program runs. That state plan includes a number of vague and inconsistent rules regarding eligibility, benefit levels, and appeal rights. For example, both the state plan and DDOE's own materials are unclear as to whether, in order to receive "crisis" benefits, a household must actually have had its electricity cut off, or simply be threatened with shutoff.

To address this problem, a bill was introduced last year in the Council that would have established certain basic rules about the application and appeals process, and would have required the Department to create regulations governing the remainder of the program. Passage of the law would have brought the District in line with the large majority of states that have either a detailed statutory framework or a set of regulations governing their LIHEAP programs.

[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." For more than eighty years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family, housing, and public benefits. It also maintains an appellate advocacy project that litigates poverty law matters in the D.C. Court of Appeals. More information about Legal Aid can be found on our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

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Following the bill's introduction, and after sustained urging by advocates, the Department last fall finally shared a draft of regulations governing the LIHEAP program. We recognize that getting this draft on paper involved significant time, effort, and thought by the agency's legal and policy staff, and we are pleased to have the process under way.

Nonetheless, as we have communicated to the agency, this first draft of the regulations does not do nearly enough to shed light on the administration of the LIHEAP program. In critical areas, the proposed regulations offer only an administrative framework for operating the program, without any meaningful guidance regarding eligibility standards or policies for determining benefit levels. For example, the draft indicates that each year, the Department will determine eligibility criteria and publish its decision – but in most public benefits programs, that determination is made once, not annually. Once made, it is published in the regulations, subject to change only for important reasons and only subject to notice and comment. There is no reason that LIHEAP should be different.

Because they are so general in nature, the proposed regulations represent a missed opportunity for DDOE to describe clearly the current rules and processes of the LIHEAP program, and to make the policy decisions that would govern the future of the program. These decisions are not easy; they reflect the need to balance competing priorities, such as the desire to serve more residents versus providing a larger and more meaningful benefit to each, or the need to verify information versus the need to respond quickly in crisis situations.

To provide transparency and accountability for LIHEAP, DDOE must make these key policy decisions, negotiate them through the notice-and-comment process, and publish the final result in program regulations. The current draft does not reflect that the agency has undertaken these policy discussions. Nor does the agency appear to be in any hurry to move to the next stage; although we provided informal comments in November, we have yet even to meet with agency staff regarding our comments. In January, the agency responded that it intends to publish redrafted proposed regulations, as well as a list of federal and District laws related to the program. Furthermore, they have invited advocates to meet and discuss these issues as they move forward. However, despite this expressed interest, the process seems to be stalled once again.

We recognize that DDOE has a large portfolio and that, like all city agencies, it operates with limited resources. But we have been working with the Department on these LIHEAP issues for nearly three years. In that time, we have not moved much closer to having a program that is transparent to participants, advocates, or the government employees who administer it. We hope that in the coming year, and with the Council's oversight, the agency will finally complete regulations that give structure and accountability to this critical program.

**Testimony of Julie Becker**
**Legal Aid Society of the District of Columbia**

**Committee on Economic Development**
**Council of the District of Columbia**

**B20-052: "Rent Control Voluntary Agreement Procedure Amendment Act of 2013"**
**B20-074: "Residential Lease Omnibus Amendment Act of 2013"**
**B20-830: "Rent Control Amendment Act of 2014"**
**B20-837: "Rent Control Improvement and Protection Amendment Act of 2014"**
**B20-895: "Rent Control Hardship Petition Amendment Act of 2014"**
**B20-915: "Tenant Opportunity to Purchase Bona Fide Offer Clarification Amendment Act of 2014"**

**October 14, 2014**

The Legal Aid Society of the District of Columbia[1] supports the six bills before the Committee today, which together will make a significant contribution to preserving affordable housing in the District of Columbia. In particular, the "Rent Control Hardship Petition Amendment Act of 2014" targets many of the most serious abuses of the petition process and creates important protections for tenants in rent-controlled properties.

In our experience, hardship petitions have appeared with increasing frequency in the District in recent years. When it is difficult to sell a building or convert it to condominiums, a hardship petition is one of the most straightforward ways to increase the property's income potential. The law guarantees landlords a 12 percent rate of return on their investment, and if a building's current rents do not result in that return, the law permits increases up to a level that would support the 12 percent figure.[2]

The rent increases to tenants available under the hardship law can be drastic. We have had cases in which landlords have sought increases ranging from 60 percent to well over 100 percent of the existing monthly rents. For the low-income tenants that Legal Aid represents, these increases inevitably result in displacing them from their homes.

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[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 82 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection.

[2] It should be noted that at least in the current economic climate, 12 percent is a far greater rate of return than one might reasonably expect for an investment. The portion of the bill reducing the rate of return to 8 percent would address this imbalance.

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We have also litigated cases in which the landlord's purpose in submitting the hardship petition is not to increase the landlord's rate of return, as the Rental Housing Act contemplates. It is to empty the building of some or all of its tenants.

The bill under consideration addresses this problem in several ways:

Elimination of the conditional increase. The "conditional increase" offers the most serious potential for injustice in the current statutory scheme. If the Rent Administrator fails to rule on the petition within 90 days, then the increase sought in the hardship petition automatically goes into effect on a "conditional" basis, without any review from the agency at all. Tenants then must pay the increase pending review, and if the agency ultimately disapproves the petition, the landlord must return the overpaid rent to the tenants.

This setup, which might function well in some properties, is wholly unworkable for tenants of low and moderate incomes. For those tenants, the requested hardship increases are typically well beyond what they can afford.[3] This means that when the conditional increase takes effect, they cannot simply pay the increase while waiting for the agency to make a decision. But if they do not pay it, they will be forced to move out.

The result of this process is that tenants may be displaced based on rent increases that the Rent Administrator and/or OAH have never reviewed and that ultimately may be declared unlawful. At best, this situation creates unfairness. At worst, it poses great potential for abuse: landlords who may have motives other than increased rental profit – i.e., a desire, for whatever reason, to empty the building – can submit a wholly unsupported hardship petition, secure in the knowledge that the tenants will be displaced as a result of the conditional increases before the agency ever gets around to reviewing the matter on its merits.

By eliminating the conditional increase, the bill would simply remove this tool for emptying buildings. We recognize that this change would transfer the cost of delay from tenants to landlords, and we agree with the housing providers that the hardship petition process in its current state is dysfunctional for all parties. A large part of this problem is attributable to the Rental Housing Commission, which takes years – not months, but years – to adjudicate most rental housing disputes. But as between landlords and low-income renters, we believe that the balance falls in favor of preventing tenants' displacement while the parties litigate the increase.

Preventing abuse of delayed rent increases. This provision targets a new and troublesome tactic under the rent stabilization law: landlords who obtain rent increases have interpreted current law to permit them to delay or withhold implementation of these increases entirely at their discretion. While this practice on its face appears to allow tenants a brief reprieve of increased rents, we have worked with several tenants and buildings where this "rent concession"

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[3] Research indicates that already, more than one in four of the District's renters spend more than half of the household income on rent. Among the lowest-income tenants – those at or below 30 percent of the area median income – 66 percent spend more than half their income on rent; among those of slightly higher income – 30 to 50 percent of AMI – nearly one-quarter devote more than half their income to rent. See Urban Institute, *Housing Security in the Washington Region: District of Columbia*, at 4 (July 15, 2014) (available at http://www.urban.org/uploadedpdf/413161-District-of-Columbia-Housing-Security-Profile.pdf).

is essentially held over the heads of individual tenants as an ongoing threat: if the tenant does anything to displease the housing provider, the "concession" may be "revoked," subjecting the tenant to an immediate and unaffordable rent increase.

This approach echoes the old "rent ceiling" scheme that the Council eliminated in 2006 – but it is even worse. Because these concessions are completely unregulated, landlords may employ them in any way, with any frequency, and for almost any reason. Tenants lack any certainty about how often the rent may increase and by how much.

For these reasons, we strongly support the provision in the bill that would prevent a landlord from reporting to RAD a different rent figure than it is charging to the tenant. With that said, we hope that once the provision becomes law, the Rental Housing Commission will move speedily to create rules regulating rent concessions. Abuses aside, there are certainly situations where "concessions" are a useful and appropriate way of keeping rent affordable. We are confident that with input from landlords and tenants, the Commission can create regulations that strike the right balance.

Protecting elderly and disabled tenants from the increase. We strongly support the provision in the bill that would expand the protections in the capital improvement law to all housing provider petitions. Elderly and disabled tenants are some of the most vulnerable parties in the petition process. They typically survive on fixed incomes, and, in the case of elderly renters, have often occupied their homes for many years, making a move that much more traumatic. And because the housing provider may take a tax credit in the amount of the uncollected increase, the bill would have little impact on the landlord's bottom line.

* * *

Finally, while today's testimony has focused on the hardship petition bill, Legal Aid also supports the provisions in the other bills under consideration, which will plug gaps in existing law; will prevent the erosion of affordable housing through the use of voluntary agreements; and will add important clarifying language to the Tenant Opportunity to Purchase Act. We applaud the Committee for taking up these issues and look forward to final passage.

**Testimony of Julie Becker**
**Legal Aid Society of the District of Columbia**[1]

**Committee on Economic Development**
**Council of the District of Columbia**

**Bill 20-113, the "Rent Control Hardship Petition Limitation Amendment Act of 2013"**

**April 11, 2014**

The Legal Aid Society supports the Rent Control Hardship Petition Limitation Amendment Act of 2013, which would alter the process for imposing "hardship" increases under the Rental Housing Act. The legislation would help tenants protect themselves against unlawful rent increases that, in many cases, have the effect of unnecessarily displacing families from their homes. In particular, the bill targets a matter of increasing importance to low-income tenants: The so-called "conditional increase" that a landlord may impose 90 days after filing a hardship petition.

In our experience, hardship petitions have appeared with increasing frequency in the District since the downturn in the housing market several years ago. When it is difficult to sell a building or convert it to condominiums, a hardship petition is one of the most straightforward ways to increase the income potential of a property. The law guarantees landlords a 12 percent rate of return on their investment, and if a building's current rents do not result in that return, the law permits increases up to a level that would support the 12 percent figure.[2]

The increases available under the hardship law can be drastic. We have reviewed cases in which landlords have sought increases ranging from 60 percent to well over 100 percent of the existing monthly rents. For the low-income tenants that Legal Aid represents, these increases inevitably result in displacing them from their homes.

We have also litigated cases in which the purpose of the hardship petition is clearly not to increase the landlord's rate of return, as the Rental Housing Act contemplates. It is to empty the building of some or all of its tenants.

The "conditional increase," which is one subject of this legislation, offers the most serious potential for injustice in the current statutory scheme. Under current law, a landlord who files a hardship petition with the Rent Administrator is entitled – in theory – to a decision on the petition within 90 days. Once the agency makes a decision, the tenants may challenge any

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[2] It should be noted that at least in the current economic climate, 12 percent is a far greater rate of return than one might reasonably expect for an investment.

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approval of the increase in the Office of Administrative Hearings. But if the Rent Administrator fails to meet the 90-day deadline, then the increase sought in the hardship petition automatically goes into effect on a "conditional" basis, without any review from the agency at all. Tenants then must pay the increase pending the Rent Administrator's review, and if the agency ultimately disapproves the increase, the landlord must return the overpaid rent to the tenants.

This setup, which might function well in some properties, is wholly unworkable for tenants of low and moderate incomes. For those tenants, the requested hardship increases are typically well beyond what they can afford.[3] This means that when the conditional increase takes effect, they cannot simply pay the increase while waiting for the agency to make a decision. But if they do not pay it, they will be forced to move out.

The result of this process is that tenants may be displaced based on rent increases that the Rent Administrator has never reviewed and that ultimately may be declared unlawful. At best, this situation creates unfairness. At worst, it poses great potential for abuse: landlords who may have motives other than increased rental profit – i.e., a desire, for whatever reason, to empty the building – can submit a wholly unsupported hardship petition, secure in the knowledge that the tenants will be displaced as a result of the conditional increases before the agency ever gets around to reviewing the matter on its merits.

The Rent Control Hardship Petition Limitation Amendment Act would address this problem in two ways. First, limiting the conditional increase to five percent would ensure that no drastic rent increase will take effect until the agency has performed a full review, and has determined that the facts support the landlord's requested figures.

Second, the penalty of treble damages for petitions filed in bad faith would certainly address some of the cases in which the landlord's motive is illegitimate. But to accomplish this goal more fully, we suggest that the penalty be structured slightly differently. As written, the statute would impose a penalty only if the landlord actually collected the conditional increase. But in reality, the very threat of the hardship increase – even if the tenants never actually pay it – is often enough to scare tenants into finding other housing. For this reason, we suggest that the Rent Administrator or the Office of Administrative Hearings be empowered to impose a penalty, perhaps in the form of a civil fine, *anytime* there is a finding of bad faith or improper purpose, regardless of whether the tenants have actually paid the increase.

With that said, it should be noted that the hardship petition process, at least in its current state, is dysfunctional for all parties – landlords as well as tenants. We recognize that there may be cases in which a landlord files a fully supported petition and then suffers significant harm from having to wait, usually well more than 90 days, for the agency to approve a needed rent increase. But in many other cases, that harm is outweighed by the effect on the tenants, for whom the Rent Administrator's delay means displacement from their homes.

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[3] Research indicates that already, more than one in four of the District's renters spend more than half of the household income on rent. Among the lowest-income tenants – those at or below 30 percent of the area median income – 63 percent spend more than half their income on rent; among those of slightly higher income – 30 to 50 percent of AMI – nearly one-third devote more than half their income to rent. See D.C. Fiscal Policy Institute, *Disappearing Act: Affordable Housing in DC is Vanishing Amid Sharply Rising Housing* Costs, at 6-7 (2012) (available at http://www.dcfpi.org/wp-content/uploads/2012/05/5-7-12-Housing-and-Income-Trends-FINAL.pdf).

There are undoubtedly a number of ways to address these issues, and to balance the rights of landlords to a reasonable return with protection for tenants against unaffordable and unlawful rent increases. We look forward to working on this legislation with you and your staff toward a workable solution for everyone involved.

**Testimony of Julie Becker**
**Supervising Attorney, Legal Aid Society of the District of Columbia**[1]

**District of Columbia Housing Authority Board of Commissioners**
**Monthly Meeting, March 9, 2011**

**Resolution 11-05**
**Regulations for the "Achieving Your Best Life Rewards Property Program"**

The regulations before the Board today would deprive certain public housing residents of a basic right: the opportunity to resolve grievances with the Housing Authority in a fair, neutral way without going to court. The proposed regulations for the AYBL program provide that all decisions related to the program are "subject to Administrative Review only," and not to the standard DCHA grievance procedure. This means that disputes about eligibility, status in the program, and termination would receive nothing more than a written review, most likely by a person directly involved the original decisionmaking process.

As a legal matter, these regulations are unsound for the reasons discussed in our comments, which are attached here. The DCHA decisions at issue are exactly the type of actions that courts around the country and here in the District have found to be subject to the grievance process.

My testimony today, however, is not about these legal questions, which will undoubtedly be sorted out in court. Instead, I'd like to focus on why this is, practically speaking, such a bad and offensive idea.

**Types of disputes that are resolved through the grievance process**

The public housing grievance process is particularly effective at addressing all manner of disputes between tenants and DCHA in an expeditious way, outside of court. Under the AYBL regulations, both parties would lose that chance for a fair dispute resolution process. The following are some examples of situations that will undoubtedly arise:

- DCHA has made an error in calculating the tenant's rent payments. The agency has counted more income than the tenant actually receives, for example, or has included income that should be excluded under the recertification rules. Ordinarily, this sort of problem can be resolved fairly quickly though a Fair Hearing. AYBL participants, however, would have no such opportunity. The most likely result for these individuals is that they will be unable to pay the unlawfully charged rent, and – without any

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internal hearing process – will ultimately risk eviction through Landlord-Tenant Court.

- A victim of domestic violence requires a transfer for public safety reasons. The agency decides that she is not entitled to a transfer. The tenant would be left with no way to challenge that decision.

- DCHA moves to terminate the AYBL Contract of Participation because it believes the family has "failed to meet its obligations without good cause." The family disagrees and wishes to remain in the AYBL program. The family has no recourse, no right to remain in its AYBL Rewards Unit, and no opportunity to stay on the path to homeownership.

**The proposed "Administrative Review" Process**

In the regular public housing program – as well as the Housing Choice Voucher Program – the cases discussed above would all be subject to the grievance process through the Office of Fair Hearings. But here, instead of a grievance hearing, DCHA has included in the regulations an "Administrative Review" process for AYBL families to challenge adverse decisions by the agency.

For the reasons discussed in our attached comments, this "review" proceeding is not a legally sufficient substitute for a grievance hearing. Equally importantly, the proposed Administrative Review process is not a practical way for most tenants to challenge DCHA's actions. First, unlike the grievance rules, the Administrative Review regulation gives tenants no right to review documents related to DCHA's decision. Without the opportunity to review its own record, a family may not even know why the agency has taken the action under "review."

Second – and perhaps worse – unlike an in-person grievance hearing, the Administrative Review process depends entirely on tenants' ability to present their cases *in writing* for consideration by the Regional Administrator. For those tenants who have difficulty with written communication, this "review" opportunity therefore is no opportunity at all. The end result will undoubtedly be to foreclose any meaningful review of DCHA's actions for a large segment of AYBL families.

Third, the person performing the Administrative Review is not neutral. Unlike the officers who conduct Fair Hearings, the person charged with Administrative Review is a supervisory employee of DCHA with a direct interest in the AYBL program and, in all likelihood, in upholding the very action that the tenant is challenging. There is no reason to believe that tenants will receive an impartial assessment through this process, particularly where the dispute involves an allegation that the tenant has or has not complied with the program requirements.

* * *

For all of these reasons, we hope the Board will decline to approve the AYBL regulations until these grievance-related issues are addressed. There is no legal basis for depriving AYBL families of access to the grievance process. Nor is there any logical reason to make relinquishing

these rights a condition of living in a Rewards property and moving on the path to homeownership.

Thank you.

**Testimony of Julie Becker**
**Legal Aid Society of the District of Columbia**[1]

**Committee on Housing and Workforce Development**
**Council of the District of Columbia**

**Bill 18-548, the "Rent Increase Amendment Act of 2009"**

**April 1, 2010**

The Legal Aid Society supports the Rent Increase Amendment Act of 2009, which would alter the process for imposing "hardship" increases under the Rental Housing Act. The legislation would help tenants protect themselves against unlawful rent increases that, in many cases, have the effect of unnecessarily displacing families from their homes. In particular, the bill targets a matter of increasing importance to low-income tenants: The so-called "conditional increase" that a landlord may impose 90 days after filing a hardship petition.

In our experience, hardship petitions are appearing with increasing frequency in the District. Given the state of the economy, which can make difficult to sell a building or convert it to condominiums, a hardship petition is one of the most straightforward ways to increase the income potential of a property. The law guarantees landlords a 12 percent rate of return on their investment, and if a building's current rents do not result in that return, the law permits increases up to a level that would support the 12 percent figure.[2]

The increases available under the hardship law can be drastic. We have reviewed cases in which landlords have sought increases ranging from 60 percent to well over 100 percent of the existing monthly rents. For the low-income tenants that Legal Aid represents, these increases inevitably result in displacing them from their homes.

The "conditional increase," which is the subject of this legislation, offers the most serious potential for injustice in the current statutory scheme. Under current law, a landlord who files a hardship petition with the Rent Administrator is entitled – in theory – to a decision on the petition within 90 days. Once the agency makes a decision, the tenants may challenge any approval of the increase in the Office of Administrative Hearings. But if the Rent Administrator fails to meet the 90-day deadline, then the increase sought in the hardship petition automatically goes into effect on a "conditional" basis, without any review from the agency at all. Tenants

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the increase pending the Rent Administrator's review, and if the agency ultimately disapproves the increase, the landlord must return the overpaid rent to the tenants.

This setup, which might function well in some properties, is wholly unworkable for tenants of low and moderate incomes. For those tenants, the requested hardship increases are typically well beyond what they can afford.[3] This means that when the conditional increase takes effect, they cannot simply pay the increase while waiting for the agency to make a decision. But if they do not pay it, they will be forced to move out.

The result of this process is that tenants may be displaced based on rent increases that the Rent Administrator has never reviewed and that ultimately may be declared unlawful. At best, this situation creates unfairness. At worst, it poses great potential for abuse: landlords who may have motives other than increased rental profit–i.e., a desire, for whatever reason, to empty the building–can submit a wholly unsupported hardship petition, secure in the knowledge that the tenants will be displaced as a result of the conditional increases before the agency ever gets around to reviewing the matter on its merits.

The Rent Increase Amendment Act would solve this problem by doing away with the conditional increase. This solution would ensure that the increase cannot take effect until the agency has performed a full review, and has determined that the facts support the landlord's requested increase.

With that said, it should be noted that the hardship petition process, at least in its current state, is dysfunctional for all parties–landlords as well as tenants. We recognize that there may be cases in which a landlord suffers significant harm from having to wait, usually well more than 90 days, for the agency to approve a needed rent increase. But in many other cases, that harm is outweighed by the effect on the tenants, for whom the Rent Administrator's delay means displacement from their homes.

There are undoubtedly a number of ways to address these issues, and to balance the rights of landlords to a reasonable return with protection for tenants against unaffordable and unlawful rent increases. We look forward to working on this legislation with you and your staff toward a workable solution for everyone involved.

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[3] Research indicates that already, half of the District's renters spend more than the recommended 30 percent of their income on rent, and one in four spends more than half of the household income on rent. Among the lowest-income tenants – those at or below 30 percent of the area median income – four out of five households spends more than 30 percent of its income on rent; among those of slightly higher income – 30 to 50 percent of AMI – two-thirds spend more than the recommended 30 percent on rent. See D.C. Fiscal Policy Institute, *Nowhere to Go: As DC Housing Costs Rise, Residents Are Left With Fewer Affordable Housing Options*, at 7-8 (2010) (available at http://www.dcfpi.org/wp-content/uploads/2010/02/2-5-10housing1.pdf).

**Nomination Hearing to Consider**
**The Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia**
**Question for the Record for Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo**
**Senator Rand Paul**

**Response of Julie H. Becker**

**As an Associate Judge of the Superior Court of the District of Columbia, will you abide by the following statement?: "The Second Amendment right is exercised individually and belongs to all Americans."**

Response: Yes. In District of Columbia v. Heller, the Supreme Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (2008); see McDonald v. City of Chicago, 561 U.S. 742, 749-50 (2010) ("In [Heller], we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense."). If I am confirmed, I will apply these and any other binding precedents to any case concerning the regulation of firearms.

Opening Statement of Steven N. Berk
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
March 2, 2016

Mr. Chairman and members of the Committee: I am honored to appear before you today as a nominee for the position of Associate Judge of the Superior Court for the District of Columbia. I would like to thank the DC Judicial Nomination Commission, and in particular its Chairman, Federal District Court Judge Emmet Sullivan, for their encouragement and for recommending me to the White House. I'd like to thank the President for nominating me. And thank you Congresswoman Norton for your kind introductory words this morning.

I would like to acknowledge my colleagues, friends, and family who are here today and have also been with me throughout this journey. I'd especially like to recognize, my two sons, Corey and Jacob; and my mother, who flew in from Chicago. She raised me to always strive for excellence in whatever endeavor I chose to pursue; and to my wife, Jenny, who has never waivered in her support, picking me up when my spirits waivered, and believing in me sometimes more than I believed in myself.

Someone who I wish were here is my father, who died last year after a long and valiant battle with cancer. At the close of World War II, American soldiers liberated my dad from the Dachau concentration camp. He was days from death, suffering from profound malnutrition and typhus. He eventually regained his health and came to the United States, as an orphan in 1948. Two years later he was a member of the United States Army serving two tours of duty on the front lines in Korea before returning to Chicago, marrying my mom, and eventually becoming a successful entrepreneur. He loved this country and I miss him very much today.

I attended law school, because I was interested in public service. That service brought me to Washington in 1989 where I worked as a prosecutor at the Securities Exchange Commission and the United States Attorney's Office for the District of Columbia. As a young partner at Jenner & Block, I spent thousands of hours on pro bono matters. After taking a short break from the practice of law, I returned on a trajectory, representing individuals, such as defrauded investors, consumers, small business owners and whistleblowers.

Over the past five years, I have continued to demonstrate a commitment to public service by volunteering for and being elected to leadership positions at the DC Bar. I served as a member of and, later, Chair of, the Judicial Evaluations Committee. I have also been elected Treasurer and currently sit as a Member of the Board of Governors.

If I am fortunate enough to be confirmed, I will commit to having everyone in the courtroom treated with dignity and respect. I will be decisive and make timely and thoughtful decisions. And I will be prepared, by reading the papers and studying the facts and law before taking the bench.

Thank you for your consideration of my nomination. I will be pleased to answer any of your questions.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE

## I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

   Steven Nathan Berk

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a U.S. citizen.

3. **Current office address and telephone number.**

   1625 Massachusetts Avenue, N.W.
   Suite 605
   Washington, D.C. 20036
   202-232-7550

4. **Date and place of birth.**

   July 2, 1959; Chicago, Illinois.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Jennifer Chandler Hauge, Vice President of the National Council of Non-Profits, 1001 G Street, N.W., Suite 700E, Washington, D.C. 20001.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   Corey Harrison Berk, 22 years old; Management Consulting Analyst, Accenture Federal Services, Bethesda, Maryland.
   Jacob Shelby Berk, 22 years old; Student, Elon University, Burlington, North Carolina.

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   Boston College Law School; 1982 – 1985; JD received in 1985.
   London School of Economics; 1981 – 1982; MSc received in 1982.

Washington University in St. Louis; 1977 – 1981; AB received in 1981.
Niles West High School (Skokie, IL); 1973 – 1977; High School Diploma received in 1977.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

Summer 1984
Sidley & Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Summer Associate

Summer 1983
JMB Realty Corporation
900 North Michigan Avenue
Suite 1100
Chicago, IL 60611
Summer Associate (Legal Department)

9. **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.**

American Legion Award for Patriotism, Integrity and Leadership (1973).
Elected Managing Editor, Boston College Law Review (1984).
Official FBI Commendation for Prosecution of Six Individuals Accused of Stealing Funds from a Public Pension Fund (1993).
Governor of Maryland, Public Service Award for Work on Behalf of Special Needs Children and Adults (2010).
SuperLawyer (2014 – 2016).

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

Founder and Chairman of the Board, Montgomery Cheetahs (2006 – 2013).
Director, Appleseed Foundation (2011 – 2015).
Founder and CEO, iHappen Interactive (2000 – 2003).

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and**

**provide titles and dates of any offices which you have held in such groups.**

District of Columbia Bar Association
Member (1992 – present)
Chairman, Judicial Evaluations Committee (2011)
Treasurer and Member Board of Governors (2012 – present)

Illinois Bar Association
Member (1985 – present)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

None.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies, which require special admission to practice.**

District of Columbia, 1992.
Illinois, 1985.
United States Supreme Court, 1998
United States Court of Appeals for the District of Columbia Circuit, 1992.
United States Court of Appeals for the Second Circuit, 2008.
United States Court of Appeals for the Seventh Circuit, 1987.
United States Court of Appeals for the Ninth Circuit, 2007.
United States Court of Appeals for the Tenth Circuit, 1998.
United States District Court for the District of Columbia, 1992.
United States District Court for the District of New Jersey, 2010.
United States District Court for the Northern District of Illinois, 1986.
United States District Court for the Northern District of California, 2007.
United States Tax Court, Special Admission, 2015.

I was administratively suspended from the District of Columbia Bar from November 1, 1999 through November 29, 1999. I have no recollection of the facts and circumstances surrounding the suspension. My best guess based on the time period of the suspension is that I was transitioning from my law firm, Jenner & Block, to an internet startup. In that transition, my contact information, including my address, changed. I also was not moving to another law firm where I would likely have been assisted by support staff in keeping my dues current.

**14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

*In the Wake of Concepcion and Dukes, Consumer Class Action Lawyers Must Take Some Clues from the Whistleblower Bar*, The National Law Journal, January 30, 2013.

*Reform from Within: Changing the Paradigm of Class Action Litigation*, The American Association for Justice Class Action Litigation Newsletter, Spring 2012.

**15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

**16. Legal career.**

**A. Describe chronologically your law practice and experience after graduation from law school, including:**

**(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I have not served as a law clerk.

**(2) Whether you practiced alone, and if so, the addresses and dates;**

I have practiced from 2009 through the present at Berk Law PLLC:

2009 – 2012
1225 15th Street, N.W.
Washington, D.C. 20036

2012 – 2014
2002 Massachusetts Avenue, N.W.
Washington, D.C. 20036

2014 – present
1625 Massachusetts Avenue, N.W.
Suite 605
Washington, D.C. 20036

**(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

1985 – 1987
Isham Lincoln & Beale (No Longer Exists)
Chicago, IL
Associate

1987 – 1989
Jenner & Block
353 Clark Street
Chicago, IL 60654
Associate

1989 – 1992
Securities and Exchange Commission
10 F Street, N.E.
Washington, D.C. 20549
Staff Attorney

1992 – 1996
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20002
Assistant United States Attorney

1996 – 2000
Jenner & Block
1099 New York Avenue, N.W.
Washington, D.C. 20001
Partner

2000 – 2003
iHappen
2639 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20037
Founder and CEO

2003 – 2005
Mehri & Skalet
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel

2005 – 2007
Cuneo Gilbert & LaDuca
507 C Street, N.E.
Washington, D.C. 20001
Partner

2007 – 2009
Chavez & Gertler
42 Miller Road
Mill Valley, CA 94941
Partner

**B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

I have enjoyed a diverse litigation practice over the past 25 years, which can be divided into three stages: (1) prosecutor (1989 – 1995); (2) large firm commercial litigator (1995 – 2002); and (3) small firm plaintiff side representation (2004 – present).

As a prosecutor, I first served as a Staff Attorney in the Office of the General Counsel of the Securities and Exchange Commission. I was primarily responsible for representing the Securities and Exchange Commission in civil matters. My most extensive matter while at the Securities and Exchange Commission was a disciplinary proceeding against a major accounting firm that signed off on the financials of a company that had committed securities fraud.

After leaving the Securities and Exchange Commission, I became an Assistant United States Attorney for the District of Columbia. In this role, all of my practice focused on criminal law.

Upon leaving the government, I returned to private practice at Jenner & Block as a Senior Associate. Within two years, I was elected to the partnership. My practice generally shifted away from criminal work and toward federal civil litigation. I conducted several internal corporate investigations and defended clients in various white-collar matters. While opportunities for jury trials were limited, I had first chair responsibilities in several state administrative enforcement actions and appeals, including in California, Louisiana and Nebraska.

My current practice working in a small firm representing plaintiffs focuses on civil and administrative litigation. My trial work has primarily been non-jury civil arbitration proceedings or administrative enforcement actions. I frequently appear in federal courts across the country in connection with national class action cases filed in different states. I have on occasion, however, represented clients in connection with white-collar criminal matters involving, for example, insider trading and violations of the Foreign Corrupt Practices Act.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

Throughout my career, I have engaged in a litigation practice in one form or

another. In my early career, I worked on large commercial cases involving companies such as MCI Communications and Tenneco Inc. As a government lawyer, for five years in the 1990s, I represented the United States in criminal matters. For the last dozen years, I have represented millions of consumers in several nationwide class actions against large consumer products companies such as Hewlett Packard, American Honda, Sony and Facebook. Over the last five years, I have shifted my practice to the representation of whistleblowers who are asserting claims under the False Claims Act, and the Dodd Frank Act, which provides whistleblower status and awards on claims brought to the Internal Revenue Service, Commodity Futures Trading Commission and Securities and Exchange Commission. I have also consistently represented investment professionals and investors in administrative proceedings and arbitrations before the American Arbitration Association, National Futures Association and Financial Industry Regulatory Authority.

**D. Describe the general nature of your litigation experience, including:**

**(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

The frequency of my court appearances has varied over time. Since 1996, most of my litigation has been motions practice, where I have argued, for example, motions to dismiss and motions for class certification mostly in federal courts across the country. During this same period, I have had approximately twelve arbitrations before the American Arbitration Association, National Futures Association and Financial Industry Regulatory Authority on various securities related matters.

**(2) What percentage of these appearances was in:**

**(a) Federal courts (including Federal courts in D.C.);**
**(b) State courts of record (excluding D.C. courts);**
**(c) D.C. courts (Superior Court and D.C. Court of Appeals only);**
**(d) Other courts and administrative bodies.**

I estimate that approximately 60% of my court appearances have been in federal courts, 10% in state courts of record, and 30% before other courts and administrative bodies, such as the American Arbitration Association, National Futures Association and Financial Industry Regulatory Authority.

**(3) What percentage of your litigation has been:**

**(a) civil;**
**(b) criminal.**

From 1992 – 1996 as an Assistant United States Attorney for the District of Columbia all my litigation practice was criminal (100%). Since 1996, 95% of my litigation practice has been civil and 5% criminal.

(4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

During my tenure as an Assistant United States Attorney from 1992 to 1996, I tried approximately ten cases per year to a jury; these were all in the District of Columbia Superior Court. Over the course of my career, I have served as chief counsel or associate counsel in approximately thirty cases that were litigated to final judgment on dispositive motions.

(5) **What percentage of these trials was to**

(a) **a jury;**
(b) **the court (include cases decided on motion but tabulate them separately).**

Approximately 85% of my trials were to a jury and 15% were to a court.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. United States v. Joanne Egypt, Case No. 93-cr-212 (D.D.C. 1993) (Hogan, J.)

I represented the United States as lead prosecutor in this case before Judge Thomas Hogan involving a sophisticated scheme among an insider and several confederates to embezzle monies from a District of Columbia pension fund. I was contacted by the FBI almost immediately after the first arrest of one of the confederates and investigated the case, which led to the conviction of seven co-conspirators who agreed to testify against Joanne Egypt, the insider and main perpetrator. Ms. Egypt eventually pled guilty. The FBI awarded me with an official accommodation. The case was significant because one arrest of a low-level confederate, through investigation and questioning, resulted in closing down the scheme and the

indictment and conviction of each member of the scheme.

Opposing Counsel:
Howard Bell Katzoff
710 D Street
Suite 310
Washington, D.C. 20004

2. Adker v. United States Department of Housing and Urban Development, Case No. 87–0874–CIV (S.D. Fla. 1998) (Paine, J.)

Leading a team of Jenner & Block attorneys for over two years (1994 – 1995), we represented a class of African American residents of Dade County, Florida, in a major fair housing case before Judge James C. Paine. Dade County was notorious for having a longstanding history of discriminating against African Americans. Prior to our civil suit, Attorney General Janet Reno, then District Attorney for Dade County, brought criminal charges against local housing conditions for the poor quality housing. Supervising four attorneys in discovery, depositions, brief writing and settlement negotiations, we obtained a very favorable settlement for housing residents. The global settlement mixed injunctive relief (designed to eliminate illegal and discriminatory practices plaguing Dade County housing for decades) and included Section 8 certificates (to enable thousands of residents to move out of overcrowded crime filled public housing projects).

Co-Counsel:
Thomas Henderson
Sanford Heisler
1666 Connecticut Avenue, N.W.
Washington, D.C. 20009
202-499-5205

Opposing Counsel:
Andrea Newmark
United States Department of Justice
Federal Programs Branch, Civil Division
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
202-514-4267

Patricia Flagg
United States Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410
202-708-1112

3. Earles v. State of Louisiana, No. 95-CA-0505 (Ct. of App. of La., 1995) (Garwood, Duhe and DeMoss J.)

In this series of cases from California, Nebraska and Louisiana, Jenner & Block represented CPAs who were threatened by various State Boards of Accountancy with revocation of their licenses if they offered securities brokerage services to accounting clients. We challenged these proceedings directly and in collateral suits brought in federal court on grounds that the state rules were anti-competitive and violations of the First Amendment. I served as the first chair for the administrative proceedings of which I prevailed in two. I also served as co-lead counsel in the federal cases. Although we did not prevail, the law in this area was significantly altered and consumers had the option of using their CPA, whom they knew and trusted, to offer securities.

Co-Counsel:
Sharon Mize
Sessions, Fishman, Nathan & Israel, LLC
201 Saint Charles Street
Suite 3815
New Orleans, LA 70170
504-582-1500

Opposing Counsel:
Robert Foley (Deceased)
Adams & Reese LLP
One Shell Square
701 Poydras Street
Suite 4500
New Orleans, LA 70139
504-581-3234

4. Sullivan v. Bank of America, 773 F. Supp. 2nd 298 (E.D.N.Y. 2011) (Spatt, J.)

This case involved a Ponzi scheme perpetrated by Nicholas Cosmo, a convicted felon who defrauded hundreds of investors, who were primarily civil servants, of their lifesavings. Mr. Cosmo claimed to be selling interests in real estate construction projects (specifically bridge loans) and for some time was able to pay investors what appeared to be large returns but were in fact simply the monies of new investors. Documents revealed that over $2 billion flowed through fifteen Bank of America accounts controlled by Cosmo and his confederates. Cosmo employed Bank of America employees and received advice from a Bank of America vice president. On behalf of investors, and after a significant factual investigation and review of thousands of documents produced by the bankruptcy trustee, Berk Law PLLC and Robbins Geller Rudman & Dowd LLP brought a claim against Bank of America for "aiding and abetting" Cosmo's fraud. The trial court dismissed the case on the pleadings, and that decision was affirmed by the

United States Court of Appeals for the Second Circuit. Although we did not prevail, the case was significant because it laid the groundwork for follow-up cases where courts have been more receptive to "aiding and abetting" theories and finding financial institutions liable for turning a blind eye to widespread frauds.

Co-Counsel:
Robbins, Geller, Rudman & Dowd LLP
Robert Rothman
58 South Service Road
Suite 200
Melville, NY 11747
631-367-7100

Opposing Counsel:
Michael Schissel
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022
212-715-1157

5. In re HP Printer Litigation, No. 5:2005cv03580 (N.D. Cal. 2014) (Fogel, J.)

This nationwide class action challenged various business practices of Hewlett Packard involving their inkjet printers and their use of an image on ink warnings that illustrated a near empty ink cartridge when in fact the cartridge had as much as 40% ink remaining. Relying on these false, and at a minimum, confusing warnings, consumers purchased ink prior to when they needed it and discarded cartridges that had a considerable amount of ink remaining. After nearly five years of litigation, the case was settled and Hewlett Packard agreed to eliminate these image warnings. The case, however, remains on appeal on other grounds.

Co-Counsel:
Niall McCarthy
Cotchett Pitre & McCarthy LLP
840 Malcom Road
Suite 200
Burlingame, CA 94010
650-692-6000

Opposing Counsel:
Sam Liversidge
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles CA, 90071
213-229-7000

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

Over the past five years, I have served in leadership positions within the D.C. Bar. First, I served as a member and the chairman of the Judicial Evaluations Committee. In that role I worked with a team to survey all D.C. Bar members about how D.C. judges treat *pro se* litigants, in an effort to improve how such litigants are treated.

I recently was elected to the post of Treasurer of the District of Columbia Bar. In that role, I have worked to protect the interests of D.C. Bar members and provide them all with more services. In particular, I have pushed the D.C. Bar staff to build programs designed to benefit small firms and solo practitioners. For example, the D.C. Bar is designing a studio in its new headquarters that will allow all members to create sophisticated videotape presentations for case related or promotional purposes. I have also been vigilant about keeping dues as low as possible. I seek to make a difference with new lawyers finding their way, older lawyers transitioning, and the many thousands of less fortunate citizens who depend on the D.C. Bar's robust *pro bono* program for representation.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I have never held judicial office.

A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

Not applicable.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  2010: Doug Gansler for Maryland Attorney General, $500.
  2012: Doug Gansler for Maryland Governor, $500.
  2015: Glenn Ivey for Maryland Congress, $250.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

    No.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

    Law firms at which I was partner may have been involved in lawsuits, but no such lawsuits related to legal work performed by me.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

    No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   If I am confirmed, I have a plan that involves transferring my pending cases to various attorneys (generally these attorneys are currently my co-counsel). By written agreement these attorneys will be responsible for completing the representation, which may include further litigation and the collection of a contingent fee owed to Berk Law PLLC. Once monies are received, my co-counsel will be obligated to: (1) pay any monies owed to our client; (2) pay any fees owed to Berk Law PLLC; and (3) retain an agreed upon percentage for their efforts. I will have no role or decision-making authority relating to these cases once the transfer has occurred.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   I have a business loan and home mortgage with Santander Bank. If a matter were to come before me involving Santander Bank, I would consider and apply the Code of Judicial Conduct to determine whether I could hear the case.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three**

**(3) copies of any trust or other relevant agreements.**

To my knowledge, no current or former clients currently have matters before the Superior Court. Nor am I aware that any current or former clients anticipate having matters before the Superior Court. If a matter were to come before me involving a former client, I would consider and apply the Code of Judicial Conduct to determine whether I could hear the case.

8. **If confirmed, do you expect to serve out your full term?**

Yes.

## III. FINANCIAL DATA

**All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

REDACTED

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

**Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.**

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes.

4. **If the answer to Question 3 is "no" –**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia? Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. Since 2011 I have resided at [redacted] Prior to that, from June 2009 to June 2011, I resided at [redacted]

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

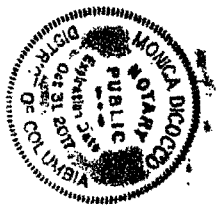
9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Four copies are attached.

**AFFIDAVIT**

Steven N. Berk being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 16th day of December 2015.




Monica DiCocco
Notary Public

**Post-Hearing Questions for the Record**
**From Senator Rand Paul**

**Nomination Hearing to Consider**
**The Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia**
**March 2, 2016**

**Response of Steven N. Berk**

**As an Associate Judge of the Superior Court of the District of Columbia, will you abide by the following statement?: "The Second Amendment right is exercised individually and belongs to all Americans."**

Response: Yes. The Supreme Court's landmark decisions in *Distritct of Columbia v. Heller,* 554 U.S. 570 (2008) and *McDonald v. City of Chicago 561 U.S. 742 (2010)* affirmed an individual has rights under the Second Amendment that include the right to keep and bear arms. In deciding a case involving those rights, I would be guided by the doctrine of "stare decisis" and bound by the holdings in *Heller* and *McDonald.*

**Opening Statement of Elizabeth Carroll Wingo**
**Nominee to be an Associate Judge of the District of Columbia Superior Court**
**March 2, 2016**

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today, as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I would like to thank President Obama for nominating me. I would also like to thank Congresswoman Norton for taking the time out of her busy schedule to introduce me at this hearing today. In addition, I would like to express my appreciation to the Committee members and the Committee staff for their hard work and for considering my nomination so expeditiously.

I would also like to acknowledge and thank Chief Judge Lee F. Satterfield for his leadership, his support, and his presence here today. I am also very fortunate to have a number of members of my family, who have been very supportive, here with me to today, and I would like to introduce and thank them: my husband, Harry Wingo, and my children, Alexandra and Natalie; my parents, Tony and Judy Carroll; my brother and sister-in-law, Tom and Katherine Carroll; my sister and brother-in-law, Michaela and Ted Lizas, and their children, my nieces Amy and CC Lizas. I would also like to acknowledge and thank my step-daughter Hailey, who is a junior in high school and unfortunately could not be here today. Finally, I would also like to thank the many friends, and current and former colleagues, who have supported me over the years, some of whom are present today.

I was born and raised in the District of Columbia, and have spent most of my legal career serving the citizens of the District of Columbia. After clerking for the Honorable T.S. Ellis in the Eastern District of Virginia, I spent four years at the U.S. Attorney's Office for the District of Columbia, prosecuting a wide variety of crimes, ranging from misdemeanor simple assaults to homicides. Following my time at the U.S. Attorney's Office, I continued to work on behalf of the people of the District of Columbia at the Office of the Attorney General for the District of Columbia, where I served as the Chief of the Criminal Section, and then as the Assistant Deputy Attorney General for Public Safety. Since 2006, I have had the honor of serving as a Magistrate Judge in the Superior Court, where I have had the opportunity to preside over calendars in the Criminal and Civil Divisions, as well as in the Family Court and Domestic Violence Unit. It would be a privilege and an honor for me to continue my public service as an Associate Judge of the Superior Court.

Thank you for your consideration, and I look forward to answering your questions.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**

   Elizabeth Carroll Wingo (formerly Elizabeth Hughes Carroll)

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a citizen of the United States.

3. **Current office address and telephone number.**

   Superior Court of the District of Columbia
   500 Indiana Avenue, N.W.
   Washington, DC 20001
   (202) 879-0426

4. **Date and place of birth.**

   April 7, 1970; Washington, DC.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Harry Matthew Wingo, Jr., Principal of West River Solutions, 5614 Connecticut Avenue, N.W. #147, Washington, D.C. 20015.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   [redacted]

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   Yale Law School, New Haven, CT; September 1994 – June 1997; Juris Doctor awarded June 1997.

   Dartmouth College, Hanover, NH; September 1988 – June 1992; Bachelor of Arts awarded June 1992.

Corvinus University (formerly Budapest University of Economic Sciences), Budapest, Hungary; Fall 1990; Study Abroad.

Stone Ridge Country Day School of the Sacred Heart, Bethesda, MD; September 1984 – June 1988; High School Diploma awarded June 1988.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

1993 – 1994
Pediatric AIDS Program of Children's Hospital (now Family Advocacy, Care and Education Services (FACES))
4640 South Carrollton Avenue
Suite 130
New Orleans, LA 70119
Volunteer Coordinator

1992 – 1993
Wilmer, Cutler and Pickering (now WilmerHale)
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
Legal Assistant

9. **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.**

Special Achievement Award, Homicide/Major Crimes Section, United States Attorney's Office (2003)
Special Achievement Award, General Felonies Section, United States Attorney's Office (2002)
Special Achievement Award, Domestic Violence/Sex Offense Section, United States Attorney's Office (2001)
Special Achievement Award, Appellate Section, United States Attorney's Office (2000)
Margaret M. Gruter Prize for Best Paper in Biology and Ethics (~1997)
Phi Beta Kappa (1992)
Academic Citation in Women, Politics, and the Law (1990)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

Broadcasters' Child Development Center
Chair of the Board of Directors (2012 – 2013)
Member of the Board of Directors (2009 – 2013)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Women's Bar Association of the District of Columbia (April 18, 2008 – present)
Charlotte E. Ray American Inn of Court (~2006 – 2007)
Bar of the United States Circuit Court for the District of Columbia (October 7, 1999 – present)
District of Columbia Bar (August 7, 1998 – present)
Virginia State Bar (October 9, 1997 – present)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Yale Law School Class of 1997
Class Secretary (1997 – present)
Broadcaster's Child Development Center
Chair of the Board of Directors (2012 – 2013)
Member of the Board of Directors (2009 – 2013)
Room Parent (2006 – 2012)
Girl Scouts Council of the Nation's Capital
Brownie/Juniors Troop Leader (2013 – 2015)
Lafayette Elementary School
Room Parent (2013 – 2014; 2015 – 2016)
DC Stoddert Soccer
GU9 Blue Metros Treasurer (2014 – 2015)
GU10 Gold Metros Team Sportsmanship Liaison (2015 – present)

None of these organizations discriminate on the basis of race, sex, or religion. Children participating in Girl Scouts must be girls, but adults of any gender may become members to volunteer.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

Virginia, admitted October 9, 1997.
District of Columbia, admitted August 7, 1998.

United States Court of Appeals for the District of Columbia Circuit, admitted December 7, 1999.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

Yale Law Report, Bi-Yearly Class Reports for Class of 1997 (1997 to present).

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

16. **Legal career.**

A. **Describe chronologically your law practice and experience after graduation from law school, including:**

(1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I served as a law clerk to the Honorable T.S. Ellis, III on the United States District Court for the Eastern District of Virginia from August 1998 to September 1999.

(2) **Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

(3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

September 1997 – August 1998
Sullivan & Cromwell
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006
Associate

August 1998 – September 1999
The Honorable T.S. Ellis, III
United States District Court for the Eastern District of Virginia
Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, VA 22314
Law Clerk

September 1999 – March 2004
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, DC 20530
Assistant United States Attorney

September 2001 – June 2002
George Washington Law School
2000 H Street, N.W.
Washington, DC 20052
Adjunct Professor, Legal Writing

March 2004 – August 2006
Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
Washington, DC 20001
Chief, Criminal Section (March 2004 to June 2006)
Assistant Deputy Attorney General for Public Safety (June 2006 to August 2006)

August 2006 – present
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, DC 20001
Magistrate Judge

B. **Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

From September, 1997, to August, 1998, I worked as an associate at Sullivan & Cromwell and focused on civil litigation. I researched and wrote memoranda and pleadings on a variety of topics and participated in document productions and privilege reviews.

From August, 1998, to August, 1999, I clerked for the Honorable T.S. Ellis, III, in the United States District Court for the Eastern District of Virginia. As a law clerk, I prepared bench memoranda and draft opinions for both civil and criminal cases.

From September, 1999, through August, 2006, I specialized in criminal law, although for a brief period in 2006, I also supervised attorneys handling civil cases. Specifically, from September, 1999, through March, 2004, I worked for the United States Attorney's Office of the District of Columbia where I tried more than 50 criminal cases, including approximately 10 jury trials. While at the United States Attorney's Office, I also handled criminal appeals in both the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit. Thereafter, I rotated through a number of trial sections, beginning in the Domestic Violence/Sex Offense Section, prosecuting

domestic violence misdemeanors, particularly simple assaults and threats. Thereafter, I prosecuted felony drug and gun offenses, followed by domestic violence felonies, including assaults with dangerous weapons, aggravated assaults, and kidnappings. I progressed to prosecuting homicides and other major crimes, such as armed robbery. Thereafter, I returned to the Domestic Violence/Sex Offense Section, where I focused on domestic violence homicides and sex offenses.

From March, 2004, through August, 2006, I worked for the Office of the Attorney General for the District of Columbia. For most of that time, from March, 2004 through June, 2006, I served as Chief of the Criminal Section, a position in which I focused on criminal matters. I supervised approximately 14 attorneys who handled approximately 10,000 to 15,000 cases a year. As a supervisor in the Public Safety Division, my responsibilities included both direct supervision and policy-related work. I was also involved in the drafting of legislation and in drafting the Office of the Attorney General's responses to proposed legislation. In June, 2004, I was promoted to Assistant Deputy Attorney General for Public Safety. I assisted in the supervision of the work of five sections, which handled civil, criminal, and family matters relating to public safety, in both the Superior Court and the United States District Court for the District of Columbia.

In August, 2006, I was installed as a Magistrate Judge in the District of Columbia Superior Court. Since becoming a Magistrate Judge, my assignments have included calendars in the Criminal Division, the Family Court, the Domestic Violence Unit, and the Civil Division.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

While in private practice at Sullivan & Cromwell, the firm's clients on whose cases I worked were typically large corporations involved in civil litigation, with the exception of one individual criminal defendant in a *pro bono* death penalty case. Since leaving Sullivan & Cromwell, all of my employment has been for the government and my area of practice has mostly been criminal law. As an Assistant United States Attorney, my client was the United States. As an attorney in the Office of the Attorney General for the District of Columbia, my client was the District of Columbia.

**D. Describe the general nature of your litigation experience, including:**

**(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

Prior to joining the District of Columbia Superior Court as a Magistrate Judge in 2006, I was a supervisor at the Office of the Attorney General. As a supervisor, I appeared in court only on rare occasions. Prior to

becoming a supervisor, however, I was an Assistant United States Attorney from 1999 to 2004. In that position, I frequently appeared in court.

(2) **What percentage of these appearances was in:**

(a) **Federal courts (including Federal courts in D.C.);**
(b) **State courts of record (excluding D.C. courts);**
(c) **D.C. courts (Superior Court and D.C. Court of Appeals only);**
(d) **other courts and administrative bodies.**

More than 99% of my court appearances were in the D.C. courts, primarily the Superior Court. Less than 1% of my court appearances have been in federal courts.

(3) **What percentage of your litigation has been:**

(a) **civil;**
(b) **criminal.**

Approximately 86% of my litigation practice has been criminal and approximately 14% has been civil, although almost all of my court appearances have been in the context of a criminal litigation.

(4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

As an Assistant United States Attorney, I handled more than fifty trials, the vast majority of which were bench trials in which I was the sole counsel for the government. In three of the approximately ten jury trials I handled, I was either associate counsel or co-counsel; in the remaining jury trials, I was sole counsel for the government. Prior to my assignment in trial sections, I handled appellate matters, and had six arguments in the District of Columbia Court of Appeals and two in the United States Court of Appeals for the District of Columbia Circuit.

(5) **What percentage of these trials was to**

(a) **a jury;**
(b) **the court (include cases decided on motion but tabulate them separately).**

Approximately 20% of my trials were to a jury and 80% were to the court.

17. **Describe the five (5) most significant litigated matters which you personally**

**handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. United States v. Gbemisola, 225 F.3d 753 (D.C. Cir. 2000).

In 2000, I briefed and argued this criminal appeal in the United States Court of Appeals for the District of Columbia Circuit before Judges Sentelle, Tatel, and Garland. Abdul Gbemisola challenged his conviction for receiving over a kilogram of uncut heroin in a package shipped from Cambodia to a Mail Boxes Etc. in the District of Columbia. Among the issues Gbemisola raised was the legality of an electronic tracking device that was installed in the package upon inspection by the United States Customs Service at the port of entry. Gbemisola picked up the package from Mail Boxes Etc. and subsequently triggered the electronic monitoring device when he opened it. The United States Court of Appeals for the District of Columbia Circuit affirmed Gbemisola's conviction. The case was of particular significance not only because the conviction of a drug dealer involved in the distribution of approximately a million dollars of heroin was upheld, but also because it resulted in a published opinion that clarified the law with respect to electronic tracking devices.

Counsel for Appellant Abdul Gbemisola:
Edward C. Sussman
601 Pennsylvania Avenue, N.W.
#900
Washington, DC 20004
(202) 737-7110

2. United States v. Emmett M. Jones, No. F-1158-00 (D.C. Super. Ct. 2001)

In 2001, I second-chaired the jury trial of Emmett M. Jones before the Honorable Michael Rankin in the Superior Court of the District of Columbia. Jones was charged with brutally sexually assaulting three women working as prostitutes in late 1999 and early 2000. After lead counsel, Jeanne Hauch, indicted the case, I joined the prosecution to assist with trial preparation, such as drafting an evidentiary pre-trial motion, and to handle the medical evidence at trial, which was particularly important given the complainants' histories. Jones was convicted on all counts as to all the complainants, including first degree sexual abuse, and sentenced to 15 years to life on each count. Importantly, the convictions were upheld on appeal in Emmett M. Jones v. United States, 853 A.2d 146 (D.C. Ct. App. 2004), and a violent serial sexual offender was held accountable for his actions.

Co-Counsel:
Jeanne M. Hauch

219 S. Alfred Street
Alexandria, VA 22314
(202) 361-2216

Lead Counsel for Defendant Emmett Jones:
Jonathan A. Rapping
John Marshall Law School
1422 West Peachtree Street, N.W.
Atlanta, GA 30309
(404) 872-3593

3. United States v. Laruan Queen, No. F-2752-02 (D.C. Super. Ct. 2002)

In 2002, I tried Laruan Queen to a jury before the Honorable Rafael Diaz in the Superior Court of the District of Columbia. Queen sneaked into his girlfriend's building, broke down her door and dragged her mostly unclothed into a hallway, where he assaulted her as she screamed for help. Queen's girlfriend was uncooperative, claiming prior to trial that Queen had not assaulted her. Ultimately, she refused to appear for trial despite being subpoenaed. That difficulty was compounded by a second and crucial witness with severe alcohol problems, who appeared for trial intoxicated. Further complicating the trial was the absence of photographic evidence of the victim's injuries, which was lost due to the malfunction of the crime scene officer's camera. Despite these challenges, a jury convicted Queen of Assault with a Dangerous Weapon. Queen was sentenced to four years of incarceration, and his conviction was affirmed on appeal in an unpublished Memorandum Opinion and Judgment.

Counsel for Defendant Laruan Queen:
Patricia Newton
7600 Marilea Road
Richmond, VA 23225
(804) 272-0439

4. United States v. Hassan Johnson, No. 2003-FEL-2984 (D.C. Super. Ct. 2003)

In 2003, I tried Hassan Johnson before the Honorable Geoffrey Alprin in the Superior Court of the District of Columbia. Johnson was charged with violently assaulting the young mother of his child. First, in January, 2003, Johnson grabbed her by the neck and hit her in the face. Second, in May, 2003, Johnson choked her into unconsciousness and then threatened and sexually assaulted her when she regained consciousness. The case was unusually challenging because the complainant was not honest about her contact with Johnson after the assaults, which undermined her credibility. Johnson was nonetheless convicted of Felony Threats to Injure, as well as two misdemeanors—Simple Assault and Violation of Protection Order. Johnson was sentenced to six years, all but two years suspended, on the felony offense, with concurrent sentences of 180 days each on the misdemeanors, with an order to stay away from the complainant during his probation. Johnson's probation was subsequently revoked for contacting the complainant multiple times within a week of his release from incarceration, and he was re-sentenced to an additional sixteen months. The case was upheld on appeal in an unpublished

Memorandum Opinion and Judgment.

Counsel for Defendant Hassan Johnson:
Marlon C. Griffith
Griffith & Wheat, PLLC
1050 17th Street, N.W.
Washington, DC 20036
(202) 496-4963

5. District of Columbia v. David Parnigoni, No. 2003-CDC-2273 (D.C. Super. Ct. 2005)

Between 2004 and 2005, I supervised the prosecution of David Parnigoni and second-chaired his jury trial before the Honorable Erik Christian in the Superior Court of the District of Columbia. Parnigoni, a 33-year-old former D.C. police officer, was charged with indecent exposure to a minor for convincing an 11-year-old child in his care to play ping-pong, with the rule that the loser had to remove his clothes for the next game. The child's father unexpectedly returned to his home and saw Parnigoni playing ping-pong naked. A jury convicted Parnigoni and he was sentenced to six months imprisonment, with an additional nine months of imprisonment suspended and five years of probation. The case is significant for two reasons—first, it identified and stopped a sexual predator, and second, after Parnigoni challenged his conviction on appeal, the District of Columbia Court of Appeals published an opinion, Parnigoni v. District of Columbia, 933 A.2d 823 (D.C. Ct. App. 2007), that clarified the law with regard to indecent exposure.

Co-Counsel:
Kerslyn D. Featherstone
Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
Suite 630 South
Washington, DC 20001
(202) 724-6600

Counsel for Defendant David Parnigoni:
Mark E. Schamel (on appeal)
Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, N.W.
5th Floor
Washington, DC 20036
(202) 857-4481

Robert A. Boraks (at trial)
Kalbian & Hagerty
888 17th Street, N.W.
Washington, DC 20006
(202) 223-5600

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

First, around 2005 when I worked at the Office of the Attorney General, I spearheaded the revision of the Bond and Collateral List of the Superior Court of the District of Columbia. In the District, an arrest can be administratively closed without a conviction for some criminal offenses—such as Possession of an Open Container of Alcohol or Failure to Obey a Lawful Order—where a defendant posts collateral and then elects to forfeit that collateral. When I became Chief of the Criminal Section, there was no official Bond and Collateral List. Rather, the collateral amounts for some offenses were kept in a book that contained copies of some of the original orders issued by the District of Columbia Superior Court Board of Judges. Furthermore, various law enforcement agencies had their own collateral lists which were not consistent across agencies either with respect to the offenses for which posting and forfeiting was permissible, or the amounts to post and forfeit. I sought to create uniformity across agencies and coordinated with various agencies, including the Metropolitan Police Department, the U.S. Secret Service, and the U.S. Capitol Police, among others, to determine, where differences existed, whether it made sense to include an offense, and what amount was appropriate for a particular offense. I then presented a proposed list to the Superior Court, which was adopted and made widely available on the Court's website.

Second, while serving as Chief of the Criminal Section at the Office of the Attorney General, I proposed and drafted language to create the criminal offense of Felony Assault, which was subsequently enacted as part of the Omnibus Public Safety Amendment Act of 2006. Under then-existing District of Columbia law, Simple Assault—a misdemeanor—encompassed any offensive touching as well as attempts to frighten. In contrast, Aggravated Assault—a felony—required "serious bodily injury," which required an extremely serious injury; indeed, not all gunshot wounds qualified as "serious bodily injury." As a result, prosecutors charged a significant number of serious assaults as misdemeanors. As a magistrate judge in both criminal and juvenile delinquency courtrooms, I have seen a significant number of cases in which the new Felony Assault offense has been charged. Those cases often have involved assaults with significant injuries, such as broken bones and lacerations requiring significant medical attention, which would otherwise have been prosecuted as misdemeanors. As a result of the new offense, therefore, adult offenders can face a more appropriate sentence, and both adult and juvenile offenders can receive a record that more accurately reflects their conduct.

Finally, in 2011, at the request of the Honorable Russell Canan, then presiding judge of the Superior Court of the District of Columbia Criminal Division, I rewrote the Preliminary Hearing Bench Book for the judges of the District of Columbia Superior Court. Although there was a Bench Book in existence, it had been prepared in 2000, was

not structured with an eye to providing a practical guide for judges handling detention hearings and preliminary hearings, and did not include many topics of importance to the judges handling detention hearings. I solicited ideas from judges who had handled preliminary hearings or detention hearings about what additional topics should be included, and then restructured and rewrote the Bench Book. The resulting 44-page manual is the Bench Book currently in use on bail law issues in the Criminal Division.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

On August 18, 2006, I was sworn in as a Magistrate Judge in the District of Columbia Superior Court, and continue to serve in that capacity. The jurisdiction of D.C. Superior Court Magistrate Judges is set forth in D.C. Code Sections 11-1732 and 11-1732A. During my tenure I have served in the Criminal, Family, Domestic Violence and Civil divisions. I drafted one opinion while in the Civil Division, in Bert Randolph v. District of Columbia, 2013-SC3-572, a copy of which is attached. I have not drafted any other opinions.

A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

In re L.C., No. 2008-DEL-2003 (August 11, 2008). At the initial hearing for this case, I found a substantial probability that the defendant had forcibly sexually assaulted a young girl in a public pool. I considered all of the relevant factors, and concluded, despite defendant's lack of criminal history, that there were no conditions that I could set that would assure the safety of the community, and in particular, of other children. On review under Rule 117 of the D.C. Superior Court Rules of Criminal Procedure, the Honorable Anita Josey-Herring interpreted In re M.L. DEJ., 310 A.2d 834 (D.C. Ct. App. 1973) to preclude the grant of a hold based on the nature and circumstances of the offense. She therefore reversed, in an oral decision, and remanded to set conditions of release for the defendant.

Belinda Brooks v. United House of Prayer For All People, No. 2012-SC2-6274 (June 4, 2013). This case involved a claim by a tenant seeking reimbursement of money she intermittently paid for her water bill, and a counter-claim by the landlord for unpaid rent, damage to the housing unit, and reimbursement for money paid by the landlord for two of the tenant's water bills. The tenant defended the claim for rent by asserting the existence of housing violations that warranted the abatement of rent. At trial, I found that the tenant was responsible for the payment of the water bill, and thus was not entitled to reimbursement. However, I denied the claim for the water bills paid by the landlord. I also denied the landlord's claim for money from damage to the unit due to insufficient evidence, but granted the claim for unpaid rent. On review under Rule 117 of the D.C. Superior Court Rules of Criminal Procedure, the Honorable Melvin Wright, in a written order, upheld the finding that responsibility for the payment of the

water bill rested with the tenant, but reversed the denial of the money paid to the water company by the landlord, finding the landlord to be entitled to that money under a *quantum merult* theory. He also vacated the judgment for the amount of rent due as that judgment had been satisfied following the verdict in this case by payment to the landlord out of the Court's Registry in a related case.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

I have not been a candidate for an elected position. I have, however, previously applied for the Associate Judge position on the Superior Court between 2009 and 2014.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

  None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  None.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

I joined the Board of my children's daycare, Broadcasters' Child Development Center, in 2009. Around the time I joined, or shortly thereafter, the daycare was sued for an incident that had occurred several years earlier, in 2006, involving a branch that fell from

a tree and hit a child in the head while on the playground—William Hamilton et al. v. Broadcaster's [sic] Child Development Center, 2009 CA 5140B (D.C. Super. Ct. 2009). The suit was handled entirely by the daycare's insurance company and settled in 2012.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   I am currently employed by the Superior Court of the District of Columbia, and will continue to be so employed if confirmed. I do not have any connections with business firms, associations or organizations.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   My husband and I own Google stock from his prior employment at Google.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   As a District of Columbia employee, I testified once, just over nine years ago, before the D.C. Council on a bill regarding public safety. I also drafted criminal legislation that was proposed and advocated by the Office of the Attorney General almost ten years ago.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   If any conflict of interest or potential conflict of interest arises, I will resolve it pursuant to the District of Columbia Code of Judicial Conduct.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

## III. FINANCIAL DATA

**All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

REDACTED

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

**Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.**

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to practice in the District of Columbia on August 7, 1998.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. Since 2009, I have resided at [redacted]

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Four copies of my Judicial Nomination Commission questionnaire are attached.

**AFFIDAVIT**

Elizabeth Carroll Wingo being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Elizabeth Wingo

SUBSCRIBED and SWORN TO before me this 16 day of Dec 2015.

Brian K. Price
Notary Public

Brian K. Price
District of Columbia Notary
My Commission Expires
August 31, 2017

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**
**SMALL CLAIMS AND CONCILIATION BRANCH**

| | | |
|---|---|---|
| **BERT RANDOLPH** | : | |
| | : | **Case No. 2013-SC3-572** |
| **v.** | : | |
| | : | **Magistrate Judge Elizabeth Carroll Wingo** |
| **DISTRICT OF COLUMBIA** | : | |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The matter came before the Court for trial on May 14, 2013 and June 14, 2013. The evidence and closing arguments concluded on June 14, 2013, without sufficient time remaining for the Court to issue its verdict orally on that date. The parties requested that the Court's verdict be delivered in writing and sent via e-mail, and that parties' presence be excused from any continued trial date for the delivery of the verdict. The plaintiff, Bert Randolph, resides in Texas. Because requiring the plaintiff to incur significant travel expenses merely for the delivery of the verdict is contrary to the "just, speedy, and inexpensive determination of every action" in Small Claims, *see* Super. Ct. Sm. Cl. R. 1, the Court granted the parties' request, and therefore issues the following written verdict.

Mr. Randolph sued the District of Columbia, seeking the recovery of unused vacation time that he alleges he accrued during the period of his employment with Advisory Neighborhood Commission 6B (hereinafter "the ANC" or "ANC 6B").[1] Mr. Randolph presented the testimony of six (6) witnesses, specifically, himself; Kenan Jarboe, a Commissioner with ANC 6B at the time Mr. Randolph began working for the ANC; Brian Flahaven, the current chair of ANC 6B; Julie Olson (by telephone), the chair of ANC 6B at the time Mr. Randolph began working for the ANC; Carol Green, the current treasurer of the ANC;

[1] Mr. Randolph's original claim included a claim for holiday pay as well, but he explicitly declined to pursue that aspect of the claim during the proceedings at the motions hearing on March 19, 2013.

and Francis Campbell, a current ANC commissioner, who also served as a Commissioner at the time Mr. Randolph began working for the Commission. He also presented eight (8) exhibits, all but one of which were admitted.[2] Specifically, the Court admitted Exhibit 1, the employment contract; Exhibit 3, a demonstrative exhibit summarizing Exhibit 4; Exhibit 4, Mr. Randolph's time sheets from 2004 through 2012; Exhibit 5, Mr. Randolph's April 13, 2012 resignation letter; Exhibit 6, Mr. Randolph's June 14, 2012 letter demanding the payment of unused vacation leave; Exhibit 7, the July 10, 2012 response from ANC 6B, signed by then-Chair Andrew Critchfield; and Exhibit 8, a draft employment contract from 2012. The District of Columbia presented additional testimony from Carol Green and Brian Flahaven, and introduced the minutes of the April 13, 2004 ANC meeting at which the hiring of Mr. Randolph was approved.[3] Based on all of the foregoing evidence, the Court makes the following findings of facts and conclusions of law.

**Findings of Fact**

Prior to signing a contract with the ANC, Mr. Randolph met with the Executive Committee of the ANC. The Commission's Chair and Treasurer are both members of the ANC's Executive Committee. During that meeting, the issue of the accrual of leave was not discussed. Between that meeting and the meeting of the full Commission, however, Mr. Randolph had an explicit discussion with Ms. Olson regarding the accrual of leave, in which they agreed that the

[2] Exhibit 2, a letter from former Commission Chair Julie Olson was excluded on the grounds that it was hearsay. At the time its admission was first sought, Ms. Olson was not available for cross-examination, and thus, though the rules of evidence do not apply in Small Claims trials, its admission would have violated the substantive right to cross-examine. During the second day of trial, after much discussion, the Court permitted Ms. Olson to testify by telephone from North Dakota. Prior to her testimony, Mr. Randolph re-raised the issue of the letter, at which point, after brief discussion, the Court continued to preclude the letter, as live testimony, rather than a hearsay summary, was now available.

[3] This document was admitted as Defendant's Exhibit 1.

leave would accrue.[4] On April 13, 2014, Mr. Randolph signed a contract with the ANC 6B. The contract was drafted by Julie Olson, then the Chair of the ANC, although Kenan Jarboe, who was at the time the Treasurer of the Commission, collaborated with her on it. Mr. Jarboe's understanding was also that the leave would accrue; the contract was based on the assumption that it contained similar terms and conditions as the contracts of the previous Executive Directors, and at least one of the contracts for the previous two directors made clear that vacation was to accrue.[5] On that same day, the decision to hire Mr. Randolph was presented to the ANC for approval. According the minutes, which Mr. Randolph, who was present, confirmed were an accurate representation of the discussion that occurred, Ms. Olson introduced Mr. Randolph, confirmed that she and he had reviewed and executed an Employment agreement, and informed the Commission that the hourly rate would be $17.73 instead of $17.70 as previously stated in the Executive Committee meeting. There was a discussion of the time to terminate the agreement, at which point, Ms. Olson "made a motion to support the employment of Bert Randolph." The motion was seconded, and "[t]he vote was 8 to 0 to support the employment of Bert Randolph." Def.'s Ex. 1

The contract Mr. Randolph signed, which was admitted as Plaintiff's Exhibit 1, stated,[6]

> This Agreement is made between Advisory Neighborhood Commission 6B and Mr. Bert Randolph.
>
> 1. **Services to be Performed**
> Mr. Randolph shall perform the duties of Executive Director of ANC 6B, as specified in Appendix A (Position Description),[7] for an indefinite

[4] Oddly, Mr. Randolph did not ask Ms. Olson about that discussion during his direct examination of her. Instead, he asked only four questions, which resulted in the following testimony: (1) Ms. Olson was the chairperson when Mr. Randolph signed the employment contract, (2) the contract called for 1 week of vacation time for every 6 months worked, (3) there were no stipulations in the contract as to the accrual or non-accrual of vacation time, and (4) there were no discussions about prohibiting the accrual of vacation time. Mr. Randolph did not ask her whether they discussed accrual during the negotiation process or her intent at the time of signing it. Nonetheless, the Court credits Mr. Randolph's testimony on this point, despite his failure to obtain any corroboration from Ms. Olson.
[5] Neither party presented those contracts, however.
[6] Because the contract is relatively brief, the Court quotes the contract in its entirety.

period, including a 6 month probation period, upon a vote of approval at the ANC meeting on April 13. As a part of his duties, he shall maintain ANC office hours during the week and will work no more than 20 hours a week.

2. **Payment**
   Mr. Randolph shall be paid bi-monthly at an annual rate of $18,439.20. This comes to a $17.73 per hour. A raise will be added after a 6 months probation period, depending on ANC funds availability and employee's performance.
3. **Expenses**
   ANC 6B shall reimburse Mr. Randolph such expenses that are directly attributable to his duties as Executive Director in accordance with the policies for the reimbursement of Commissioner expenses.
4. **State and Federal Taxes**
   ANC 6B shall make FICA (Social Security and Medicare taxes) payments, unemployment compensation contributions, and workmen's compensation on Mr. Randolph's behalf and shall withhold the appropriate DC and federal income tax.
5. **Fringe Benefits**
   ANC 6B will not provide any employee pension or health benefit plan. During the period of this contract, Mr. Randolph will be eligible for one week of vacation time for each 6 month period employment.
6. **Terminating the Agreement**
   Either party may terminate this Agreement at any time by giving 15 days written notice to the other party of the intent to terminate. As stated in Appendix A, the Executive Director serves at the pleasure of the ANC. The ANC, therefore, reserves the right to suspend the Executive Director (with pay) immediately upon vote of the ANC Executive Committee before the require [sic] 15 days have passed.
7. **Modifying the Agreement**
   This Agreement may be modified only by a writing signed by both parties.
8. **Applicable Law**
   This Agreement will be governed by the laws of the District of Columbia.

Pl.'s Ex. 1. The agreement was signed by Mr. Randolph and Julie Olson. There is no evidence that the full Commission ever saw the contract. Moreover, technically, they did not actually vote to approve the signed contract, although Mr. Flahaven testified that he understood the minutes to mean that the contract was approved, and the Commission has proceeded on that basis. Francis Campbell was a Commissioner at the time, and the Chair of the Planning and Zoning Committee of the Commission, but was not on the Executive Committee. He also stated that the intent at the

[7] Neither side provided the Court with Appendix A, which is not part of the record.

time was that Mr. Randolph would earn his vacation time, i.e., that it would accrue, although there was no specific or clear testimony as to what discussions he participated in, and with whom, that led him to that conclusion.

Mr. Randolph worked for the ANC from April 13, 2004, through April 13, 2012. The contract required that he work "no more than 20 hours a week," but did not set a minimum number of hours to be worked in any week. Despite the fact that his salary was identified to the Commission as an hourly wage, and despite the fact that, per the contract, he was supposed to be paid bi-monthly at an annual rate, which was initially set at $18,439.20,[8] Mr. Randolph's salary was actually paid monthly based on 80 hours a month.[9] There is no indication that his pay varied from paycheck to paycheck based on the hours actually worked either under or over 80 hours, at any time during his employment.

During his years at the Commission, he submitted monthly time sheets to track his time, which were admitted as Exhibit 4.[10] The ANC payroll time sheets did not require, or provide

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[8] Although the parties appeared to agree that Mr. Randolph received at least one raise over the course of his employment, neither party presented any evidence as to what the amount of any raise was, or when any raise occurred.

[9] In fact, although the parties agreed at the hearing on the Motion for Summary Judgment held on March 19, 2013 that he was paid monthly for 80 hours a month, neither side presented much direct testimony on that issue at trial, or asked that any of the testimony from the Motions Hearing be adopted for trial. The Court, however, does conclude that it has sufficient evidence at trial to infer that payment schedule based on a) Mr. Randolph's very brief testimony on the May 14, 2013 trial date that he was paid monthly, b) Commissioner Green's testimony regarding how his salary was budgeted, i.e., that his pay was budgeted based on an 80 hour a month rate, 12 months a year, and c) the time sheets themselves, which are monthly, not weekly. The Court also notes in reaching this inference that beginning as early as January 2006, Mr. Randolph began noting vacation hours any time his calculation of his hours worked was less than 80. Finally, during closing arguments, Mr. Randolph, in explaining his calculation of damages to the Court, referenced a monthly pay of $1297.45, which he divided by 80, and multiplied the number of hours he believed was owed, in order to get a base to which he added pain and suffering. Because these statements were not during testimony, and thus not subject to cross-examination, the Court would not rely exclusively or even heavily on these representations. However, the Court need not ignore them entirely, as Mr. Randolph had been previously sworn, and pursuant to Small Claims Rule 12, "[t]he judge shall conduct the trial in such manner as to do substantial justice... and shall not be bound by the provisions or rules of practice, procedure, pleading or evidence...."

[10] Although there was conflicting testimony/proffers made at the motions hearing regarding who, if anyone, reviewed and/or approved the time sheets during the course of his employment, neither side introduced any evidence on that issue at trial.

any space to make a weekly tally of his time, but instead provided for a monthly tally.[11] During the first six month period he worked, April through September 2004, he did not note any vacation time on his time sheets. However, including April 2004,[12] he worked less than 80 hours during the month three times in that time period, without taking vacation. Specifically, he worked 35.5 hours in April, 75.75 hours in May 2004, and 79.25 hours in June 2004. From October 2004 to March 2005, he worked less than 80 hours without taking leave in October 2004 (77 hours), November 2004 (76.5 hours), and December 2004 (69.75 hours), and February 2005 (71.25).[13]

During the next 6 month period, April through September 2005, he worked 80 hours or more every month. During the next 6 month period, October 2005 through March 2006, Mr. Randolph took leave during the only two months in which the total hours that he worked was less than 80 hours. Specifically in January 2006, he took 15 hours of leave, and in February 2006, he took 5 hours of leave, bringing his total hours worked in each of those months to 80 exactly. Indeed, from January 2006 through to his resignation, Mr. Randolph's total hours worked, as he calculated them, were never less than 80 hours, because he took vacation to bring

[11] During the years he worked, Mr. Randolph's calculations as to the total monthly hours worked were, based on the Court's calculations using his numbers as to the daily hours worked, inaccurate approximately 25 times. The Court concludes that the mis-calculations were the result of mathematical errors rather than any intent to deceive, however, because on at least 8 of those errors, the number he reported as his total hours worked was lower, rather than higher, than what the hours actually worked were, based on the amounts he reported for each individual day. Moreover, many of the other errors were in months where he worked more than 80 hours, and therefore the error just increased the number of hours over 80 reported, which would have no impact on either his pay or the vacation hours to be taken. In any event, the Court notes that as a result of the errors, all of its conclusions are drawn from the Court's calculations, rather than any totals noted on Mr. Randolph's time sheets. The Court has attached a chart summarizing the data for the months in which the Plaintiff worked less than 80 hours and a comparison of the calculations completed by the Plaintiff and the Court as Attachment A to this Judgment. The Court did, however, use the daily total numbers he provided to reach its total, and did not check for errors in the daily totals against the reported hours worked, i.e., that when he reported working from 10:30 to 2:30, the total number of hours he reported working was in fact 4.

[12] Neither side presented any evidence as to how the pay the month of April 2004 was handled, although Mr. Randolph began working mid-month. The burden is on the Plaintiff to present evidence to demonstrate the liability of the Defendant, however. Therefore, in the absence of any evidence to the contrary, the Court will assume that the Plaintiff was paid then, as he was later, for 80 hours that month.

[13] For one of those months, October 2004, Mr. Randolph believed he had worked 82.5 rather than 77 hours. For the other three months, he submitted timesheets with a total hour calculation of less than 80.

them up to exactly 80.[14] Because Mr. Randolph's calculations were not consistently accurate, however, on some months he took less leave than necessary to get to 80 hours, and on other months, he took more.

During the rest of 2006 through 2007 and much of 2008, Mr. Randolph worked more, or significantly more, than 80 hours a month.[15] In May 2008, Mr. Randolph took 43 hours of vacation time to bring his pay up to the 80 hours. Forty three hours is both more vacation time than accrues in any 6 month period, and more than accrues in any fiscal year.[16] There was no evidence of any kind that the Commission did anything other than permit that action. In July 2008, Mr. Randolph calculated his total as 80 hours, but actually worked 76 hours. In August 2009, he calculated his total as 80, but actually worked 68. In December 2009, he calculated his total as 80, but actually worked 75.5. In August 2010, he took 5 hours of leave to bring his total up to 80 hours.

During the 6 month period from October 2010 through March 2011, by his calculations, he noted on his time sheets 21 hours of leave, more than accrues in any 6 month period. Specifically, in October 2010, he took 5 hours of leave, which by his calculations, took him up to 80 hours. By the Court's calculations, however, he needed an additional 3.5 hours of leave, for a total of 8.5, to bring him to 80 hours. And in February 2011, he calculated that he had worked 80 hours, but he had in fact worked 79, so needed 1 additional hour of vacation to bring him up to 80. In March 2011, he took 16 hours of leave, to bring his total up to 80, although by the Court's calculations, he took 4 more hours than needed, because he had actually worked 68 hours.

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[14] Because this practice did not begin until January 2006, it is possible that during the first year, Mr. Randolph was paid only for the hours worked. Plaintiff, however, produced no evidence or testimony to that effect.
[15] In April 2008, 23.5 of his hours were spent satisfying his grand jury obligation.
[16] The ANC's fiscal year runs from October 1 through September 30 of the following year.

From April 2011 through September 2011, he took 24.5 hours of leave, again more than accrues in any 6 month period. Specifically, in July 2011, he took 24.5 hours of leave, although based on the Court's calculations of the hours worked, he needed an additional .5 hours to bring his total hours to 80.

From October 2011 through March 2012, Mr. Randolph noted 38.45 hours of leave, more than accrues in any 6 month period. Specifically, in October 2011, he took 15.25 hours of leave. In December 2011, he took 10.35 hours of leave. In January 2012, he took 10.85 hours of leave. In February of 2012, he took .5 hours of leave (although he needed an additional .5 hours to bring him up to the 80 hours). He took 1.5 hours in March (although he actually had worked 82.5 hours, and did not need to take any vacation hours to bring him to the 80 hours he had calculated).

In the spring of 2012, a revised contract was offered, which was never signed by Mr. Randolph. In the revised contract, the Executive Director was expressly permitted both to accrue leave, and to be paid out on the leave that accrued, albeit with limitations on the amount that could be paid out, which would be paid out at a reduced rate. *See* Pl.'s Ex. 8.

During the course of Mr. Randolph's employment with the Commission, as part of his duties, he worked with the Treasurer to make sure the Treasurer had the appropriate information in the quarterly budgets and for the fiscal year. He was aware that they calculated his annual salary and approved it. Based on the testimony of Commissioner Green and Commissioner Jarboe, it is clear that the Commission never made any budgetary appropriation for the possibility that accrued leave would be paid out if Mr. Randolph's employment terminated. Instead, they took his yearly salary and divided it by 12, to be paid out in monthly installments.

There was no testimony of any kind that Mr. Randolph ever raised the failure to budget for any possible pay out with the Treasurer or sought to have that included in the budget.

On April 13, 2012, Mr. Randolph resigned by way of a letter to Andrew Critchfield, who was then the Chairman of the Commission. *See* Pl.'s Ex. 5. In that letter, he indicated that the change in Commission members resulting from the 2010 election had created an untenable change in the work environment at the Commission, and that he was resigning as a result. He indicated that he was providing the fifteen day notice required by the contract, and was resigning effective May 1, 2012, but that he intended to take the next two weeks as paid vacation leave. He left the letter, his keys and his building pass on his desk. In that letter he requested that 139.30 hours of unused vacation time be paid out.[17]

The Court could not locate a time sheet for April 2012, but Mr. Randolph's June 14, 2012 letter to Commissioner Green, which was admitted as Exhibit 6, states that he had requested 52.3 hours of leave for April 2012, and that amount was not included in his paycheck, because based on an email exchange, Mr. Randolph's April paycheck "'included only the hours worked because you had already used and been paid for all your earned vacation this year.'"

On July 10, 2012, then Chair of the Commission, responded to the vacation issue by stating:

> The April 13, 2004 contract you signed with ANC6B states that you "will be eligible for one week of vacation time for each 6 month period of employment." It does not say you will receive a week of vacation time for each 6 month period of employment. We have no record of any action of the Commission to authorize that any "eligible" vacation time be taken. In addition, the contract does not speak to the consequences of any failure to take any "eligible" vacation time. Because "[t]his Agreement may be modified only by a writing signed by both

[17] Although this method of requesting leave is unusual, the Court credits Mr. Randolph's testimony that, as a general practice, he did not ask in advance to take leave but instead simply took it when he felt like it, and noted it on his time sheets. Commissioner Green testified that she did not believe he had given adequate notice, but did not contradict his testimony that as a practice, he was not required to obtain approval from anyone, or provide any advance notice, prior to taking leave.

> parties," in the absence of any later language consistent with your belief, and, importantly, since is this is the first time that you submitted this issue before the Commission, ANC 6B must conclude that you used all authorized vacation time.

Pl.'s Ex. 7. That letter also clarified that the amount of his last paycheck was $450.11, which reflects what the Commission viewed to be his earned April 2012 wages.

**Conclusions of Law**

Despite the explicit language in the written contract, based on the conduct of the parties, it is clear that both parties understood, and agreed, that Mr. Randolph would be paid for 80 hours a month, and that he was to either work at least 80 hours, or take leave to bring the total hours worked to 80 hours a month. It was also clear that he would not to be paid for any hours over 80 in a month, and overages from one month would not apply to any other month. In other words, rather than working no more than 20 hours a week, as stated in the written contract, he worked no more than 80 hours a month, and was paid accordingly. As long as 80 hours were accounted for in the month, it did not matter how many hours were worked in any individual week. The Court finds that the written contract was modified in this way by mutual agreement of the parties, as demonstrated by their undisputed conducted over the course of at least 6 years. [18]

[18] The District of Columbia Court of Appeals has made clear that in the absence of ambiguity, a written contract speaks for itself and is binding on the parties. *Gagnon v. Wright*, 200 A.2d 196 (D.C. 1964). However, "[w]ritten agreements may be modified by subsequent oral agreement but the oral modification must be established by a preponderance of the evidence." *Id.* at 198. This is true even where the written contract contains express prohibitions on oral modifications. *See, e.g.*, *Puma v. Sullivan*, 746 A.2d 871, 875 (D.C. 2000) (citing *Nickel v. Scott*, 59 A.2d 206, 207 (D.C. 1948)). Although the District of Columbia Court of Appeals does not appear to have addressed whether such modification may also be made by an unambiguous course of conduct over a lengthy period of time, multitudinous other jurisdictions have found precisely that. *See, e.g.*, *Curtis v. Radio Rep., Inc.*, 696 F. Supp. 729, 733 (D.D.C. 1988) ("[A]cts which clearly express an intent to be bound will give rise to liability where all the elements of contract formation are present") (citing *Bane v. City of Columbia*, 480 F. Supp. 34, 38 (D.S.C. 1979); *Wiley v. State Farm Fire & Casualty Co.*, 585 F.3d 206, 213 (5th Cir. 2009)("the subsequent actions of parties pursuant to a contract may support a finding that the original contract has been modified to an extent consistent with the subsequent course of conduct") (citations omitted); *Precision Components v. C.W. Bearing USA, Inc.*, 286 Fed. Appx. 91, 93 (4th Cir. 2008) ("A written contract may be modified by the parties' subsequent course of conduct."); *Transpower Constructors, Div. of Harrison Int'l Corp. v. Grand River Dam Auth.*, 905 F.2d 1413,

Moreover, unlike the specifics in the written contract, which there is no indication (given the wording in the minutes of the April 13, 2004 meeting) that the Commission as a whole ever saw, much less approved, the Commission as a whole did clearly approve the monthly payment of his salary each year when it approved the annual budget.

The 2004 written contract is silent as to whether vacation time would accrue during the course of his employment. The contract, however, contains no integration clause, and based on the testimony of all of the Commissioners who were actually part of the ANC at the time Mr. Randolph was hired, as well as Mr. Randolph's testimony, the Court concludes that it was the intent of the parties at the time that Mr. Randolph's leave accrue. Moreover, the written language of the contract – though the written contract was largely ignored in the parties' practice – is difficult to read in a sensible manner without accrual, because of the somewhat awkward way in which the leave provision is phrased, i.e., "[d]uring the period of this contract, Mr. Randolph will be eligible for one week of vacation time for each 6 month period worked." Unless that sentence is read to require that he take the last week of each 6 month period as vacation – which even the District does not argue and would be both highly unusual and entirely inconsistent with the practice of the parties – it would at the very least have to accrue across 6 month time periods, and therefore across years, since the second 6 month period would be the end of the fiscal year. The finding that the time was intended to and does accrue under the contract is also supported by and consistent with the conduct of the parties. Specifically, over the course of his employment, Mr. Randolph took, and was paid for by the Commission,

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1419 (10th Cir. 1990) ("Oklahoma law permits parties to a construction contract to alter or abrogate through their course of conduct contractual requirements for submitting claims for extra work."); *Brookhaven Landscape & Grading Co. v. J. F. Barton Contracting Co.*, 676 F.2d 516, 522 (11th Cir. 1982) ("Under Georgia law, waiver of written modification requirements may be established through a course of conduct between the parties"); *c.f.* RESTATEMENT (SECOND) OF CONTRACTS § 278(1) (1981) ("If an obligee accepts in satisfaction of the obligor's duty a performance offered by the obligor that differs from what is due, the duty is discharged").

vacation hours that exceeded both 20 hours in a 6 month period at least 4 times, and 40 hours in a fiscal year at least once.

That does not resolve the issue fully, however, because Mr. Randolph is requesting not just that his leave accrue, but that it be paid out to him after the date of his resignation. There was no testimony of any kind that the issue of whether the leave that accrued would be paid out at the end of employment was ever addressed by the parties, and if so, at what rate and with what, if any, limitations. It is clear that Mr. Randolph believed that it would be and should be paid out in its entirety, but there was no testimony on this issue from the Commissioners at the time, although it is clear from Commissioner Campbell's testimony that he believed it was appropriate to pay out any accrued leave. Whether that was based on Commissioner Campbell's understanding of the intent of the parties at the time or his view of the morally appropriate action to take given the accrual of leave was not, however, clear. Moreover, the actions of the Commission in failing to appropriate for that possibility is a course of conduct that indicates that there was no intent to do so, or at the very least, that there was no meeting of the minds as the issue had not been addressed. And indeed, based on the evidence presented, there is no indication that Mr. Randolph, though involved in the budgets, ever sought to have that item included, nor did he provide a summary at the end of each year of the amount of leave that he thought was accruing. Moreover, based on the contract presented in the spring of 2012, all parties were aware that the Commission perceived a distinction between the accrual of leave and the paying out of that leave at the end of employment.

Thus, the Court concludes that Mr. Randolph's leave accrued, that he should have been paid for the 52.3 hours for April prior to the effective date of his resignation, but that after his resignation, he is not entitled to further leave. Moreover, given the Court's ruling, the Court

finds the Defendant's arguments regarding the Anti-Deficiency Act[19] inapplicable. The leave taken during Mr. Randolph's employment was in fact budgeted for every year, as part of his salary; the Court is not awarding anything over and above the 80 hours a month that was budgeted for and approved by the Commission.

Moreover, because the Court credits Mr. Randolph's testimony that no procedure for the taking of leave had been established, and that he simply included the leave on his time sheets, the Court does not find any basis for the Commission not to pay out the vacation time requested between the date of his letter, and the effective date of his resignation.[20]

Based on the Court's calculations, Mr. Randolph worked sixteen 6-month periods,[21] and thus accrued 320 hours of leave during the course of his employment. The Court finds, based on its own calculations, that he used 245.45 hours of leave (whether he noted the time on his time sheets or not). Therefore, because he had accrued but not used 74.55 hours, he did have the 52.3 hours of accrued leave to take between the date of his resignation letter and the effective date of the resignation, and should be paid for them.[22]

Accordingly, it is this 9th day of July, 2013,

[19] D.C. Code § 47-355.01 *et seq.*
[20] In making this finding, the Court is not in any way indicating its approval for this particular method of resigning.
[21] Each period went from April to September of a year, and then from October of that year to March of the following year, and thus every second 6-month period ended at the end of a fiscal year for the Commission.
[22] Mr. Randolph also sought damages for pain and suffering, which the Court does not find to be warranted in this case. As a general rule, "the District of Columbia does not allow consequential damages for emotional distress in a breach of contract action." *Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 802 n.18 (D.C. 2011) (en banc). Furthermore, even if "the existence of a contract can be evidence of the special relationship or undertaking that may give rise to tort liability," in this case, Mr. Randolph did not make any arguments that would support a claim for negligent infliction of emotional distress. *Id.*

**ORDERED** that judgment be entered in favor of the Plaintiff, Bert Randolph, in the principal amount of $927.28,[23] plus post judgment interest to accrue at the prevailing statutory rate per annum, and court costs.

MAGISTRATE JUDGE ELIZABETH CARROLL WINGO
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

*(Signed in Chambers)*

Copies to the parties via e-mail.

[23] In reaching this number, the Court multiplied the number of hours of vacation leave by the hourly wage noted in the contract, $17.73. Although the Court notes that the parties agree that Mr. Randolph's hourly wage was higher than $17.73, Mr. Randolph has the burden of proving the amount of damages, and did not provide either his new hourly wage, or his new yearly wage. Using the method Mr. Randolph described, taking the amount of his paycheck (1297.45) divided 80 hours, results in an even lower hourly wage, presumably because, as was required by the written contract, the appropriate taxes were taken out of his paychecks.

**ATTACHMENT A**

| Month and year (where less than 80 hours worked) | Total monthly hours submitted by Plaintiff | Total monthly hours worked calculated by the Court | Leave taken | Leave that should have been taken to bring the monthly total to 80 hours | Amount used by the Court to determine Leave Used |
|---|---|---|---|---|---|
| April 2004 | 35.5 | 35.5 | 0 | 44.5 | 44.5 |
| May 2004 | 75.75 | 75.75 | 0 | 4.25 | 4.25 |
| June 2004 | 79.75 | 79.75 | 0 | .25 | .25 |
| October 2004 | 82.50 | 77 | 0 | 3 | 3 |
| November 2004 | 75 | 76.5 | 0 | 3.5 | 3.5 |
| December 2004 | 70.75 | 69.75 | 0 | 10.25 | 10.25 |
| February 2005 | 71.25 | 71.25 | 0 | 8.75 | 8.75 |
| January 2006 | 80 | 65 | 15 | - | 15 |
| February 2006 | 80 | 75 | 5 | - | 5 |
| May 2008 | 80 | 37 | 43 | - | 43 |
| July 2008 | 80 | 76 | 0 | 4 | 4 |
| August 2009 | 80 | 68 | 0 | 12 | 12 |
| December 2009 | 80 | 75.5 | 0 | 4.5 | 4.5 |
| August 2010 | 80 | 75 | 5 | - | 5 |
| October 2010 | 80 | 71.5 | 5 | 8.5 | 8.5 |
| February 2011 | 80 | 79 | 0 | 1 | 1 |
| March 2011 | 80 | 68 | 16 | 12 | 12 |
| July 2011 | 80 | 55 | 24.5 | 25 | 25 |
| October 2011 | 80 | 64.75 | 15.25 | - | 15.25 |
| December 2011 | 80 | 69.65 | 10.35 | - | 10.35 |
| January 2012 | 80 | 69.15 | 10.85 | - | 10.85 |
| February 2012 | 80 | 79 | .5 | 1 | 1 |
| March 2012 | 80 | 82.5 | 1.5 | 0 | -1.5 |
| | | | | **TOTAL** | 245.45 |

**Response of Elizabeth Carroll Wingo to**
**Post-Hearing Questions for the Record**
**From Senator Rand Paul**

**Nomination Hearing to Consider**
**The Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia**
**March 2, 2016**

**As an Associate Judge of the Superior Court of the District of Columbia, will you abide by the following statement?: "The Second Amendment right is exercised individually and belongs to all Americans."**

Response: Yes, as the Supreme Court stated in District of Columbia v. Heller, 554 U.S. 570, 581 (2008), "We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." Additionally, in McDonald v. City of Chicago, 561 U.S. 742, 778 (2010), the Supreme Court further found that the rights guaranteed by the Second Amendment were "among those fundamental rights necessary to our system of ordered liberty," and thus were applicable to the states. If confirmed as an Associate Judge, I will continue to follow and apply all binding precedent, including the decisions of the Supreme Court in Heller and McDonald.

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