

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Andrew Lynn Brasher

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

United States District Judge for the Middle District of Alabama

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

Office of the Alabama Attorney General
501 Washington Avenue
Montgomery, Alabama 36130

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

1981; Milan, Tennessee

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

2003 – 2006, Harvard Law School; J.D. (*cum laude*), 2006

2001, Université Stendhal (now Université Grenoble Alpes); no degree

1999 – 2002, Samford University; B.A. (*summa cum laude* with honors), 2002

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

2011 – present
Office of the Alabama Attorney General
501 Washington Avenue

Montgomery, Alabama 36130
Solicitor General (2014 – present)
Deputy Solicitor General (2011 – 2014)

2007 – 2011
Bradley Arant Boult Cummings LLP
819 5th Avenue North
Birmingham, Alabama 35203
Associate

2006 – 2007
Honorable William H. Pryor Jr.
United States Court of Appeals for the Eleventh Circuit
Hugo Black Courthouse
1729 5th Avenue North
Birmingham, Alabama 35203
Law Clerk

Summer 2006
Gibson Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Summer Associate

Summer 2005
Ropes & Gray LLP
800 Boylston Street
Boston, Massachusetts 02199
Summer Associate

Spring 2005
Visiting Professor Ronald Mann
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Fall 2004
Professor Charles Ogletree
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Summer 2004
Maynard Cooper & Gale

1901 Sixth Avenue North
Regions Harbert Plaza
Suite 2400
Birmingham, Alabama 35203
Summer Associate

Summer 2004
Bradley Arant Rose & White
[Now Bradley Arant Boulton Cummings]
1819 5th Avenue North
Birmingham, Alabama 35203
Summer Associate

Fall 2003
Professor Charles Donahue
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant

Spring 2003
Baptist Joint Committee for Religious Liberty
200 Maryland Avenue, N.E.
Washington, D.C. 20002
Intern

Other Affiliations (uncompensated):

2015 – present
Samford University
800 Lakeshore Drive
Birmingham, Alabama 35229
Board of Overseers

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

I have never served in the military. I registered for selective service upon turning 18.

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

National Association of Attorneys General, Best Brief Award (2011–2012, 2013–2014,

and 2014–2015 Terms)

Alabama Leadership Initiative (2013)

Alabama SuperLawyers Rising Star (2011)

Degree from Harvard Law School conferred *cum laude* (2006)

Victor Brudney Prize (2006)

Member, *Harvard Law Review* (2004 – 2006)

Degree from Samford University conferred *summa cum laude* with honors (2002)

Samford University Academic, History, and Foreign Language Scholarships (1999 – 2002)

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

Alabama State Bar Association Character & Fitness Committee (2013 – 2017)

Alabama Supreme Court

Standing Committee on Alabama Rules of Appellate Procedure (2014 – present)

American Bar Association (2008 – 2014)

Birmingham Bar Association (2008 – 2011)

Defense Research Institute (2007 – 2011)

Young Lawyer Liaison, Government Enforcement and Corporate Compliance Committee (2009 – 2010)

Young Lawyer Liaison, Appellate Practice Committee (2010 – 2011)

Federalist Society for Law and Public Policy Studies (2003 – 2006, 2008 – present)

Montgomery Chapter Vice President (2013 – present)

10. **Bar and Court Admission:**

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

Alabama, 2007

There have been no lapses in membership.

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

Supreme Court of the United States, 2011
United States Court of Appeals for the Fourth Circuit, 2010
United States Court of Appeals for the Fifth Circuit, 2010
United States Court of Appeals for the Sixth Circuit, 2011
United States Court of Appeals for the Ninth Circuit, 2011
United States Court of Appeals for the Eleventh Circuit, 2007
United States District Court for the Northern District of Alabama, 2007
United States District Court for the Middle District of Alabama, 2012
United States District Court for the Southern District of Alabama, 2013

There have been no lapses in membership.

11. **Memberships:**

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

Alabama Legislature's Code of Ethics Reform and Clarification Commission, Ex Officio Member (2018 – present)

Alabama Legislature's Interim Study Committee on Campaign Finance Reform, Attorney General's Delegate (2012 – 2013)

Samford University Board of Overseers (2015 – present)

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

I am a member of the Board of Overseers for Samford University. Samford University was founded in 1841 as a Baptist college for men. In 1913, the school

became fully and permanently coeducational. The school did not admit African American students until the 1960's. At present, and at no time during my service on the Board of Overseers, does Samford discriminate in admissions or in the hiring of employees on the basis of race, sex, religion or national origin, either through formal admission or hiring requirements or the practical implementation of admission or hiring policies.

Except as set forth above, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

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

Assistant Attorney General Ed Carnes 1980-1985, 69 ALA. L. REV. 651 (2018).
Copy supplied.

ALABAMA LAW INSTITUTE, ALABAMA ELECTION LAW HANDBOOK (18th ed. 2017). Contributor and editor. Copy supplied.

Symposium: A Recipe for Continued Confusion and More Judicial Involvement in Redistricting, SCOTUSBLOG (May 23, 2017). Copy supplied.

Alabama Law Institute, ALABAMA ELECTION LAW HANDBOOK (17th ed. 2015). Contributor and editor. Copy supplied.

Symposium: The Death Penalty Lives To Fight Another Day, SCOTUSBLOG (June 29, 2015). Copy supplied.

Symposium: Good Faith and Caution, Not Irrationality or Malice, SCOTUSBLOG (Jan. 16, 2015). Copy supplied.

Advice on Motions in Limine, FOR THE DEFENSE, Jan. 2012. Copy supplied.

Circuit Reports: Eleventh Circuit, CERTWORTHY, Vol. 13, Issue 2 (Oct. 20, 2011). Copy supplied.

Class Action Lessons from Wal-Mart v. Dukes, CORPORATE COUNSELOR, Aug. 2011. Copy supplied.

Circuit Reports: Eleventh Circuit, CERTWORTHY, Vol. 13, Issue 1 (April 1, 2011). Copy supplied.

If You Wouldn't Say It, Why Write It? Tips for More Conversational and Effective Writing, FOR THE DEFENSE, Jan. 2011. Copy supplied.

Circuit Reports: Eleventh Circuit, CERTWORTHY, Vol. 12, Issue 2 (Oct.15, 2010). Copy supplied.

Basics of Certiorari Practice in the Alabama Supreme Court, ALA. LAW. (May 2009). Copy supplied.

Amendments Rejected in ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (5th ed. 2008). Copy supplied.

Substantive Consolidation: A Critical Examination, Harvard Law School Program on Corporate Governance (2006). Copy supplied.

Discriminatory Limitations on Direct Wine Shipment, 119 HARV. L. REV. 307 (2006). Copy supplied.

Sixth Circuit Rejects De Minimis Defense to the Infringement of a Sound Recording Copyright, 118 HARV. L. REV. 1355 (2005). Copy supplied.

Letter to the Editor, HARV. L. REC., Apr. 22, 2004. Copy supplied.

Book Review of *One Nation Under God* by Eugene Hemrick, *Report from the Capitol*, Vol. 58, No. 5 (March 5, 2003). Copy supplied.

Commencement Speaker Embarrasses and Offends Graduates and Attendees, SAMFORD CRIMSON, Feb. 12, 2003. Copy supplied.

Birmingham Pledge Means Well, but Empty, Without Firm Commitment, SAMFORD CRIMSON, Sept. 25, 2002. Copy supplied.

International Theme Unrelated to Events, SAMFORD CRIMSON, Mar. 21, 2001. Copy supplied.

ROTC Provides Military Experience, SAMFORD CRIMSON, May 10, 2000. Copy supplied.

Spring Fling Promises Fun for All, SAMFORD CRIMSON, Apr. 26, 2000. Copy supplied.

Theatre Offers Creative Childcare, SAMFORD CRIMSON, Mar. 22, 2000. Copy supplied.

Beeson Bridge Falls to Science Center, SAMFORD CRIMSON, Mar. 15, 2000. Copy supplied.

Stages Gears up for New Semester, SAMFORD CRIMSON, Mar. 1, 2000. Copy supplied.

In addition to the above, as a research assistant, I edited drafts of Professor Ronald Mann's book *Charging Ahead: The Growth and Regulation of Payment Card Markets* and the 2005 edition of Professor Charles Ogletree's book *All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education*. As a member of the Harvard Law Review, I had some role in editing most articles published from the fall of 2004 to the spring of 2006.

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

REPORT OF THE STANDING COMMITTEE ON THE ALABAMA RULES OF APPELLATE PROCEDURE (Feb. 9, 2018). Copy supplied.

REPORT OF THE STANDING COMMITTEE ON THE ALABAMA RULES OF APPELLATE PROCEDURE (July 27, 2017). Copy supplied.

REPORT OF THE STANDING COMMITTEE ON THE ALABAMA RULES OF APPELLATE PROCEDURE (March 11, 2016). Copy supplied.

REPORT OF THE STANDING COMMITTEE ON THE ALABAMA RULES OF APPELLATE PROCEDURE (Sept. 25, 2015). Copy supplied.

REPORT OF THE STUDY COMMITTEE ON CAMPAIGN FINANCE REFORM TO THE ALABAMA LEGISLATURE (2013). Copy supplied.

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

Letter to Sens. Charles E. Grassley and Dianne Feinstein, Nomination of Brett J. Talley, Oct. 17, 2017. Copy supplied.

Letter to Sens. Charles E. Grassley and Dianne Feinstein, Nomination of Kevin C. Newsom, June 7, 2017. Copy supplied.

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

March 22, 2018: Judge/Panelist, Donworth Moot Court Competition, Cumberland School of Law. I was a judge for the final round of this moot court competition. I have no notes, transcript, or recording. The address for Cumberland School of Law is 305 Riley Road, Birmingham, Alabama 35229.

March 19, 2018: Panelist, "Solicitors General Supreme Court Review and Preview," Rule of Law Defense Fund, New Orleans, Louisiana. I have no notes, transcript, or recording. The address for the Rule of Law Defense Fund is 1747 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20006.

December 14, 2017: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," State Government Lawyers' CLE, Montgomery, Alabama. Notes supplied.

November 2, 2017: Speaker, "Review and Preview of Supreme Court Term 2016-17," Southeastern Business Law Institute, Birmingham, Alabama. Notes supplied.

October 19, 2017: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," Federalist Society for Law & Public Policy Studies, Yale Law School Student Chapter, New Haven, Connecticut. Notes supplied as notes from December 14, 2017 event.

October 3, 2017: Panelist, "The Limits of Executive Orders," 2017 Faulkner Law Review Symposium, Montgomery, Alabama. I have no notes, transcript, or recording. The address for the Faulkner Law Review is 5345 Atlanta Highway, Montgomery, Alabama 36109.

September 21, 2017: Speaker, "Review and Preview of Supreme Court Term 2016-17," Federalist Society for Law & Public Policy Studies, University of Alabama Law School Student Chapter, Tuscaloosa, Alabama. Notes supplied as notes from November 3, 2017 event.

August 25, 2017: Speaker, "When Laws Are Challenged in Litigation," Legislative Services Bill Drafting Seminar, Alabama Legislature, Montgomery, Alabama. Notes supplied.

July 14, 2017: Speaker, "Review and Preview of Supreme Court Term 2016-17," Alabama State Bar Association Annual Meeting, Point Clear, Alabama. Notes supplied as notes from November 3, 2017 event.

June 30, 2017: Speaker, "Review and Preview of Supreme Court Term 2016-17," Federalist Society for Law & Public Policy Studies, Nashville Lawyers Chapter, Nashville, Tennessee. Notes supplied as notes from November 3, 2017 event.

May 31, 2017: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. Notes supplied as notes from December 14, 2017 event.

May 5, 2017: Panelist, "The Gorsuch Effect," Rule of Law Defense Fund, Charleston, South Carolina. The panel discussed Justice Gorsuch's first few weeks on the Supreme Court. I have no notes, transcript, or recording. The address for the Rule of Law Defense Fund is 1747 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20006.

April 10, 2017: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," Federalist Society for Law & Public Policy Studies, University of Mississippi School of Law Student Chapter, Oxford, Mississippi. Notes supplied as notes from December 14, 2017, event.

March 25, 2017: Panelist, "State Solicitors General," Harvard Law Federalist Society Alumni Symposium, Cambridge, Massachusetts. I spoke regarding my work as Alabama Solicitor General. I have no notes, transcript, or recording. The address for the Harvard Student Chapter of the Federalist Society is 103 Pound Hall, 1563 Mass Avenue, Cambridge, Massachusetts 02138. Press coverage supplied.

February 28, 2017: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," Federalist Society for Law & Public Policy Studies, University of Georgia School of Law Student Chapter, Athens, Georgia. Notes supplied as notes from December 14, 2017, event.

February 17, 2017: Speaker, "The Law of Firearms in Public Places," Alabama League of Municipalities, Montgomery, Alabama. Notes supplied.

February 4, 2017: Panelist, “Combating Federal Overreach,” Federalist Society for Law & Public Policy Studies, Florida Lawyers Chapter, Annual Meeting, Orlando, Florida. Recording supplied.

January 10, 2017: Speaker, “Attorney General’s Office Update,” Alabama Probate Judges’ Winter Meeting, Point Clear, Alabama. PowerPoint supplied.

December 8, 2016: Speaker, “The Law of Firearms in Public Places,” Alabama Association of County Commissions, Montgomery, Alabama. Notes supplied as notes from February 17, 2017 event.

October 28, 2016: Panelist, “Amicus Practice in the Eleventh Circuit,” Eleventh Circuit Practice Institute, Atlanta, Georgia. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education, which sponsored the Eleventh Circuit Practice Institute, is Post Office Box 117210, Atlanta, Georgia 30368.

October 27, 2016: Panelist, “Conversation with Solicitors General,” Eleventh Circuit Practice Institute, Atlanta, Georgia. I spoke regarding my work as Alabama Solicitor General. I have no notes, transcript, or recording. The address for the Institute of Continuing Legal Education, which sponsored the Eleventh Circuit Practice Institute, is Post Office Box 117210, Atlanta, Georgia 30368-7210.

October 19, 2016: Speaker, “Supreme Court Review,” Bradley Arant Boult Cummings LLP, Birmingham, Alabama. PowerPoint supplied.

October 19, 2016: Speaker, “Jobs in Law and Government,” Samford University, Birmingham, Alabama. I spoke regarding my work as Alabama Solicitor General. I have no notes, transcript, or recording. The address for Samford University is 800 Lakeshore Drive, Homewood, Alabama 35209.

October 11, 2016: Speaker, “Supreme Court 2015 Wrap Up: A Terrible Horrible No Good Very Bad Term,” Federalist Society for Law & Public Policy Studies, University of Alabama Law School Student Chapter, Tuscaloosa, Alabama. Notes supplied.

September 20, 2016: Speaker, “Justice Scalia’s Legacy,” Montgomery Kiwanis Club, Montgomery, Alabama. I spoke about some of Justice Scalia’s important opinions and arguing before Justice Scalia. I have no notes, transcript, or recording. The address for the Montgomery Kiwanis Club is 201 Dexter Avenue, Montgomery, Alabama 36104.

September 15, 2016: Speaker, “Supreme Court 2015 Wrap Up: A Terrible Horrible No Good Very Bad Term,” Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. Notes supplied

as notes from October 11, 2016, event.

July 27, 2016: Speaker, "Review of Supreme Court Term 2015-16," Houston County Bar Association, Dothan, Alabama. Notes supplied as notes from October 11, 2016, event.

April 19, 2016: Panelist, "Future of the Voting Rights Act after *Shelby County v. Holder*," National Association of Attorneys General Southern Meeting, Emory Law School, Atlanta, Georgia. Notes supplied.

March 24, 2016: Speaker, "Alabama's Litigation Against The EPA's Waters Of The United States Rule: A Case Study In Combating Federal Overreach," Federalist Society for Law & Public Policy Studies, Harvard Law School Student Chapter, Cambridge, Massachusetts. Notes supplied.

February 24, 2016: Panelist, "Antonin Scalia's Life & Death," Faulkner Law School, Montgomery, Alabama. I spoke about arguing before Justice Scalia. I have no notes, transcript, or recording. The address for Faulkner Law School is 5345 Atlanta Highway, Montgomery, Alabama 36109.

February 1, 2016: Speaker, "What I Learned From Losing *ADC v. Alabama*," Federalist Society for Law & Public Policy Studies, University of Chicago Law School Student Chapter, Chicago, Illinois. The presentation was substantively similar to my April 19, 2016 speech at the National Association of Attorneys General Southern Meeting, for which I have provided notes.

October 30, 2015: Speaker, "Supreme Court Round-Up," Southeastern Business Law Institute, Birmingham, Alabama. I discussed the previous Supreme Court term's business cases. I have no notes, transcript, or recording. The address of the Southeastern Business Law Institute is Cumberland School of Law, 305 Riley Road, Birmingham, Alabama 35229.

September 29, 2015: Panelist, "Supreme Court Round-Up," Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. I discussed the previous Supreme Court term. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

July 29, 2015: Speaker, "Understanding the Supreme Court's Same-Sex Marriage Decision," Alabama Probate Judges Conference, Tuscaloosa, Alabama. PowerPoint supplied.

July 21, 2015: Moderator, "Fat Cats and Philanthropists: How the IRS Governs Your Charitable Giving," Alabama Policy Institute, Birmingham, Alabama. Recording supplied.

July 12, 2015: Panelist, "Update on United States Supreme Court Cases and Decisions," Alabama State Bar Association Annual Meeting, Point Clear, Alabama. I spoke about the Supreme Court term that had recently ended. I have no notes, transcript, or recording. The address of the Alabama State Bar Association is 415 Dexter Avenue, Montgomery, Alabama 36104.

June 22, 2015: Panelist, "Supreme Court Tax Cases," State and Local Legal Center, Washington, District of Columbia. PowerPoint supplied.

May 21, 2015: Panelist, "Solicitors General Review the Supreme Court," Rule of Law Defense Fund, Atlanta, Georgia. The panelists discussed pending and recently-decided Supreme Court cases. I have no notes, transcript, or recording. The address of the Rule of Law Defense Fund is 1747 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20006.

April 22, 2015: Speaker, "Weighing the Legal Arguments for Same-Sex Marriage from a Federalism Perspective," Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. The substance of my presentation was similar to the talk given on July 29, 2015, for which I have provided a PowerPoint.

February 12, 2015: Panelist, "Controversial Cases in the U.S. Supreme Court and 11th Circuit," Hugh Maddox Inn of Court, Montgomery, Alabama. I recounted the facts and holdings of cases that had been decided by the Supreme Court and Eleventh Circuit. I have no notes, transcript, or recording. The address for the Hugh Maddox Inn of Court is 150 South Perry Street, Montgomery, Alabama 36104.

August 22, 2014: Speaker, "Supreme Court Roundup: Review of 2013-2014 Term," Eleventh Circuit Practice Institute, Montgomery, Alabama. Notes supplied.

July 8, 2014: Speaker, "Supreme Court Roundup: Review of 2013-2014 Term," Federalist Society for Law & Public Policy Studies, Birmingham Lawyers Chapter, Birmingham, Alabama. Notes supplied as notes from August 22, 2014, event.

June 27, 2014: Speaker, "Supreme Court Roundup: Review of 2013-2014 Term," Federalist Society for Law & Public Policy Studies, Montgomery Lawyers Chapter, Montgomery, Alabama. Notes supplied as notes from August 22, 2014, event.

February 26, 2014: Speaker, "Remarks from Attorney General Luther Strange," Alabama Citizens for Life, Montgomery, Alabama. I read brief remarks on behalf of Attorney General Luther Strange who had been an invited speaker but could not attend at the last minute. I have no notes, transcript, or recording. The

address of Alabama Citizens for Life is Post Office Box 184, Montgomery, Alabama 36101. Press coverage supplied.

December 4, 2013: Speaker, "Understanding Alabama's Immigration Law and the Litigation About It," Administrative Law Section of the Alabama State Bar, Montgomery, Alabama. PowerPoint supplied.

November 20, 2013: Speaker, "Pre-Trial and Motions Practice in the Federal Courts," Faulkner Law School, Montgomery, Alabama. Notes supplied.

August 21, 2013: Speaker, "Understanding Alabama's Immigration Law and the Litigation About It," Alabama Association of County Commissioners Annual Convention, Orange Beach, Alabama. PowerPoint supplied.

Oct. 18, 2012: Speaker, Review of Supreme Court Term 2011-12, Alabama Government Lawyer's CLE, Montgomery, Alabama. PowerPoint supplied.

Sept. 5, 2012: Panelist, "Back to School Supreme Court Review: What You Need to Know About This Term and Last," Bradley Arant Boult Cummings LLP, Birmingham, Alabama. I spoke about cases that had been decided in the most recent Supreme Court term and cases in the upcoming term. I have no notes, transcript, or recording. The address for Bradley Arant Boult Cummings LLP is One Federal Place 1819 Fifth Avenue North, Birmingham, Alabama 35203.

Sept. 3, 2012: Judge/Panelist, Gordon T. Saad Appellate Advocacy Competition, Cumberland School of Law. I was a judge for the final round of this moot court competition. I have no notes, transcript, or recording. The address for Cumberland School of Law is 305 Riley Road, Birmingham, Alabama 35229.

In private practice, I presented at two teleconference CLEs about mortgage servicer litigation. I do not recall the precise date of those CLEs, nor can I find any records, notes, etc.

In college, I gave presentations at political science research conferences on my unpublished senior thesis, which concerned regional political parties in Spain. I cannot recall with any confidence the dates or locations of those conferences.

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

Fraimon Roberts III, *Frog Habitat Case Pending at U.S. Supreme Court Draws Interest from St. Tammany to Utah*, NEW ORLEANS ADVOCATE, Sept. 10, 2017. Copy supplied.

Pat Duggins, *Justice Reform: When the Jury Says "Life in Prison," and the Judge Says "Death..."*, ALA. PUBLIC RADIO, May 2, 2017. Transcript supplied.

Josh Moon, *Analysis: The Truth About Alabama's Proposed Gambling Bills*, MONTGOMERY ADVERTISER, Aug. 17, 2016. Copy supplied.

Marcia Coyle, *Water Wars Likely To Spill into Supreme Court; Foes of EPA Rules Filed Challenges in 21 Courts*, NAT'L L.J., July 11, 2016. Copy supplied.

Kathy Hagood, *Writing for the Judge*, BUS. ALA., Apr. 2016. Copy supplied.

Capitol Journal, Alabama Public Television, August 28, 2015. Recording supplied.

Dori Bernstein, Irv Gornstein, & Steven Goldblatt, *Supreme Court Institute Annual Report*, May 14, 2015. Copy supplied.

Nina Totenberg, *After Botched Executions, Supreme Court Weighs Lethal Drug Cocktail*, NPR MORNING EDITION, Apr. 29, 2015. Transcript supplied.

Kim Chandler, *Fight Over Legislative Districts Returns to District Court*, Associated Press, Apr. 18, 2015. Copy supplied. Reprinted in multiple outlets.

Patrick L. Gregory, *Alabama Gets Another Chance To Defend Diesel Tax on Rail Carriers*, BLOOMBERG BNA, Mar. 10, 2015. Copy supplied.

Mary Troyan, *State Revenue Could Take a Hit*, MONTGOMERY ADVERTISER, Dec. 12, 2014. Copy supplied. Reprinted in multiple outlets.

Mark Sherman & Kim Chandler, *Justices To Consider Alabama Voting Case*, Associated Press, Nov. 12, 2014. Copy supplied.

Nina Totenberg, *Supreme Court Case Seeks Source of Alabama Gerrymandering*, NPR MORNING EDITION, Nov. 12, 2014. Transcript supplied.

Nina Totenberg, *Should Short Beards Be Allowed Behind Bars?*, NPR ALL THINGS CONSIDERED, Oct. 6, 2014. Transcript supplied.

Shave and a Haircut, SCOTUSBLOG, Oct. 5, 2014. Recording supplied.

Richard Wolf, *Justices To Rule if Race-Based Districts Legal; Case Seeks To Dilute Black Voting Strength in Some Areas*, USA TODAY, Sept. 2, 2014. Copy supplied.

Capitol Journal, Alabama Public Television, August 8, 2014. Recording supplied.

Alexander Ripps, *Sales and Use Taxes: Supreme Court Agrees To Hear Alabama Diesel Tax Case*, BLOOMBERG BNA, July 2, 2014. Copy supplied.

Kevin P. McGowan, *Public Employee's Testimony in Criminal Trial Is Protected Speech, Supreme Court Decides*, BLOOMBERG BNA, June 25, 2014. Copy supplied.

Sam Hananel, *U.S. Supreme Court Rules for Whistleblower in Alabama Case*, Associated Press, June 20, 2014. Copy supplied. Reprinted in multiple outlets.

Brian Lyman, *AG Wants Decision Ending Gay Sex Ban Reconsidered*, MONTGOMERY ADVERTISER, June 19, 2014. Copy supplied.

Brian Lyman, *State AG Backs Tea Party in IRS Case*, MONTGOMERY ADVERTISER, May 8, 2014. Copy supplied. Reprinted in multiple outlets.

Richard Wolf, *Supreme Court Won't Hear Case on Gay Wedding Snub*, USA TODAY, Apr. 7, 2014. Copy supplied.

Brian Lyman, *Judge Orders Trial in Alabama Abortion Lawsuit*, MONTGOMERY ADVERTISER, Apr. 1, 2014. Copy supplied. Reprinted in multiple outlets.

Brian Lyman, *Judge Extends Temporary Restraining Order on Alabama Abortion Law*, MONTGOMERY ADVERTISER, Mar. 25, 2014. Copy supplied.

Richard Wolf, *Justices May Hear Gay Wedding Case: New Mexico Studio's Refusal To Take Photos Creates Legal Tussle*, USA TODAY, Mar. 21, 2014. Copy supplied.

Brian Lyman, *Impact of Tex. Abortion Ruling on Ala. Law Not Clear*, MONTGOMERY ADVERTISER, Nov. 27, 2013. Copy supplied.

Brian Lyman, *Experts in Abortion Clinic Case Come at a Price*, MONTGOMERY ADVERTISER, Aug. 1, 2013. Copy supplied.

Mike Cason, *New Rule for Doctors Delayed Again*, BIRMINGHAM NEWS, July 21, 2013. Copy supplied.

Brian Lyman, *Judgment in Abortion Clinic Suit Likely To Come Next Year*, MONTGOMERY ADVERTISER, July 20, 2013. Copy supplied.

Sebastian Kitchen, *Ala. Attorney General Asks Federal Judge To Close Creek Casinos*, MONTGOMERY ADVERTISER, Apr. 13, 2013. Copy supplied.

Robert McClendon, *Bingo Battle Heating up: Attorney General Expands Complaint Against Poarch Creek Tribe*, HUNTSVILLE TIMES, Apr. 12, 2013. Copy

supplied.

Robert McClendon, *Expert: Indian Bingo Suit 'Novel' But Won't Succeed*,
MOBILE REGISTER, Feb. 22, 2013. Copy supplied.

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

In the fall of 2017, I was appointed by the Alabama Board of Pardons and Paroles to be a hearing officer (akin to an administrative law judge) to resolve a personnel matter involving allegations against the Board's former executive director.

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

One.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

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

None.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

In the one matter that I resolved as a hearing officer, the Board of Pardons & Paroles alleged that its former Executive Director had engaged in race and sex-based discrimination in violation of federal and state laws. Based on the evidence presented before me, I found that the executive director had violated federal law and state rules by assigning state vehicles to employees based on their race and sex. I found insufficient evidence that the executive director had treated employees differently in employee discipline based on race. Based on my findings, the former Executive Director was removed from his position. My decision was affirmed by the Board of State Personnel.

Counsel for Prosecution:
Meredith Barnes
Kevin Blackburn
Laura Best
Board of Pardons & Paroles
301 Ripley Street
Montgomery, Alabama 36104
(334) 514-5090

Counsel for Defendant:
John D. Saxon
2119 Third Avenue North
Birmingham, Alabama 35203
(205) 324-0223

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

A copy of my unpublished report is attached.

Counsel for Prosecution:
Meredith Barnes
Kevin Blackburn
Laura Best
Board of Pardons & Paroles
301 Ripley Street
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Counsel for Defendant:
John D. Saxon
2119 Third Avenue North
Birmingham, Alabama 35203
(205) 324-0223

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

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have acted as a hearing officer in only one case. As described above, I have issued one unpublished report.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have supplied a copy of the one unpublished report that I have issued.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have served as an adjudicator in only one case, described above. Recusal was not an issue in that case.

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

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

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

I have never been a candidate for or held an elected public office. Since law school, I have held the following appointed positions:

Solicitor General, State of Alabama, 2014 – present. Appointed in January 2014 by then-Alabama Attorney General Luther Strange.

Deputy Solicitor General, State of Alabama, 2011 – 2014. Appointed in November 2011 by then-Alabama Attorney General Luther Strange.

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

Volunteer, Trump Transition Team (Dec. 2016 – Jan. 2017). I consulted on occasion with members of the Department of Justice “beachhead” team about criminal law issues with which they should familiarize themselves before the transition.

Volunteer, Bradley Byrne for Governor (2010). I made phone calls to tell supporters about scheduled events and to remind supporters to vote.

Volunteer, Luther Strange for Attorney General (2010). I made phone calls to remind supporters to vote. I also gave the campaign and transition team occasional advice about legal issues affecting the State.

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

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

From 2006 to 2007, I served as a law clerk to the Honorable William H. Pryor Jr., Circuit Judge of the United States Court of Appeals for the Eleventh Circuit.

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

I have never practiced alone.

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

Summer 2006
Gibson Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Summer Associate

2007 – 2011
Bradley Arant Boult Cummings LLP
819 Fifth Avenue North
Birmingham, Alabama 35203
Associate

2011 – present
Office of the Alabama Attorney General
501 Washington Avenue
Montgomery, Alabama 36130
Deputy Solicitor General (2011 – 2014)
Solicitor General (2014 – present)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

My practice has always focused on complex trial and appellate litigation, but I have never specialized in any particular substantive area of the law. When I first graduated from law school, I was a pre-clerkship summer associate at a large law firm where I worked primarily on securities cases. When I returned to private practice after my clerkship, I worked on all aspects of complex commercial and product liability litigation, including pre-trial discovery, class certification, summary judgment, motions in limine, jury instructions, and appeals. As the Deputy Solicitor General from

2011 to 2014, I worked on constitutional cases in federal court—conducting discovery, pre-trial motions practice, filing briefs, and arguing appeals. I also worked on criminal appeals in the state court system and federal habeas matters in federal court. When I was promoted to Solicitor General in 2014, I became a supervisor as well as a litigator. As Solicitor General, I supervise other attorneys in three areas: (1) particularly important or complicated civil litigation in federal district court or state trial court, (2) civil and criminal appeals in the United States Supreme Court, Eleventh Circuit Court of Appeals, and Alabama Supreme Court, and (3) legal opinions issued by the Attorney General to state and local officers. I also appear in court and personally handle trial-level cases or appeals at the direction of the Attorney General.

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

In private practice, I worked primarily for manufacturers, construction companies, financial services companies, and pharmaceutical companies. I also represented Alabama's then-governor in litigation and in an advisory capacity. During this period of my career, I also had a heavy pro bono practice and was frequently appointed by the federal courts to represent criminal defendants.

In November of 2011, I left private practice to work at the Alabama Attorney General's Office, first as Deputy Solicitor General and then as Solicitor General. My clients at the Attorney General's Office have been the State, its agencies, and its officers.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice has always been exclusively litigation and litigation-related advice. When I was in private practice, I appeared in court occasionally. At the Attorney General's Office, I appear in court frequently. I have presented oral argument three times in the United States Supreme Court, four times in the Alabama Supreme Court, approximately seventeen times in the Eleventh Circuit, and approximately five times in other state and federal appellate courts. I have argued dispositive motions and other pre- and post-trial matters in the Middle District of Alabama, Northern District of Alabama, and state trial courts.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 70%
 - 2. state courts of record: 30%
 - 3. other courts: 0%
 - 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 70%
 - 2. criminal proceedings: 30%

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

When I was in private practice, I was associate counsel in two jury trials. I represented the defendant in a federal criminal trial, and the defendant in a complex state court civil trial. At the Attorney General's Office, I have been chief counsel for three bench trials over constitutional issues: I defended the constitutionality of state laws in two federal bench trials. I also defended the prosecution team and other state employees against constitutional claims during a multi-day evidentiary hearing in a state-court public corruption prosecution. After the court entered judgment on those claims, the case proceeded to a jury trial on the criminal charges in which I did not actively participate.

- i. What percentage of these trials were:
 - 1. jury: 30%
 - 2. non-jury: 70%

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

I have practiced extensively before the Supreme Court of the United States both in private practice and at the Alabama Attorney General's Office. I have filed nine merits briefs as counsel of record or co-counsel, and I have argued three cases. I have also filed other kinds of briefs, such as amicus briefs and briefs in opposition to certiorari.

I have argued the following merits cases in the Supreme Court:

McWilliams v. Dunn, 137 S. Ct. 1790 (2017)
Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015)
Alabama Department of Revenue v. CSX Transp., Inc., 135 S. Ct. 1136 (2015)

I have filed briefs as counsel of record for either a party or *amicus curiae* in the following additional merits cases:

Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., No. 17-71 (Aug 14, 2017)
(consolidated with *Markle Interests, L.L.C. v. U.S. Fish & Wildlife Serv.*, No. 17-

74)

Dunn v. Madison, 138 S. Ct. 9 (2017)
Johnson v. Alabama, 137 S. Ct. 2292 (2017)
Russell v. Alabama, 137 S. Ct. 158 (2016)
Barnes v. Alabama, 136 S. Ct. 2447 (2016)
Barnes v. Alabama, 136 S. Ct. 2446 (2016)
Flowers v. Alabama, 136 S. Ct. 2445 (2016)
Slaton v. Alabama, 136 S. Ct. 2445 (2016)
Bonds v. Alabama, 136 S. Ct. 2444 (2016)
Knotts v. Alabama, 136 S. Ct. 2443 (2016)
Wimbley v. Alabama, 136 S. Ct. 2387 (2016)
Johnson v. Lee, 136 S. Ct. 1802 (2016)
Adams v. Alabama, 136 S. Ct. 1796 (2016)
Wittman v. Personhuballah, 136 S. Ct. 1732 (2016)
Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016)
Presley v. Alabama, 136 S. Ct. 1399 (2016)
Duke v. Alabama, 136 S. Ct. 1378 (2016)
Baker v. Alabama, 136 S. Ct. 1378 (2016)
McWilliams v. Alabama, 136 S. Ct. 1373 (2016)
Storey v. Alabama, 136 S. Ct. 1373 (2016)
Forman v. Alabama, 136 S. Ct. 1372 (2016)
Ingram v. Alabama, 136 S. Ct. 1372 (2016)
Flynn v. Alabama, 136 S. Ct. 1371 (2016)
Foster v. Alabama, 136 S. Ct. 1371 (2016)
Hogan v. Alabama, 136 S. Ct. 1370 (2016)
Iiams v. Alabama, 136 S. Ct. 1370 (2016)
Gardner v. Alabama, 136 S. Ct. 1369 (2016)
Reeves v. Alabama, 136 S. Ct. 1369 (2016)
Pratt v. Alabama, 136 S. Ct. 1368 (2016)
Stubbs v. Alabama, 136 S. Ct. 1368 (2016)
Black v. Alabama, 136 S. Ct. 1367 (2016)
Dunlap v. Alabama, 136 S. Ct. 1367 (2016)
Matthews v. Alabama, 136 S. Ct. 1366 (2016)
Wilson v. Alabama, 136 S. Ct. 1366 (2016)
Williams v. Alabama, 136 S. Ct. 1365 (2016)
Click v. Alabama, 136 S. Ct. 1363 (2016)
Hurst v. Florida, 136 S. Ct. 616 (2016)
Glossip v. Gross, 135 S. Ct. 2726 (2015)
Obergefell v. Hodges, 135 S. Ct. 2584 (2015)
Knight v. Thompson, 135 S. Ct. 1173 (2015)
Holt v. Hobbs, 135 S. Ct. 853 (2015)
Lane v. Franks, 134 S. Ct. 2369 (2014)
Michigan v. Bay Mills Indian Community, 134 S. Ct. 2024 (2014)
Walden v. Fiore, 134 S. Ct. 1115 (2014)
Hinton v. Alabama, 134 S. Ct. 1081 (2014)
Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1 (2013)

McQuiggin v. Perkins, 569 U.S. 383 (2013)
Standard Fire Ins. Co. v. Knowles, 568 U.S. 588 (2013)
Perry v. Perez, 565 U.S. 1090 (2011)

I have also filed briefs as counsel of record for either a party or *amicus curiae* in the following nonmerits matters:

Lee v. Alabama, No. 17-775 (petn. pending)
Kirksey v. Alabama, No. 17-6113 (Nov. 6, 2017)
Wimbley v. Alabama, No. 17-5663 (Oct. 30, 2017)
Peruta v. California, No. 16-894 (June 26, 2017)
Culbreth v. Alabama, No. 16-8186 (June 19, 2017)
Alaska v. Zinke, No. 16-596 (May 1, 2017)
Woolf v. Alabama, No. 16-8152 (Apr. 24, 2017)
Alabama Democratic Conference v. Marshall, No. 16-832 (Apr. 24, 2017)
Byrd v. Alabama, No. 16-479 (Mar. 20, 2017)
Bohannon v. Alabama, No. 16-6746 (Jan. 23, 2017)
Shaw v. Alabama, No. 16-5726 (Jan. 23, 2017)
Brohl v. Direct Mktg. Ass'n, No. 16-458 (Dec. 12, 2016)
Building Indus. Ass'n of the Bay Area v. Dept. of Commerce, No. 15-1350 (Oct. 11, 2016)
Knight v. Thompson, No. 15-999 (May 2, 2016)
Samra v. Price, No. 15-8089 (Apr. 18, 2016)
Brooker v. Alabama, No. 15-892 (Apr. 18, 2016)
Luong v. Alabama, No. 15-922 (Mar. 28, 2016)
Shanklin v. Alabama, No. 15-953 (Mar. 21, 2016)
McWane Inc. v. FTC, No. 15-706 (Mar. 21, 2016)
White v. Alabama, No. 15-5730 (Oct. 19, 2015)
Dunn v. DeBruce, No. 14-807 (June 15, 2015)
Lockhart v. Alabama, No. 14-8194 (Apr. 20, 2015)
Scott v. Alabama, No. 14-8189 (Apr. 20, 2015)
Strange v. Searcy, No. 14A840 (Feb. 9, 2015)
Arthur v. Thomas, No. 13-1451 (Oct. 6, 2014)
Lynch v. Alabama, No. 13-1232 (Oct. 6, 2014)
Elane Photography, LLC v. Willock, No. 13-585 (Apr. 7, 2014)
Patterson v. Adkins, No. 13-85 (Oct. 7, 2013)
Reynolds v. Alabama, No. 12-10278 (Oct. 7, 2013)
Daniel v. Alabama, No. 11-10329 (Oct. 1, 2012)

I have been listed on briefs as supporting counsel for either a party or *amicus curiae* in the following merits cases:

McCoy v. Louisiana, No. 16-8255 (pending)
Lee v. United States, 137 S. Ct. 1958 (2017)
NLRB v. SW General, Inc., 137 S. Ct. 929 (2017)
NLRB v. Noel Canning, 134 S. Ct. 2550 (2014)

Shelby Cnty., Ala. v. Holder, 570 U.S. 529 (2013)
Miller v. Alabama, 567 U.S. 460 (2012)
Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009)
Riley v. Kennedy, 553 U.S. 406 (2008)

I have been listed on briefs as supporting counsel for either a party or *amicus curiae* in the following nonmerits matters:

State of Indiana v. Commonwealth of Massachusetts, No. 22O149 (Dec. 11, 2017)
State of Missouri v. State of California, No. 22O148 (Dec. 4, 2017)
Arthur v. Dunn, No. 16-1407 (May 25, 2017)
Arthur v. Dunn, No. 16-602, 16A-451 (Feb. 21, 2017)
Arthur v. Alabama, No. 16-595 (Jan. 23, 2017)
Keunzel v. Alabama, No. 16-213 (Oct. 31, 2016)
Lee v. Thomas, No. 13-775 (Mar. 24, 2014)
Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms & Explosives, No. 13-137 (Feb. 24, 2014)
Stroud v. Alabama Bd. of Pardons & Paroles, No. 13-635 (Jan. 13, 2014)
Clemons v. Alabama, No. 12-1478 (Oct. 7, 2013)
Alabama v. United States, No. 12-884 (Apr. 29, 2013)
Thaler v. McGowen, No. 12-82 (Nov. 26, 2012)
Thomas v. Madison, No. 12-308 (Nov. 13, 2012)
Lord Abbett Mun. Income Fund, Inc. v. Strange, No. 11-1332 (Oct. 1, 2012)
Alabama v. Lane, No. 11-627 (Jan. 23, 2012)
Beason v. Bentley, No. 11-157 (Jan. 9, 2012)

Although not listed in the briefs or docket, I also assisted in the preparation of the reply brief in the following case:

Allen v. Siebert, 128 S. Ct. 2 (2007)

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

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

1. *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015); *Alabama Legislative Black Caucus v. Alabama*, 231 F.Supp.3d 1026 (M.D. Ala. 2017).

I defended the constitutionality of Alabama's house and senate legislative districts before a three-judge district court in the Middle District of Alabama and the Supreme Court of the United States. From 2012 to 2014, my principal role was to advise the Attorney General about various legal issues presented by the case. After the State prevailed in the district court, I briefed and argued the appeal in the Supreme Court in 2014. In a 5-4 decision authored by Justice Breyer and joined by Justices Kennedy, Ginsburg, Kagan, and Sotomayor, the Court reversed and remanded for further proceedings.

On remand, I participated in supplemental discovery, briefing, and argument before the three-judge district court. In an opinion authored by Judge William H. Pryor Jr. of the U.S. Court of Appeals for the Eleventh Circuit and joined by Chief Judge Keith Watkins of the Middle District of Alabama, the district court held 12 of Alabama's districts unconstitutional and rejected claims against all other districts. Judge Myron Thompson of the Middle District of Alabama concurred in part and dissented in part.

During the remedial phase of the litigation, I advised the Legislature on how to redraw the challenged house and senate districts. The Legislature redrew all the challenged districts, and the plaintiffs agreed that the new plans solved the legal infirmities in the old plans. The litigation ended in the fall of 2017.

Co-Counsel for Defendants State of Alabama and Alabama Secretary of State:

Luther Strange
[Then Attorney General of Alabama]
Current contact information available upon request

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Attorney General of Alabama
Megan A. Kirkpatrick
Jim Davis
Misty Messick
Office of Alabama Attorney General
Post Office Box 300152
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John J. Park, Jr.
Strickland Brockington Lewis
Midtown Proscenium, Suite 2200
1170 Peachtree Street, N.E.
Atlanta, Georgia 30309
(678) 347-2208

Counsel for Intervenor-Defendants Reapportionment Committee Co-Chairs:

Dorman Walker
Balch & Bingham LLP
105 Tallapoosa Street, Suite 200
Montgomery, Alabama 36104
(334) 269-3138

Counsel for Intervenor-Defendant Governor of Alabama:

David Byrne
[Then Governor's Legal Advisor]
Alabama Securities Commission
Post Office Box 304700
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(334) 242-2382

Counsel for Plaintiff the Alabama Legislative Black Caucus:

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University of Washington School of Law
William H. Gates Hall
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Seattle, Washington 98195
(206) 616-3167

James U. Blacksher
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Birmingham, Alabama 35201
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Counsel for Plaintiff the Alabama Democratic Conference:

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New York University School of Law
40 Washington Square South,
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John K. Tanner
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Honorable James H. Anderson
[Then at Copeland, Franco, Screws & Gill, P.A.]

Montgomery County Circuit Court
Post Office Box 1667
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Counsel for the United States of America as amicus in support of neither party:

Don Verrilli
[Then United States Solicitor General]
Munger Tolles & Olson
1155 F Street, NW
Washington, D.C. 20004
(202) 220-1100

2. *McWilliams v. Dunn*, 137 S. Ct. 1790 (2017).

I represent the Commissioner of the Alabama Department of Corrections in this capital case presenting questions about the meaning of “clearly established” law under the Anti-Terrorism and Effective Death Penalty Act. The inmate argued that *Ake v. Oklahoma*, 470 U.S. 68 (1985), clearly established that a State must provide an indigent defendant whose mental health will be a significant factor at trial the assistance of a mental health expert who is a member of the defense team rather than neutral. In an opinion written by Justice Breyer and joined by Justices Kennedy, Ginsburg, Sotomayor, and Kagan, the Supreme Court declined to resolve that question, concluding instead that it was clearly established that in this particular case the neutral expert did not meet the State’s obligations under *Ake*. Justice Alito wrote a dissenting opinion, joined by the Chief Justice and Justices Thomas and Gorsuch. I continue to represent the State on remand in the Eleventh Circuit.

Co-Counsel:

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Attorney General of Alabama
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Counsel for Petitioner:
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83 Poplar Street, N.W.
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3. *State v. Hubbard*, 43-CC-2014-000565.00 (Lee Cnty. Circuit Court). Decisions supplied, with the exception of court orders that remain under seal.

During the State's public corruption prosecution of former Alabama Speaker of the House Mike Hubbard, I defended the Attorney General's Office, state employees, and the prosecution team in year-long proceedings against various state and federal constitutional claims. In particular, I acted as lead counsel in a multi-day evidentiary hearing with related depositions and discovery matters. Judge Jacob Walker of the Lee County Circuit Court granted judgment in favor of the State on all constitutional challenges. After a jury trial in which I did not actively participate, Speaker Hubbard was found guilty of 12 felony violations of state ethics laws. That conviction is presently on appeal.

Other attorneys for the State:

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[Then Supernumerary District Attorney and Acting Attorney General]
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4. *Alabama Democratic Conference v. Attorney Gen.*, 838 F.3d 1057, 2016 WL 5389276 (11th Cir. Sept. 27, 2016); *Alabama Democratic Conference v. Broussard*, 541 Fed. Appx. 931 (11th Cir. 2013); *Alabama Democratic Conference v. Strange*, Case No. 5:11-cv-02449-JEO (N.D. Ala.).

From 2012 to 2017, I successfully defended a state campaign contribution restriction – the “PAC-to-PAC transfer ban” – from a constitutional challenge based on *Citizens*

United. The Alabama Legislature had unanimously enacted the law to ban certain transfers between political action committees after such transfers had been implicated in a federal bribery prosecution. After Magistrate Judge John Ott of the Northern District of Alabama held the law unconstitutional, I appealed the decision to the Eleventh Circuit, drafting all relevant briefs and delivering oral argument. A panel of the Eleventh Circuit—Judge Rosemary Barkett, Judge Adalberto Jordan, and Visiting Judge Harvey Schlesinger—reversed and remanded for additional proceedings. Following those proceedings, Judge Ott upheld the law, and I successfully defended that ruling in a second appeal. A new panel of the Eleventh Circuit –Judge Charles Wilson, Judge Beverly Martin, and Visiting Judge Patrick Higginbotham – agreed that the law is constitutional.

Co-Counsel:

Luther Strange
[Then Alabama Attorney General]
Current contact information available upon request

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[Then at the Office of the Alabama Attorney General]
Office of Governor Kay Ivey
Chief Deputy General Counsel
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Counsel for the Plaintiff:

Ed Still
Edward Still Law Firm LLC
2112 11th Avenue South, Suite 541
Birmingham, Alabama 35205
(205) 320-2882

5. *Alabama Dept. of Revenue v. CSX Transp., Inc.*, 135 S. Ct. 1136 (2015).

I defended the legality of Alabama’s sales and use tax on railroad diesel fuel against a challenge under the federal 4-R Act in this case before Supreme Court of the United States. The Supreme Court granted review to consider two questions: whether a State violates federal law when it taxes diesel fuel purchases made by a rail carrier while exempting similar purchases made by the rail carrier’s competitors and, if so, whether that violation is eliminated when other tax provisions offset that treatment. The Supreme Court ruled unanimously for the Alabama Department of Revenue on the second question and 7-2 against the Department on question one. Justice Scalia wrote the Court’s majority opinion, which was joined by Chief Justice Roberts and Justices Kennedy, Breyer, Alito, Kagan, and Sotomayor. Justice Thomas and Justice Ginsburg dissented. I

continue to represent the Department on remand.

Co-Counsel:

Luther Strange
[Then Alabama Attorney General]
Current contact information available upon request

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Counsel for the United States as amicus in support of neither party:

Elaine J. Goldenberg
[Then Assistant to the United States Solicitor General]
Munger Tolles & Olson
1155 F Street, NW
Washington, D.C. 20004
(202) 220-1100

6. *Planned Parenthood Southeast v. Strange*, 2:13cv405-MHT (M.D. Ala.).

From 2013 until 2016, I defended the constitutionality of a state law that imposed an “admitting privileges” requirement on abortion clinics. I took and defended depositions, handled written discovery, and briefed and argued temporary restraining order and summary judgment motions. During the multi-week bench trial that followed, I also handled various evidentiary issues, directed the trial team’s strategy, and gave the closing argument. Judge Myron Thompson of the Middle District of Alabama ultimately held the law at issue to be unconstitutional: *Planned Parenthood v. Bentley*, 951 F.Supp.2d 1280 (M.D. Ala. 2013) (preliminary injunction); *Planned Parenthood v. Strange*, 9 F.Supp.3d 1272 (M.D. Ala. 2014) (summary judgment); *Planned Parenthood v. Strange*, 33 F.Supp.3d 1330 (M.D. Ala. 2014) (post-trial judgment). After the Supreme Court held a similar Texas law unconstitutional in *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___, 136 S. Ct. 2292 (2016), I withdrew the State’s appeal of Judge Thompson’s permanent injunction, ending the litigation.

Co-Counsel:

Luther Strange
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7. *Lane v. Franks*, 134 S. Ct. 2369 (2014).

I represented the Acting President of Central Alabama Community College in this personnel dispute before the Supreme Court of the United States. The dispute arose after a former state employee alleged that he was fired because he testified against a state legislator during a federal public corruption trial. The Supreme Court granted certiorari to consider whether the First Amendment protects an employee in such circumstances. After I took over representation in this case, the State confessed error and argued that the First Amendment allows a state employee to sue if he or she is terminated because he or she testified about public corruption. The State also argued that the state supervisor who fired the employee could not be held personally liable for damages because of qualified immunity. The Supreme Court unanimously adopted our position.

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8. *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278 (11th Cir. 2015); *Alabama v. PCI Gaming Auth.*, 15 F. Supp.3d 1161 (M.D. Ala. 2014).

I represented the State of Alabama in this public nuisance suit filed to challenge gambling that the Attorney General had concluded violated the Indian Gaming Regulatory Act. I drafted and filed the complaint and amended complaint, and I briefed various motions, including the defendants' motion to dismiss. Chief Judge Keith Watkins of the Middle District of Alabama dismissed the amended complaint, and I then briefed and argued the State's appeal. The Eleventh Circuit – Judge Jill Pryor, Judge Stanley Marcus, and Visiting Judge David Ebel – affirmed.

Co-Counsel:

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9. *Riley v. Joint Fiscal Comm. of Alabama Legislature*, 26 So. 3d 1150 (Ala. 2009); *Ex parte Riley*, 11 So. 3d 801 (Ala. 2008); *Joint Fiscal Comm. of Alabama Legislature v. Riley*, No. CV-08-900752 (Montgomery Cty. Circuit Court).

From 2008 through 2009, I represented the then-Governor of Alabama, Bob Riley, in litigation challenging the constitutionality of his item veto of a conditional appropriation in the general-fund appropriations bill for fiscal year 2009. I briefed motions to dismiss and summary judgment in state trial court (Hon. Truman Hobbs), which ruled against the Governor. We appealed twice to the Supreme Court of Alabama, and I drafted the briefs in that Court as well. In the first appeal, the Supreme Court of Alabama (Justices Cobb, See, Lyons, Woodall, Smith, Stuart, Bolin, Parker, and Murdock) held the dispute was justiciable. In the second appeal, the Supreme Court of Alabama (Justices Cobb, Lyons, Woodall, Smith, Stuart, Bolin, Parker, Murdock, and Shaw) held that the Governor's item veto message did not satisfy state constitutional requirements and that the vetoed section of the general-fund appropriations bill was not itself unconstitutional.

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10. *United States v. McCray*, No. 2:05-cr-00531-KOB-TMP (N.D. Ala.); 280 Fed.Appx. 945 (2008).

From 2007 until 2009, I represented the defendant Richard Orlando McCray in this federal criminal case. The Eleventh Circuit appointed my firm to represent the defendant on appeal from a guilty plea, and we successfully argued that he had pled guilty only because the district judge misled him about his likely sentence during the guilty plea colloquy. Judges Stanley Birch, Joel Dubina, and Stanley Marcus vacated the conviction and remanded for further proceedings. I continued to represent Mr. McCray pro bono during his subsequent trial in front of Judge Karon Bowdre. The jury found Mr. McCray guilty, but we secured the minimum possible sentence.

Co-Counsel for Mr. McCray:

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

As the Solicitor General of Alabama, I have had a substantial role in supervising the drafting of Attorney General's Opinions, which resolve questions of state law for the benefit of local and state officials. These opinions can be found at <https://www.ago.state.al.us/Opinions>.

In private practice, I often represented clients in civil litigation resolved by a settlement before trial. One such case was a multi-million dollar contract and unjust enrichment action filed by a former employee against my client, Amquip Crane Co. After discovery, summary judgment, and rulings on pre-trial motions, the case settled shortly before trial.

In private practice, I also represented a number of businesses in responding to investigations conducted by state regulators. One such business was required to respond to investigative demands from the Attorneys General of New York, Colorado, Florida, and Alabama.

I have never acted or registered as a lobbyist.

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

I have never taught a course.

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

None.

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

If confirmed, I may seek to teach a law school course once or twice a year. I have no commitments or agreements to do so, and no other plans for outside activities.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse in any litigation where I have ever played a role. I intend to recuse from any current or future case that challenges a government law or policy that I have previously defended. I also intend to recuse from any current or future cases in which I was involved in a previous iteration of the case involving a criminal defendant. This means, for example, that I will recuse from a future federal habeas petition filed by a state or federal prisoner who was prosecuted in a state court case in which I was, or appeared to be, involved. For a period of two years, I anticipate recusing in all cases where the Office of the Alabama Attorney General represents a party. If I directly own stock in any business, I will recuse from any litigation involving that business. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

I had a substantial pro bono caseload when I was in private practice. I counseled and represented homeless men through a pro bono legal assistance program at a Birmingham homeless shelter. And I was often appointed to represent criminal defendants in federal court. I tried one appointed federal case to verdict: *United States v. McCray*, No. 2:05-cr-00531-KOB-TMP (N. D. Ala. 2008). I litigated four more on appeal: *United States v. Hamaker*, 303 Fed.Appx. 855 (11th Cir. Dec. 18, 2008); *United States v. Ghertler*, 605 F.3d 1256 (11th Cir. 2010); *Madaio v. Roden*, 375 Fed.Appx. 921 (11th Cir. April 20, 2010); *United States v. Whitworth*, 10-13473-A (May 17, 2011). (To the extent my firm received partial compensation under the Criminal Justice Act, it is my understanding that the firm used it to fund other pro bono activities.)

My position at the Attorney General's Office precludes pro bono work, Ala. Code § 36-15-9, but I have volunteered in other ways. For example, for the last several years, I have been a member of the state bar committee that determines whether applicants for the bar meet the requisite character and fitness requirements to practice law.

26. **Selection Process:**

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

In December 2016, I sent a letter of interest to Senator Richard Shelby for one of the vacancies in the United States District Court for the Middle District of Alabama. At various points over 2017, I discussed my continuing interest in a judicial nomination with personnel from Senator Shelby's office, former Senator Luther Strange's office, and the White House Counsel's Office. On December 9, 2017, I received a call from Senator Shelby's Chief of Staff to schedule an interview. I

interviewed with Senator Shelby and former Senator Strange on December 11, 2017. On December 21, 2017, I was told that Senator Shelby had passed my name on to the White House Counsel's Office for consideration. Since that time I have been in touch with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice about my candidacy. On April 10, 2018, the President submitted my nomination to the Senate.

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

No.