

**NOMINATIONS OF ANN C. FISHER,
ASHLEY E. POLING, CATHERINE BIRD,
RAINEY R. BRANDT, AND SHANA FROST MATINI**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

NOMINATIONS OF ANN C. FISHER TO BE A COMMISSIONER, POSTAL
REGULATORY COMMISSION, ASHLEY E. POLING TO BE A
COMMISSIONER, POSTAL REGULATORY COMMISSION, CATHERINE BIRD
TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY,
RAINEY R. BRANDT TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA AND SHANA FROST MATINI TO BE AN
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 16, 2019

Available via the World Wide Web: <http://www.govinfo.gov>

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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**NOMINATIONS OF ANN C. FISHER,
ASHLEY E. POLING, CATHERINE BIRD,
RAINEY R. BRANDT, AND SHANA FROST
MATINI**

TUESDAY, JULY 16, 2019

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

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

Present: Senators Johnson, Lankford, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF SENATOR LANKFORD¹

Senator LANKFORD. Good morning, everyone. Today we are considering five nominations—and I apologize for starting 3 minutes late to do it, but we will make up the time—Ann Fisher and Ashley Poling to be Commissioners of the Postal Regulatory Commission (PRC), Catherine Bird to be General Counsel (GC), Federal Labor Relations Authority (FLRA); Rainey Brandt and Shana Matini to be Associates Judges, Superior Court of the District of Columbia.

Ms. Ann Fisher currently serves as the Director of Public Affairs and Government Relations at the Postal Regulatory Commission. She previously served in several senior staff positions in the U.S. Senate, including Deputy Staff Director of this Committee, under Chairman Collins.

Ms. Ashley Poling currently serves Ranking Member Gary Peters as Director of Governmental Affairs and Senior Counsel on the Committee, and I have heard you have very strong statements in opposition today. [Laughter.]

She previously served as the Counsel to Senator Jon Tester, which was a lapse in judgment for you, and Senior Counsel to Heidi Heitkamp, which made up for your lapse in judgment for Jon Tester, on the Subcommittee on Regulatory Affairs and Federal Management (RAFM).

Ms. Catherine Bird currently serves as the Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services (HHS). She previously served as Legislative Director for California Senator John Moorlach, and is a Legislative Aide for California State Senator Ted Gaines.

¹The prepared statement of Senator Lankford appears in the Appendix on page 27.

Magistrate Judge Rainey Brandt currently serves as Magistrate Judge in the D.C. Superior Court. She is also an Adjunct Associate Professor at American University's Department of Justice, Law, and Criminology.

Magistrate Judge Shana Frost Matini currently serves as Magistrate Judge on the D.C. Superior Court. She previously served as a trial attorney in the Office of the Attorney General of D.C.

The Committee takes all of these nominations extremely seriously, as you have noticed, based on all the background work and the staff conversations and the endless numbers of forms and questions that you have all received. We are pleased to have these nominees before us right now.

The Committee staff reached out to many of the colleagues and affiliates of the nominees. They spoke highly of their professional abilities and your fitness to potentially serve in the roles to which you have been nominated. Staff interviewed the nominees on an array of issues, and each has thoughtfully and competently answered each question.

I look forward to speaking with each of you more today on your experience and accomplishments, how you intend to bring them to bear for the Federal Government and the District of Columbia.

I will now recognize the Ranking Member Sinema, who is going to defer to Senator Peters, and so we are going to skip over my deferment to deferment. How about that? So we can go from there.

OPENING STATEMENT OF SENATOR PETERS¹

Senator PETERS. That sounds good. So, thank you, Chairman Lankford, and I know Senator Sinema will be here shortly and she will be—

Senator LANKFORD. She is probably running eight miles somewhere.

Senator PETERS [continuing]. She is on her way here and will have a more formal opening. But I wanted to have an opportunity to thank all of the nominees here.

But I would like to add a few words about one nominee, and that is Ashley Poling, who I am very fortunate to have on my committee staff, as Director of Governmental Affairs and as Senior Counsel.

Over the past year, Ashley has been a valued advisor and she has been instrumental in much of this Committee's work since she started working for Senator Tester 6 years ago. Ashley went on to serve as a key advisor on postal issues for Senator Heitkamp before joining my team.

And, Mr. Chairman, Senator Heitkamp has submitted a formal letter of—I can only characterize this as one say, and that is enthusiastic support for her nomination, and I would like to have the letter entered into the record.²

Senator LANKFORD. Without objection.

Senator PETERS. Staff and members who have worked with Ashley over the years are likely familiar with her unique ability to work through complex policy issues to find bipartisan paths forward. I am confident that she will bring this skill to the Postal

¹ The prepared statement of Senator Peters appear in the Appendix on page 29.

² The letter of Senator Heitkamp appears in the Appendix on page 144.

Regulatory Commission. I also appreciate Ashley's commitment to mentoring staff on her team as well as the enthusiasm and depth of policy knowledge she has brought to this Committee.

So, Ashley, on behalf of myself and the Homeland Security and Governmental Affairs Committee (HSGAC) Members past and present, we all thank you, and I look forward to your testimony as well as the testimony of others before us today.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you. I recognize Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Well, thank you, Mr. Chairman, and thank you to today's nominees for their willingness to serve. Our nation needs the best possible people to serve inside our Federal Government, and I am glad that so many of the nominees' families could be here with us today.

I have a longer opening statement that I will ask the Chairman to add to the record.¹

Senator LANKFORD. Without objection.

Senator SINEMA. Thank you. I wish all of our nominees the best and I look forward to our conversation.

That is it.

Senator LANKFORD. Alright. I will take the shorter statement publicly and take the longer statement by record. That is terrific.

I do want to recognize—we have couple of special guests that are here with us today as well. Congressman Meadows wanted to do a special introduction today of Ashley Poling, and we would be pleased to be able to receive your opening statement right now.

OPENING STATEMENT OF MARK MEADOWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. MEADOWS. Thank you, Mr. Chairman, and Chairman Johnson, Ranking Member Sinema, Ranking Member Peters, and Members of the Committee. Thank you so much for giving me this honor.

In DC there are a lot of heavy lifts. This is not one of those. I can tell you that when I came to Congress postal reform was last—no, if there was a number below last in terms of my priority it would be postal reform, and yet I have had the opportunity to meet with Ann and Ashley. And what I wanted to do is share, for this Committee's consideration—you have a Republican Member of Congress introducing a Democrat nominee, and that does not happen very often in this town, and it only happens because of the exceptional talent of Ashley Poling.

I want to just, Mr. Chairman, and for the Committee, to raise the awareness of this public servant. I can tell you that in this town, all of you know—this is not your first rodeo—you understand the partisan politics that happen each and every day, on every piece of legislation. And yet when we were working in the House, Ashley, not once, not twice, not three times, but multiple times continued to reach out to advocate for her State, and at that time for

¹The prepared statement of Senator Sinema appears in the Appendix on page 32.

Senator Heitkamp, for the service standards that rural America needs to make sure that is put in place.

And I can tell you, Senator Sinema, we actually went to Arizona, to your home State. We visited a processing center in Tucson, Arizona, that you are very well aware of. And one of the big things that Ms. Poling was pushing for is making sure that we do not close down processing centers that ultimately makes mail a 1-week or 2-week delivery system, when, candidly, it is such a central part of who we are as a Nation. I know, in the mountains of western North Carolina, there are more stories and more living that takes place at the U.S. Postal Service (USPS) and those centers than anyplace else.

You go to the post office and you share the stories, but it is not just that. We have come to rely on this system, and it is in a crisis mode. Quite frankly, as a business guy, I do not know how we solve this. I look at the financial stability of where our postal system is and from a business perspective it is bankrupt, and so any consideration that this Committee can make to move these two individuals through very quickly to make sure that the Postal Regulatory Commission is fully staffed very quickly. Every day we have a \$145 billion deficit—that is billions with a B—that if we do not address immediately, all of us, whether we are Democrat or Republican, will see the results of that back home.

And, last, I would close with this. It is not about Ashley. She is here today because she has actually done the hard work, as Senator Peters so eloquently put in his opening remarks. But she did the hard work behind the scenes, each and every day, not caring who got the credit. And in a town where it is all about who gets the credit, I can say that not only my unqualified endorsement of Ashley Poling is something that truly impressed me, but she knows more about postal than anybody on Capitol Hill.

And so I would strongly encourage your consideration, your expedient consideration of her nomination. I consider her a friend, but I also consider her an expert. And for her parents who are here in the audience, you can be extremely proud of the daughter that you have and the way that she carries herself in such a professional manner.

And so with that I thank this esteemed body for allowing me the opportunity to introduce Ashley Poling for your consideration.

I yield back.

Senator LANKFORD. Mark, thank you so much for your recommendation on this. You have thoroughly ruined your reputation now as a Republican Member of Congress.

Mr. MEADOWS. Well, that was the danger. I got that.

Senator LANKFORD. Let me also bring some additional letters of recommendation. Mark, thank you really for being here. I appreciate very much that.

I want to acknowledge some letters of support that have been submitted to the Committee in favor of the nominees, including a letter from our colleague, Senator Susan Collins of Maine, in support of Ann Fisher. She is a long-time staffer to Susan Collins and this Committee, and so we appreciate very much your leadership.

And so I am asking unanimous consent, without objection, for Senator Collins' letter to be included as well.¹

I would call on Senator Carper to be able to make a statement as well, at this time, on one of our nominees, as well.

OPENING STATEMENT OF THOMAS R. CARPER,² A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thanks, Mr. Chairman. It is great to be on this side of the dais, actually sitting next to this woman.

Senator LANKFORD. We have a few questions for you while you are on that side, as well. [Laughter.]

Senator CARPER. Well, I have a few answers.

I am honored to sit here next to Ann Fisher. I have known Ann for, a dozen years or so, and walking over at the time, I would describe her—I am going to talk a bit about her credentials and then I will yield back—I would also describe her as mother of the year twice, arguably one of the luckiest guys around. You did a great job working for Susan in all other capacities, where I first got to know her.

But I think when she speaks she will introduce her husband, David, and daughters, I think Dagney—is it Dagney? Is that correct—Dagney and Regan—it is not Regan, is it?

Ms. FISHER. Regan.

Senator CARPER. Regan. I wanted to thank both Dagney and Regan for sharing their mom, and I want to thank David for sharing his wife with our country, very much.

And when we look at Ann's resume she can be summed up in a couple of quick bullet points, and one of those is senior government executive with over 20 years of experience on Postal Service-related issues, trusted government liaison to the U.S. Congress, thought leader on the U.S. Postal Service, and a key leader in the postal stakeholder community.

None of these quick snippets can really describe, though, Ann Fisher. I have had the real privilege of working with her and have grown to respect her over nearly two decades. Each bullet only describes a piece of Ann and who she is, but together these bullets show she is an unquestionably qualified person to be a PRC Commission.

The Postal Service is the linchpin, as we know, of a trillion-dollar mailing industry, and the role of the regulator is one that cannot be overestimated. You need someone who understands postal product pricing and someone who understands the intricacies of the postal marketplace. That is Ann Fisher.

For more than 20 years, Ann has been at the forefront of postal issues. When she was the former Republican Deputy Staff Director of this Committee, I had the pleasure of working with her on postal reform issues, over 12 years ago, and we have continued to work together since then in her roles in the PRC on numerous legislative policy reforms.

Party politics aside, Ann is, first and foremost, a professional. Any time you ask Ann a question, we are going to get an honest

¹ The letter submitted by Senator Collins appears in the Appendix on page 84.

² The prepared statement of Senator Carper appear in the Appendix on page 30.

and a thoughtful answer. She is woman of integrity and her long-standing relationships in the postal community, with all the stakeholders, and with the unions show that Ann is going to be an impartial leader for the PRC.

Her knowledge and her character are why she is prepared to a regulator for the largest employer in America, behind Walmart, and I look forward to the work that Ann will do as a commissioner on the PRC, and I rest easy knowing that she will be watching out for the health of this vital Federal agency.

I think, Mr. Chairman and colleagues, there is a certain irony that I hope is not lost. Mark Meadows was here to introduce Ashley—Mark, a Republican, Ashley, a Democrat—and I am here to introduce Ann Fisher. That is the way this place is supposed to work. That is the way this Committee works, and I think it is a special day for that reason.

Thank you.

Senator LANKFORD. Senator Carper, thank you very much.

It is the custom of this Committee to swear in all witnesses before you testify.

Senator CARPER. Do you want to swear me in too? [Laughter.]

Senator LANKFORD. You know what? We will allow you to not do public swearing today.

So I would ask each of you that are at the table to please rise, raise your right hand.

Do you swear the testimony that you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. FISHER. I do.

Ms. POLING. I do.

Ms. BIRD. I do.

Ms. BRANDT. I do.

Ms. MATINI. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect that the witnesses all answered in the affirmative.

I want to recognize Ms. Fisher for an opening statement, but I would hope for all of you, when you give your opening statement, that you will also introduce your families here and let everybody know who they are. They have come this journey with you and we think it is extremely important to be able to acknowledge those folks that are walking on this journey with you as well.

Ms. Fisher, you are recognized first.

**TESTIMONY OF ANN C. FISHER,¹ NOMINATED TO BE A
COMMISSIONER, POSTAL REGULATORY COMMISSION**

Ms. FISHER. Chairman Lankford, Chairman Johnson, and Ranking Member Sinema, Members of the Committee, thank you for the opportunity to appear before you today, and for your consideration of my qualifications to be a commissioner of the Postal Regulatory Commission. I would also like to thank President Trump for nominating me. I am deeply honored.

I am grateful to have with me today my husband, David Fisher, my two daughters, Dagny and Regan Fisher, and my nephew Au-

¹The prepared statement of Ms. Fisher appears in the Appendix on page 37.

gust Veerman of Sioux Falls, South Dakota. While my parents, Paul and Cathryn Rehfuss, are not able to be here today, I know they will be proudly watching from their home in Yankton, South Dakota. Both were long-time public servants for the State of South Dakota, and have instilled in me the value of a career dedicated to public service.

This past May, I marked my 26th year of Federal service with all but two of those years devoted to postal issues. In the Senate, I benefited from working for three different senators representing very different States: South Dakota, Mississippi, and Maine. Naturally, part of my time was spent assisting the members' constituents with a myriad of postal issues. I noticed that post office closures consistently generated the most passion. I learned how much people across America care about their local post office, especially in highly rural areas.

As a government relations manager at Postal Service headquarters here in Washington, I developed an appreciation for the vast scope of the postal network and the complexity involved in moving a single piece of mail from the post office or a blue box to someone's mailbox across town or across the country. I also spent a good deal of time traveling to midwestern States, meeting with local postal officials and congressional staff, helping to ensure transparency of postal operations and resolve community concerns.

Starting at the Postal Regulatory Commission in 2007, I worked as chief of staff to former Chairman Dan Blair, then later became the director of public affairs and government relations, where I have worked the past 11 years. Our mission is to ensure the transparency and accountability of the Postal Service. The Commission prides itself on providing timely and rigorous analyses, while optimizing stakeholder engagement. With a major review of the system for setting market dominant rates well underway, the qualifications, fairness, and impartiality of the commissioners is paramount.

My background at the Commission provides me a wide variety of experiences necessary to meaningfully contribute as a commissioner and maintain this high level of transparency and accountability.

To date, the most challenging yet rewarding part of my career was my time spent as deputy staff director to the former Chairman of this Committee, Susan Collins, as she, together with then-Ranking Member Carper, crafted a Senate companion to the House of Representatives postal reform bill.

Updating postal laws that had been in place since 1970 was incredibly difficult, for the U.S. Postal Service is the centerpiece of a \$1.4 trillion mailing industry that employs more than 7.5 million people. After years of effort and a multitude of obstacles, The Postal Accountability and Enhancement Act (PAEA) was signed into law by President Bush in 2006. Unfortunately, shortly thereafter, the Great Recession coupled with accelerated electronic diversion dramatically reduced mail volume. Today, the Postal Service has lost money 12 years in a row and has an outstanding debt of \$11 billion.

I took great interest in the December 2018 report issued by Treasury Secretary Mnuchin's Task Force on the United States

Postal System. While opinions of the recommendations made within the report may be varied, I think most can agree with the task force goal of identifying a path for the U.S. Postal Service to operate a sustainable business model, provide necessary mail services to citizens and businesses, and compete fairly in commercial markets.

Difficult decisions lie ahead for Congress and the Commission with respect to potential postal reform. I believe my experience working within the U.S. Senate, at the U.S. Postal Service, and at the Postal Regulatory Commission have given me a clear understanding of the challenges faced by today's Postal Service, as well as viable options for the future.

Mr. Chairman, if confirmed, I will dedicate myself to working with Congress, the Administration, and the Postal Service to ensure that users of the postal system have a vibrant and efficient mail system for many years to come. Thank you.

Chairman JOHNSON. Ms. Poling.

TESTIMONY OF ASHLEY E. POLING,¹ NOMINATED TO BE A COMMISSIONER, POSTAL REGULATORY COMMISSION

Ms. POLING. Good morning Chairman Lankford, Ranking Member Sinema, and Members of the Committee. Thank you for inviting me to testify today regarding my nomination to the Postal Regulatory Commission.

I am thankful for the family, mentors, friends, and colleagues who could all be here today. It means the world to me. I would also like to take a moment to introduce and thank my wonderful parents, Barclay and Lindy Poling, who are sitting right over there. Their unwavering guidance, love, and support over the years has been nothing short of extraordinary, and they have truly shown me what it means to be a public servant. They have also had to hear far more about postal issues over the years than any parents ever should, and for that I will be forever grateful.

I would also like to thank Congressman Mark Meadows for introducing me today and Senator Heidi Heitkamp for her letter of support for the hearing record, as well as Ranking Member Peters for his kind words.

I have spent significant time working on postal policy in the U.S. Senate, and I have been uniquely fortunate to work for three past and present Members of this Committee: Ranking Member Gary Peters of Michigan, Senator Heidi Heitkamp of North Dakota, and Senator Jon Tester of Montana. In over 5 years of working on the Homeland Security and Governmental Affairs Committee, I have gained a strong appreciation for the vital role that the Postal Service plays in the lives of postal customers across our Nation.

In my work for the States of Montana and North Dakota, I have personally seen how post offices represent the heart of the communities they serve and why the Postal Service is a lifeline to the individuals and small businesses in rural America. It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring that strong service provi-

¹The prepared statement of Ms. Poling appears in the Appendix on page 86.

sions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefited the postal customer on the local level and would ensure the Postal Service's accountability to its customers.

Relationship-building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective States of North Dakota and North Carolina. Their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral role negotiating four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over multiple Congresses with the entire postal community. This includes stakeholders from a large coalition of mailers, all four of the major postal unions, postmasters, postal supervisors, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General (OIG), and offices in the House and the Senate, on both sides of the aisle.

The United States Postal Service is at a critical crossroads in our Nation's history. It faces significant financial challenges that pose a very real threat to its long-term viability. The fiscal path that the Postal Service is on is not a sustainable one, but it also has the very real potential for revitalization through needed legislative reforms in Congress. By working collaboratively across the postal community on these challenges, I believe we can preserve, revitalize, and modernize a vital lifeline of communication that has existed for over 200 years.

If confirmed as a Postal Regulatory Commissioner, I would welcome the opportunity to actively work with all of our stakeholders, this Committee, the entire Congress, my fellow commissioners, and the Postal Service to find common-sense, lasting solutions to the challenges faced by this agency so that the best results can be delivered to postal customers across our country.

Thank you for considering my nomination and I look forward to answering your questions.

Chairman JOHNSON. Thank you. Ms. Bird.

TESTIMONY OF CATHERINE BIRD,¹ NOMINATED TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY

Ms. BIRD. Chairman Lankford, Ranking Member Sinema, Members of the Committee, thank you for the opportunity to discuss my nomination to become General Counsel of the Federal Labor Relations Authority. I would like to thank the Committee on Homeland Security and Governmental Affairs and its staff for all the courtesies they have shown me as I have prepared for this hearing. Additionally, I would like to thank the staff at the FLRA who have provided assistance during this process.

To start, I would like to acknowledge my parents, Gary and Linda Hoyer, who are with me today. My mother, who has been a teacher for over 40 years, and my father, who works as a computer programmer at Dallas Theological Seminary in Texas, helped mold me to who I am today. I am extremely grateful for their constant support and guidance in my life.

It is an honor and privilege to be nominated by President Trump to serve as the General Counsel of the FLRA.

I grew up in a household which values service to others. As I evaluated various career paths to utilize my law degree, I quickly chose to use it in service to the American people. Our Federal Government serves many critical roles, from providing national security to preserving our majestic National Parks, and to caring for our wounded warriors or those suffering from the devastating effects of the opioid crisis. I have the utmost respect for the work of our Federal Government and for the dedicated public servants performing that work.

If confirmed, I can assure you of my commitment to ensure that all Federal employees are treated fairly and their rights are respected. In particular, I will uphold the rights of employees to form, join, or assist any labor organization, or to refrain from any such activity, and their right to engage in collective bargaining.

I also believe, as stated in the President's Management Agenda, that those in public service must be accountable for mission-driven results and that agencies must have the necessary tools and resources to deliver those results. If confirmed, I would be guided by the need to maintain the smooth functioning of our government, to provide excellent service to the public, and to be effective stewards of taxpayer dollars on behalf of the American people.

I truly value the incredibly diverse, complex, and challenging work our government does, and I consider the FLRA's mission to administer the Federal Service Labor-Management Relations Statute as integral to achieving a well-functioning government. If confirmed as General Counsel of the FLRA, I would be honored to be a part of the FLRA's leadership in promoting stable, constructive labor relations that contribute to a more effective and efficient government.

My career has provided me with the skill set and experience needed to excel in the position for which I am being considered. During my time at the Department of Health and Human Services, I have worked on three specific issues that would benefit me if I were confirmed to this position.

¹The prepared statement of Ms. Bird appears in the Appendix on page 145.

First, I participated in term-bargaining negotiations on behalf of HHS management in discussion with the National Treasury Employees Union (NTEU). This experience taught me the importance of an objective and impartial Federal Labor Relations Authority in ensuring that labor negotiations proceed efficiently and effectively. This first-hand experience of the collective bargaining process has given me a keen understanding of the dynamics of the process and the ability to understand the process in a practical and not only theoretical manner. If confirmed as General Counsel, I will strongly support the need for good faith negotiations as envisioned in the Statute and case law, and I will apply the law independently and impartially.

Second, in my role as Principal Deputy Assistant Secretary for Administration, I oversaw a highly successful Federal Employee Viewpoint Survey (FEVS) program, centered on employee engagement. If confirmed, I vow to take employee engagement seriously and do everything within my authority to improve employee morale in the Office of the General Counsel (OGC).

Third, in my role at HHS, and in other positions, I have been entrusted by employees to investigate complaints and address issues they have raised to my attention. These situations have required me to critically look at the facts of a case, apply applicable rules and regulations, and come to a fair and impartial decision. I would apply a similar approach in evaluating charges of unfair labor practices. My decisions would be grounded in the Statute, regulations, and case law, using my best, independent judgment in each case.

I believe that my experience and passion will provide value to not only the FLRA, but by embracing a customer service approach will also benefit the many Federal agencies, labor organizations, and employees who rely on the work that FLRA does.

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

Chairman JOHNSON. Thank you. Ms. Brandt.

TESTIMONY OF RAINEY R. BRANDT, TO BE AN ASSOCIATE JUDGE,¹ SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. BRANDT. Mr. Chairman and Members of the Committee, thank you for this opportunity to appear today as you consider my nomination to serve as an Associate Judge of the Superior Court of the District of Columbia. The Committee Members and their staff have been very welcoming and I appreciate the hard work and careful consideration of my nomination. I would like to thank the D.C. Judicial Nomination Committee and its chair, Judge Emmett Sullivan, for recommending me to the White House, and the President for nominating me.

It is an honor to be seated here today with my colleague and friend, Judge Shana Matini. Our friendship began over 20 years ago when we clerked together at Superior Court. I am fortunate to have the support and guidance from many friends and colleagues, some of whom are here today. I thank you all for helping me get to this point.

¹The prepared statement of Ms. Brandt appears in the Appendix on page 205.

Five of them in particular who are present, I would like to recognize at this time: Chief Judge Robert Morin, as well as former Chief Judge Lee Satterfield, both of whom have been with me every step along my judicial journey. Deputy Director of Interpol, Michael Hughes, whose friendship is a source of support and guidance. Judge Michael Rankin and Judge Stephanie Duncan Peters, for whom I clerked, and learned so much about how to be a good judge.

I would like to observe that my mom, Eloise, who died 3 years ago, is in my heart and I know she is proud of what both her daughters have accomplished. My sister, Cricket, who is seated behind me, a dedicated D.C. public school teacher, is here today to offer her support.

Last but certainly not least, I would like to thank my husband, Chief Robert Brandt of the United States Marshals Service. His unconditional love and support enable me to give 110 percent to District of Columbia.

I have lived in the District of Columbia for over 30 years. Much of my legal career has been at Superior Court, first as a student practicing attorney, then judicial law clerk to Judges Michael Rankin and Stephanie Duncan-Peters, then as a special counsel to three chief judges, and now as a magistrate judge. In addition to my work as a lawyer and judicial officer, I teach at American University and have done so for over 25 years. All of these experiences have given me the opportunity to be a good public servant, and prepared me to become an associate judge.

Since 2012, I have been a magistrate judge at D.C. Superior Court. During my tenure, I have been assigned to the criminal, civil, and domestic violence divisions. I am well prepared to assume the additional responsibilities of an associate judge. In addition to my caseload responsibilities, I serve on a variety of court committees and have taken on the leadership role of currently being the Deputy Presiding Magistrate Judge.

Each day I see people from all walks of life, with varied degrees of temperament and vulnerability. I work diligently to ensure that all litigants who appear before me feel they are heard and each case handled fairly, all while preserving the rule of law.

It is an honor to serve the citizens of the District of Columbia as I maintain the court's mission of being open to all, trusted by all, providing justice to all.

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

Chairman JOHNSON. Thank you. Ms. Matini.

TESTIMONY OF SHANA FROST MATINI,¹ NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. MATINI. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today, and thank you for considering my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I want to thank the Judicial Nomination Commission, and in particular the Com-

¹The prepared statement of Ms. Matini appears in the Appendix on page 235.

mission's Chair, the Honorable Emmet G. Sullivan, for recommending me to the White House, and the President for nominating me. I also wish to recognize and thank Chief Judge Robert E. Morin, as far as Chief Judge Lee Satterfield, both of whom are present today, for their support and leadership, and to thank the Committee staff for their hard work in preparing for this hearing.

I am so pleased to be joined today by members of my family. My father, Robert, resides in California so he is unable to be here today, but he is watching online, along with other members of my family, with I am sure a great deal of pride. My mother, Lynda, traveled from her home in Florida to support me today, as she has every day of my life. My husband, Ali, and our daughter, Sofia, are also present. Their love and encouragement means the world to me and I am thankful to have them in my life. I am also joined by a number of friends and colleagues, and I am grateful to each of them for their friendship.

It is a great honor to be considered to be an Associate Judge on the Court where my legal career began when the Honorable Richard A. Levie hired me to serve as his law clerk. I am forever indebted to Judge Levie, who is here today, for his guidance and his unwavering support throughout my career. My clerkship also provided an opportunity to form long-term relationships with my fellow law clerks, including my friend and colleague Judge Rainey Brandt, who clerked the same year that I did.

Upon graduation from law school in the District and after my clerkship, I worked in both the private and non-profit sectors before joining the District of Columbia Office of the Attorney General, where I served the District and its citizens as a trial attorney in the Civil Litigation and Equity Divisions.

As a litigation attorney for the Office of the Attorney General, I practiced regularly in the Superior Court, and always found the judges before whom I appeared to be thoughtful, fair, and dedicated. Not only did I learn so much as a practitioner in Superior Court, but when I was appointed to serve as a magistrate judge, I was provided invaluable guidance from my Superior Court colleagues.

Since my appointment as a magistrate judge, I have served the Court in the Civil, Criminal, and Family Divisions, and thoroughly enjoyed the challenges that each assignment presented and the ability to serve my community. I am humbled by this nomination and, if I am fortunate enough to be confirmed, the opportunity to continue serving the District of Columbia as an Associate Judge of the very Court where I started as a young lawyer and have learned so much.

Thank you, and I look forward to answering any questions the Committee has.

Senator LANKFORD. Thank you. I appreciate very much all of your statements there.

There is a mandatory set of questions that we need to be able to ask all of you, and so what I am going to ask is—I am going to down the row and I am going to ask the question and then each of you, I want you to be able to answer verbally to me. Is everybody OK with that? So there are three questions I am going to ask, and I am going to ask each of you to answer verbally with me.

The first question, is there anything 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?

Ms. Fisher.

Ms. FISHER. No.

Senator LANKFORD. Ms. Poling.

Ms. POLING. No.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. No.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. No.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. No.

Senator LANKFORD. The 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?

Ms. Fisher.

Ms. FISHER. No.

Senator LANKFORD. Ms. Poling.

Ms. POLING. No.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. No.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. No.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. No.

Senator LANKFORD. Thank you.

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

Ms. Fisher.

Ms. FISHER. Yes.

Senator LANKFORD. Ms. Poling.

Ms. POLING. Yes.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. Yes.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. Yes.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. Yes.

Senator LANKFORD. Thank you very much.

I am going to defer my questions to the very end and move to Senator Sinema.

Senator SINEMA. Thank you, Mr. Chairman. My first question is for Ms. Fisher.

One of the chief concerns that Arizona has regarding the U.S. Postal Service is inconsistency in service performance. Given your many years of experience within the PRC in various roles, and the critical role the PRC plays in the oversight of service, how can the PRC help the Postal Service improve its service performance?

Ms. FISHER. Thank you, Senator. The Commission, by law, is required to consult with the Postal Service on their service goals as they set them each year or make modifications to them, and we

also collect all of the data related to their service performance annually and report on the extent to which they meet their performance through our Annual Compliance Determination, which is issued each year in March.

I also, in my position, oversee the constituent relations aspect, and we receive letters from approximately 7,000 consumers across America a month, and their number one issue is service, and, in particular, it is delayed mail. So we are well aware of the issue and will consistently work with the Postal Service to encourage them to meet those performance goals. We know how important it is across the board.

Senator SINEMA. Thank you. My next question is for Ms. Poling.

Given the recent reports of the Postal Service's new business plan and the cuts to service infrastructure contained in the plan, it is critical that leaders of postal oversight bodies understand the importance of consistent postal service to customers and the impacts that misguided service cuts could have on local economies.

If confirmed to this role, how would you use the PRC's existing authority to make sure that any proposed Postal Service infrastructure changes, including the consolidation of processing plants, are closely examined to ensure they make sense from a financial and consumer service standpoint?

Ms. POLING. Thank you, Senator. I think first I would say, I think it is wonderful that the PRC already does a lot of monitoring of the service performance of the Postal Service. With that said, I do think that probably one of the things I would really like to examine and explore is, is there more that can be done, in terms of holding the Postal Service accountable, to make sure they are meeting those service performance targets.

That is something I have explored quite a bit on the congressional staffer side, through legislation, in terms of, what can be done to make sure that the PRC really is holding the Postal Service in complete compliance. That is something I would like to examine further, as a commissioner, if confirmed, but I also do think that probably Congress has a role to play there as well.

Second, I would say I think it is really important to make sure we are getting accurate data. There was an Operational Window Change Report that came out in the fall of 2018, that actually found that the Postal Service only saved about 5.6 percent of the projected savings that they said they would for changing the overnight service standard. We no longer have an overnight service standard anymore. First-Class Mail takes 2 to 3 days to be delivered.

I think it is incredibly important to make sure that the PRC is getting the most accurate data possible, and I think it is important that Congress is getting the most accurate data possible from the Postal Service.

So if confirmed I would do everything I could to make sure that we are getting that accurate data so that we can make sure that we are serving the American postal customers as effectively as possible. Thank you.

Senator SINEMA. My next questions are for Ms. Bird.

The general counsel at the FLRA is the key decisionmaker regarding when unfair labor practice charges move forward. Experi-

ence with Federal labor law and its practice is an essential qualification for the position.

Before your positions with HHS that started in 2017, what was your experience with Federal labor law and its adjudication, and have you ever supervised the work product of other lawyers working in Federal labor law?

Ms. BIRD. I have not. I did not have specific experience with Federal labor law. However, I did deal with labor unions often as stakeholders in legislation that was coming before members that I worked with in the California State Senate.

Senator SINEMA. Thank you. Since joining HHS in 2017, I know you have played a key role in representing the agency's interest in the realm of labor management negotiations, specifically in the effort to reach a new collective bargaining agreement, and you have also advised management in a separate labor negotiation at the Department of Veterans Affairs (VA).

The unions representing employees in these disputes, the National Treasury Employees Union and the American Federation of Government Employees (AFGE), have provided letters opposing your nomination. I do want to submit both letters for the record,¹ with the Chairman's approval, and ask a few questions that allow you to respond to the claims in these letters.

Senator LANKFORD. Without objections.

Senator SINEMA. Thank you.

In a letter opposing your nomination, the NTEU said that HHS moved to declare an impasse in collective bargaining negotiations after 1 day of negotiations. Could you tell me how your perception of 1 day of bargaining for only a couple of identified issues led to an impasse and what your perception of good-faith bargaining was in that situation?

Ms. BIRD. I do not agree with that characterization. The collective bargaining had begun on that contract back in, I believe, 2016, and there had been multiple instances of negotiations with the parties. As far as when we moved to impasse we had multiple days of negotiations. HHS management team felt that it was important early on, because of some of the contentiousness of the negotiations prior, to bring in an independent body, the Federal Mediation and Conciliation Service (FMCS), to help oversee those negotiations, and in an effort to reach an agreement. At the direction of the FMCS, the parties found themselves to be at impasse quickly, and that went to the Impasses Panel, which then made the determination.

Senator SINEMA. Thank you. My next question is also about your role advising HHS on collective bargaining negotiations. In April of this year, the Federal Service Impasse Panel issued a decision on many of the disputed issues from that negotiation with NTEU. In your policy questionnaire, and at your recent staff interview, you answered several questions by stating you would be guided by statute, regulations, and relevant case law, but in the April decision the Impasse Panel found multiple places where the HHS management position did not follow Federal labor relations statute, regulations, and applicable case law. I am wondering if you could help

¹The letters referenced by Senator Sinema appears in the Appendix on page 283.

square those statements about strict adherence to precedence with the recent findings of the Impasse Panel.

Ms. BIRD. My role in the HHS management negotiations, and really my duty, was to represent management to the best of my ability at that negotiations table, which is what I did. My role and my duty as general counsel of the FLRA would be to be an impartial decisionmaker, and I can commit to look at the facts of each case, apply the applicable rules and regulations to the individual facts in that case, and come to an impartial and a fair decision.

Senator SINEMA. Thank you, Ms. Bird. Mr. Chairman, my time has expired.

Senator LANKFORD. Thank you. I want to recognize the Chairman of the full Committee, Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Chairman JOHNSON. Thank you, Mr. Chairman. I want to first welcome all the nominees and thank you for your past service and your willingness to serve in the new capacity, and wish you all well.

I do want to focus a little bit on postal reform because we have a unique opportunity with two nominees that are very well versed in the subject. So I am going to ask three questions and I want both of you to respond, and I will start with Ms. Fisher, because you were actually here during 2006 postal reform.

I just want to ask the basic question. What do you think was the best part of postal reform, what went right, what went wrong, and why are we still talking about fixing the postal system?

Ms. FISHER. I think the rate cap was tremendously helpful. The mailers, at that time, a priority concern of theirs was stability and consistency. Rates prior to that had been set to increase every 2 to 3 years, and for large mailers that was a huge jump in what they would pay for postage fees. So the rate cap got that right.

We also, in working with the Postmaster General at the time, believe that setting it at Consumer Price Index (CPI) was also adequate. That was what the Postal Service had effectively operated under for the past 20 years. But we had absolutely no idea that shortly after the bill was passed the Great Recession would come about, and these seemed to be constraints that were just impossibly tight for the Postal Service to operate under and still be able to make these multi-billion-dollar Federal retiree health benefit payments that we had scheduled for them over the coming 40-some years.

So what I wish is—I do believe the rate cap system was right. I wish that we had given the Commission the opportunity to possibly revise that sooner than 10 years after enactment. I also wish that perhaps there had been language included that required more transparency on the end of the Postal Service when it comes to making changes in nationwide that impact Postal Service across the country.

We serve an advisory opinion role in that capacity, but the advice that we give to the Postal Service is often taken by the Postal Service but we do not know what happens with it once we have given it.

Chairman JOHNSON. OK. Ms. Poling, why didn't 2006 work? I mean, why are we still looking at fixing the postal system?

Ms. POLING. Thank you, Chairman. What I would say, I think, first, is that we are at an incredibly different time than we were in 2006. If memory serves me right, I think that is right before sort of the iPhone came out, before people, I think, began to rely even more on electronic mail. That was kind of the start on that.

In addition, I think as Ann said, we did have the recession of 2007 to 2009. In addition, we have had declining mail volumes. Again, that is coupled—

Chairman JOHNSON. And that really could not be predicted and was not anticipated—

Ms. POLING. Exactly.

Chairman JOHNSON [continuing]. In the 2006 reform. Because I do have limited time—

Ms. POLING. Yes.

Chairman JOHNSON [continuing]. What has been the primary impediment to getting something passed, or fixing the system over the intervening years? What has been the primary impediment?

Ms. POLING. I would say the primary impediment is getting stakeholders on the same page. I think that is something that is really tough in the postal community. You have a lot of wonderfully passionate people, but finding people—finding kind of that sweet spot where everyone can agree is a tough task. I have worked on, as I said, a number of postal bills. I have seen it year after year.

I do think, though—

Chairman JOHNSON. Getting on the page of what issue?

Ms. POLING. Well, I think—

Chairman JOHNSON. What has been the main problem—

Ms. POLING. Yes.

Chairman JOHNSON [continuing]. That we cannot get agreement on?

Ms. POLING. I think probably the main issue that we have to consider is the prefunding mandate for retiree health. Another issue that always comes up is rates. We have kind of tried to address that some through legislation. Obviously the PRC is sort of the primary rate-making body.

In addition, service, as I spoke about in my opening, is an issue that does come up, because that is something that really does impact, I think, communities all over this country. Finally, I would say ways to modernize the postal system is another area that always comes up. I would say there has been a lot of discussions on, I think, especially the retiree health mandate, how to fix that, has been a struggle.

I would actually like to comment on the Postal Task Force Report. There was an idea on there that actually talked about vested liability, using that as potentially as a way of reducing the prefunding burden. I will say I have not examined that in detail. That is from my reading of the report. But what that would essentially do is just look at those existing retirees of the Postal Service, as well as those who are about to retire, and would not go as far into the future as what we have right now.

So I think there are—and I would comment, I mentioned earlier, stakeholders, it is tough to get everyone on the same page. That

is actually one of the issues that I have heard more consensus on than I have many others, and I think it is worth really examining that, because I do kind of think that that has always been the toughest issue to get through.

Chairman JOHNSON. We do need accurate information, and there is all kinds of information I have been trying to obtain for years and I just simply cannot get it, in terms of—I will not get into that.

Ms. FISHER, I would like your perspective on kind of what has been holding things up.

Ms. FISHER. I do believe it is difficult, as Ashley, said, to get members on the same page. I felt hopeful when the White House Task Force issued their report, the extent to which it discussed the Universal Service Obligation (USO) and possible considerations that could be considered around that. This was something that the Commission looked at in 2008. We were mandated by the 2006 act to look at the universal service obligation and the two monopolies, the mailbox and delivery everywhere.

The White House Task Force asked Congress to consider looking at things that have the potential for big changes in revenue, such as possibly dropping down to 5-day-a-week delivery, franchising the mailbox. Those are some big-picture items that traditionally Congress has rejected.

What I would recommend is that a nationwide survey be undertaken, and perhaps this could be done by the Commission in conjunction with the Postal Service, to ask the American public what exactly do you want of your Postal Service today.

We found, through a smaller poll, done by George Mason Institute, whom we worked with on the 2008 report, that of around 1,000 people polled, the majority were comfortable with the idea of moving to 5-day delivery. A majority were not comfortable with the idea of opening up the mailbox, but if it were to be opened up to certain companies that they were familiar with, then they were very comfortable with the idea. I am not advocating for either of these changes, but they are worth considering, and I think it is time for an update.

Chairman JOHNSON. OK. If the Chairman would indulge me for just one final question. By the way, I think the President's Task Force on this did a pretty good job of laying out the problem. I just want to ask a question on that.

One of the recommendations was fix the postal system without a taxpayer bailout. Do you both agree with that position? Ms. Fisher.

Ms. FISHER. Absolutely. The Postal Service was intended to be self-funding and it should be.

Chairman JOHNSON. Ms. Poling.

Ms. POLING. Yes, I do.

Chairman JOHNSON. OK. Thank you very much. Thank you, Mr. Chairman.

Senator LANKFORD. Senator Carper.

Senator CARPER. Thank you, Mr. Chairman. Again, to each of our witnesses today, welcome, and congratulations on your nominations. And your parents, in some cases, and you families are here and friends are here. I have found in my life that when daughters

or sons turn out well it is usually, in part, because they picked the right parents. [Laughter.]

And for the folks in the audience who helped raise these women and molded and shaped them, we want to thank you as well.

I had a question for Ms. Fisher and Ms. Poling, both of you. I have a couple of questions I would like to ask you. The first one deals with rate review.

The Postal Regulatory Commission concluded, I think more than a year ago, that the postal rate system was not meeting the objectives that Congress set when we last enacted postal reform in 2006. In short, the commissioners found that the system does not allow the Postal Service to raise the revenues it needs to maintain its financial health or to meet the service standards that it has established. The Commission has not yet finalized the replacement for the existing system.

I would just ask if each of you could take a minute or two to talk about how important you believe it is for the Commission to take this next step, and how you plan to approach this project if you are confirmed.

Ann, would you go first?

Ms. FISHER. Yes. This is one of the most important undertakings that the Commission has experienced since my time there, in my opinion. The stakes are very high, considering the Postal Service's finances. This review has been far more complicated than I would have anticipated, and being done in accordance with all the rules of the Administrative Procedures Act (APA), it can be lengthy.

We were stalled for a bit, unfortunately, with four commissioners coming to reach a majority of consensus on certain issues related to the findings, but now since we have had a fifth commissioner join our ranks in December things are moving forward again.

I think it is very important that we finish this and get it out for public review and comment as soon as possible, and I am committed to doing that as soon as I arrive at the Commission.

Senator CARPER. Thank you. Ms. Poling, same question.

Ms. POLING. Yes. Thank you. Yes, so I would say, this is something obviously that was mandated under PAEA, and in that, in the proposed rule that the Commission did put out in December 2017, they did find that the rate-setting process had not been as efficient as they hoped. In addition, they also found that the high quality service standards had not been met.

I think that is a really key piece. Obviously, I know I have talked a little bit already today about service, but that I would be a piece that I would be particularly interested in examining, if I were confirmed to be a commissioner. But I would also be very interested to see all of the work that has gone into the analysis that got us to the point of the proposed rule, and to make sure that I thoroughly understand it, as well as the impact that it would have on the full postal community. I think that is really important.

One thing I would note, in particular, in the proposed rule, there was a proposal that the PRC put forward that would actually allow an additional point to be given to the Postal Service in the future, in the rate-making process, if they are able to meet or exceed service performance targets. I think that is really interesting and I think that we have to think of ways to make sure that they

are, really being held accountable in this area, based on how much it impacts every single person in this country but also, obviously, in Congress. Members are very familiar with this issue and hear about it the most from constituents.

So those are some areas I would be really interested in, and I would commit to examining this and working on it, and, working through the process as expeditiously as possible.

Senator CARPER. Alright. Thank you both for those responses.

One more question, if I could, with regards to evaluating the Postal Service. This is for each of you.

If confirmed, what steps would each of you take to evaluate the status of the Postal Service and the steps that need to be taken in the coming months to address both its short-term and its long-term financial challenges, and what will your main areas of interest be?

Ms. Poling, would you like to go first?

Ms. POLING. So I would say I think that we have really got to do a full-scale analysis of all the issues that the Postal Service has been facing. I have obviously become pretty familiar with those in Congress, working through multiple variations of legislation. But I also think it would be really interesting to make sure that I am fully understanding what that looks like in terms of the PRC's role as well, and in terms of sort of what we can do to really make sure that the postal community is working together.

One of the strategic missions that the Postal Regulatory Commission has in their statement is to create more engaging relationships with Congress. I think that is something that I could really bring. I have worked with, obviously, members and staff across both sides of the aisle. I know the stakeholder community incredibly well. I think that is something that I could really bring to this. In addition, I would also say my service experience, which I have talked about quite a bit, I think that is something that really brings an insight into what the American postal customer is looking for.

Ann commented earlier on a review of the universal service obligation. I do think we need to absolutely know what Americans want today, and we need to know what they want all over the country. That is incredibly important. At the end of the day, we are serving the American postal customer and we have really got to look at that.

In addition, I would say it would be interesting—the Postal Service, obviously, a bright spot for it has really been in the package market. I think we need to—I would like to make sure I am understanding everything as well as I can, from the perspective of a commissioner, if confirmed. But I think that really is an area where there is great potential for the Postal Service to continue innovating, and if they are able to do so more flexibly in the future I think that the sky is truly the limit.

Senator CARPER. Alright. Fine. And the same question, Ms. Fisher, if you would please. Thank you.

Ms. FISHER. With respect to the short-term and the long-term financial condition of the Postal Service, I believe resolution of the 10-year review of the market-dominant rate-setting system is a priority, as that would provide the Postal Service with the necessary additional rate authority and incentivize them to become more efficient. So that is my number one priority.

Second after that, I am, as I stated earlier, very interested in updating the Commission's report on the universal service obligations and monopolies. While any changes to the universal service obligations are Congress' to make, I would love for the Commission to be able to provide them with food for thought to help them move ahead in these areas.

Senator CARPER. Alright. Thank you both.

Mr. Chairman, Albert Einstein used to say, in adversity lies opportunity, and there is plenty of adversity.

Senator LANKFORD. And lots of opportunity.

Senator CARPER. But there is a fair amount of opportunity as well, and if confirmed we hope you will help us find that. Thank you. And good luck, everyone. Thank you for your service.

Senator LANKFORD. Thank you.

So then it is down to me. I have just 98 minutes of questions left. [Laughter.]

This will be somewhat of a lightning round, as I go through several things here, to be able to go through. And for fear that the D.C. Court does not feel like they are getting enough attention here I am going to begin with both of you. It is the benefit of being on a panel with five here.

Ms. Matini, I want to begin with you on this. As a nominee, do you pledge that the facts in the law will drive your decisions on the bench?

Ms. MATINI. Yes.

Senator LANKFORD. Thank you. How can you use your position best to be able to help solve the problems that D.C. is currently facing, just in population and criminal issues, civil issues, and just people issues? It is not unique to D.C. It is just folks, nationwide. What can you do best to be able to serve the people of D.C.?

Ms. MATINI. Thank you, Senator. I believe that if I am confirmed to be an associate judge I would continue to do what I have done as a magistrate judge, which is to treat the cases that come before me all individually, try to keep the cases moving expeditiously through the courthouse when people come to court. Their cases are very important to them and they are important to me. I want to make sure that they each have the opportunity to be heard and to receive a decision that is based on the facts that I have heard and the law that applies to those facts, and to manage the courtroom in a way where everyone has the opportunity to be heard but the cases continue to move through the courtroom in an expeditious manner.

Senator LANKFORD. So let me ask you a follow up question on that. How can you make sure that justice is not delayed, because that is a big issue, to be able to make sure that the backlogs do not continue to stack up and that individuals that show up in court actually get their day in the court? They have gone through a lot of pain to be able to get to that moment, some of them for years. They have prepared, paid attorneys, gone through counsel, been in multiple meetings, and it has been very difficult. No one looks forward to their day in court. They look forward to it being done and getting resolution at that point. How can you make sure justice is not delayed in your court?

Ms. MATINI. I hold myself to very high standards. I try to be as prepared as possibly can for every case that comes before me so that I am aware of the potential issues that could come up. And I also hold the lawyers that appear before me to the same high standard, and I believe that in my experience as a magistrate judge over the past 3½ years my expectations are known throughout the courthouse that people should be one time, they should be prepared, and that I expect that cases that are set for that day are going to go that day, and to try to encourage everyone to be as prepared as possible.

Senator LANKFORD. So just because an attorney was really busy and had three other cases they do not necessarily get another 3 months of just extra time for your case.

Ms. MATINI. No, but I also want to make sure that the individual that the attorney represents is adequately represented. So if it is a situation where an attorney needs more time in order to be able to effectively represent an individual, I do have to consider that—

Senator LANKFORD. Sure.

Ms. MATINI [continuing]. Because to simply move a case forward for the sake of expediency, that is not serving the purpose of what I need to be doing.

Senator LANKFORD. Thank you. The same questions I want to ask you, Ms. Brandt. So do you pledge that the facts of the law will drive your decisions from the bench?

Ms. BRANDT. Yes.

Senator LANKFORD. So how can you use your position best to be able to serve the people of D.C.?

Ms. BRANDT. Thank you for the question, Senator. I think just by doing what I have been doing for the past 7 years, is taking each case as it comes in, applying the law to the facts as they present themselves, and making sure that each litigant has an opportunity to be heard.

Senator LANKFORD. How do we deal with the backlogs, as we have talked about before with Ms. Matini? How do we make sure that it is not justice delayed in the process?

Ms. BRANDT. Well, I am a self-confessed Type A personality.

Senator LANKFORD. Nothing wrong with that.

Ms. BRANDT. So I always like to make sure that I am prepared whenever I take the bench, and I expect the lawyers to be prepared as well. And part of being prepared, as the judge, is setting the appropriate deadlines that the lawyers need to meet, and holding the lawyers to those deadlines is part of the process of moving the cases through the system. There is always an opportunity in individual cases where expediency might be to the detriment of the litigant, so you have to take each situation as it presents itself and act accordingly.

I would like to footnote that part of moving the process along is being decisive in you decisionmaking.

Senator LANKFORD. Thank you.

Ms. Bird, let me ask you a little bit about—and let me ask you this, and I failed to do this earlier and I apologize. Have you received a copy of the letters that we put into unanimous consent

(UC) earlier, that Senator Sinema referenced? Have you seen both those letters?

Ms. BIRD. I have not.

Senator LANKFORD. OK. Well, I apologize that I did not ask you about that earlier. I should have asked you earlier on that and to make sure that you get a copy of those.

One of the issues that was raised in the letter was your role in the negotiations with the VA. Can you talk through those negotiations real quick, and what was your role at that time?

Ms. BIRD. Yes. I provided brief support to the VA management team as somewhat of a consultant to them to provide experience and knowledge for a short period of time.

Senator LANKFORD. OK. But not as an official VA negotiator or as a VA representative?

Ms. BIRD. No. there was a detail in place—

Senator LANKFORD. Right.

Ms. BIRD [continuing]. To the VA, but no, I was not officially a part of the VA's bargaining team. Just more of a consultant role.

Senator LANKFORD. Can you describe your approach to managing employees that are in various geographic locations? You are not going to have the privilege of getting a chance to see everyone you manage every day. How are you going to handle that?

Ms. BIRD. That is correct. Right now at HHS I help oversee a division that has 900 employees and many of those employees are remote. And so we utilize all different forms of technology to stay in constant communication with our employees and to be able to do video conferences, things of that nature, to ensure that we are fully engaged with employees across the country.

Senator LANKFORD. I heard your comments earlier about working toward creating a positive working environment, even within the general counsel's office, as well as providing fair arbitration or negotiation and the opportunity to be able to have fair conversation for all parties. Do you feel confident you are ready to be able to do that?

Ms. BIRD. Yes, I do. One of the things I mentioned in my opening statement is that I have been a part of HHS's very well-run Federal employee viewpoint survey—

Senator LANKFORD. Right.

Ms. BIRD [continuing]. And we are number one right now in large agencies, number two across the Federal Government. So I am really excited about the ability to bring that experience to the Office of the General Counsel.

Senator LANKFORD. That is good. Thank you.

There are not many postal regulatory questions that have not already been asked. The two of you all have had plenty of opportunity to be able to go through quite a few things.

Let me ask you this, though. What can the PRC do, without legislative action, to maximize this conversation about rates and sustainability of USPS products, especially those that do not cover costs right now? There has been an ongoing dialogue about some products do not cover the costs, but that is its own unique challenge. If I go back to the newspapers in my small towns, and for the people that are in many of my communities, they are very dependent on trying to be able to get news and to be able to get infor-

mation, and to be able to get periodicals and things. Many of those things do not cover costs.

What do you need legislatively, or what can be done by the PRC without legislation?

Ms. FISHER. Senator, I think that there are the potential for movement among the classes of market-dominant and competitive products that can be done to allow the Postal Service the potential for more rate-setting flexibility. But that requires a willing body of Governors to submit such a request to the Commission and a willing majority body of commissions to approve such a request.

The issue of the underwater products is constant. It has been going on for a long time, decades, I believe. I know that the Postal Service has worked very hard, through changes in equipment, in the way they process those products, to help address the costing issues, but it will also be addressed as well in the 10-year review, I believe.

Senator LANKFORD. Great. Ms. Poling, do you have anything you want to add to that?

Ms. POLING. Yes. I would just add, you had asked about, I think, just really maximizing the role from the position of being a PRC commissioner. I think that there really has to be really effective oversight, to the extent possible. We did not go into this particularly but I know negotiated service agreements have been another area that has come up, in terms of those covering their costs, and that is something else that the Commission obviously evaluates.

I think from what I understand from USPS, OIG, insight, I really think this is somewhere that there needs to be more thorough oversight, of who is getting those discounts and things like that, with the Postal Service. So that is one area.

In addition, I would just say I think continuing to really monitor, as much as they can, service performance results. I think there are excellent examples of collaboration. Right now the Postal Service has an internal measurement system that was approved by the PRC last summer. That is something that Members of Congress, two of my former bosses, worked on, and worked closely with the PRC and the Postal Service to do that.

I bring that up—I think that is an excellent example of collaboration and what we need to see more of while there, and I will look forward to more fully understanding all parts of that role if confirmed.

Senator LANKFORD. Alright. Well, there are quite a few issues that obviously have to be addressed that we have not talked about today, things like security, drugs coming in from outside the country or moving around within the country through the mail system, illegal products, whether that be ivory that is moving into the country or illegal items that are moving in, artifacts and such moving in through the mail.

So there is a wide variety of issues. And we focus very often on drugs moving but there is a wide variety of issues that have to be addresses and be able to determine what is the best way to do that. And we will count on you all to be able to help focus on the ideas and make the proposal that are needed to be able to address these items.

My State is not dissimilar to many other States. In Oklahoma, we are very dependent on the mail coming, whether it be for prescription or for news or for a bill coming in. We are very focused on access to that timely product coming into our box.

There is also a tremendous group of letter carriers and postal employees that serve in our State that are remarkable public servants. And we are very proud of them and very partial to them. But we are also looking for answers and recommendations as we struggle through this process. I appreciate you both stepping up to consider this.

All of you, you have been through this dialogue but this is not the first time to be able to have a dialogue like this. All of you have been through extensive background checks. You have turned in endless documents. I have personally gone through all of your FBI files—it is very exciting, by the way. I have also gone through all of the background information for all five of you. You have met with our staff who have pummeled you with endless questions and then did follow up questions with you. You have submitted lots of answers to lots of issues.

So I appreciate you coming through not only today but what you have already walked through. Our goal is to be able to get you through this process completely, get you through confirmation, and get you on the task, because you did not initiate this process so that you could go through confirmation. You initiated this process so you could be confirmed. So let's finish that out in the days ahead.

I thank all of you for being so willing to be able to go through a long, arduous process, to be able to do this service to your country.

You have all made financial disclosures,¹ provided responses to biographical and hearing questions submitted by the Committee.² Without objection, this information will be made a part of the hearing record,³ with the exception of the financial data,⁴ which are on file and available for public inspection in the Committee offices.⁵

The hearing record will remain open until noon tomorrow, July 17, for the submission of statements and questions for the record.

Thank you all and thank your families for walking through this as well, with all of you.

With that, the hearing is adjourned.

[Whereupon, at 11:17 a.m., the Committee was adjourned.]

¹ The information of Ms. Fisher appears in the Appendix on page 39.

² The information of Ms. Poling appears in the Appendix on page 89.

³ The information of Ms. Bird appears in the Appendix on page 147.

⁴ The information of Ms. Brandt appears in the Appendix on page 206.

⁵ The information of Ms. Matini appears in the Appendix on page 236.

A P P E N D I X

Opening Statement of Senator James Lankford

**Nomination of Ann C. Fisher to be a Commissioner of the Postal Regulatory Commission;
Nomination of Ashley E. Poling to be a Commissioner of the Postal Regulatory
Commission; Nomination of Catherine Bird to be General Counsel of the Federal Labor
Relations Authority; Nomination of Rainey R. Brandt to be Associate Judge on the
Superior Court of the District of Columbia; and Nomination of Shana Matini to be
Associate Judge on the Superior Court of the District of Columbia
July 16, 2019**

Good morning. The hearing will come to order. Today we will consider five nominations: Ann Fisher and Ashley Poling to be Commissioners of the Postal Regulatory Commission; Catherine Bird to be General Counsel of the Federal Labor Relations Authority; and Rainey Brandt and Shana Matini to be Associate Judges on the Superior Court for the District of Columbia.

MS. ANN FISHER currently serves as the Director of Public Affairs and Government Relations at the Postal Regulatory Commission. She previously served in several senior staff positions in the U.S. Senate including as Deputy Staff Director of this Committee under Chairman Collins.

MS. ASHLEY POLING currently serves Ranking Member Gary Peters as his Director of Governmental Affairs and Senior Counsel on the Committee. She previously served as Counsel to Senator Jon Tester and Senior Counsel to Senator Heidi Heitkamp on the Subcommittee on Regulatory Affairs and Federal Management.

MS. CATHERINE BIRD currently serves as the Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services. She previously served as Legislative Director for California State Senator John Moorlach [More-Lock] and as a Legislative Aide for California State Senator Ted Gaines.

MAGISTRATE JUDGE RAINEY RANSOM BRANDT currently serves as a Magistrate Judge on the D.C. Superior Court. She is also an adjunct associate professor at American University's Department of Justice, Law and Criminology.

MAGISTRATE JUDGE SHANA FROST MATINI currently serves as a Magistrate Judge on the D.C. Superior Court. She previously served as a trial attorney in the Office of the Attorney General of D.C.

The Committee takes these nominations very seriously, and we are pleased to have these nominees before us.

Committee staff reached out to many of the colleagues and affiliates of the nominees, and they spoke highly of your professional abilities and fitness to potentially serve in the roles to which you have been nominated.

Staff interviewed the nominees on an array of issues, and each has thoughtfully and competently answered each question.

I look forward to speaking with each of you more today on your experience and accomplishments and how you intend to bring them to bear for the federal government and the District of Columbia.

I now recognize Ranking Member Sinema for her opening statement.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Nominations of Ann Fisher and Ashley Poling, to be Commissioners, Postal Regulatory Commission;
Catherine Bird to be General Counsel, Federal Labor Management Authority; and Rainey Brandt and
Shana Frost Matini, to be Associate Judges, Superior Court of the District of Columbia**

July 16, 2019

Senator Gary C. Peters, Ranking Member

Opening Remarks

Thank you, Chairman Lankford, Ranking Member Sinema, and thank you to all of the nominees for your willingness to serve.

I would like to add a few words about one nominee – Ashley Poling, who I am fortunate to have on my Committee staff as my Director of Governmental Affairs and Senior Counsel.

Over the past year, Ashley has been a valued advisor – and she has been instrumental in much of this Committee’s work since she started working for Senator Tester six years ago.

Ashley went on to serve as a key advisor on postal issues for Senator Heitkamp before joining my team.

Mr. Chairman – Senator Heitkamp has submitted a formal letter in “enthusiastic” support of her nomination – which I ask to have entered into the record.

Staff and members who have worked with Ashley over the years are likely familiar with her unique ability to work through complex policy issues to find bipartisan paths forward – I’m confident she will bring this skill set to Postal Regulatory Commission.

I also appreciate Ashley’s commitment to mentoring staff on her team as well as the enthusiasm and depth of policy knowledge she has brought to this committee.

Ashley – on behalf of myself – and HSGAC members past and present – thank you. I look forward to your testimony and the testimony of all our nominees.

Senator Thomas R. Carper

Introduction of Ann C. Fisher to be a Commissioner on the Postal Regulatory Commission

July 16, 2019

I am honored to introduce Ann Fisher for the hearing on her nomination to be a commissioner on the Postal Regulatory Commission.

Before I introduce Ann, however, I want to introduce Ann's family – her husband David, and her two daughters Dagny and Regan. Thank you for sharing your mother and wife with us for the last 20 years and thank you for supporting her in this new role.

When you look at Ann's resume, she can be summed up in various quick bullets:

- Senior government executive with over 20 years of experience on Postal Service related issues.
- Trusted government liaison to the U.S. Congress
- Thought leader on the U.S. Postal Service
- A key leader in the postal stakeholder community

None of these quick snip-its can really describe the Ann Fisher I have worked with and grown to respect over nearly two decades.

Each bullet only describes a piece of Ann and who she is, but together, these bullets show she is unquestionably qualified to be a PRC commissioner.

The Postal Service is the lynchpin of a trillion dollar mailing industry and the role of the regulator is one that cannot be underestimated. You need someone who understand Postal product pricing and someone that understands the intricacies of the Postal market place. And that is Ann.

For more than 20 years Ann has been at the forefront of Postal issues. When Ann was the former Republican Deputy Staff Director of this Committee, I had the pleasure of working with her on Postal Reform in 2006. We have continued to work together since then in her roles at the PRC on numerous legislative policy reforms.

Party politics aside, Ann is a first and foremost a professional. You know that anytime you ask Ann a question – you are going to get an honest and thoughtful answer.

Ann is a woman of integrity and her long-standing relationships in the Postal Community—with all the stakeholders and unions—show that Ann is going to be an impartial leader for the PRC.

Her knowledge and her character are why she is prepared to be a regulatory for the largest employer in America behind Wal-Mart.

I look forward to the work Ann will do as a commissioner on the PRC, and I rest easy knowing that she will be watching out for health of this vital federal agency.

Statement for the Record

Sen. Kyrsten Sinema

July 16, 2019

Nomination hearing for Ann C. Fisher and Ashley E. Poling to be Commissioners on the Postal Regulatory Commission (PRC); Rainey R. Brandt and Shana Frost Matini to be Associate Judges on the Superior Court of the District of Columbia; and Catherine Bird to be General Counsel for the Federal Labor Relations Authority.

Thank you, Mr. Chairman.

Today we are considering two nominees to serve on the Postal Regulatory Commission, two nominees to serve as Associate Judges on the Superior Court for the District of Columbia and one nominee to serve as General Counsel of the Federal Labor Relations Authority.

The Postal Regulatory Commission (PRC) is an organization whose unique perspective has been extremely important to various ongoing postal policy debates. As the Postal Service looks to tackle future financial stability, the PRC's role will be crucial in addressing the questions surrounding proposed changes to its financial structure and concerns over service performance. This analysis will inform how the Postal Service proceeds with its plans and will provide key decision makers, such as Congress, with important insight into the resulting impact to postal customers, postal employees, and other important stakeholders.

Having over 20 years of experience as a senior executive working on postal issues in the U.S. Senate, the Postal Service, and the PRC, Ms. Fischer is no stranger to the postal community. This is true of Ms. Poling as well, who has more than six years of experience working within the Senate, focusing extensively on Postal issues. I believe the strong experience of both Ms. Fischer and Poling will provide valuable regulatory insight as the Postal Service considers significant operational changes.

We are also pleased to consider two nominees to serve as Associate Judges of the District of Columbia Superior Court. The court currently faces a historically high number of vacancies, while also dealing with a heavy caseload. A full complement of judges on the Superior Court is 62, and there are currently 10 vacancies, with an additional three expected this year due to retirements. Continued vacancies at the D.C. Superior Court slow the administration of justice.

Ms. Brandt and Ms. Matini have displayed a well-established commitment to public service. Both currently serve as Magistrate Judges within the District of Columbia Superior Court. Ms. Brandt has served as a Magistrate Judge for seven years and previously worked as Special Counsel to the Chief Judge of the Superior Court of the District of Columbia for fourteen years. Ms. Matini has served as a Magistrate Judge for almost four years and previously as an attorney in the Office of the Attorney General (OAG) for the District of Columbia, Civil Litigation Division for eleven years.

The FLRA's Office of General Counsel (OGC) is responsible for investigating, prosecuting, and adjudicating Unfair Labor Practice (ULP) allegations—claims that agencies or labor organizations have failed to uphold their legal obligations to other parties or individual employee.

Ms. Bird, the nominee for the General Counsel of the FLRA, has served as Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services (HHS) since May 2017. In this position, she has represented HHS management in labor negotiations. Before working at HHS, Ms. Bird worked as a legislative aide in the California State Senate, and as a student life specialist at Simpson University in California.

In the 2018 *Best Places to Work* rankings compiled by the Partnership for Public Service (PPS), the FLRA ranked third to last in overall employee job satisfaction among small agencies. The agency experienced the largest score shift of all small agencies between 2017 and 2018. A motivated workforce is an effective workforce, and I hope FLRA leadership will develop a strategy to reverse this trend.

The FLRA also faces a significant case backlog. Over 200 Unfair Labor Practice Complaints await disposition. I encourage Ms. Bird, if confirmed, to pursue fair and innovative strategies for disposing of pending complaints in a timely and conscientious manner while continuing to process the FLRA's normal influx of complaints and appeals.

I would like to thank the nominees who have volunteered to serve in these important positions, and I look forward to hearing their testimony.

**Opening Statement of Rep. Mark Meadows (R-NC)
July 16, 2019**

Thank you, Mr. Chairman.

Chairman Johnson, Ranking Member of the Senate, Ranking Member Peters, and Members of the Committee:

Thank you so much for giving me this honor. In DC there are a lot of heavy lifts; this is not one of those. I can tell you when I came to Congress, postal reform was last in the ranking of my priorities. And yet, I've had the opportunity to meet with Ann and Ashley, and what I want to share for this Committee's consideration is the fact that you have a Republican Member of Congress introducing a Democrat nominee. That doesn't happen very often in this town, and it only happens because of the exceptional talent of Ashley Poling, and I just want to raise the awareness of this public servant.

Each of you understand the partisan politics happening every day on every piece of legislation. And yet, when we were working in the House, Ashley continued - not once, not twice, not three times, but multiple times - to reach out and to advocate for her state, for Senator Heitkamp, and for the service standards that rural America needs to make sure are put in place. And I can tell you, Senator Sinema, we actually went to Arizona, to your home state, and we visited a processing center in Tucson Arizona. One of the major items for which Ms. Poling was advocating was making sure that we don't close down processing centers necessary to the mail delivery system.

I know, in the mountains of western North Carolina, there are more stories and more living that takes place through the postal service, and at those centers, than at any place else. You go to the post office, and you share the stories, but it's not just that - we have come to rely on this system, and it is in crisis mode. Quite frankly, as a businessman, I don't know how we solve this. I look at the financial stability of where our postal system is, and from the business perspective, it is bankrupt. And so, any considerations that this Committee can make to move these two individuals through very quickly to make sure the Postal Regulatory Commission is fully staffed would be recommended.

Every day we have a 145-billion-dollar deficit. And if we do not address this issue immediately - all of us, whether we are Democrat or Republican, will see the results of that backup.

Lastly, I would close with this. It's not about Ashley. She is here today because she has actually done the hard work as Senator Peters so eloquently put in his opening remarks. She did the hard work behind the scenes each and every day, not caring who received the credit. And in a town where it's all about who gets the credit, I can say that is something that truly impressed me. She knows more about postal issues than anyone on Capitol Hill, and I would strongly encourage your consideration - your expedient consideration - of her nomination. I consider her a friend, but I also consider her an expert. To her parents that are here in the audience - you can be extremely proud of the daughter you have and the way that she carries herself in such a professional manner.

With that, I thank this esteemed body for allowing me the opportunity to introduce Ashley Poling for your consideration.

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEES
RANKING MEMBER, HIGHWAYS AND TRANSIT
ECONOMIC DEVELOPMENT, PUBLIC
BUILDINGS AND EMERGENCY MANAGEMENT
AVIATION



COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM
SUBCOMMITTEES
GOVERNMENT OPERATIONS
HEALTH CARE, BENEFITS, AND
ADMINISTRATIVE RULES

Congress of the United States

House of Representatives

Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton
Senate Homeland Security and Governmental Affairs Committee
Hearing on Shana Frost Matini and Rainey R. Brandt
Superior Court of the District of Columbia
July 16, 2019

I support the nominations of Shana Frost Matini and Rainey R. Brandt to be Associate Judges on the Superior Court of the District of Columbia, an Article I court. Both of these nominees have extensive litigation experience, which is central to the Superior Court, the District's local trial court. I appreciate the Committee's hearing today because the Superior Court is the engine of the day-to-day local criminal and civil justice systems in the District.

Judge Matini has extensive experience with this court, as she currently serves as a Magistrate Judge for the Superior Court. Judge Matini was sworn into this position in January 2016. Judge Matini has served as a magistrate in both the civil and criminal divisions of the Superior Court. This exceptional experience will be very useful to her position as an Associate Judge. Prior to her role as a magistrate, Judge Matini further served the residents of the District as Assistant Attorney General and acting section chief in the Office of the Attorney General for the District of Columbia. In this position, Judge Matini argued cases in both the Superior Court and the U.S. District Court for the District of Columbia. From February 1999 through January 2001, Judge Matini was a senior legal fellow at the Einstein Institute for Science, Health and the Courts, where she led seminars in legal/scientific education for federal and state judges, focused particularly on genetics and molecular biology. Judge Matini also brings experience from the private sector. She served as an attorney at ADR Associates/JAMS in the District, where she worked with a former judge on the Superior Court in his role as Special Master in a federal RICO lawsuit, and as a litigation association at Russell & Russell in Falls Church. After graduating from the University of the District of Columbia School of Law, where she graduated *magna cum laude* and was the Editor-in-Chief of the University of the District of Columbia Law Review, Judge Matini clerked for Judge Richard A. Levie of the Superior Court. After graduating from the George Washington University, Judge Matini served as an English teacher at the Language Teacher's Training College in Slupsk, Poland. Again, I believe Judge Matini's exceptional experience and service to the District of Columbia make her well qualified for a position as an Associate Judge on the Superior Court of the District of Columbia.

I am also pleased to support Judge Rainey R. Brandt's nomination to the Superior Court. Judge Brandt would bring a wealth of educational and professional experience to the bench. Judge Brandt serves as a Magistrate Judge on the Superior Court and is currently the Deputy Presiding Magistrate Judge. Prior to her nomination as a magistrate, Judge Brandt served as Special Counsel to the Chief Judge of the Superior Court. Through that position, Judge Brandt

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helped the District close the prison at Lorton within the timeframe mandated by Congress. Judge Brandt has served as an assistant professor at American University here in the District since 1995, and is currently an adjunct associate professor. After graduating from the Columbus School of Law at the Catholic University of America, Judge Brandt served as a law clerk to two different judges on the Superior Court. Judge Brandt has received numerous awards for her service, including being named Outstanding Adjunct Professor at American University twice in just four years, and has participated in numerous panels on legal issues. Judge Brandt received her Ph.D., M.S. and B.G.S. degrees from American University. She also studied at Brown University.

I would be remiss if I did not express my grave concerns about the large number of vacancies on the Superior Court and D.C. Court of Appeals. Currently, there are 11 vacancies out of 62 authorized judges on the Superior Court and two vacancies out of nine authorized judges on the Court of Appeals. As you know, the chief judges of the Superior Court and Court of Appeals wrote to this Committee last year about the harm the vacancies are causing on the administration of justice in both our trial and appellate courts.

Unfortunately, we seem to have a vacancy crisis every few years, whether the Senate is controlled by Democrats or Republicans. I recognize that this Committee does not have sole responsibility for the fate of D.C. judges. The Senate leadership is understandably more focused on nominees for lifetime federal judgeships and federal agencies than for local D.C. courts, and any individual senator can effectively block a nominee on the floor. However, I implore this Committee to process as many nominees as possible. We cannot confirm a nominee unless we at least start their confirmation process.

STATEMENT OF ANN C. FISHER

Chairman Lankford, Ranking Member Sinema, and members of the Committee, thank you for the opportunity to appear before you today, and for your consideration of my qualifications to be a commissioner of the Postal Regulatory Commission. I would also like to thank President Trump for nominating me. I am deeply honored.

I am grateful to have with me today my husband David Fisher, my two daughters Dagny and Regan Fisher, and my nephew August Veerman of Sioux Falls, South Dakota. While my parents, Paul and Cathryn Rehfluss, are not able to be here today, I know they will be proudly watching from their home in Yankton, South Dakota. Both were long-time public servants for the State of South Dakota, and have instilled in me the value of a career dedicated to public service.

This past May I marked my 26th year of Federal service – with all but two of those years devoted to postal issues.

In the Senate, I benefitted from working for three different senators representing very different states: South Dakota, Mississippi and Maine. Naturally, part of my time was spent assisting the members' constituents with a myriad of postal issues. I noticed that post office closures consistently generated the most passion. I learned how much people across America care about their local post office, especially in highly rural areas.

As a government relations manager at Postal Service headquarters here in Washington, I developed an appreciation for the vast scope of the postal network and the complexity involved in moving a single piece of mail from the post office or a blue box to someone's mailbox across town or across the country. I also spent a good deal of time traveling to midwestern states, meeting with local postal officials and congressional staff – helping to ensure transparency of postal operations and resolve community concerns.

Starting at the Postal Regulatory Commission in 2007, I worked as chief of staff to former Chairman Dan Blair, then became the director of public affairs and government relations, where I have worked the past 11 years. Our mission is to ensure the transparency and accountability of the Postal Service. The Commission prides itself on providing timely and rigorous analyses, while optimizing stakeholder engagement. With a major review of the system for setting Market Dominant rates well underway, the qualifications, fairness and impartiality of the commissioners is paramount.

My background at the Commission provides me a wide variety of experiences necessary to meaningfully contribute as a commissioner and maintain this high level of transparency and accountability.

To date, the most challenging yet rewarding part of my career was my time spent as deputy staff director to the former Chairman of this Committee, Susan Collins, as she, together with then-Ranking Member Carper, crafted a Senate companion to the House of Representatives

postal reform bill. Updating postal laws that had been in place since 1970 was incredibly difficult, for the U.S. Postal Service is the centerpiece of a \$1.4 trillion mailing industry that employs more than 7.5 million people. After years of effort and a multitude of obstacles, The Postal Accountability and Enhancement Act was signed into law in 2006.

Unfortunately, shortly thereafter, the Great Recession coupled with accelerated electronic diversion dramatically reduced mail volume.

Today, the Postal Service has lost money 12 years in a row and has an outstanding debt of \$11 billion.

I took great interest in the December 2018 report issued by Treasury Secretary Mnuchin's Task Force on the United States Postal System. While opinions of the recommendations made within the report may be varied, I think most can agree with the Task Force goal of identifying a path for the U.S. Postal Service to operate a sustainable business model, provide necessary mail services to citizens and businesses, and compete fairly in commercial markets.

Difficult decisions lie ahead for Congress and the Commission with respect to potential postal reform. I believe my experience working within the U.S. Senate, at the U.S. Postal Service and at the Postal Regulatory Commission have given me a clear understanding of the challenges faced by today's Postal Service, as well as viable options for its future.

Mr. Chairman, if confirmed, I will dedicate myself to working with Congress, the Administration and the Postal Service to ensure that users of the postal system have a vibrant and efficient mail system for many years to come. Thank you.

REDACTED

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
	Date of Nomination
Commissioner, Postal Regulatory Commission	April 29, 2019

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ann	Christine	Fisher	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 901 New York AVE NW		
City: Washington	State: DC	Zip: 20003	City: Washington	State: DC	Zip: 20268

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Multiple Names	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Ann	Christine	Reh fuss		X	05/1966 Est ☐	05/2000 Est ☐
					Est ☐	Est ☐

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1966	Yankton, SD

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
David	Nile	Fisher	

<i>Spouse's Other Names Used</i> (current spouse only)						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
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
		Est. <input type="checkbox"/>	Present <input type="checkbox"/>	Est. <input type="checkbox"/>	Present <input type="checkbox"/>		
University of South Dakota	university	01/1992	<input type="checkbox"/>	12/1993	<input type="checkbox"/>	M.A.	12/1993
Minnesota State University at Mankato	university	09/1986	<input type="checkbox"/>	06/1989	<input type="checkbox"/>	B.S.	06/1989
South Dakota State University	university	08/1984	<input type="checkbox"/>	05/1986	<input type="checkbox"/>		
			<input type="checkbox"/>		<input type="checkbox"/>		

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) "present" box if still employed
Government	Postal Regulatory Commission	Director, Public Affairs and Govt. Relations	Wash. DC	01/2007 <input type="checkbox"/>	Present <input type="checkbox"/>
Government	U.S. Senate on Homeland Security and Governmental Affairs	Deputy Staff Director	Wash. DC	12/2002 <input type="checkbox"/>	01/2007 <input type="checkbox"/>
Government	U.S. Senate Subcommittee on International Security, Proliferation and Federal Services	Professional Staff	Wash. DC	02/2001 <input type="checkbox"/>	12/2002 <input type="checkbox"/>
Government	U.S. Postal Service	Government Relations Manager	Wash. DC	12/1998 <input type="checkbox"/>	02/2001 <input type="checkbox"/>
Government	U.S. Senate Subcommittee on Intl. Security, Proliferation and Federal Services	Professional Staff	Wash. DC	01/1997 <input type="checkbox"/>	12/1998 <input type="checkbox"/>
Government	Office of U.S. Senator Larry Pressler (R-SD)	Legislative Aide/ Economist	Wash. DC	01/1995	01/1997
Government	U.S. Senate Committee On Small Business	Economist	Wash. DC	05/1993	01/1995

(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)	Date Service Ended (month/year) (check box if estimate) (check
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		(check box if estimate)		"present" box if still serving	
		Summer	2012	Fall 2012	Present
Romney Transition Team 2012 (Romney Readiness Project)	Volunteer advisory position on postal matters that may come before a new Administration		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Est <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>
			Est <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>

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.

NONE.

(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.

Not applicable.

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.

Three service awards received during my tenure at the U.S. Postal Service

"NAPUS Champ" award received at 2007 National Association of Postmasters of the U.S. Leadership Conference

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).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
St. Peter's Catholic Church, Capitol Hill	2004 to present	Parish Member

7. Political Activity

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

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (If applicable)</u>

(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.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(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.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

(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.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

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: Winter 1989
- a. Is this an estimate (Yes/No): YES
- B) Description of the specific nature of the offense: When I was 22 years old, I drove a highly intoxicated friend home from a college party, in his car. I had also been drinking, but to a lesser extent. I saw a police car nearby and I was nervous. My friend thought it would be funny to jerk the steering wheel. The car swerved and I was pulled over by the police officer. I was given a breathalyzer and found to have a 0.10 blood alcohol level. I was charged with a DUI. I secured a public defender and the charge was reduced to Reckless Driving, Alcohol Related. I received an approximately \$100 fine, which I paid. I was also required to meet with a counselor to discuss the ramifications of drinking and driving. I have had no similar driving experiences since that time.
- 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): Mankato, Blue Earth County, MN 56001, 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: Mankato City Police
 - 2) Location of the law enforcement agency (city, county, state, zip code, country): Mankato, Blue Earth County, MN
- 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):
 - 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:
 - 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:

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

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.

No.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(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.

No.

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

(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.

No.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(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

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

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.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

15. Agreements or Arrangements

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.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

16. Additional Financial Data

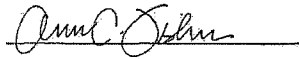
All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

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.

A handwritten signature in cursive script, appearing to read "Ann C. Johnson", is written over a horizontal line.

This 7th day of MAY, 2019

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



May 6, 2019

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 Ann Fisher, who has been nominated by President Trump for the position of Commissioner, Postal Regulatory Commission.

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 APOL

Digitally signed by DAVID
APOL
Date: 2019.05.06 10:20:06
-0400'

David J. Apol
General Counsel

Enclosures **REDACTED**



February 22, 2019

David A. Trissell
General Counsel and Designated Agency Ethics Official
Postal Regulatory Commission
901 New York Ave., Suite 200
Washington, DC 20268-0001

Dear Mr. Trissell:

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 Commissioner at the Postal Regulatory Commission.

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.

My spouse is currently employed by Siemens Medical Solutions USA, Inc. which is a subsidiary of Siemens Healthineers AG (Healthineers) whose parent company is Siemens AG (Siemens). He receives a fixed salary, a bonus, and stock performance awards in Siemens and Healthineers. 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 Siemens AG or any of its subsidiaries, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

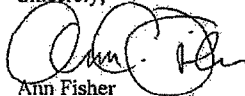
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Commissioner in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

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.

Sincerely,



Ann Fisher

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Ann Fisher to be
Commissioner, Postal Regulatory Commission**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to serve as a Commissioner on the Postal Regulatory Commission (“PRC” or “the Commission”)?

I believe I was nominated based upon my knowledge of postal issues developed through 26 years of service in the U.S. Senate, at the U.S. Postal Service (USPS) and at the Postal Regulatory Commission (PRC).

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner of the PRC? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I have consulted with the Office of Government Ethics and the PRC’s Designated Agency Ethics Official (DAEO) to identify potential conflicts of interest. I am not aware of any current conflicts of interest. Also, in consultation with the PRC DAEO and OGE, I have signed an ethics agreement that specifies how I will handle any situations in the future to avoid any conflicts of interest that may arise.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be a Commissioner of the PRC?

I have over 20 years of experience as a senior executive working on postal issues in the U.S. Senate, the USPS and the PRC. Additionally, I possess a M.A. in economics, which is in line with the PAEA guidance that “...Commissioners shall be chosen solely on the

basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration.....”

6. Please describe:

a. Your leadership and management style.

My leadership and management style emphasize openness, teamwork, commitment to mission, and delivering a high quality work product.

b. Your experience managing personnel.

I have over 20 years of managerial experience, primarily of small teams.

c. What is the largest number of people that have worked under you?

Approximately 20 – 25 people worked under me during my tenure as the Deputy Staff Director on the Senate Homeland Security and Governmental Affairs Committee.

III. Role of the Postal Rate Commission and its Commissioners

7. Please describe your view of the Commission’s core mission and an individual Commissioner’s role in achieving that mission.

The Commission’s mission is to ensure transparency and accountability of the USPS and foster a vital and efficient universal mail system. Commissioners must dedicate themselves to fairness and impartiality, and the provision of timely and rigorous analysis. A Commissioner must also proactively respond to a rapidly changing postal environment.

8. The President’s task force on the United States Postal Service (USPS or Postal Service) recommended a stronger regulatory oversight role for the PRC. What role do you believe the Commission should play in overseeing the Postal Service?

The Task Force recommended that the PRC be provided with “expanded controls, imposing increased accountability on the USPS.” Specific expanded controls were not listed. The PRC exists to protect the public interest while providing objective, accurate, and timely regulatory analyses and decisions. The Commission must continue to ensure transparency and accountability of the USPS while fostering an efficient universal mail system.

9. The Commission is an independent agency. How do you understand that obligation of independence? How does such independence affect your approach to the evaluation and decision of cases?

I consider an independent agency as one intended to be free from political influence. I intend to serve fairly and impartially with respect to all cases brought before the Commission.

10. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

I have never officially received a whistleblower complaint, nor have I been involved in the resolution of one.

b. How would you plan to implement policies within the Commission to encourage employees to bring constructive suggestions forward without the fear of reprisal?

The Commission's Workplace Harassment Policy clearly states that an employee will be protected from reprisal or retaliation should they participate in an investigation, proceeding or hearing. Additionally, the Commission EEO policy states that the Civil Service Reform Act of 1978, 5 U.S.C. 2302, applies to Commission employees and prohibits reprisal against employees or applicants for whistleblowing.

c. Do you commit without reservation to work to ensure that any whistleblower within the Commission does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

IV. Policy Questions

Previous Postal Service Reforms

11. It has been nearly twelve years since the Postal Accountability and Enhancement Act of 2006 (PAEA) (P.L. 109-435) changed postal pricing to provide the Postal Service with more flexibility as well as improve the rate-making process.

a. Do you believe the Postal Service has effectively utilized the pricing flexibility provided by the PAEA? If yes why, if no why not?

Yes, I believe the pricing flexibility has been effectively utilized. Since the PAEA's enactment, the number of NSAs has steadily risen, the USPS has offered seasonal pricing incentives and introduced a series of experimental market tests.

b. Do you believe the goal of increased flexibility was met? If yes why, if no why not?

I believe the USPS has effectively used its pricing flexibility with Competitive products. The PAEA allowed the USPS Board of Governors to more directly manage and price the USPS' competitive products, subject to minimal regulatory oversight to ensure that the USPS competes fairly with the private sector delivery services. The Market Dominant price cap was intended to balance maximum rate setting flexibility with increased efficiency. It has been difficult for USPS to try to balance the restrictions of an inflation-based rate cap, the downturn in volume, and personnel-related expenses, all while maintaining financial stability.

- c. Should "flexibility" include the ability of the Postal Service to have different price increases for one class of mail versus another class? If yes why, if no why not?

Under the current system, the Postal Service has flexibility to raise prices within a class to varying degrees so long as the average increase of the class as a whole does not exceed CPI-U. Considering that, there will generally be a variety of different rate increases across the classes.

- d. Do the workshare provisions of the Commission rules, all else equal, foster flexibility? If yes why, if no why not?

Yes, I believe the workshare rules do foster flexibility. Workshare discounts allow USPS to offer reduced rates for mail that is prepared or entered in a manner that avoids certain activities postal employees would otherwise have to perform. The Commission's role is to ensure that workshare discounts do not exceed the cost USPS avoids as a result of the workshare activity (unless certain exceptions are met, as specified in law). There is nothing to prevent USPS from increasing a workshare discount that is less than avoided costs. The Postal Service also has the flexibility to enter into new workshare discounts without seeking PRC approval.

12. The PAEA substantially changed the relative responsibilities of the Postal Service Board of Governors and the Commission.

- a. What do you believe are the most important decisions the Commission has made since the PAEA?
- Initial establishment of the Market Dominant rate-setting system
 - Consideration of two separate USPS requests for an exigent rate increase
 - Consideration of USPS advisory opinion request to move from 6 day delivery to 5 day
 - Issuance of a new formula to calculate the minimum amount that Competitive products as a whole are to contribute to USPS institutional costs
 - Issuance of a finding that the Market Dominant rate system has not achieved the necessary objectives established by Congress over a 10 year period

- b. What are the key decisions you expect the Commission to make in the future under the PAEA?
- Issuance of a final Commission regulation governing the Market Dominant Rate System
 - I believe the PRC has a very important role to play in helping Congress and USPS clearly define the USO. Determining what the American public of today needs from the Postal Service should be part of any future reform effort.
- c. Generally, what approaches do you advocate the Commission should take in regulating the Postal Service and why?

I believe the Commission should continue to allow the Postal Service to experiment operationally. It is also important that the Commission maintain an emphasis on the rigor of its analysis and seeking regular improvements to data received from the Postal Service.

13. What is your overall impression of how well the postal reforms under the PAEA have been implemented so far? What areas have been most challenging, and what areas do you believe need the most attention in the future?

For the most part I believe the PAEA has been well implemented. A primary goal was a more streamlined rate setting system with pricing flexibility to allow USPS to better respond to customers. The revised rate cap-based system was also intended to provide strong incentives to hold down costs, which I believe it did. However, the unanticipated "Great Recession" severely impacted mail volume, leaving the USPS unable to manage an aggressive payment schedule for the Retiree Health Benefit Fund (RHBF). Given the rapid downturn in the economy post-PAEA, ideally the Act would have allowed a Commission review of the Market Dominant rate system sooner than 10 years post-enactment. For the future, I believe it's vital that Congress, the USPS and the Commission work together to determine what the public wants and needs from the present day Postal Service, and to better align the current network to meet those needs.

14. The PAEA set forth a new process for resolving complaints against the Postal Service. What do you believe must be done to ensure that the Commission will review and resolve any complaints promptly and fairly?

I believe the Commission's current process for resolving complaints works well and allows for complaints to be resolved rapidly and fairly. The Commission has been well-served by its dual-track complaint system, which directs informal complaints to our consumer relations specialist and formal complaints to the legal department. The majority of complaints we receive are informal. Our consumer relations specialist has consistently met her goal of responding to these informal complaints within 48 hours.

Postal Service Operations

15. What role, if any, should the Commission have in the Postal Service's operational decisions?

I believe operational decisions should be left to the operator. The Commission's role is to protect the public interest, ensure transparency and accountability of the Postal Service, and to assure that USPS' actions are not in violation of the law.

16. Should Congress modify or repeal the requirement for the Postal Service to seek advisory opinions from the Commission, as some have proposed? Why or why not?

Traditionally, advisory opinion requests have been of great interest to members of Congress and their constituents, due to the nationwide impact on some aspect of postal service. Therefore I believe Congress should consider requiring the Postal Service to submit a written response to PRC advisory opinions prior to implementing its proposed service change. While I do not believe USPS should be required to comply with our recommendations, an explanation of non-compliance should be provided to both the PRC and Congress.

17. What do you believe should be the role of the Commission in helping to ensure that the quality and timeliness of the Postal Service's data in cases before the Commission are adequate?

By law, the PRC has final authority over whether the quality and quantity of data submitted by the USPS is adequate for the PRC to make its decisions. Should the PRC determine that data provided is insufficient or not timely, the PRC may reject or remand any case back to the Postal Service. The PRC should continue its adherence to these important rules.

18. The Postal Service continues to experience volume and revenue losses. According to USPS annual filings, the Postal Service ending Fiscal Year (FY) 2018 with a net loss of \$3.9 billion, an increase of \$1.2 billion over FY 2017.

- a. What additional steps do you believe the Postal Service should take that do not require Congressional action to improve its financial condition?

I agree with portions of a previously introduced Senate bill, S. 2629 (115th Congress) and a few of the Task Force recommendations. Specifically, I believe it makes sense to allow the USPS to explore supplying services for Federal, State, and local government entities that have substantial scale, would generate revenue, and would not present a balance sheet risk to the USPS.

The Task Force also suggested that the USPS could potentially capture additional value from its existing retail offices by converting post offices into contract post

offices or by co-locating with or renting space to complementary retail establishments.

The Postal Service should also consider reports by both GAO and the Postal Service IG outlining options for network and operational changes.

- b. What legislative changes do you believe Congress should consider to help improve the Postal Service's financial condition?

The Postal Service has defaulted on \$43 billion in prefunding payments for the RHB Fund. Ideally, Congress would find a way to restructure the annual payments over a longer period of time. I am certainly aware, however, of the difficulty in addressing this issue based upon the direct Federal budget impact.

19. In your view, how can the Postal Service return to viability in a market in which e-commerce and electronic communication and payments are increasing and mail volume is declining? What role do you believe the Commission should play in shaping the future Postal Service given these rapid changes?

This is a very challenging environment for USPS. While I do not have a solution, I believe it is imperative that Congress, the USPS and the PRC take a close look at what American consumers want and need from today's Postal Service.

20. Since enactment of the PAEA, the Commission has interpreted the term "non-postal service" through consideration of various Postal Service proposals for new products and services.

- a. Do you believe the Postal Service should be allowed to compete with the private sector? If so, under what circumstances?

The Postal Service competes with the private sector in the area of package delivery. With appropriate oversight by the Commission, this has allowed for a robust package delivery market. The PAEA prohibited the USPS from offering nonpostal products. Prior to this prohibition by Congress, the USPS performed very poorly in this area and was the subject of GAO reports and congressional hearings.

- b. What concerns, if any, do you have about such efforts?

I think this issue deserves careful consideration, including a review of previous postal ventures in the nonpostal area. I would be concerned about the potential negative impact upon private sector businesses with whom the USPS may seek to compete. There would likely be issues raised regarding unfair competition and pricing fairness.

- c. What role do you believe the Commission should play in the introduction or pricing of new products?

The Commission should continue its current role of determining whether new products introduced by the USPS Board of Governors are indeed postal, then deciding whether the product belongs in the Market Dominant or Competitive category.

Postal Ratemaking

21. During consideration of the PAEA, there was debate about the impact of a consumer-inflation-based rate cap. In your opinion, how has the rate cap helped the Postal Service, the mailing community, and postal customers? How has the rate cap hurt these groups?

In general, I believe the rate cap helped to force network efficiencies that may never have occurred. For the mailing community, it provided them with a consistency and predictability that had been lacking. However, the limitations of a strict CPI-based cap has been very challenging.

22. In your view, what drawbacks and advantages would exist to increasing postal rates through legislation, rather than through the existing ratemaking process?

I believe Congress wisely removed itself from the ratemaking process with passage of the Postal Reform Act of 1970. The Commission, as created by Congress, has the expertise and resources to provide the necessary review, approval and regulation of Market Dominant postal rate increases. However, the limitations of a strict CPI-based cap, locked in for 10 years, has proved extremely challenging for USPS. Postal reform bills from previous congresses have included language to increase the rate baseline subject to the cap. I believe enactment of such measures would have aided the USPS. At this point, I look towards the Commission's ongoing development of a final rule to govern the market dominant system.

23. According to 39 U.S.C. § 407, the Commission submits views to the Secretary of State regarding any treaty, convention, or amendment which alters the rate or classification of certain types of mail. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

The law requires that the State Department ensure each treaty, convention or amendment concluded is consistent with the Commission's views unless there is a foreign policy or national security concern. It is incumbent upon the Secretary of State to make this aspect of the law a priority during Universal Postal Union (UPU) proceedings.

24. The President's task force on the USPS recommended monetizing USPS's exclusive access to the mailbox to generate more income. What is your view of monetizing the "mailbox monopoly" and what role should the PRC play in ensuring fair rates in this type of monopoly?

I believe the Postal Service should thoroughly gauge the public's desire for continuation of the mailbox monopoly. The Commission looked at this issue in 2008 and public sentiment seemed to favor retention of the monopoly, based on issues such as mail security and the efficient collection of mail from cluttered mailboxes. However, public opinion may have changed since then. It is worth studying.

I assume "monetizing" the mailbox would result in the Postal Service proposing to the Commission a new product. In that scenario, the Commission would classify the new product as either Competitive or Market Dominant and ensure it meets the necessary legal requirements of either category.

25. The task force also recommended that USPS redefine mail classes and define products by the type of sender and the declared purpose of the mail item. What should be the PRC's role with regard to the mail classes offered by the USPS?

Current law requires the PRC to review and approve of any changes in product classification. That practice should continue.

Service Standards and Other Performance Obligations

26. Debates about postal reform legislation raise fundamental questions about the role of the Postal Service in our nation, including the nature of the Postal Service's universal service obligation.

- a. What is your view of the Postal Service's universal service obligation?

The USO is broadly defined by title 39 as "the obligation to provide postal services to bind the nation together through ... the correspondence of the people ... [by providing]... services to patrons in all areas and ... to all communities." For over 30 years, Congress has mandated via the appropriations process that mail be delivered 6 days per week and that no post office shall be closed for operating at a deficit. Beyond that, I consider the USO to largely undefined, and means many different things to different people.

- b. Do you believe the concept of universal service has evolved since the PRC's 2008 report on universal service? If so, how? How do you believe Postal Service can adapt to meet that obligation?

I believe that the public's view of what they expect and need from the Postal Service is certainly evolving, particularly with younger generations and in urban areas with more delivery options. I believe Congress, the Commission and the Postal Service must work together to determine how best the USPS may adapt to meet the needs of today's public.

When the Commission issued the 2008 report, it noted difficulty in capturing the needs and expectations of small businesses, individuals and rural patrons – despite

extensive public outreach efforts. Going forward, gathering this information will be critical.

- c. In your view, what is the Commission's role in preserving universal service?

Each year in its *Annual Report to the President and Congress*, the Commission calculates the cost of the universal service obligation. The Commission also annually reports on the extent to which the USPS meets its service performance standards. In areas where service may be lacking, the USPS will discuss with the PRC opportunities for improvement.

27. What do you believe should be the Commission's role in establishing performance standards for postal products and services and for monitoring the Postal Service's results in meeting these standards?

The PAEA required the Postal Service, in consultation with the PRC, to establish (and from time to time revise) a set of service standards for Market Dominant products. The Commission-issued *Annual Compliance Determination* reports on the extent to which each Market Dominant product achieved its stated service standard for the year. Should a particular product fail to meet its standard, the Commission may issue a directive to USPS in an effort to address the problem. I believe this is an appropriate role for the Commission that provides transparency to the public, while ensuring USPS accountability.

28. The Postal Service continues to face the problem of reducing costs while also maintaining fast and reliable service. In your opinion, how can the Commission help the Postal Service try to find this balance?

Last year, the Commission approved the Postal Service's use of its internal Service Performance Measurement (SPM) plan to publicly report service measurement results. Using metrics and data, the SPM has the potential capacity to locate "pinch points" in the system which may impede mail movement. Ideally, the Commission will be able to use this data to prescribe resources around the "pinch points."

29. In your view, what degree of transparency should the Postal Service provide to Congress, mailers, and the public on delivery performance goals and general quality of delivery services? Do you believe the Commission has sufficient information to monitor service quality?

Congress, mailers and the general public all appear to have a great interest in the extent to which the Postal Service meets their delivery goals. I do not expect that interest to diminish; therefore, I consider maximum transparency by the Postal Service a priority.

Through compilation of its *Annual Compliance Determination*, the Commission regularly seeks to improve upon the amount and quality of data received in this area. At present, I

believe the information received is sufficient, but there is always room for improvement and refinement.

30. The President's task force on the USPS recommended that if products not deemed to be "essential" do not cover their direct costs, then the USPS should increase prices, reduce service costs, or exit the business of these products. What is your view of how the universal service obligation applies to these types of mail products?

The range of products covered by the USO is currently not defined by the law. I believe the job of defining which products are covered by the USO belongs to Congress. This would be a very complicated undertaking. Working together, the USPS and the PRC should be able to provide Congress with different options to consider.

31. Many postal stakeholders have raised concerns about the adequacy of the Postal Service's financial transparency. The PAEA requires the Postal Service to meet the financial reporting requirements of the Sarbanes-Oxley legislation. What is your opinion of this mandate and do you believe the Postal Service has satisfied this mandate? Are further improvements necessary to make Postal Service finances more transparent? If yes, what additional improvements are needed?

Improving the financial transparency of the USPS was a primary goal of the PAEA. I believe the USPS successfully complies with this mandate. Additionally, the Commission issues an annual report detailing its financial analysis of the USPS financial results and 10-K statement. This report has been well received by the postal stakeholder community.

Post Office Closings and Relocations

32. In your opinion, does the existing process for closing and relocating post offices adequately protect the interests of postal customers and the affected communities, especially in small towns and rural areas? If yes, how? If not, what additional protections do you believe are necessary?

During my years working on the Governmental Affairs Committee, and later the Homeland Security and Governmental Affairs Committee, I frequently worked with Senators, their staff, and the USPS regarding communities' displeasure with the closing/relocation processes. While the USPS has made improvements to the process over time, I understand community frustration often remains.

At present, I do not have enough information to say whether or not the current process offers adequate protection to customers and communities. However, Senate bill S. 2629, introduced last Congress, contained several provisions to expand upon the analysis required before a decision to close could be made. Giving consideration to the distance to the closest retail postal facility not slated for closure, the availability of broadband Internet service, and the unique characteristics of the location all seem sensible to me.

33. To what extent do you think the availability of postal services at alternative locations should be a key factor when considering closing or consolidating traditional retail facilities?

I believe that is an important consideration, especially in rural areas.

34. Do you believe the Postal Service should have additional flexibility to more quickly and easily close post offices? If so, what impact do you believe this will have on the Postal Service's current retail network?

I believe the timelines within the current process allow for necessary public notice and comment.

35. Many members of the public have expressed a concern that the Postal Service does not adequately involve affected communities in the decision-making process for the closings of post offices and processing facilities. What are your views on this issue?

The law allows communities the right to appeal to the Commission a post office closure decision. The Commission takes appeals very seriously. However, I believe it is best left to Congress and the USPS to determine what is the appropriate level of community involvement in closure decisions.

36. Are improvements needed to the Commission's appeals process related to closing and consolidating post offices? If yes, what specific changes do you believe are needed? If no, please explain why you believe the current process is viable.

I believe the Commission serves an appropriate role in ensuring the USPS does indeed follow their own rules for closures. If a customer or community appeals a closure to the Commission and we determine appropriate steps were not followed, the Commission may remand the decision to the USPS and require they take the necessary steps.

Should the Commission have greater input over the closures or consolidations of post offices or postal processing facilities? Why or why not?

These are important operational decisions that I believe are best left to the Postal Service. The Commission is a small agency with limited resources. At present, we do not have staff with the expertise necessary to assist the Commission with such decisions.

V. Relations with Congress

37. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

38. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

39. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

VI. Assistance

40. Are these answers your own? Have you consulted with the Postal Service, the Commission, or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. I did consult with Commission staff on certain technical matters related to pending and previous cases.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Ann Fisher to be
Commissioner, Postal Regulatory Commission**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

II. Background of Nominee

3. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

Yes.

4. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

I have on occasion disagreed with my superiors on a policy goal or strategy, and have advocated for my position aggressively. It has sometimes worked and other times failed.

5. What would you consider your greatest successes as a leader?

I led the Senate Republican staff effort in 2006 to pass the Postal Accountability and Enhancement Act of 2006. This was by far my greatest accomplishment as it required years of work, many setbacks and constant negotiation.

6. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?

Having to fire someone who lacked the necessary skills to be successful in his position. I hired him knowing of his shortcomings, but felt with assistance he could grow into the position. I felt responsible for not having had the time to provide more coaching. I am now very careful when screening applicants to ensure they are fully qualified.

III. The Role of the PRC and its Commissioners

7. What do you believe are the most important responsibilities of the Postal Regulatory Commission (PRC), and what is your opinion of how those responsibilities have been fulfilled?

The PRC exists to protect the public interest while providing objective, accurate, and timely regulatory analyses and decisions. The Commission must continue to ensure transparency and accountability of the USPS while fostering an efficient universal mail system. To date, I believe the Commission has appropriately fulfilled these duties.

8. In your view, what are the major challenges facing the PRC?

I think it is vitally important that the Commission move rapidly to complete the final rules following its 10 year review of the system for regulating Market Dominant rates.

9. What do you believe should be the PRC's top three priorities over the next five years?

Completion of the 10 year rate review, coordination with Congress and the USPS in seeking to define the universal service obligation, and maintenance of high analytic standards coupled with rigorous review.

10. If confirmed, how will you coordinate and communicate with PRC staff to accomplish the PRC's goals?

Chairman Taub set in place a process for the senior leaders in the agency to meet quarterly and discuss strategic planning goals. The frequency of the meetings and the quality of the input enable the Commission to stay on track with its stated goals.

IV. Policy Questions

11. Generally, what approaches do you advocate that the PRC take in regulating the Postal Service and why?

I believe the Commission should continue to allow the Postal Service to experiment operationally. It is also important that the Commission maintain an emphasis on the rigor of its analysis and seeking regular improvements to data received from the Postal Service.

12. The Postal Service has been operating without a quorum on its bipartisan Board of Governors since 2014. What challenges do you believe the Postal Service faces without a Board quorum? How should the PRC approach its role given the vacancies on the Board of Governors?

Through the creation of a "Temporary Emergency Committee", the Board of Governors was able to act upon measures it would not have been able to without a quorum. I anticipate the most serious challenge the Board could face is inability to approve a needed rate increase. The Commission must continue to exercise its responsibilities as required by law. I am

hopeful the Senate will be able to confirm additional Governors in the near future. The USPS definitely benefits from the independent viewpoint provided by Governors.

13. 39 USC § 101 establishes the seven fundamental pillars of U.S. postal policy.

- a. If confirmed, what legislative or administrative reforms would you advocate for to help the PRC and the Postal Service ensure these policies are fully realized?

I think it most important that Congress find a way to restore the Postal Service's long term financial viability.

- b. Should any of these policies be reformed? If not, why not; and if so, in what ways?

No. I think retention of all is necessary as they are important guideposts for future reforms.

- c. Specifically, 39 USC § 101(b) states, "The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." Do you support this policy goal or believe it should be changed in any way?

I consider it one of the most important of the seven pillars.

PRC Rate Review

14. One of the core principles of the PAEA was to provide Postal Service customers, through the establishment of an inflation-based rate cap, with predictability and stability in pricing of the Postal Service's market dominant products. Pursuant to the PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 30 U.S.C. §3622, including stability, fairness, and generating adequate revenue to cover Postal Service costs. The PRC found that the cap did not meet all of these criteria, including that it did not allow for the Postal Service to reach long-term financial stability or maintain high quality service standards.

- a. What is your opinion of the PRC's conclusions?

I agree with the Commission's findings that while the system was largely successful in achieving the goals related to the structure of the ratemaking system, the system has not increased pricing efficiency, nor has it maintained the financial health of the USPS as intended by the PAEA.

- b. Do you believe any of the objectives or factors should be weighted above others?

The law required the Commission to review the system and determine whether it achieved the nine objectives, considering the 14 factors, established by Congress. Congressional intent was to place the emphasis on whether the objectives were met. Therefore, I believe objectives should be given more consideration than factors, but I would not agree that any one of either categories should be weighted above all others.

15. Some argue that much of the Postal Service's financial instability has been caused by its retiree healthcare prefunding payments.

a. Do you agree with this view?

I believe the payment schedule established by the PAEA has been impossible to meet and is part of the Postal Service's problem. However, it's also important to note that the USPS has not paid into the fund for the past 4 years, with seemingly no penalty. I agree with Commission recommendations submitted to Congress that Congress modify the retiree health benefits fund prefunding level and lengthen the payment schedule to improve USPS sustainability.

b. How, if at all, should the impact of the prefunding requirement affect the PRC's views on the Postal Service's business model?

By law, the USPS is responsible for these payments. Therefore payment of the fund must be a key consideration when looking at ways to restore financial viability to the USPS.

16. As a result of its findings, the PRC issued a Notice of Proposed Rulemaking (NPR) that proposed changes to the market dominant rate system, including additional rate authorities that would allow the Postal Service to raise prices on certain products.¹ In considering price increases, how should the Postal Service balance the need for additional revenue with the possibility that higher rates could further reduce mail volume?

The Commission may grant the Postal Service the authority to increase rates for certain products. It is for the operator to decide how much the market can bear, and increase rates proportionately.

Service Standards and Performance

17. The PAEA requires the Postal Service to consult with the PRC in establishing modern service standards, as well as in modifying the standards and planning for future standards. Do you believe PRC consultation has been effective thus far? What improvements, if any, would you make to ensure the Postal Service and PRC effectively collaborate in improving service performance and maintaining high quality service standards?

I believe the consultative process has been productive. Issuance of annual reports on service performance by the PRC bring needed transparency to the process.

¹ Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

Additional Proceedings

18. On August 23, 2018, President Trump issued a Memorandum stating that “current international postal practices in the UPU [Universal Postal Union] do not align with United States economic and national security interests.” On October 17, 2018, the White House announced the United States would withdraw from the UPU within one year, and concurred with a State Department recommendation that the United States adopt self-declared postal rates no later than January 1, 2020. The UPU held a special meeting in April 2019 to address these concerns and will hold an Extraordinary Congress in September 2019 to vote on rate reform proposals. What do you believe the PRC’s role will be, and what challenges will it face, regarding postal policy issues and the potential implementation of self-declared rates? If confirmed, how would you prepare to meet these challenges?

In accordance with 39 U.S.C. Section 407(c)(1) and 39 CRF part 3017, the Commission established a docket on June 20 for the purpose of developing its views on whether certain proposals for the Third Extraordinary Congress are consistent with the standards and criteria for modern rate regulation; specifically, terminal dues for Inbound Letter Post small packets and bulky letters. Additionally, on May 22, USPS filed with the Commission Order CP2019-155 proposing self-declared rates. The actual implementation of these rates will be up to the USPS.

It is the duty of the State Department, with White House approval, to convene the members of the delegation that will travel to the September Congress. That step has not yet occurred.

For the past 13 years I have served as the Commission representative to the State Department’s Federal Advisory Committee on International Postal and Delivery Services. Holding this position ensures I remain abreast of all international postal matters. I will continue my diligence as a commissioner.

19. The President’s Task Force on the U.S. Postal System recommended the Postal Service distinguish between “essential” mail and packages “for which a strong social or macroeconomic rationale exists for government protection” versus mail and packages that are commercial in nature, and recommended the Postal Service pursue price increases, reduce service costs, or exit the business line for the latter category. What are some of the challenges to the Postal Service and PRC in distinguishing between these categories, particularly given the essential nature of certain deliveries to customers who otherwise would not have access to mail services?

I believe the job of determining which products should or should not be covered by the universal obligation belongs to Congress. The PRC and the USPS could provide input. A thorough assessment of the public’s needs must come first.

20. The number of Negotiated Service Agreements (NSAs) has increased in recent years. In FY 2012, the PRC approved 54 NSAs, growing to 290 in FY 2018.² How do you view the increase in NSAs and what do you believe the PRC should do to handle the NSA workload and provide timely reviews?

I consider the increase in number to be positive and reflects increased USPS use of rate setting flexibilities. The vast majority of NSAs filed with the Commission are competitive, and share cost characteristics with existing NSAs. This enables a highly efficient review process by the Commission. On occasion the Postal Service will file a unique NSA that will require additional time for staff review. I do not consider this problematic.

V. Relations with Congress and the Public

21. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Based upon my years spent working in the U.S. Senate, I am aware of Congress' need for expeditious responses to information requests. As the Commission's Director of Government Relations, I make responding to Member requests a priority. I would continue that practice as a commissioner.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

23. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

24. If confirmed, do you commit to take all reasonable steps to ensure that you and the PRC comply with deadlines established for requested information?

Yes.

25. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

² Postal Regulatory Commission: *Annual Report to the President and Congress, Fiscal Year 2018* (January 2019) (<https://www.prc.gov/sites/default/files/reports/PRC%202018%20Annual%20Report-FINAL-Digital%20Filed.pdf>)

26. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

27. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving U.S. Postal Service operations and effectiveness?

Yes.

28. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

29. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

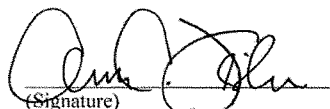
Yes.

VI. Assistance

30. Are these answers your own? Have you consulted with the U.S. Postal Service or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with PRC staff on certain case specifics.

I, Ann C. Fisher, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 25 day of June, 2019

**Senator Maggie Hassan
Post-Hearing Questions for the Record
Submitted to Ann C. Fisher**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

1. Last fall, I sent a letter with Sen. Shaheen to Postmaster General Megan Brennan encouraging the United States Postal Service to work with city officials to address the concerns raised by the citizens of Portsmouth regarding the relocation of the city's Post Office while the McIntyre Federal Building undergoes renovation. In a letter to Portsmouth officials, the Postal Service committed to returning the Portsmouth Post Office to a central location, if possible.
 - a. If confirmed, will you commit to providing my office with updates on the status of the decision on where the Portsmouth Post Office will be permanently housed, including what factors the United States Postal Service is considering to make that decision?

By law, the Postal Regulatory Commission has a limited role in post office closures and consolidations. Section 404(d)(5) of Title 39 of the United States Code authorizes any person served by a post office subject to closure or consolidation to file an appeal with the Commission within 30 days of the determination to close or consolidate by USPS. When considering an appeal, the Commission must set aside a USPS determination found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record. The Commission must complete its administrative review no later than 120 days after receiving the appeal.

The Postal Service has shared with me general background information related to the relocation of the Portsmouth Post Office. Considering the Commission's limited role, it is best that your information regarding Postal discussions with the citizens of Portsmouth come directly from USPS.

Considering Portsmouth residents' intense interest, I certainly hope the USPS will keep you abreast of all decisions related to the potential relocation of the Portsmouth Post Office. I firmly believe that the USPS should provide maximum transparency of operations to Congress regarding changes to their retail network. In the meantime, I will share this QFR and my response with USPS leadership.

For your information, I would like to share with you appropriate USPS contacts:

Donald Hildreth, Postmaster
Portsmouth, NH 03801
Phone: [REDACTED]
Email: [REDACTED]

Kathi Roy, C&IC Manager
151 Forest Avenue, Suite 7022
Portland, ME 04101-7022

Email: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

U.S. Postal Service Government Relations
Michael Gordon, Government Relations Representative
Jim Cari, Government Relations Representative
475 L'Enfant Plaza SW
Washington, DC 20260-3500

Phone: [REDACTED]

Fax: [REDACTED]

**Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Ann C. Fisher**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

- 1) The Postal Service is going through a challenging period with extreme financial pressure and a need to make critical changes. To survive, the Postal Service needs strong leadership, and that includes among its regulators.
 - a. What key leadership traits will you bring to the table in this role with the PRC?

Key leadership traits I will bring to the role of commissioner are openness, a focus on teamwork, commitment to mission, and delivery of a high quality work product.

- 2) Given the recent reports of the Postal Service's new business plan and the cuts to service infrastructure contained in the plan.
 - a. What do you believe the role of the PRC should be in evaluating the cost savings and impact on the financial health of USPS on structural changes that involve consolidation or changes in service?
 - b. Given previous USPS decisions regarding consolidation failed to produce promised savings, should PRC play a role in preemptively reviewing proposed business plan changes, to ensure the financial underpinnings of proposed cost savings are accurate?

The PRC has an important role to play regarding proposed structural or service changes proposed by USPS that would have a nationwide impact.

By law, any change made by the USPS that will generally affect service on a nationwide or substantially nationwide basis requires the USPS to seek an advisory opinion from the PRC (39 U.S.C. § 3661). Since 2008, the PRC has issued five advisory opinions. Each contains a thorough review of the USPS proposal, along with the associated cost savings. The Commission also advises as to whether it believes the USPS proposal is consistent with public policy requirements regarding the provision of adequate and efficient postal services to the Nation.

Due to the significant public and congressional interest in such changes, the PRC has previously recommended to Congress that USPS be required, upon receipt of the PRC's advisory opinion, to provide a written response to Congress, prior to implementation, addressing the Commission's recommendations.

SUSAN M. COLLINS
MAINE

413 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
SPECIAL COMMITTEE
ON AGING,
CHAIRMAN
APPROPRIATIONS
HEALTH, EDUCATION,
LABOR, AND PENSIONS
SELECT COMMITTEE
ON INTELLIGENCE

July 15, 2019

The Honorable James Lankford
Chairman
Senate Subcommittee on Regulatory Affairs and Federal Management
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Kyrsten Sinema
Ranking Member
Senate Subcommittee on Regulatory Affairs and Federal Management
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lankford and Ranking Member Sinema:

I am writing to offer my strong endorsement of Ann C. Fisher to serve as a Commissioner of the Postal Regulatory Commission (PRC). With over 20 years of experience working on Postal Service issues, Ann's expertise makes her highly qualified to serve as the Commissioner of the PRC. Ann has had a successful career as a senior government executive, working in a multitude of roles and serving as a reliable liaison to Congress, the Postal Service, and the many stakeholders invested in Postal Service issues.

I can attest to Ann's breadth of experience and expertise because she served as my principal advisor on these issues when I was Chairman of the Senate Homeland Security and Governmental Affairs Committee. During her time as my advisor, she was instrumental in the passage of the Postal Accountability and Enhancement Act, which I authored and was signed into law in 2006. This extensive legislation provided crucial updates to postal laws that had not been revised for over three decades. Ann's remarkable knowledge of the issues, combined with her ability to understand the array of concerns of the many disparate stakeholders involved, was the key to successfully passing this incredibly complicated legislation.

She showed those same skills in her roles at the PRC, first as Chief of Staff and now as Director of the Office of Public Affairs and Government Relations. There is no question that Ann understands the challenges and complexities the Postal Service faces. She knows the importance of sufficient postal services in rural states like Oklahoma, Arizona, and Maine. And her appreciation of the larger and smaller scope of the Postal Service has enabled her to serve her roles well and will be a major asset should she be confirmed.

Ann was raised in South Dakota, the daughter of two dedicated public servants in her home state. She has followed suit and pursued a career devoted to public service. I can truly think of no person better suited for this position, and I strongly urge the Subcommittee to approve her nomination for consideration by the full Senate.

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Sincerely,

A handwritten signature in black ink that reads "Susan Collins". The signature is written in a cursive style with a large, prominent "S" and "C".

Susan M. Collins
United States Senator

Opening Statement of Ashley E. Poling
Nominee, Postal Regulatory Commission
July 16, 2019

Good morning Chairman Lankford, Ranking Member Sinema, and members of the Committee. Thank you for inviting me to testify today regarding my nomination to the Postal Regulatory Commission.

I am thankful for the family, mentors, friends, and colleagues who could all be here today—it means the world to me. I would also like to take a moment to introduce and thank my wonderful parents, Barclay and Lindy Poling. Their unwavering guidance, love, and support over the years have been nothing short of extraordinary, and they have truly shown me what it means to be a public servant. They have also had to hear far more about postal issues over the years than any parents ever should, and for that I will be forever grateful. I would also like to thank Congressman Mark Meadows for introducing me today and Senator Heidi Heitkamp for her letter of support for the hearing record.

I have spent significant time working on postal policy in the United States Senate, and I have been uniquely fortunate to work for three past and present members of this Committee: Ranking Member Gary Peters of Michigan, Senator Heidi Heitkamp of North Dakota, and Senator Jon Tester of Montana. In over five years of working on the Homeland Security and Governmental Affairs Committee, I have gained a strong appreciation for the vital role that the Postal Service plays in the lives of postal customers across our nation.

In my work for the states of Montana and North Dakota, I have personally seen how post offices represent the heart of the communities they serve and why the Postal Service is a lifeline to the individuals and small businesses in rural America. It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring that strong service provisions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefitted the postal customer on the local level and would ensure the Postal Service's accountability to its customers.

Relationship building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective states of North Dakota and North Carolina. Their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral negotiating role in four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over

multiple Congresses with the entire postal community. This includes stakeholders from a large coalition of mailers, all four of the major postal unions, postmasters, postal supervisors, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General, and offices in the House and the Senate, on both sides of the aisle.

The United States Postal Service is at a critical crossroads in our nation's history. It faces significant financial challenges that pose a very real threat to its long-term viability. The fiscal path that the Postal Service is on is not a sustainable one, but it also has the very real potential for revitalization through needed legislative reforms in Congress. By working collaboratively across the postal community on these challenges, I believe we can preserve, revitalize, and modernize a vital lifeline of communication that has existed for over 200 years. If confirmed as a Postal Regulatory Commissioner, I would welcome the opportunity to actively work with all of our stakeholders, this Committee, the entire Congress, my fellow commissioners, and the Postal Service to find commonsense, lasting solutions to the challenges faced by this agency so that the best results can be delivered to postal customers across our country.

Thank you for considering my nomination and I look forward to answering your questions.

###

REDACTED

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Commissioner, Postal Regulatory Commission	June 12, 2019

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Ashley	Jay Elizabeth	Poling	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 442 Hart Senate Office Building		
<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20008	<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20510

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth <small>(Do not include month and day)</small>	Place of Birth
1987	Raleigh, North Carolina

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> <small>(current spouse only)</small>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
N/A			

<i>Spouse's Other Names Used</i> <small>(current spouse only)</small>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From <small>(Month/Year)</small> <small>(Check box if estimate)</small>	Name Used To <small>(Month/Year)</small> <small>(Check box if estimate)</small>
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix
N/A			

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
Elon University School of Law	Law School	August/2010 <input type="checkbox"/> Est	Present <input type="checkbox"/> Est May/2013 <input type="checkbox"/>	Juris Doctor	May 25, 2013
College of William & Mary	University	August/2005 <input type="checkbox"/> Est	Present <input type="checkbox"/> Est May/2009 <input type="checkbox"/>	Bachelor of Arts	May 17, 2009
		<input type="checkbox"/> Est	Present <input type="checkbox"/> Est <input type="checkbox"/>		
		<input type="checkbox"/> Est	Present <input type="checkbox"/> Est <input type="checkbox"/>		

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)
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Director of Governmental Affairs & Senior Counsel, Ranking Member Gary Peters (D-MI)	Washing ton, DC	January 2019 <input type="checkbox"/> Est <input type="checkbox"/>	Present <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Senior Policy Counsel, Subcommittee on Regulatory Affairs and Federal Management, Ranking Member Heidi Heitkamp (D- ND)	Washing ton, DC	October 2017 <input type="checkbox"/> Est <input type="checkbox"/>	January 2019 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Counsel, Subcommittee on Regulatory Affairs and Federal Management, Ranking Member Heidi Heitkamp (D- ND)	Washing ton, DC	March 2015 <input type="checkbox"/> Est <input type="checkbox"/>	October 2017 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate	Legislative Aide, Office of Senator Jon Tester (D-MT)	Washing ton, DC	January 2015 <input type="checkbox"/> Est <input type="checkbox"/>	March 2015 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security	Counsel, Subcommittee	Washing ton, DC	April 2014 <input type="checkbox"/> Est <input type="checkbox"/>	January 2015 <input type="checkbox"/> Est <input type="checkbox"/>

	& Governmental Affairs Committee.	on the Efficiency and Effectiveness of Federal Programs & the Federal Workforce, Chairman Jon Tester (D-MT)			
Other Federal Employment	United States Senate	Staff Assistant, Office of Senator Jon Tester (D-MT)	Washington, DC	April 2014	April 2014
Other Federal Employment	United States Senate	Senate Intern, Office of Senator Jon Tester (D-MT)	Washington, DC	September 2013	April 2014
Unemployment	Period between end of law school/end of clerkship and when I started job in Senate		Raleigh, NC	July 2013	September 2013
State Government (Non-Federal Employment)	University of North Carolina School of Government/Elon University School of Law	Clerk for Criminal Subcommittee of North Carolina Pattern Jury Instructions Committee	Chapel Hill, NC	August 2011	July 2013
Other	International Rights Advocates	Spring Intern (externship in my final semester of law school for academic credit)	Washington, DC	January 2013	May 2013
Other	Friends Unite (nonprofit organization)	Head of Human Rights Issues & Advocacy/Volunteer	Raleigh, NC	March 2012	May 2013
Other	Santa Clara University School of Law (International Law, Humanitarian Law, and Human Rights Law Program)	Study Abroad Program Student, after 1 st year of law school for academic credit (7-week program)	Geneva, Switzerland & Strasbourg, France	June 2011	July 2011
Other	Elon University School of Law	Full time Student	Greensboro, NC	August 2010	May 2013
Non-government Employment	Martin & Jones, PLLC	Asbestos Claims	Raleigh, NC	June 2009	July 2010

Nongovernment Employment	G. Bates Studio	Assistant Part-Time Sales Associate	Williamsburg, VA.	January 2009	May 2009
Other	College of William & Mary – Reves Center for International Studies	Study Abroad Program Student, Christ's College, before final year of college for academic credit (5-week program)	Cambridge, United Kingdom	July 2008	August 2008
Nongovernment Employment	Poynor Spruill, LLP	Summer Intern	Raleigh, NC	May 2008	June 2008
Nongovernment Employment	Raleigh Racquet Club	Lifeguard/Swim Coach	Raleigh, NC	May 2007	August 2007
Nongovernment Employment	Raleigh Racquet Club	Lifeguard/Swim Coach	Raleigh, NC	May 2006	August 2006
Other	College of William & Mary	Full time Student	Williamsburg, VA	August 2005	May 2009
Nongovernment Employment	Raleigh Racquet Club	Lifeguard	Raleigh, NC	May 2005	August 2005

(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)
N/A		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>

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.

N/A

(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.

N/A

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.

- **September 2016: Golden Buffalo Award**
 - Awarded by Senator Heitkamp's office for "outstanding service in the planning, execution and follow up of terrific events in North Dakota as we continue to work to improve mail delivery for all North Dakotans." This was largely the result of the development, coordination, planning, and execution of the Postmaster General's visit to North Dakota in 2016.
- **April 2009: William & Mary Benjamin Stoddert Ewell Award**
 - One of 40 members selected from the undergraduate and graduate classes of 2009 (approximately 2,160 students total) to be honored with this award "for outstanding participation and leadership in campus and community activities and for service and contribution to the College."
- **Spring 2009: Kappa Kappa Gamma Outstanding Senior Award**
 - Voted upon by a chapter of approximately 90 women.
- **Spring 2006: Kappa Kappa Gamma Outstanding New Member Award**
 - Voted upon by a chapter of approximately 90 women.
- **Spring 2005: Family Circle Cup/L'Oreal Personal Best Scholarship, North Carolina Recipient**

- o Awarded to three women from South Carolina, Georgia, and North Carolina for “outstanding charitable and volunteer achievements in their respective communities.”
- **Spring 2005: Lion’s Club International Local Scholarship Recipient, Raleigh, North Carolina**
 - o Awarded to high school students planning to attend two or four-year colleges based on their record of service to their high schools and community.

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
William & Mary Washington, DC Alumni Chapter Board	June 2016 - Present	Scholarship Committee Chair (September 2017 – Present) Events Committee Co-Chair (September 2016 – September 2017)
William & Mary Young Guard Council	May 2009 – Present (membership ends in June 2019)	Vice Chair (May 2016 – Present) Class of 2009 Representative (May 2009 – Present)
William & Mary Society of 1918	March 2019 – Present	Member
Kappa Kappa Gamma Sorority	August 2005 – May 2009 August 2005 – Present (as Alumina)	Member (August 2005 – Present) Alumna (May 2009 – Present)

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7. Political Activity

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

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
N/A			

(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.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Heidi for Senate	Voter Protection Volunteer	Handled hundreds of calls on the Dem-NPL North Dakota Voter Protection hotline and helped educate voters on what documents they would need to vote successfully via absentee ballot, early voting, or on Election Day. Also poll watched during early voting at multiple polling locations in Fargo to ensure voters were being given accurate information to vote successfully by Election Officials.	October 23, 2018 – November 6, 2018
Heidi for Senate	Phone Banking Volunteer	Made calls on behalf of North Dakota Democratic statewide candidates for the 2018 midterm election.	June 27, 2018
Planned Parenthood Advocates of Montana	Phone Banking Volunteer	Made calls on behalf of Montana Democratic	October 6, 2016

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.

Title	Publisher	Date(s) of Publication
"What does Tribe Pride mean to you?"	College of William & Mary, Alumni University Advancement Gale Blog Post	November 21, 2017
"Study Abroad presents law students with international opportunities"	Elon University School of Law, contributed to reporting for this article	February 20, 2013
"A New Way of Seeing Things: Report on the Fall 2012 Study Abroad/International Panel"	Elon University School of Law, Student Report on International Panel/Benefits of International Study	December 20, 2012
"Saving Babies: One Foot at a Time"	Friends Unite nonprofit volunteer Blog Post	July 29, 2012
"The Impact of Introductions"	Friends Unite nonprofit volunteer Blog Post	July 29, 2012

(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
United Postmasters and Managers of America Legislative Summit Congressional Staff Panelist	G-50 Dirksen Senate Office Building, Washington, DC 20510/Audience made up of UFMA members from across the country	January 28, 2019
The Rural/Urban Divide; Package Delivery in the 21 st Century Panel	USPS Office of Inspector General Headquarters, 1735 N. Lynn Street, Arlington, VA 22209/Audience made up largely by members of postal stakeholder community	August 7, 2018
A Grand Alliance to Save our Public Postal Service/Postal Heritage Day Panelist	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of congressional staff, members of postal stakeholder community	July 26, 2018
The Capitol Forum: USPS Last Mile Policy Conference Panelist	The National Press Club, 529 14 th Street NW, Washington, DC 20045/Audience made up of members of the postal stakeholder community	June 13, 2018
American Catalog Mailers Association National Conference Panelist	The Dupont Circle Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036/Audience made up of members of the ACMA from across the country	May 22, 2018
National Rural Letter Carriers Association Legislative Seminar Panelist	Hyatt Regency on Capitol Hill, 400 New Jersey Avenue NW, Washington, DC 20001/Audience made up of NRLCA members from across the country	May 21, 2018
American Postal Workers Union State Convention	C'Mon Inn, 3051 32 nd Avenue S, Grand Forks, ND 58201/Audience made up of North Dakota APWU members from across the state	April 21, 2018
National Association of Postal Supervisors Legislative Seminar Congressional Staff Panelist	Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202/Audience made up of NAPS members from across the country	March 12, 2018

United Postmasters of America Legislative Summit Congressional Staff Panelist	Capitol Visitor Center Auditorium in U.S. Capitol/Audience made up of UPMA members from across the country	February 26, 2018

(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.

Title	Place/Audience	Date(s) of Speech
National Active and Retired Federal Employees Association Legislative and Training Conference Congressional Staff Panelist	Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311/Audience made up of NARFE members from across the country	March 11, 2019
Partnership for Public Service Schaeffer Fellows Program "Values and Vision" Session Panelist	1100 New York Avenue, Suite #200 East, Washington, DC 20005/ Audience made up of Schaeffer Fellows who are selected from four elite universities across the country. Focus of program is to help participants become engaged citizens and to develop an informed view of government service and operations.	June 9, 2017
National Active and Retired Federal Employees Association Legislative and Training Conference Congressional Staff Panelist	Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311/Audience made up of NARFE members from across the country	March 13, 2017
William & Mary Alumni Capitol Hill Panel Discussion with Congressional Staff who are alumni	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of current students enrolled at William & Mary Washington Center	January 13, 2017
William & Mary Alumni Capitol Hill Panel Discussion with Congressional Staff who are alumni	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of current students enrolled at William & Mary Washington Center	January 14, 2016

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.)
 - NO
- 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).

N/A for all in this section

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

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):

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:

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

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):

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:

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:

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

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.

<u>Date/Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
N/A				

(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.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
N/A				

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(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.

N/A

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
N/A			

(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

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)

15. Agreements or Arrangements

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)

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

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.

Handwritten signature of Stanley Jay Ezekiel Poling in black ink.

THIS 22nd day of JUNE, 2019

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



June 18, 2019

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 Ashley Jay Elizabeth Poling, who has been nominated by President Trump for the position of Commissioner, Postal Regulatory Commission.

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.

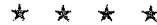
Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL Digitally signed by DAVID APOL
Date: 2019.06.18 12:21:30 -0400

David J. Apol
General Counsel

Enclosures **REDACTED**



May 20, 2019

David A. Trissell
General Counsel and Designated Agency Ethics Official
Postal Regulatory Commission
901 New York Ave., Suite 200
Washington, DC 20268-0001

Dear Mr. Trissell:

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 Commissioner at the Postal Regulatory Commission.

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.

Upon confirmation, I will resign from my position with the William and Mary Young Guard Council. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the William and Mary Young Guard Council is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

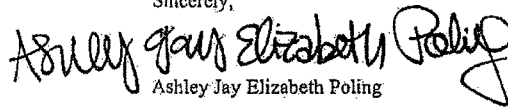
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Commissioner in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

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.

Sincerely,


Ashley Jay Elizabeth Poling

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Ashley Poling to be
Commissioner, Postal Regulatory Commission**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to serve as a Commissioner on the Postal Regulatory Commission (“PRC” or “the Commission”)?

No.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner of the PRC? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I am not aware of any conflicts and have worked with the Postal Regulatory Commission’s General Counsel and Office of Government Ethics throughout this process to identify any actual or apparent conflicts of interest. I have since signed an ethics agreement where I have pledged to resign from certain non-governmental positions if confirmed. I have also pledged to avoid participating in any matter in which I have financial interest and to ensure that any account professional or investment manager I obtain during my potential appointment would obtain my approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201 (a), obligations of the United States, or municipal bonds.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be a Commissioner of the PRC?

I have spent significant time working on postal policy in the United States Senate, and specialized in this issue area during my years working for two Senators from rural states—former Senator Heidi Heitkamp of North Dakota and Senator Jon Tester of Montana. The Postal Service plays a central and unique role in rural communities, and I quickly realized just how impacted our constituents were by degradations in service that resulted from a series of operational changes that were made to the Postal Service network after experiencing significant decreases in mail volume. To date, nearly 160 mail processing facilities have been consolidated across the country and the Postal Service also eliminated the overnight service standard for First-Class Mail, meaning that it now takes even longer than it used to for mail to get from Point A to Point B.

It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring strong service provisions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefitted the postal customer on the local level and that would ensure the Postal Service's accountability to its customers. This strategy ultimately resulted in the introduction of original rural postal legislation, the inclusion of principles from that legislation in broader Senate postal reform legislation in the 114th Congress with a strong emphasis on service, and culminated in the bipartisan introduction of the most widely supported comprehensive postal reform bill by the postal stakeholder community in years in the 115th Congress (S. 2629).

Relationship building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective states of North Dakota and North Carolina, and their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral negotiating role in four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over multiple Congresses with the entire postal community, including stakeholders from a large coalition of mailers, all four of the major postal unions, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General, and offices in both the House and the Senate, on both the Member and staff level, and on both sides of the aisle.

I believe my ability to build strong bipartisan relationships, my trusted and balanced reputation in the postal stakeholder community, my creative problem-solving approach,

my passion for postal issues and my collaborative spirit make me an ideal candidate for this position.

6. Please describe:

a. Your leadership and management style.

I would describe my leadership and management style as highly engaging, collaborative, supportive, and empowering. I strongly believe that being an active listener and always treating team members with respect leads to increased morale and productivity in an office environment. As a leader, I also believe it is important to be approachable, compassionate, self-aware, and to conduct yourself with the highest integrity at all times. In my role, I am constantly required to prioritize and triage issues that we deal with on the governmental affairs team for the Ranking Member. While this can certainly be a challenge at times, I feel it is incumbent upon me as a supervisor to insulate my team from as much stress as possible and to navigate difficult situations with a positive attitude.

b. Your experience managing personnel.

I currently serve as the Director of Governmental Affairs for the Ranking Member, and my favorite part of my job is managing my team. While I have helped to manage fellows in previous positions, this is my first explicitly supervisory role on the Hill. Throughout my life experience, I have always enjoyed mentoring and I feel like I have the opportunity to do this every single day as a supervisor. I have an open door policy and believe that my team members always feel comfortable coming to me to discuss policy ideas, strategy, or anything else that is important for them to have the best work experience possible. As a supervisor, I am a strong advocate for my team and make it clear that we will work through any challenge together.

c. What is the largest number of people that have worked under you?

I currently manage/oversee ten people as the Director of Governmental Affairs for the Ranking Member. This includes full time staff members, fellows, a detailee, and a law clerk. This number will soon increase to eleven with the addition of an intern.

III. Role of the Postal Rate Commission and its Commissioners

7. Please describe your view of the Commission's core mission and an individual Commissioner's role in achieving that mission.

The Commission's core mission is to "ensure transparency and accountability of the United States Postal Service and foster a vital and efficient universal mail system" (Postal Regulatory Commission Mission Statement).

An individual Commissioner's role is to be fair and impartial in all matters brought before the Commission and to help carry out the PRC's mission of transparency and

accountability of the Postal Service. I also believe it is important for the Commission to be as responsive as possible to Congress.

8. The President's task force on the United States Postal Service (USPS or Postal Service) recommended a stronger regulatory oversight role for the PRC. What role do you believe the Commission should play in overseeing the Postal Service?

The Commission has regulatory authority over the Postal Service in the following areas: price changes, service standards and service performance, financial accounting and reporting, proposed nationwide changes in service, customer complaints, and overall compliance with the Postal Accountability and Enhancement Act of 2006. I think it is important for the Commission to carry out its regulatory authority in compliance with the law. The President's task force on the United States Postal Service made a number of legislative and administrative recommendations. It is my understanding that any of the administrative recommendations would require administrative proceedings and a majority vote of the Commissioners. Having not served on the Commission, this is something I would need to analyze carefully if confirmed.

9. The Commission is an independent agency. How do you understand that obligation of independence? How does such independence affect your approach to the evaluation and decision of cases?

I understand the Commission's obligation of independence to mean that it must be immune from political and outside influence as it conducts its regulatory oversight authority over the Postal Service. An individual Commissioner's role is to be fair and impartial in all matters brought before the Commission and to help carry out the PRC's mission of transparency and accountability of the Postal Service. I would be strongly committed to that approach as a Commissioner, if confirmed.

10. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

- a. During your career, how have you addressed whistleblower complaints?

In my role as a congressional staffer and supervisor, I have always placed the highest value on whistleblower complaints. While I have not worked on these issues directly very often on the Hill, I recall them coming up the most in the constituent context through casework in my previous position. I learned about some complaints directly when I was out in the state and/or speaking with my state colleagues. After gaining a thorough understanding of what the circumstances entailed from the relevant parties, our office would work to draft a request for the Postal Service Office of the Inspector General to investigate the issues that arose. We were always cognizant of protecting whistleblower confidentiality, and our state staffers did an excellent job of interacting regularly with all of those who reached out to our state offices for help.

- b. How would you plan to implement policies within the Commission to encourage employees to bring constructive suggestions forward without the fear of reprisal?

If confirmed, I would work to make sure that all policies are communicated clearly to employees within the Commission so that they would have the best chance of being followed as fully and as accurately as possible. I would also do my best to make employees aware of the fact that constructive suggestions are important and that they should never be in fear of reprisal.

- c. Do you commit without reservation to work to ensure that any whistleblower within the Commission does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

IV. Policy Questions

Previous Postal Service Reforms

11. It has been nearly twelve years since the Postal Accountability and Enhancement Act of 2006 (PAEA) (P.L. 109-435) changed postal pricing to provide the Postal Service with more flexibility as well as improve the rate-making process.

- a. Do you believe the Postal Service has effectively utilized the pricing flexibility provided by the PAEA? If yes why, if no why not?

The PAEA directed the PRC to develop a modern system for regulating rates and classes for Market Dominant products and also directed the Postal Service Board of Governors to establish rates and classes for products in the competitive mail category. It is my understanding that the increased pricing flexibility provided for under PAEA has helped shape the Postal Service's approach to developing specific initiatives: seasonal pricing incentives, market tests of experimental products, and Negotiated Service Agreements. It is also my understanding that the Postal Service has also used its flexibility within the Market Dominant category of mail to set prices for products below the class level and also when setting workshare discounts.

- b. Do you believe the goal of increased flexibility was met? If yes why, if no why not?

It is my understanding that the Postal Service has taken advantage of the PAEA's increased pricing flexibility through the various specific initiatives listed above. With that said, I imagine there are always ways for the Postal Service to be using these flexibilities more effectively. Having not served on the Commission, this is something I would need to analyze carefully if confirmed. Additionally, I think it is important to note that there are a number of other issues that the Postal Service has been navigating as a result of decreased mail volume and its requirement to prefund

future retiree health benefits under the 2006 law. It is important for a sustainable path to be found soon so that the Postal Service has the ability to overcome these various hurdles as effectively as possible.

- c. Should “flexibility” include the ability of the Postal Service to have different price increases for one class of mail versus another class? If yes why, if no why not?

Under PAEA, my understanding is that rate changes for each Market Dominant mail class (those over which the Postal Service exercises an effective monopoly) may not exceed the inflation-based annual price cap (Consumer Price Index for All Urban Customers) and that Competitive products (those over which the Postal Service competes with the private sector) must cover their attributable costs. It is my understanding that while there is a ceiling by class, there is no floor. This means that the Postal Service is free to have different price increases as long as it does not surpass this ceiling. One of the primary purposes of the PRC’s 10-year required rate review under PAEA is to evaluate the rate-setting system and to determine if Congress’s objectives under the law have been met. While the PRC issued a proposed rule in December of 2017, that rule has yet to be finalized. It is my understanding that this review is still pending before the Commission. Having not served on the Commission, this is something I would need to analyze carefully if confirmed in order to make a fully informed decision on this question.

- d. Do the workshare provisions of the Commission rules, all else equal, foster flexibility? If yes why, if no why not?

I understand that Postal Service is able to offer Postal Regulatory Commission approved workshare discounts to mailers so that they can perform mail preparation and distribution activities that the Postal Service would otherwise be responsible for carrying out. Under PAEA, these discounts should not exceed (with limited exceptions) the costs that the Postal Service avoids by allowing mailers to perform these activities in this workshare relationship. While the workshare provisions seem to foster flexibility, I have not served on the Commission and would therefore want to evaluate this question further if confirmed. In addition, there was a 2015 Postal Service Office of the Inspector General audit report that found that certain workshare discounts no longer benefit the Postal Service as they were originally intended because of how much the mail processing network has changed over the years and recommended that Postal Service management periodically work with the PRC to review these discounts. I would be interested to see what recommendations have been implemented since the time of this audit report.

12. The PAEA substantially changed the relative responsibilities of the Postal Service Board of Governors and the Commission.

- a. What do you believe are the most important decisions the Commission has made since the PAEA?

I believe that one of the most important decisions that the Postal Regulatory Commission has made since PAEA was on July 5, 2018 when the Commission approved new internal service performance measurement systems for certain Market Dominant products, including products within domestic First-Class Mail, Periodicals, Marketing Mail, and Package Services. Both of my former bosses teamed up on a letter to the Postal Regulatory Commission in May of 2015 that requested that the Commission conduct an in-depth study on rural mail delivery, and specifically, on mail service between rural communities and mail service between rural and urban communities. This request resulted in a number of meetings with both the Postal Service and the Postal Regulatory Commission on the Postal Service's updates to their measurement system. I believe that the emphasis our offices placed on the importance of accurate service measurement in rural communities informed decisions in regards to the new system and ultimately made it much more granular in its tracking of rural mail.

I also believe the exigent rate increase that was put in place as a result of the Great Recession of 2007-2009 is one of the most important decisions that the Commission could have made with respect to the Postal Service's financial health.

- b. What are the key decisions you expect the Commission to make in the future under the PAEA?

I believe that the Commission's final rule on the 10-year rate review that was required under the PAEA will be one of the most important decisions that the PRC has made since the enactment of the law. The Commission issued a proposed rule in December of 2017 that found its system for regulating rates and Market Dominant products has not maintained the financial health of the Postal Service as intended under the law.

- c. Generally, what approaches do you advocate the Commission should take in regulating the Postal Service and why?

I believe that the Commission could become even more engaged in regards to its regulatory oversight role over service standards and service performance as part of its mission is to foster a vital and efficient universal mail system. I am intimately familiar with this area of postal policy from my time working for the rural states of North Dakota and Montana, and understand the very real impacts that mail processing plant consolidations have had on service performance. I think this is an area where greater oversight is needed, but having not served on the Commission, I would have to evaluate the best way to engage more in this area if confirmed. In addition, the PRC is responsible for ensuring transparency and accountability in its regulatory role over the Postal Service

13. What is your overall impression of how well the postal reforms under the PAEA have been implemented so far? What areas have been most challenging, and what areas do you believe need the most attention in the future?

I understand that the PAEA has been implemented fairly comprehensively since its enactment. It is important to note that at the time of the bill's enactment, the Postal Service was in a very different place in respect to mail volume and revenues. While the retiree health prefunding mandate may not have been as burdensome at the time of enactment, it became increasingly more so as the Postal Service navigated the Great Recession and declining mail volumes in the years since the PAEA's passage.

14. The PAEA set forth a new process for resolving complaints against the Postal Service. What do you believe must be done to ensure that the Commission will review and resolve any complaints promptly and fairly?

I believe it is important for the Commission to do everything it can to resolve any complaints against the Postal Service as promptly and as fairly as possible, which means that there also must be strong communication. It is also important to make sure that the Commissioners are approaching their review with an aligned methodology for evaluation purposes. It is also important for the Commission to monitor and maintain adequate staffing levels.

Postal Service Operations

15. What role, if any, should the Commission have in the Postal Service's operational decisions?

The Postal Service's role is that of the operator, while the Postal Regulatory Commission's role is that of the regulator. The Commission is responsible for ensuring the accountability and the transparency through its oversight of the operator, the Postal Service, and for fostering a vital and efficient universal mail system. The Postal Service is solely responsible for making operational decisions, while the Commission would only provide guidance on those decisions through advisory opinions.

16. Should Congress modify or repeal the requirement for the Postal Service to seek advisory opinions from the Commission, as some have proposed? Why or why not?

As the Postal Service touches every single household in our country, I believe it is important to consider the importance of the regulator's role in protecting the public, as well as its commitment to transparency. I understand that the Commission's issuance of advisory opinions allows the PRC to evaluate certain operational decisions of the Postal Service. I also understand that there is nothing that requires the Postal Service to take into account the Commission's guidance—something I am familiar with from years of working on postal policy. One potential way of making the role and impact of advisory opinions more clear would be through legislation. I have only thought of this in terms of congressional legislation. Having not served on the Commission, this is something I would need to analyze carefully if confirmed.

17. What do you believe should be the role of the Commission in helping to ensure that the quality and timeliness of the Postal Service's data in cases before the Commission are adequate?

It is my understanding that the Commission relies significantly on quality and timeliness of the data that the Postal Service provides in order to review cases, and that the Commission has the ability to remand or reject cases when this data has not complied with these requirements. Having not served on the Commission, I am not directly familiar with the data that the PRC receives from the Postal Service. From a congressional perspective, however, my former bosses have routinely asked for accurate data from the Postal Service.

18. The Postal Service continues to experience volume and revenue losses. According to USPS annual filings, the Postal Service ending Fiscal Year (FY) 2018 with a net loss of \$3.9 billion, an increase of \$1.2 billion over FY 2017.

- a. What additional steps do you believe the Postal Service should take that do not require Congressional action to improve its financial condition?

The Postal Service should do everything it can to make sure its current customers continue using the Postal Service. One way to do that is by ensuring that their new internal mail measurement system is being implemented as effectively as possible. The most frequent concern I heard from rural constituents while working on postal policy was in regards to poor service performance. Because the Postal Service is a lifeline to individuals and small businesses in rural America, it is important to make sure that these customers can rely on their mail in the same way as other customers throughout the country. Because the new measurement system has the ability to track mail delivery at a more granular level, that means that the Postal Service now has the ability to identify problems more quickly at the district level and fix them before issues rise to a congressional level.

In addition, the Postal Service needs to take advantage of cost saving measures that the Postal Service Office of Inspector General has identified, such as identifying opportunities to collocate with other federal agencies after determining that 86 percent of postal facilities have excess space in a congressionally mandated 2018 audit report (a determination that was close to what the Postal Service had reported to Congress under the Federal Property Management Reform Act of 2016).

Another example of where the Postal Service could improve its retail decisions and improve customer service, sales, and efficiency is by better tracking its foot traffic. According to a 2017 Postal Service Office of the Inspector General RARC Report, there were 2.7 billion post office visits in FY 2016. The Postal Service could better understand that foot traffic by gathering data on in store flows and analyzing who visits post offices and why. By better understanding its customers, the Postal Service can do a better job of ensuring that it is serving them effectively.

Finally, the Postal Service should be doing all that it can under its current authority to both manage costs and increase revenues. It is important to note that this is not an easy task, as there have been a number of technological and economic changes in the postal landscape since postal legislation was last passed in 2006

- b. What legislative changes do you believe Congress should consider to help improve the Postal Service's financial condition?

I believe it is essential for Congress to act in order to implement the legislative changes that are necessary to foster the improvement of the Postal Service's financial condition. Having worked on comprehensive postal reform legislation nearly my entire time in the U.S. Senate, there are several areas that are always discussed when contemplating potential bill provisions: the prefunding of future retiree health benefits (as required under the 2006 law), service performance, postal rates, governance, and innovation and modernization of the existing business model. One of the toughest parts about postal reform legislation is coming up with a package that will improve the Postal Service's fiscal solvency for a significant duration of time. My former boss used the word "rehydrate" when she spoke about the Postal Service, and I think that is an accurate word to describe what must be done for the Postal Service's financial health in the near term. One of the reasons it is so difficult to find a solution that will be a more permanent fix is because technology is ever changing, as is the Postal Service's dynamic customer base. The legislative solution that Congress finds will not be a permanent one, but with bipartisan negotiations and significant stakeholder support, it does have the potential to revitalize the Postal Service at a critical time in the agency's financial health.

2. In your view, how can the Postal Service return to viability in a market in which e-commerce and electronic communication and payments are increasing and mail volume is declining? What role do you believe the Commission should play in shaping the future Postal Service given these rapid changes?

The Postal Service operates at the center of a massive \$1.4 trillion printing, delivery, and logistics industry that employs approximately 7.5 million people, all while processing nearly half of the world's mail and using no taxpayer dollars to operate. While the services that the Postal Service offers are still vital, it is critical that the agency be given the ability to modernize through congressional action. One of the key issues that must be addressed is the prefunding mandate for future retiree health benefits. Because of the agency's remarkable liabilities, the Postal Service has continuously been working to cut costs, which prevents them from properly investing in the infrastructure they so desperately need. One of the reasons the Postal Service been able to navigated the e-commerce boom as well as it has is due to its unique network, as well as its key role in last mile delivery.

I believe that the Commission must be in tune with the challenges that the Postal Service faces under its current model, and should carefully consider all Postal Service proposals

that seek to modernize the Postal Service's network to meet its ever changing customer demands.

3. Since enactment of the PAEA, the Commission has interpreted the term "non-postal service" through consideration of various Postal Service proposals for new products and services.

- a. Do you believe the Postal Service should be allowed to compete with the private sector? If so, under what circumstances?

The Postal Service currently competes with the private sector through its competitive products, which cannot be cross-subsidized by Market Dominant products, must cover their attributable costs, and must collectively cover what the Commission determines to be an appropriate share of the Postal Service's institutional costs. The PAEA limits the Postal Service's authority to provide nonpostal services (aside from those that were grandfathered in before enactment of the law), which are defined as any services that are nonpostal in nature. The PAEA requires the Commission to review each nonpostal service offered by the Postal Service and to determine whether that service can continue.

- b. What concerns, if any, do you have about such efforts?

While there have been a number of discussions around increasing the Postal Service's use of nonpostal services, it is important to carefully consider the ramifications of any potential changes to the current law. The Postal Service plays an important role in the lives of the American public, so it would be important to evaluate whether expansion into certain nonpostal product spaces would allow the Postal Service to unfairly compete. I also believe that the primary goal of any comprehensive reform legislation should be to put the Postal Service on firm financial footing.

- c. What role do you believe the Commission should play in the introduction or pricing of new products?

The Commission is responsible for making sure that any new products or prices are in compliance with the law. The Postal Service is responsible for introducing and pricing these products before requesting a regulatory review from the Commission.

Postal Ratemaking

4. During consideration of the PAEA, there was debate about the impact of a consumer-inflation-based rate cap. In your opinion, how has the rate cap helped the Postal Service, the mailing community, and postal customers? How has the rate cap hurt these groups?

With the exception of the exigent rate increase that resulted from the 2007-2009 Great Recession, the consumer-inflation-based rate cap has provided stability and rate

predictability to the postal mailing community by capping rates at the class level to the rate of inflation.

The consumer-inflation-based rate cap has probably impacted the Postal Service the most negatively as it has not allowed them to address the financial challenges they face more aggressively.

5. In your view, what drawbacks and advantages would exist to increasing postal rates through legislation, rather than through the existing ratemaking process?

As a congressional staffer who has worked on numerous postal bills over the years, I have primarily considered potential postal rates increases in the context of legislation as opposed to the traditional ratemaking process. Having not served on the Commission, I would need to analyze the advantages and disadvantages of both processes if confirmed.

6. According to 39 U.S.C. § 407, the Commission submits views to the Secretary of State regarding any treaty, convention, or amendment which alters the rate or classification of certain types of mail. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

It is my understanding that the Secretary of State should prioritize U.S. law and the Commission's views when navigating treaties, conventions, or amendments.

7. The President's task force on the USPS recommended monetizing USPS's exclusive access to the mailbox to generate more income. What is your view of monetizing the "mailbox monopoly" and what role should the PRC play in ensuring fair rates in this type of monopoly?

While it is vital that new revenue streams be developed for the Postal Service, it is also important that Postal Service customers be protected from mail-related criminal activity. Opening up the Postal Service's mailbox monopoly to private companies could pose risks to the personal privacy of customers, and could potentially make them more susceptible to mail fraud, theft, etc. With that said, I would reserve judgment on this proposal until it has been further developed. The PRC would be responsible for ensuring that any proposed rates are in compliance with the law.

8. The task force also recommended that USPS redefine mail classes and define products by the type of sender and the declared purpose of the mail item. What should be the PRC's role with regard to the mail classes offered by the USPS?

It is my understanding that the Commission's role would be to ensure that any new products or rates are in compliance with the law.

Service Standards and Other Performance Obligations

9. Debates about postal reform legislation raise fundamental questions about the role of the Postal Service in our nation, including the nature of the Postal Service's universal service obligation.

- a. What is your view of the Postal Service's universal service obligation?

The universal service obligation is a wholly unique obligation that makes the Postal Service both accessible and affordable to all American postal customers, no matter where they live.

- b. Do you believe the concept of universal service has evolved since the PRC's 2008 report on universal service? If so, how? How do you believe Postal Service can adapt to meet that obligation?

The postal landscape has changed significantly since 2008, meaning that the universal service obligation has also evolved during that time. Technology has continued to evolve, as has Americans' reliance on electronic communication. While mail volume has also declined in the past decade, it is important to keep in mind the unique role that the Postal Service still plays in rural communities, and why it is important to make sure that universal service is protected. The Postal Service needs to continue to evaluate customer experience to assess how to most effectively serve the American public in rural and urban areas across the country.

- c. In your view, what is the Commission's role in preserving universal service?

The Commission is required to estimate the costs incurred by the Postal Service in providing three types of public services or activities under the universal service obligation including: postal services to areas of the nation the Postal Service would not otherwise serve, free or reduced rates for postal services as required by title 39, and other public services or activities the Postal Service would not otherwise provide but for the requirements of law. In addition to calculating costs, the Commission also has regulatory authority over service standards and service performance.

10. What do you believe should be the Commission's role in establishing performance standards for postal products and services and for monitoring the Postal Service's results in meeting these standards?

Under current law, the Postal Service, in consultation with Postal Regulatory Commission, establishes a set of service standards for Market Dominant products. It is my understanding that the Commission continuously monitors the Postal Service's service performance results in meeting those service standards. The Commission is also responsible for reviewing and assessing service performance results annually and can direct the Postal Service to improve weak service performance areas when necessary. I believe this role makes sense for the Commission, but I think additional enforcement mechanisms need to be considered so that the Postal Service can be held accountable when they are not improving service performance. My position on this is derived from

my work on service issues as a congressional staffer. Having not served on the Commission, I would have to consider this from a different perspective if confirmed.

11. The Postal Service continues to face the problem of reducing costs while also maintaining fast and reliable service. In your opinion, how can the Commission help the Postal Service try to find this balance?

In the face of declining mail volumes, a significant prefunding requirement for future retiree health benefits, the Great Recession, and changes in technology, the Postal Service has been forced to cut costs—often at the price of service to postal customers. While this has been frustrating to members of Congress, it also highlights why congressional action is necessary to implement effective postal reform legislation. The Postal Service is required to consult with the Commission in its establishment of service standards for Market Dominant products, and the Commission also continuously monitors the Postal Service’s results in meeting those standards. If confirmed, I think it is important to explore how the Commission could be even more engaged in terms of monitoring the Postal Service’s service performance.

12. In your view, what degree of transparency should the Postal Service provide to Congress, mailers, and the public on delivery performance goals and general quality of delivery services? Do you believe the Commission has sufficient information to monitor service quality?

I think it is essential for the Postal Service to provide as much transparency as possible to Congress, mailers, and the public on delivery performance goals and general quality of delivery services. One suggestion in prior iterations of postal legislation would be to publish such results online to promote absolute transparency with the public. There could be potential ways of increasing this transparency further through legislation, as certain information is already published. Having not served on the Commission, I would need to evaluate whether the Commission has sufficient information to monitor service quality if confirmed. It is my understanding that there have been instances where the information provided by the Postal Service has not been sufficient, but that the quality of the Postal Service’s information has since improved.

13. The President’s task force on the USPS recommended that if products not deemed to be “essential” do not cover their direct costs, then the USPS should increase prices, reduce service costs, or exit the business of these products. What is your view of how the universal service obligation applies to these types of mail products?

While a creative proposal, I think this would be a tough recommendation to implement in practice. As was raised at the Committee’s hearing on the Postal Task Force in March of this year, how do you objectively differentiate between products that are deemed “essential” to one person in one part of the country and “non-essential” to another? A number of factors could be at play (geographical location, season, etc.) in any given situation that would make it difficult to develop a one-size-fits-all approach. I think you could potentially run into a situation where a postal customer’s access to the universal

service obligation is compromised because a product they need may not be deemed objectively "essential."

14. Many postal stakeholders have raised concerns about the adequacy of the Postal Service's financial transparency. The PAEA requires the Postal Service to meet the financial reporting requirements of the Sarbanes-Oxley legislation. What is your opinion of this mandate and do you believe the Postal Service has satisfied this mandate? Are further improvements necessary to make Postal Service finances more transparent? If yes, what additional improvements are needed?

It is important for there to be adequate financial oversight of the Postal Service, and I believe this mandate helps significantly in that oversight. Having not served on the Commission, I am not intimately familiar with the financial reports that are filed by the Postal Service with the PRC. It would be hard for me to make an accurate assessment regarding whether further improvements are necessary to make Postal Service finances more transparent at this time.

Post Office Closings and Relocations

15. In your opinion, does the existing process for closing and relocating post offices adequately protect the interests of postal customers and the affected communities, especially in small towns and rural areas? If yes, how? If not, what additional protections do you believe are necessary?

I believe the existing process for closing and relocating post offices is adequate, but could also be further strengthened so postal customers and affected communities are more strongly protected. It is important that postal customers are given adequate notice with a specific timeline of when a post office is closing, and are alerted as quickly as possible regarding what alternative options they may have. In addition, it is important that these closing/relocation determinations consider distance, the weather and terrain of an area, and access to broadband.

16. To what extent do you think the availability of postal services at alternative locations should be a key factor when considering closing or consolidating traditional retail facilities?

The availability of postal services at alternative locations should definitely be a key factor when considering whether to close or consolidate a traditional retail facility. It is important to keep in mind that a closing or consolidation will have a distinct impact on a community, and it is important to make sure that they will have adequate access to any potential alternative.

17. Do you believe the Postal Service should have additional flexibility to more quickly and easily close post offices? If so, what impact do you believe this will have on the Postal Service's current retail network?

I do not. Post offices are central components of communities across the country and any decision to close them should be subject to a uniform process where the Postal Service is held accountable to the postal customers in a community, and is responsible for ensuring that they have alternate adequate access to postal services.

18. Many members of the public have expressed a concern that the Postal Service does not adequately involve affected communities in the decision-making process for the closings of post offices and processing facilities. What are your views on this issue?

Having heard about this problem a number of times while working for rural offices, I can affirm that this is absolutely the case. In one particular instance, we learned that a post office had closed unexpectedly in Halliday, North Dakota (population 230) in the fall of 2016. My former boss sent a letter to the Postmaster General urging the Postal Service to resolve the issues at the post office as quickly as possible so that it could be reopened, and to also make sure postal customers were provided with an alternative postal location in the interim, which ultimately became the local town hall. We worked closely with our western state staff on this situation and after continuing to press the Postal Service, were successful in getting them to reopen the post office in January of 2017. While the Postal Service's plan had never been to close Halliday's post office forever, the way in which things were handled sparked significant concern among residents, which ultimately led to our office getting involved. It is important to make sure we are building in an adequate process for members of the local community in any instance where a post office could potentially be closed—even a temporary one.

19. Are improvements needed to the Commission's appeals process related to closing and consolidating post offices? If yes, what specific changes do you believe are needed? If no, please explain why you believe the current process is viable.

It is my understanding that the Commission adopted new rules in 2015 in regards to public notice, participation by interested parties, the contents of required filings, and deadlines. I also understand that the Commission has continued to examine the appeals process related to closing and consolidating post offices. As someone who understands just how much these closures can impact communities in rural America, if confirmed, I think it is important to continue to evaluate this process so that the postal customer is prioritized.

20. Should the Commission have greater input over the closures or consolidations of post offices or postal processing facilities? Why or why not?

Having not served on the Commission, I have not had the opportunity to comprehensively assess the PRC's current role in the process, which primarily relates to appeals. If confirmed, I would need to evaluate the effectiveness of the PRC's current role in the process before making additional suggestions for further input.

V. Relations with Congress

21. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

22. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

23. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

VI. Assistance

24. Are these answers your own? Have you consulted with the Postal Service, the Commission, or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. I have consulted with the Commission and they have reviewed my answers for legal, regulatory, and technical accuracy.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Ashley Poling to be
Commissioner, Postal Regulatory Commission**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

II. Background of Nominee

3. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

I continuously strive to create a respectful environment for my team members where they feel comfortable having constructive discussions, even if this means that their views are different than my own or others. Being willing to voice when one has different views regarding a particular policy is essential to ultimately making that policy better. I believe I encourage constructive dialogue with my team members by being an approachable, active listener

4. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

A time that specifically comes to mind is in the postal arena. As people who work in Washington, DC are aware, the two years leading up to an election are critical and members have limited time to focus on multiple issue areas. In the fall of 2017, I made a pitch to the leadership in my former office as to why it was important for my boss to continue to advocate strongly on postal issues as one of the few voices committed to a bipartisan approach. While the work the Senator had done in this realm was certainly appreciated, there was concern over how much time she would have to devote to the area in the coming months. I came to the meeting with a one-pager and a strategy for how the Senator could continue her leadership on this issue while maximizing staff involvement. I aggressively advocated for this position and was successful in the way that the Senator introduced one of the most widely supported bipartisan postal bills in the spring of 2018, along with her bipartisan colleagues in the Senate.

5. What would you consider your greatest successes as a leader?

I consider my greatest success as a leader to be my ability to make people feel valued for the work that they contribute to our team. In an atmosphere like the Hill, it is easy to get caught up in every day stressors and to forget to recognize team members when they have done an exceptional job. After the last committee markup, I made a specific point to sit down with my team members who worked to advance specific bills led by the Ranking Member and not only recognized their terrific work, but also pointed out just how difficult it is to get bills out of committee. There is a tremendous amount of work that goes into every single stage of the legislative process, and I consider it to be my duty as a supervisor to be there as a support system as my team members navigate challenges, and to guide them as well as I possibly can from my own experiences on the Hill. It is not hard to make people feel valued, yet so few people take the time to actually do so on the Hill.

6. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?

One of my greatest failures as a leader is not always recognizing that mistakes shape our work and who we become as much, if not more so, than our successes. While it is my job to guide and advocate for my team members, I also find that I constantly want to protect them from making mistakes. While this is inherent in the role of a supervisor to some extent, it is also important to step back and realize that mistakes are not fatal and that they can ultimately make us all better in the work that we do. It is important to give employees the space they need to flourish even if that means that they are making some mistakes along the way.

III. The Role of the PRC and its Commissioners

7. What do you believe are the most important responsibilities of the Postal Regulatory Commission (PRC), and what is your opinion of how those responsibilities have been fulfilled?

The Commission's core mission is to "ensure transparency and accountability of the United States Postal Service and foster a vital and efficient universal mail system" (Postal Regulatory Commission Mission Statement). In practice, the Commission is able to do this through the postal rate setting process, annual determinations of Postal Service compliance, and through oversight of the Postal Service's ability to meet service performance goals. Having not served on the Commission, I cannot fully evaluate how these responsibilities have been fulfilled, but it does appear that the Commission has been very engaged in addressing pricing regulations in recent years.

8. In your view, what are the major challenges facing the PRC?

I believe the PRC has a number of challenges, some of which are also listed below, but the one that will need to be addressed in the near future is finalizing the rule of the 10-year rate review under PAEA. I know this has been an incredibly long process with significant feedback from the stakeholder community along the way. What the PRC ultimately implements with respect to this rule will have a significant impact on the Postal Service's financial health.

9. What do you believe should be the PRC's top three priorities over the next five years?

1) Careful Consideration of Universal Service Obligation:

- a. From a cost perspective, the Commission is going to have continue to evaluate the USO. From a larger policy perspective, it is important to dig into this issue and to evaluate if there are more effective ways of defining it than what is currently under the law. The goal should always be to serve postal customers as effectively as possible and to ensure accessibility and affordability.

2) Increase Engagement with Congress:

- a. While Chairman Taub has made himself very accessible to Congress, I have often wondered how the Commission as a whole could be more engaged. This is an area I would like to explore further if confirmed to serve on the Commission.

3) Review Process/Resources for Handling Negotiated Service Agreements (NSA's):

- a. In FY 2018, the Commission approved 290 NSA's. This is a large number for a small agency that has limited resources. It will be important to assess how the Commission can most effectively handle this workload in the future.

10. If confirmed, how will you coordinate and communicate with PRC staff to accomplish the PRC's goals?

I would first make sure that I have a thorough understanding of the Commission's current strategic plan and would then make sure that I am communicating clearly with PRC staff to help accomplish these goals. I am a highly collaborative person, so I would look forward to tackling these goals as a team if confirmed.

IV. Policy Questions

11. Generally, what approaches do you advocate that the PRC take in regulating the Postal Service and why?

The PRC is responsible for ensuring the transparency and the accountability of the Postal Service through the postal rate setting process, annual determinations of Postal Service compliance, and through oversight of the Postal Service's ability to meet service performance goals. In respect to service, it is important for the PRC to continue demanding the highest quality data from the Postal Service in order to evaluate its cases effectively. If confirmed, I would be very focused on this, as well as diligent oversight of the Postal Service's ability to meet its service performance targets.

12. The Postal Service has been operating without a quorum on its bipartisan Board of Governors since 2014. What challenges do you believe the Postal Service faces without a Board quorum? How should the PRC approach its role given the vacancies on the Board of Governors?

In the absence of a quorum on the Postal Service Board of Governors, it is my understanding that the Board is limited from making operational decisions on the establishment of service standards, on approving annual financial statements, and on adopting official positions on legislative proposals, among others. Because the Board of Governors was completely vacant until last year, it has been an open question in the postal community regarding what powers the Postal Service had in the interim. It is very positive that Congress was able to confirm two Board members last year, and it is my understanding that they are working hard to get up to speed on the Postal Service's current financial situation. I also believe that the Postal Service faces challenges in regards to service issues without a quorum. The Postal Service has made a number of changes to their network in recent years, including the elimination of the overnight service standard. Unfortunately, the Postal Service never realized the cost savings that they predicted from their Operational Window Change (OWC). An October 2018 Postal Service Office of the Inspector General report found that the Postal Service only realized 5.6 percent of their projected savings, and that they were unlikely to ever realize their annual projections fully. It is important that the Board be fully functioning so that service issues can be accurately addressed.

13. 39 USC § 101 establishes the seven fundamental pillars of U.S. postal policy.

- a. If confirmed, what legislative or administrative reforms would you advocate for to help the PRC and the Postal Service ensure these policies are fully realized?

39 USC § 101(d) states that "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis." The Commission has a critical role to play in the ratemaking process and has already undertaken the 10-year rate review as required by the PAEA to evaluate whether the system for regulating rates and Market Dominant products is working as intended, while also taking into account all of the Postal Service's outstanding liabilities. The PRC determined in their proposed rule that the rate system has not supported the health of the Postal Service as intended. Having not served on the Commission, I am not able to comment on this specific rule, but I do think it is vital that we address the Postal Service's financial health in the most effective way possible.

Having worked on various postal reform bills over the course of my career in the Senate, I definitely believe there are ways to address and enhance some of these pillars through legislation.

- b. Should any of these policies be reformed? If not, why not; and if so, in what ways?

I am generally comfortable with these pillars and believe they provide a broad spectrum of the various areas that impact postal policy.

- c. Specifically, 39 USC § 101(b) states, "The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that

effective postal services be insured to residents of both urban and rural communities.”
Do you support this policy goal or believe it should be changed in any way?

I absolutely support this policy goal and have substantially worked on both protecting and enhancing service over the course of my postal career on the Hill with respect to legislation.

PRC Rate Review

14. One of the core principles of the PAEA was to provide Postal Service customers, through the establishment of an inflation-based rate cap, with predictability and stability in pricing of the Postal Service’s market dominant products. Pursuant to the PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 30 U.S.C. §3622, including stability, fairness, and generating adequate revenue to cover Postal Service costs. The PRC found that the cap did not meet all of these criteria, including that it did not allow for the Postal Service to reach long-term financial stability or maintain high quality service standards.

a. What is your opinion of the PRC’s conclusions?

The Commission has a critical role to play in the ratemaking process. The PRC determined in their proposed rule that the rate system has not supported the health of the Postal Service as intended. Having not served on the Commission, I am not able to comment on this specific rule, but I do think it is vital that we address the Postal Service’s financial health in the most effective way possible. I also believe it is essential for high quality service standards to be prioritized.

b. Do you believe any of the objectives or factors should be weighted above others?

Having not served on the Commission, I am not able to address this question fully from the perspective of a regulator. If confirmed, I would analyze these factors carefully in order to conduct an informed analysis. I would observe that section 3622 of title 39 of the U.S. Code mandates that each of the objectives “. . . shall be applied in conjunction with the others.”

15. Some argue that much of the Postal Service’s financial instability has been caused by its retiree healthcare prefunding payments.

a. Do you agree with this view?

I believe that the retiree health prefunding payments have greatly contributed to the Postal Service’s financial instability over the past decade or so.

b. How, if at all, should the impact of the prefunding requirement affect the PRC’s views on the Postal Service’s business model?

Addressing the prefunding requirement is key in terms of addressing the Postal Service's current business model and improving the agency's financial health. The stress of the prefunding requirement has forced the Postal Service to cut costs at the price of service and has prevented the agency from investing in critical infrastructure. The sooner this requirement is addressed, the sooner the Postal Service can fully focus on modernizing.

16. As a result of its findings, the PRC issued a Notice of Proposed Rulemaking (NPR) that proposed changes to the market dominant rate system, including additional rate authorities that would allow the Postal Service to raise prices on certain products.¹ In considering price increases, how should the Postal Service balance the need for additional revenue with the possibility that higher rates could further reduce mail volume?

Data and technical analysis must play a central role in achieving this particular balance. It is also important that the postal landscape be considered as a whole and that different perspectives are integrated from across the postal stakeholder community.

Service Standards and Performance

17. The PAEA requires the Postal Service to consult with the PRC in establishing modern service standards, as well as in modifying the standards and planning for future standards. Do you believe PRC consultation has been effective thus far? What improvements, if any, would you make to ensure the Postal Service and PRC effectively collaborate in improving service performance and maintaining high quality service standards?

While I think it is important that the Commission already plays a consultative role in this process, I think there is room to evaluate whether the PRC's role could be strengthened with respect to greater enforcement of service performance. One potential way of enhancing the Commission's role would be through legislative reforms that would seek the PRC's guidance at various points throughout the monitoring process of service performance targets for the Postal Service. I also think it is important for the Commission to be as responsive as possible to Congress regarding these issues. One of the reasons the new internal mail measurement system takes into account rural areas is because of the letter my former bosses wrote to the Commission.

Additional Proceedings

18. On August 23, 2018, President Trump issued a Memorandum stating that "current international postal practices in the UPU [Universal Postal Union] do not align with United States economic and national security interests." On October 17, 2018, the White House announced the United States would withdraw from the UPU within one year, and concurred with a State Department recommendation that the United States adopt self-declared postal rates no later than January 1, 2020. The UPU held a special meeting in April 2019 to address these concerns and will hold an Extraordinary Congress in September 2019 to vote on rate

¹ Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

reform proposals. What do you believe the PRC's role will be, and what challenges will it face, regarding postal policy issues and the potential implementation of self-declared rates? If confirmed, how would you prepare to meet these challenges?

It is my understanding that while the Commission would serve in its regulatory role, the State Department would take the lead in terms of negotiating treaties. As I understand the framework under the law, the Commission's role is limited to reviewing rates and classifications under this process and advising the State Department regarding compliance with U.S. postal laws. As the operator, the Postal Service must consider the impacts of remaining in or ultimately leaving the Universal Postal Union. I would imagine that this could be a highly sensitive case, and I would do all that I could to ensure that I am as well versed as possible in the Universal Postal Union's structure and the terminal dues system. Having not served on the Commission, it is difficult for me to fully evaluate the PRC's role in the process unless confirmed.

19. The President's Task Force on the U.S. Postal System recommended the Postal Service distinguish between "essential" mail and packages "for which a strong social or macroeconomic rationale exists for government protection" versus mail and packages that are commercial in nature, and recommended the Postal Service pursue price increases, reduce service costs, or exit the business line for the latter category. What are some of the challenges to the Postal Service and PRC in distinguishing between these categories, particularly given the essential nature of certain deliveries to customers who otherwise would not have access to mail services?

As was raised at the Committee's hearing on the Postal Task Force in March of this year, how do you objectively differentiate between products that are deemed "essential" to one person in one part of the country and "non-essential" to another? A number of factors could be at play (geographical location, season, etc.) in any given situation that would make it difficult to develop a one-size-fits-all approach. I think you could potentially run into a situation where a postal customer's access to the universal service obligation is compromised because a product they need may not be deemed objectively "essential." Having directly worked with constituents in rural areas on postal issues, I think this proposal is one that would have to be evaluated with the utmost caution.

20. The number of Negotiated Service Agreements (NSAs) has increased in recent years. In FY 2012, the PRC approved 54 NSAs, growing to 290 in FY 2018.² How do you view the increase in NSAs and what do you believe the PRC should do to handle the NSA workload and provide timely reviews?

This is a large number of NSA's to handle for a small agency with limited resources. It will be important to assess how the Commission can most effectively handle this workload in the future. Having not served on the Commission, I am not intimately familiar with the PRC's approval process of NSA's, but I would look forward to understanding and evaluating this process more comprehensively if confirmed.

² Postal Regulatory Commission: *Annual Report to the President and Congress, Fiscal Year 2018* (January 2019) (<https://www.prc.gov/sites/default/files/reports/PRC%202018%20Annual%20Report-FINAL-Digital%20Filed.pdf>)

V. Relations with Congress and the Public

21. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Having worked in Congress for my entire professional life, I have a deep appreciation and understanding of the importance of agencies being responsive in a timely manner to Member requests for information. If confirmed, I would do everything I could to work with my fellow Commissioners to ensure that we are doing everything in our power to address Member requests in a thorough and timely fashion.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

23. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

24. If confirmed, do you commit to take all reasonable steps to ensure that you and the PRC comply with deadlines established for requested information?

Yes.

25. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

26. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

27. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving U.S. Postal Service operations and effectiveness?

Yes.

28. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

29. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

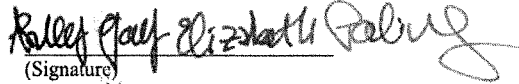
Yes.

VI. Assistance

30. Are these answers your own? Have you consulted with the U.S. Postal Service or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. While I have not consulted with the U.S. Postal Service, I have consulted with the Commission. The Commission has reviewed my answers for legal, regulatory, and technical accuracy.

I, Asma Poling, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 25th day of June, 2019

**Senator Maggie Hassan
Post-Hearing Questions for the Record
Submitted to Ashley E. Poling**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

1. Last fall, I sent a letter with Sen. Shaheen to Postmaster General Megan Brennan encouraging the United States Postal Service to work with city officials to address the concerns raised by the citizens of Portsmouth regarding the relocation of the city's Post Office while the McIntyre Federal Building undergoes renovation. In a letter to Portsmouth officials, the Postal Service committed to returning the Portsmouth Post Office to a central location, if possible.
 - a. If confirmed, will you commit to providing my office with updates on the status of the decision on where the Portsmouth Post Office will be permanently housed, including what factors the United States Postal Service is considering to make that decision?

I absolutely commit to providing your office with updates on the status of the Portsmouth Post Office, if confirmed. I have specific experience with similar issues from my work with Senator Heidi Heitkamp of North Dakota. It is important for citizens to have centralized access to their post office, and it is important for the Postal Service and the Postal Regulatory Commission to do everything they can within their respective roles to make sure that customers are served as effectively as possible.

**Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Ashley E. Poling**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

- 1) The Postal Service is going through a challenging period with extreme financial pressure and a need to make critical changes. To survive, the Postal Service needs strong leadership, and that includes among its regulators.
 - a. What key leadership traits will you bring to the table in this role with the PRC?

I am confident that Congress has the ability to give this vital institution the tools it needs to address its serious financial challenges. However, this must be more than just a legislative effort – it must be an all-out collaboration of the entire postal community. My leadership style is best described as very approachable and highly collaborative. I have strong relationships across the entire postal stakeholder community from my years working on Capitol Hill. One of the strategic goals of the Postal Regulatory Commission is to “actively engage with Congress and stakeholders in support of a dynamic postal system.”¹ I believe that my proven ability to work on comprehensive postal reform in a highly bipartisan and bicameral way in Congress will serve me well in this new role as a Postal Regulatory Commissioner, if confirmed.

- 2) Given the recent reports of the Postal Service’s new business plan and the cuts to service infrastructure contained in the plan.
 - a. What do you believe the role of the PRC should be in evaluating the cost savings and impact on the financial health of USPS on structural changes that involve consolidation or changes in service?

It is my understanding that under current law, the Postal Service consults with the Commission in its establishment of service standards for Market Dominant products and continuously monitors the Postal Service’s results in meeting those service standards. If confirmed to the PRC, I would like to explore what additional authority the Commission has in terms of holding the Postal Service accountable in regards to service. As I mentioned during the hearing, there is also a potential role for Congress to play in terms of enhancing the Postal Service’s accountability when it comes to meeting service standards and performance through legislation.

¹ Fiscal Year 2018 Annual Report to the President and Congress, Postal Regulatory Commission, p. 15.

- b. Given previous USPS decisions regarding consolidation failed to produce promised savings, should PRC play a role in preemptively reviewing proposed business plan changes, to ensure the financial underpinnings of proposed cost savings are accurate?

While I think it is important to explore what additional authority the Postal Regulatory Commission may have when it comes to service accountability, it is also important to note that the Postal Service serves in the role of the operator, while the Postal Regulatory Commission serves in the role of the regulator. It is my understanding that the Postal Service's Board of Governors plays a significant role in the long-term planning of the Postal Service, approves the Postal Service's annual financial, operating, and capital plans, and also sets postal policies. I am not familiar with the ins and outs of how the Operational Window Change (OWC) decision was made, but it is my understanding that the Postal Service made this decision because they thought it would amount to significant cost savings. Because last fall's USPS OIG report revealed that this was not the case, I think it is important to evaluate how greater oversight can be implemented so that the Postal Service is relying on accurate data and cost saving projections in the future. It is also my understanding that under current law, the Postal Service consults with the Commission in its establishment of service standards for Market Dominant products. Because this was a service standard change, it would seem that the Commission would have at least played a consultative role in the process. I am committed to exploring what the consultative role of the Commission entails, as well as what can be done in terms of holding the Postal Service accountable to strong service standards at the Commission level. I also believe that Congress could potentially have a role to play through legislation in terms of enhancing this oversight.

United States Senator Heidi Heitkamp
North Dakota
2013-2019

July 14, 2019

To Whom It May Concern:

I enthusiastically support Ashley Poling's nomination for the Postal Regulatory Commission. Ashley possesses a unique blend of research expertise, perspective on bureaucratic and political dynamics, and intellectual curiosity that would make her well-suited to produce first-rate ideas and solutions. I have no doubt she will serve honorably and with enthusiasm.

Ashley served my U.S. Senate office with distinction and her work was thorough, informative and results oriented. She worked closely with me on improving service performance of the United States Postal Service (USPS) across the country and I am pleased that our work is now an important part of postal reform discussions. She was pivotal in moving forward our work with Congressman Mark Meadows of North Carolina ensuring we had bi-partisan support for the efforts.

Her work is always led with a commitment to hold the postal service accountable to taxpayers. I appreciate that she also couples that ethos with a keen understanding of the postal worker and their important role in the USPS.

Ashley would bring the same knowledge, insights from her work in this area, and thoughtful analysis to the Commission. She makes effective arguments using facts and data. Her congenial, collaborative approach that made her an excellent team player in my office will help her thrive in this new role.

I believe Ashley is a leader. Her analytical ability, credibility, and good judgment already make her a respected voice. I whole heartedly endorse her nomination and hope you will give it serious consideration.

Sincerely,



Heidi Heitkamp

Statement of Catherine E. Bird
Before the Committee on
Homeland Security and Governmental Affairs
United States Senate
July 16, 2019

Chairman Lankford, Ranking Member Sinema, Members of the Committee, thank you for the opportunity to discuss my nomination to become General Counsel of the Federal Labor Relations Authority. I would like to thank the Committee on Homeland Security and Governmental Affairs and its staff for all the courtesies they have shown me as I have prepared for this hearing. Additionally, I would like to thank the staff at the FLRA who have provided assistance during this process.

To start, I would like to acknowledge my parents, Gary and Linda Hoyer, who are with me today. My mother, who has been a teacher for over 40 years and my father, who works as a computer programmer at Dallas Theological Seminary in Texas, helped mold me to who I am today. I am extremely grateful for their constant support and guidance in my life.

It is an honor and privilege to be nominated by President Trump to serve as the General Counsel of the FLRA.

I grew up in a household which values service to others. As I evaluated various career paths to utilize my law degree, I quickly chose to use it in service to the American people. Our federal government serves many critical roles, from providing national security to ensuring the safety of our food, air, and water; from preserving our majestic National Parks to caring for our wounded warriors or those suffering from the devastating effects of the opioid crisis. The American people count on the federal government every day in so many ways. I have the utmost respect for the work of our federal government and for the dedicated public servants performing that work. If confirmed as General Counsel of the Federal Labor Relations Authority, I can assure you of my commitment to ensure that all federal employees are treated fairly and that their rights under the Federal Service Labor Management Relations Statute are respected. In particular, I will uphold the rights of employees to form, join, or assist any labor organization, or to refrain from any such activity, and their right to engage in collective bargaining.

I also believe, as stated in the President's Management Agenda, that those in public service must be accountable for mission-driven results and that agencies must have the necessary tools and resources to deliver those results. If confirmed, I would be guided by the need to maintain the smooth functioning of our government and never lose sight of the fact that agencies, managers, and all employees should be constantly striving to deliver mission outcomes defined and authorized by Congress, to provide excellent service to the public, and to be effective stewards of taxpayer dollars on behalf of the American people. I truly value the incredibly diverse, complex, and challenging work our government does, and I consider the FLRA's mission to administer the Statute as integral to achieving a well-functioning government. If confirmed as General Counsel of the FLRA, I would be honored to be a part of the Federal Labor Relations Authority's leadership in promoting stable, constructive labor relations that contribute to a more effective and efficient government.

My career has provided me with the skill-set and experience needed to excel in the position for which I am being considered. During my time at the Department of Health and Human Services, I have worked on three specific issues that would benefit me if I were to be confirmed to this position.

First, I participated in term-bargaining negotiations on behalf of HHS management in discussion with the National Treasury Employees Union. This experience taught me the importance of an objective and impartial Federal Labor Relations Authority in ensuring that labor negotiations proceed efficiently and effectively. This first-hand experience of the collective bargaining process has given me a keen understanding and sense of the dynamics of the process and the ability to understand the process in a practical and not only theoretical manner. If confirmed as General Counsel, I will strongly support the need for good faith negotiations as envisioned in the Statute and case law, and I will apply the law independently and impartially.

Second, in my role as Principal Deputy Assistant Secretary for Administration, I oversaw a highly successful Federal Employee Viewpoint Survey program, centered on employee engagement. If confirmed, I vow to take employee engagement seriously and do everything within my authority to improve employee morale in the Office of the General Counsel. While I assist in the supervision of nearly 900 employees at HHS, I welcome the views and opinions of all employees and encourage them to speak their minds freely and respectfully. My time at HHS has taught me to rely on a wide range of employees at all levels when dealing with the complex issues that arise.

Third, in my role at HHS, and in other positions, I have been entrusted by employees to investigate complaints and address issues they have raised to my attention. These situations have required me to critically look at the facts of a case, apply applicable rules and regulations and come to a fair and impartial decision. I would apply a similar approach in evaluating charges of unfair labor practices or representational disputes at the FLRA, viewing each allegation with an open mind. My decisions would be grounded in the Statute, regulations, and case law, using my best, independent judgment in each case.

I believe that my experience and passion will provide value to not only the FLRA, but by embracing a customer-service approach, will also benefit the many federal agencies, labor organizations, and employees who rely on the work that FLRA does.

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

REDACTED

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<i>Name of Position</i>	<i>Date of Nomination</i>
General Counsel of the Federal Labor Relations Authority	April 11, 2019

<i>Current Legal Name</i>			
<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>	<i>Suffix</i>
Catherine	Elaine	Bird	

<i>Addresses</i>					
<i>Residential Address</i> (do not include street address)			<i>Office Address</i> (include street address)		
			Street: 200 Independence Ave, S.W., Suite 309F		
City: Washington	State: D.C.	Zip: 20002	City: Washington	State: D.C.	Zip: 20201

<i>Other Names Used</i>							
<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Check if Maiden Name</i>	<i>Name Used From</i> (Month/Year) (Check box if estimate)	<i>Name Used To</i> (Month/Year) (Check box if estimate)	
Catherine	Elaine	Hoyer		YES	01/1984 Est <input type="checkbox"/>	03/2009	Est <input checked="" type="checkbox"/>
Cassie					01/1984 Est <input type="checkbox"/>	Present	

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1984	San Antonio, Texas

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix

<i>Spouse's Other Names Used</i> (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)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

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
Howard Payne University	University	08/2002 <input type="checkbox"/> Est <input type="checkbox"/>	05/2006 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	Bachelor of Science	5/2006
Baylor Law School	Law School	08/2007 <input type="checkbox"/> Est <input type="checkbox"/>	05/2010 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	5/2010
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		

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, USPS/US 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)
Other Federal Employment	U.S. Department of Health and Human Services	Principal Deputy Assistant Secretary for Administration	Washington, D.C.	05/2017	Present
State Government	California State Senate	Legislative Director for Senator Moorlach	Sacramento, CA	08/2016	05/2017
State Government	California State Senate	Legislative Aide for Senator Gaines	Sacramento, CA	02/2013	08/2016
Non-government employment	Simpson University	Student Life Specialist	Redding, CA	08/2010	02/2013
Non-government employment	Blalock & Blalock	Law Clerk	Redding, CA	08/2010	11/2011
Unemployment	I was in law school and then studying for Texas Bar Exam	N/A	Waco, TX	08/2009	08/2018
Non-government employment	Thomas Fulkerson Law Firm	Summer Law Clerk	Houston, TX	06/2009 Est <input checked="" type="checkbox"/>	08/2009 Est <input checked="" type="checkbox"/>
Non-government employment	Jackson Walker, LLP	Summer Law Clerk	Dallas, TX	05/2009 Est <input checked="" type="checkbox"/>	06/2009 Est <input checked="" type="checkbox"/>
Unemployment	Study abroad summer of 2008 and law school Aug. 2008-May 2009	N/A	Waco, TX	06/2008	05/2009 Est <input checked="" type="checkbox"/>
Non-government employment	Thomas Fulkerson Law Firm	Summer Law Clerk	Houston, TX	05/2008	06/2008

Unemployment	I was in Law School	N/A	Waco, TX	08/2007		05/2006	
Non-Government employment	Dallas Theological Seminary	Data Entry Clerk	Dallas, TX	04/2007	Est <input checked="" type="checkbox"/>	08/2007	Est <input checked="" type="checkbox"/>
Unemployment	Took a few months off in preparation for law school	N/A	Dallas, TX	01/2007	Est <input checked="" type="checkbox"/>	04/2007	Est <input checked="" type="checkbox"/>
Other Federal employment	Subcommittee on the Constitution and Civil Justice of the U.S. House Committee on the Judiciary	Staff Assistant	Washington, DC	08/2006	Est <input checked="" type="checkbox"/>	01/2007	Est <input checked="" type="checkbox"/>
Non-government employment	A. Herndon and Associates	Document Scanner	Dallas, TX	05/2006	Est <input checked="" type="checkbox"/>	08/2006	Est <input checked="" type="checkbox"/>
Self-employed	N/A	Babysitter, Nanny, Tutor	Brownwood, TX	08/2004		05/2006	
Non-government employment	Howard Payne University	Student Aide	Brownwood, TX	08/2005	Est <input checked="" type="checkbox"/>	05/2006	Est <input checked="" type="checkbox"/>
Non-government employment	Quality Body Shop	Receptionist	Brownwood, TX	08/2004	Est <input checked="" type="checkbox"/>	12/2004	Est <input checked="" type="checkbox"/>
Non-government employment	Howard Payne University	Student Life Assistant	Brownwood, TX	08/2003	Est <input checked="" type="checkbox"/>	05/2004	Est <input checked="" type="checkbox"/>
Non-government employment	Dallas Theological Seminary	Accounts Payable Clerk	Dallas, TX	05/2003	Est <input checked="" type="checkbox"/>	08/2003	Est <input checked="" type="checkbox"/>
Unemployed	Freshman Year of College	N/A	Brownwood, TX	08/2002		05/2003	
Non-government employment	Dallas Theological Seminary	Accounts Payable Clerk	Dallas, TX	05/2002	Est <input checked="" type="checkbox"/>	08/2002	Est <input checked="" type="checkbox"/>
Unemployed	Senior year of high school	N/A	Dallas, TX	01/2002		05/2002	Est <input checked="" type="checkbox"/>

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

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
Subcommittee on the Constitution and Civil	Internship	05/2005 Est <input checked="" type="checkbox"/>	08/2005 Est <input checked="" type="checkbox"/>

Justice of the U.S. House Committee on the Judiciary			
		Est a	Est a
		Est a	Est a

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.

While at the U.S. Department of Health and Human Services I represented management in labor negotiations. I will work with FLRA ethics officers to ensure that I avoid actual or apparent conflicts of interest and will follow the advice of FLRA ethics officers concerning recusals.

(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.

While working as a Legislative Director and Legislative Aide in the California State Senate, I lobbied in support of my bosses' bills. I did all of this in my official capacity as a state government employee.

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.

Hatton W. Sumners Scholarship
 Full Tuition scholarship to Baylor Law School
 Summa Cum Laude, Howard Payne University
 Magna Cum Laude, Baylor Law School

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).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate)	<u>Position(s) Held</u>
Redding Republican Women	2012-2014 (approx.)	Board Member
Sacramento Mental Health Board	2017	Board Member
League of Women Voters	2012-2014 (approx.)	Member
Women's Fund	2012-2014 (approx.)	Member
Texas State Bar	2010- Present	Member
California State Bar	2011-Present	Member

7. Political Activity

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

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
Shasta County Supervisor	Candidate Only	2012	N/A

(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.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Brian Dähle for California State Assembly	Volunteer	Organized other volunteers and conducted research	2012

(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. None

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

(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.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Speeches during my campaign	Candidates Forums	March 2012-June 2012

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.)
No
- 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):
- B) Description of the specific nature of the offense:
- 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):
- 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:
 - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- 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):
 - 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 pro." etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
 - 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:

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

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. No

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(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. No

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

(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. No

Name of Agency/Association/Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint

(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

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)

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15. Agreements or Arrangements

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.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date (month/year)</u>

16. Additional Financial Data

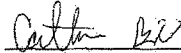
All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

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 27th day of May, 2019

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



April 18, 2019

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 Catherine Bird, who has been nominated by President Trump for the position of General Counsel, 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 APOL

David J. Apol
General Counsel

Digitally signed by DAVID
APOL
Date: 2019.04.18 12:53:13
-0400

Enclosures **REDACTED**



April 12, 2019

Rebecca J. Osborne, Esq.
Acting Deputy Solicitor and Alternate Designated Agency Ethics Official
Federal Labor Relations Authority
1400 K St., NW
Washington, DC 20424

Dear Ms. Osborne:

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 General Counsel, 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.

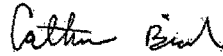
I will meet in person with you during the first week of my service in the position of General Counsel in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I further understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) 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.

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.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Bird".

Catherine Bird

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire
For the Nomination of Catherine Bird to be General Counsel of the
Federal Labor Relations Authority**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to be General Counsel of the Federal Labor Relations Authority (FLRA)?

No.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel of the FLRA? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

While at the U.S. Department of Health and Human Services (HHS) I represented management in labor negotiations. I will work with FLRA ethics officers to ensure that I avoid actual or apparent conflicts of interest and will follow the advice of FLRA ethics officers concerning recusals.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be General Counsel of the FLRA?

I have spent the majority of my career working as a government employee, in both management and non-management positions. As such, I am well aware of the challenges facing both groups and the need to have an independent entity, such as the FLRA, assist in finding solutions to disputes. I currently oversee the Human Resources division at

HHS. In this role, I have participated in investigations and have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.

6. Please describe:

a. Your leadership and management style.

I believe in trusting my employees to effectively perform their duties. If guidance is needed, I readily step in to assist and work hard to ensure my employees are set up for success.

b. Your experience managing personnel.

In most of my positions, I have managed a team of employees. In my current position, I oversee management of six division leads, each with large portfolios and a total of close to 900 employees under them. These employees are located across the country.

c. What is the largest number of people that have worked under you?

In my current role, I assist with overseeing a division of close to 900 employees.

III. Role of General Counsel, FLRA

7. Please describe your view of the agency's core mission and the General Counsel's role in achieving that mission.

The FLRA provides leadership in establishing policies and guidance related to federal-sector labor management relations and compliance with the Federal Service Labor-Management Relations Statute. The FLRA's mission is to protect rights and facilitate stable relationships among Federal agencies, labor organizations, and employees, while advancing an effective and efficient Government through the administration of the Statute. The General Counsel plays a vital role in carrying out this mission by investigating and, if warranted, prosecuting charges of unfair labor practices and determining appropriate bargaining units.

8. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

I have worked swiftly to investigate whistleblower complaints brought to my attention and have ensured that no retaliation was taken against the whistleblower.

- b. How do you plan to implement policies within the FLRA Office of General Counsel to encourage employees to bring constructive suggestions forward without the fear of reprisal?

While it is premature for me to speak on any specific policies, I strive to create an environment where my employees are encouraged to express all constructive viewpoints.

- c. Do you commit without reservation to work to ensure that any whistleblower within FLRA does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

- 9. What are the top challenges facing the FLRA Office of General Counsel today? What steps do you plan to take, if confirmed, to address these challenges?

It is premature for me to comment on the top challenges facing the office since I am not currently in the office. However, I am aware of a backlog of cases. I will gather advice and counsel from the top managers in the Office of the General Counsel on addressing this challenge and any other challenges facing the office.

IV. Policy Questions

- 10. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

I don't believe I am currently in a position to assess the state of federal labor-management relations on a government-wide basis or whether improvements should be made. From my vantage point at HHS, I have found that having a strong and impartial FLRA is essential for a well-functioning federal labor-management relations system.

- 11. Given your understanding of the FLRA's mission, do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

It is premature for me to comment on improvements to the Statute until I have been involved in its implementation.

12. The FLRA Office of General Counsel has been without a General Counsel since January 2017. During that time, the FLRA Office of General Counsel has been unable to issue unfair labor practice (ULP) complaints or rule on ULP appeals decisions for those charges found by a FLRA Regional Office to lack merit. If confirmed, how will you ensure that these cases are decided on in a timely and efficient manner?

It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to effectively and fairly address the cases.

13. What considerations do you believe should guide the FLRA Office of General Counsel in deciding to investigate a ULP charge? What considerations should guide ULP appeals decisions by the FLRA?

The General Counsel should be guided by the provisions of Chapter 71 of title 5, United States Code, FLRA regulations, and relevant case law.

14. What do you believe is the appropriate role of the FLRA Office of General Counsel in union elections?

The role established in Chapter 71, FLRA regulations, and relevant case law.

15. What do you believe should guide determinations of national consultation rights and consultation rights for government-wide rules and regulations?

I believe the provisions of Chapter 71, FLRA regulations, and relevant case law should be used as the guide.

16. What considerations do you believe should guide determinations on representation petitions before the FLRA Office of General Counsel?

I believe the provisions of Chapter 71, FLRA regulations, and relevant case law should be used as the guide.

17. Under what circumstances do you believe the FLRA Office of General Counsel should deny a motion to withdraw a claim before the office?

I would look to the Statute, applicable regulations, and relevant case law to make such determinations.

18. What do you believe is the role of the General Counsel in identifying and remedying terms in collective bargaining agreements that may violate federal law or regulation?

The General Counsel would take no action unless a charge of unfair labor practice is filed with the Office of the General Counsel. Should such a case be filed, I would need to review the specific circumstances and determine whether the particular fact pattern would constitute a violation of the Statute within the jurisdiction of the General Counsel. I do not think speculating about hypothetical issues would be appropriate.

V. Relations with Congress

19. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

20. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

21. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, in accordance with applicable law.

VI. Assistance

22. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

These answers are my own. I received technical assistance from the FLRA.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Catherine Bird to be
General Counsel, Federal Labor Relations Board**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Have you been asked to pledge loyalty to the President, Administration, or any other government official?

No.

3. Were there any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

4. Have you ever represented a party in a matter before or involving the Federal Labor Relations Authority (FLRA)? If so, please describe the matter(s) and the nature of the representation.

I represented the U.S. Department of Health and Human Services (HHS) before the Federal Service Impasses Panel. I assisted with the brief.

5. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel of the FLRA? If so, what are they, and to whom were the commitments made?

No.

II. Background of Nominee

6. Why do you want to be General Counsel of the FLRA?

I strongly believe in the importance of an efficient and effective government which is providing the best service possible to the American people. For this to be accomplished, there must be a healthy relationship between federal employees and their management. I see the role of the General Counsel at the FLRA as essential in harmonizing this relationship.

7. Please describe your experience, if any, conducting investigations and impartially evaluating the merits of allegations or disputes.

I currently oversee the Human Resources division at HHS. In this role, I have participated in investigations and have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.

8. Please describe your experience, if any, with prosecuting unfair labor practice (ULP) complaints.

I have not prosecuted an unfair labor practice complaint.

9. If confirmed, you will be responsible for reviewing appeals of decisions issued by Regional Directors regarding the merits of ULP charges. Do you believe you will review and adjudicate appeals that come before you with good judgement and impartiality? Please explain, citing examples of prior work or experience that could bear on your abilities, if applicable.

Yes, I will exercise good judgement and impartiality. I currently oversee the Human Resources division at HHS. In this role, I have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.

10. If confirmed as General Counsel of the FLRA, you would be responsible for all Office of General Counsel (OGC) staff at headquarters and at regional offices around the country. Please describe any experience you have managing staff remotely.

In my current position, I oversee staff across the country.

11. Please describe:

a) Your leadership and management style.

I believe in trusting my employees to effectively perform their duties. If guidance is needed, I readily step in to assist and work hard to ensure my employees are set up for success.

b) Your experience managing personnel.

In most of my positions, I have managed a team of employees. In my current position, I oversee management of six division leads, each with large portfolios and a total of close to 900 employees under them. These employees are located across the country.

c) What is the largest number of people that have worked under you?

In my current role, I assist in overseeing a division with close to 900 employees.

12. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates?

Yes. All viewpoints should be heard to make an informed decision.

13. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

I believe my role as an employee is to ensure my supervisors are well aware of all viewpoints before they make a decision. Therefore, I have disagreed and aggressively advocated for a specific position. I have been successful.

14. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

I strive to always do what is in the best interest of the country. Politics do not play a role in that decision.

15. What would you consider your greatest successes as a leader?

I am most successful when I build a team and provide the support necessary to accomplish my organization's mission.

16. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?

I fail when my employees have found themselves unequipped to accomplish what I have asked of them. These experiences have taught me to be fully attuned to the needs of my team and how to anticipate the tools they will require.

17. During your career, has your conduct as a government employee ever been subject to an investigation or audit by an Inspector General, Office of Special Counsel, Department of Justice, agency Equal Employment Opportunity office or investigator, or any other federal or state investigative entity? If so, please describe the nature of the allegations/conduct and the outcome of the investigation(s) or audit(s).

No.

Experience with Unions

18. Please list and describe your professional experience with labor unions.

While working for the California State Senate, I interacted with labor unions when they were a stakeholder in legislation. While working at HHS, I have participated in labor relations.

19. Please elaborate on your recent role representing Department of Health and Human Services (HHS) management in labor negotiations.

I provided support and counsel to the management team during labor negotiations.

20. Have you participated in any labor negotiations on behalf of any other agency besides HHS? If so, please elaborate on those circumstances.

Yes, I briefly provided support and counsel to the management team at U.S. Department of Veterans Affairs (VA).

21. Have you ever participated in labor negotiations that resulted in a bargaining impasse? If so, please describe your role and the outcome of the impasse(s).

Yes, the labor negotiations between HHS and the National Treasury Employees Union (NTEU) resulted in impasse. I provided support and counsel to the management team during those negotiations. FSIP heard the case and made a determination.

22. How would you characterize good-faith labor negotiations?

I would look to Chapter 71, as well as court cases and Authority precedent, to determine the parameters of good faith negotiations.

- a) In your view, why are good-faith negotiations important to the collective bargaining process?

Good-faith negotiations should result in a collective bargaining agreement which furthers an effective and efficient government.

23. Please describe, to the best of your knowledge, any unfair labor practice (ULP) charges or complaints against HHS during your tenure.

HHS has had unfair labor practice charges filed against it regarding labor negotiations.

- a) Are you aware that any such charges have been substantiated?

To my knowledge, no.

- b) Have you been involved in responding to any ULP charges or complaints while at HHS?

I have provided support and counsel in responding to some of the charges.

24. Please describe, to the best of your knowledge, any ULP or charges or complaints brought by HHS during your tenure.

I am unaware of any.

- a) Are you aware that any such charges have been substantiated?

Since I am unaware of any charges or complaints, no.

- b) Have you been involved in bringing ULP charges or complaints while at HHS?

Not to my knowledge.

25. Have you ever been named in an ULP charge or complaint? If yes, please elaborate on each charge or complaint.

I was named in a complaint brought against the VA labor negotiations team. However, I am unaware of the details of the charge or complaint.

III. Policy Questions

26. The FLRA has been without a General Counsel for over 18 months (since November 2017). This has resulted in a number of issues, including a backlog of over 200 cases that have been recommended for prosecution.

- a) If confirmed, how would you address the case backlog?

It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to address the case backlog.

- b) How will you balance efficiency and quality when dealing with the backlog?

It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to efficiently and fairly address the cases.

- c) Under Chairman Kiko's leadership, the FLRA has closed two major regional offices in Boston and Dallas. As a result, the FLRA's capacity to prosecute has been diminished by 21%. Do you have any concerns that your ability to tackle the backlog will be impeded by a diminished staff?

It is premature for me to determine what concerns, if any, I have. However, I would work with the Chairman to ensure that the Office of the General Counsel is staffed to effectively address its workload.

- d) If confirmed, under what circumstances would you decline to issue a complaint for any of the pending cases recommended for prosecution?

I would have to look at the specific facts and circumstances of the case before me and the law and make a determination at that time on each and every case. I cannot prejudge the outcome of any particular case.

27. Employee morale at the FLRA has plummeted 31 points in the last two years on the Federal Employee Viewpoint Survey (FEVS). The Partnership for Public Service recently ranked the FLRA 27 of 29 small agencies in its Best Places to Work rankings.

- a) In your view, how does employee morale affect workplace efficacy?

Depending on the specific circumstances, employee moral can affect workplace efficacy.

- b) What steps would you take as a leader within the agency to bolster employee morale?

It is premature for me to comment on specific steps. However, I would work with the Chairman and OGC management to bolster morale.

- c) The Deputy General Counsel issued a follow-up survey to the Office of General Counsel staff in response to the agency's overall poor FEVS performance. At a hearing in front of the House Committee on Oversight and Reform, Chairman Kiko refused to provide Congress with results from the follow-up survey, citing confidentiality concerns. If confirmed, will you commit to providing those survey result – with appropriate redactions of Personally Identifiable Information—to Congress?

I can commit to providing the Congress with appropriate information about decisions I make in the future, consistent with applicable law. Regarding comments of FLRA staff made prior to my appointment, if confirmed, I would need to review the circumstances of any such statements and consult with the appropriate FLRA officials, including the Solicitor, before making any determination about their disclosure.

28. In December 2018, Chairman Kiko decertified the FLRA's Union of Authority Employees, citing her interpretation of the Federal Service Labor-Management Relations Statute (the Statute) as precluding FLRA employees from unionizing. Do you agree with Chairman Kiko's interpretation of the Statute? Please explain.

While this is a matter under the authority of the Chairman, my understanding is that the Statute, on its face, excludes the FLRA from coverage.

Labor Relations

29. Please discuss your views on the role of collective bargaining in the federal workforce.

Collective bargaining in the federal sector is in the public interest. Congress envisioned the Statute as the primary means by which the FLRA would protect the rights of, and facilitate the collective-bargaining relationships among federal agencies, labor organizations, and employees.

30. The current FLRA board has been overturning arbitration cases at an unprecedented rate – under Chairman Kiko, the FLRA has overruled arbitrators 51 times, and each was in favor of the agency involved. The Federal Education Association, a union representing Defense Department education employees, has sued the FLRA, saying that the board has an anti-union bias. Please discuss your understanding of the situation.

I am not familiar with this line of cases of the Authority, the statistic mentioned, or the litigation referred to.

31. What is your view of the President's 2018 Executive Orders 13836, 13837, and 13839?

- a) How do you view telecommuting rights for federal workers?

- b) How do you view recent attempts by agencies to charge unions rent for office space?
- c) How do you view recent proposals to standardize Performance Improvement Plans at 30 days across government?
- d) Please discuss your views on official time.

Because the Executive Order are the subject of pending litigation, it would not be appropriate for me to express an opinion or offer speculation on them. If confirmed as General Counsel, I could be called on to interpret the Executive Orders or the subject matter contained therein. As mentioned, my decisions and actions would be guided by the Statute, Chapter 71 of title 5.

32. In your view, can an agency implement a collective bargaining contract without the full and explicit agreement of its labor union counterpart?

This or a similar issue may be before the FLRA and/or the courts, and it would not be appropriate for me to comment or speculate on pending cases. I would need to understand the particular facts and circumstances at issue and then would apply the provisions of Chapter 71 and applicable regulations and case law.

IV. Relations with Congress and the Public

33. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Yes.

34. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

35. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

36. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

37. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

38. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving your office's operations and effectiveness?

Yes.

39. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

40. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes.

V. Assistance

41. Are these answers completely your own? If not, who has provided you with assistance?

These answers are my own. I received technical assistance from the FLRA.

42. Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

I received technical assistance from the FLRA.

I, Catherine Bird, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Catherine Bird
(Signature)

This 2nd day of July, 2019

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Minority Supplemental Questionnaire for the Nomination of Catherine Bird to be
General Counsel, Federal Labor Relations Authority**

July 12, 2019

1. For each position you have held at Department of Health and Human Services (HHS), please provide the following:
 - a. Start and end dates;
 - b. Title;
 - c. Office/division;
 - d. type of appointment (e.g. Schedule A, Schedule C, Noncareer SES); and
 - e. The title/position of your direct supervisor(s).
 - Start and end dates: May 22, 2017-July 30, 2017
 - Title: Advisor
 - Office/Division: Immediate Office of the Secretary, Office of the White House Liaison
 - Type of appointment: Schedule C
 - Title/Position of direct supervisor: Timothy Clark – IOS/White House Liaison for Political Personnel Boards and Commissions
 - Start and end dates: July 31, 2017-May 12, 2018
 - Title: Advisor and Legal Counsel
 - Office/Division: Office of the General Counsel
 - Type of appointment: Schedule C
 - Title/Position of direct supervisor: Heather Flick, Deputy General Counsel
 - Start and end dates: May 13, 2018-February 2, 2019
 - Title: Associate Deputy General Counsel
 - Office/Division: Office of the General Counsel
 - Type of appointment: Schedule C
 - Title/Position of direct supervisor: Robert Charrow, General Counsel
 - Start and end dates: August 20, 2018 – February 2, 2019
 - Title: Acting Principal Deputy Assistant Secretary for Administration
 - Office/Division: Office of the Assistant Secretary for Administration
 - Type of appointment: Schedule C
 - Title/Position of direct supervisor: Scott Rowell, Assistant Secretary for Administration
 - Start and end dates: February 2, 2019-present*
 - Title: Principal Deputy Assistant Secretary for Administration
 - Office/Division: Office of the Assistant Secretary for Administration
 - Type of appointment: NC SES
 - Title/Position of direct supervisor: Scott Rowell, Assistant Secretary for Administration

* I have maintained some responsibilities in the Office of the General Counsel. For those responsibilities, Robert Charrow, General Counsel, is my supervisor. Additionally, for the last few weeks, I have provided support as acting Deputy Chief of Staff while the current Deputy Chief of Staff is on maternity leave.
2. During your staff interview you stated that you were recused from working on labor negotiations for the HHS following the announcement of your nomination. Please provide the following:
 - a. the exact date on which you ceased work on HHS labor negotiations;

- i. April 4, 2019
 - b. the specific terms and scope of your recusal(s) (*For example, whether you were formally removed from the negotiation team, walled off from all related communications, removed from other Human Resources matters, etc.*); and
 - i. On April 4, 2019, I formally recused myself via email to David Mansdoerfer and Darrell Hoffman from all labor relations issues, which I understood to mean all things related to labor relations activity that could potentially come before the General Counsel of the FLRA. Accordingly, after April 4, 2019, I had no involvement with the negotiation team and provided no counsel or assistance to the team on matters related to HHS labor negotiations.
 - c. Copies of any documents memorializing the terms of any recusal(s) resulting from your actual or expected nomination.
 - i. Enclosed email.
3. In your response to Question 20 of the Minority Supplemental Pre-hearing Questionnaire, you stated that while employed by HHS you “briefly provided support and counsel to the management team at the U.S. Department of Veterans Affairs (VA)” during labor negotiations. During your staff interview you stated that this involvement was ad hoc, but that a formal agreement was in place regarding your work with the VA’s management team.
- a. Please explain why you did not list your position with VA under Section 3(B) of the HSGAC Biographical Questionnaire.
 - i. As stated, while working at HHS, I provided *ad hoc* support for the VA. When I completed the questionnaire, I didn’t feel as if question 3(B) included this issue. While it is correct that there was an MOA in place, in fact, during the detail, I provided only limited assistance on a sporadic basis, as requested by VA. I considered my assistance to VA as being performed in my capacity as an HHS employee and thus not a separate position. I apologize for the oversight and any confusion it may have caused.
 - b. Please provide copies of all agreements (including any modifications/addenda) under which you performed work for the VA.
 - i. Enclosed Memorandum of Agreement (MOA)
 - c. Please provide the exact start and end dates for your work with the VA. If the actual dates on which you began or ceased working with the VA differ from any dates identified in any written agreement, please explain.
 - i. I started working with the VA on August 20, 2018. Per the terms of the MOA, the detail was extended beyond the initial 120-day period by informal mutual agreement of the parties. For additional context, to the best of my recollection, other than a for a few weeks during the late fall and winter, my role with VA was very limited. For most weeks of the detail, I provided little or no assistance to VA. I don’t recall the exact date, but I officially ended work with VA in mid-March of 2019. To my knowledge, the completion of my detail was not documented.
4. During your staff interview you stated that you served as a member of the Interagency Labor Relations Working Group (LRG) established by Executive Order 13836 (May 25, 2018), including serving as the co-chair of the Committee on Model Agreements.
- a. Please explain why you did not list your position with the LRG under Section 3(B) of the HSGAC Biographical Questionnaire.
 - i. I represented HHS in my official capacity during LRG meetings. I did not view my interactions with the LRG as separate and distinct from my HHS responsibilities.

- b. Please provide the start and end dates of your involvement in the LRG.
 - i. Start -Approximately July 10, 2018
 - ii. End- Approximately February 20, 2019, in light of the fact I was being considered for this position.
- c. Other than the Committee on Model Agreements, please identify any committees you participated in as a member of the LRG and describe the activities of those committees during your tenure.
 - i. I was Co-Chair of the Model Collective Bargaining Agreement (CBA) Language and Analysis of Government-wide CBA Provisions, which was the only Committee I participated in.
 - ii. The Committee analyzed provisions of term CBAs on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights and examined general trends and commonalities across term CBAs, and their effects on bargaining-unit operations.
- d. What were the objectives of the Committee on Model Agreements and what were your responsibilities as co-chair?
 - i. As co-chair, I helped facilitate communications.
 - ii. The objective was to analyze provisions of CBA and examine general trends.
- e. What other agencies or entities participated in the Committee on Model Agreements?
 - i. I did not maintain records on participants, and ended my participation in February, shortly after the end of the partial government shutdown. However, I have some recollection of representatives from the Department of Education and the Office of Personnel Management participating.
- f. Please describe any communications you have had with the LRG or its members following your formal departure from the group.
 - i. I have had informal, social interactions or communications with members of the LRG on a few occasions, but I don't recall any substantive communications with LRG members regarding labor relation issues since leaving the group in February. After February, for a brief period, I may have responded to general inquiries from other agency employees regarding an HHS matter that was before the FLRA Federal Service Impasses Panel. I am not sure whether any of these were from LRG members, and the communications were not substantive, but in the nature of status updates.

Bird, Catherine (OS/OGC)

From: Bird, Catherine (OS/OGC)
Sent: Thursday, April 4, 2019 6:41 PM
To: Hoffman, Darrell (OS/ASA/IO); Mansdoerfer, David (HHS/OASH)
Subject: Recusal

Hi Darrell and David,

Effective immediately, due to my pending nomination as the General Counsel of FLRA, I am recusing myself from all labor relations issues.

Thank you,
Catherine Bird
Principal Deputy Assistant Secretary for Administration Department of Health and Human Services

**MEMORANDUM OF AGREEMENT
BETWEEN
DEPARTMENT OF VETERANS AFFAIRS
(HOST AGENCY)
AND
DEPARTMENT OF HEALTH AND HUMAN SERVICES
(PARENT AGENCY)**

A. PURPOSE

This Memorandum of Agreement (MOA) documents the reimbursable interagency agreement under which (i) David Mansdoerfer, Deputy Assistant Secretary for Health for Operations, (ii) Catherine Bird, Associate Deputy General Counsel, (iii) and Heather Flick, Deputy General Counsel (the Detailees) will be episodically detailed from the Department of Health and Human Services (HHS) to assist the Department of Veterans Affairs (VA) subject to the terms and conditions below.

B. GENERAL

Both parties agree that the Detailees have skills, knowledge, and experience that VA currently does not have. The work contemplated by this MOA will benefit the VA and its Office of the General Counsel (VA OGC) as it provides legal advice and guidance to VA officials on labor management relations, including negotiating master labor agreements. It is expected that the Detailees' expertise will enhance the VA's ability to oversee labor management negotiations and associated policies.

C. ADMINISTRATION/FINANCIAL

The details subject to this MOA will commence no later than August 20, 2018 and are not to exceed 120 days. This assignment may be extended upon mutual agreement of the host and parent agency for a period not to exceed 12 months. The Detailees' immediate supervisors' are Robert Charrow, General Counsel, HHS who can be reached at 202-690-7741 and Admiral Brett Girior, Assistant Secretary for Health, HHS who can be reached at 202-690-7694.

The Detailees will directly report to the General Counsel, VA. The duty location of the Detailees at the parent agency is 200 Independence Avenue, S.W., Washington, DC 20201. The duty location of the Detailees at the host agency will be 810 Vermont Ave., N.W., Washington, DC 20420.

Upon receiving a request for services under this MOA from the VA, the Detailees' HHS supervisors, in consultation with the Detailees, will determine whether the Detailees can accommodate the request. The VA recognizes that the Detailees' primary responsibilities are to provide services to HHS. The Detailees may work remotely under this MOA, as necessary.

Any VA related travel, per diem costs, and training associated with this assignment will be the responsibility of the host agency.

The Detailees' compensation shall be reimbursed by the host agency to the parent agency, per diem, at their respective pay grade.

The Detailees will provide all required time and attendance documentation to assigned HHS timekeeper. HHS will maintain sole responsibility for approving all leave requests and certifying time cards in the ITAS system. The employees shall be entitled to annual and sick leave in accordance with HHS regulation. The Detailees will be counted as occupying their current positions of record and will remain on the payroll at HHS.

The host agency will support the Detailees with furnished office, conference room access, telephone, customary office amenities, computer/connectivity, and building/base access to accomplish their duties.

Furthermore, the host agency will not subsequently detail the Detailees to perform substantially different duties from those formally approved without additional approval from the parent agency.

D. SECURITY

At a minimum, the Detailees will continue with their current level of access and authority; however, the host agency is authorized to certify access to other agencies and organizations, as necessary.

E. ASSIGNMENT RESPONSIBILITIES

The Detailees will be assigned to the VA OGC under the supervision of the General Counsel, VA. Specific duties are outlined below:

Catherine Bird and Heather Flick will serve as Attorney-Advisors to the VA for labor management relations. David Mansdoerfer will serve as a Senior Advisor to the General Counsel, VA for labor management relations. Specifically, the Detailees will provide expert advice to the VA on labor management relations and facilitate the negotiation of master labor agreements and compliance with laws regulations, and other requirements.

Top Line Duties:

- Advise and assist on labor management relations to include policy formulation, master agreement negotiations, and implementation of policies.
- Review ground rules, proposals, articles, and other documents pertaining to labor management relations at the VA.
- Inform strategy and policy supporting new labor management relationships at the VA.
- Guide VA officials in labor management discussions, communications, and representation within and outside the VA.

F. PERFORMANCE EVALUATION

The Detailees' Employee Performance Management System evaluations for 2018 and 2019 will be completed by HHS with input from the VA.

G. RULES, REGULATIONS, AND POLICIES

This agreement shall comply with the provisions of title 5, chapter 41, United States Code (USC). The employees are subject to the Federal Conflict of Interest Statutes; the Standards of Ethical Conduct for employees of the Executive Branch, including supplemental instructions that apply to the respective employees; and the Hatch Act limitations on political activities (18 U.S.C. §§ 203, 205, 207, 208, and 209), as well as applicable state and local statutory and regulatory provisions.

The Federal Tort Claims Act and other Federal Tort liability statutes shall apply to the employees. The rules and policies that govern the internal operation and management of the host and parent activity are applicable to the employees.

H. CONTACTS

<p>Office of the General Counsel</p> <p>Jim Byrne, General Counsel Office of the General Counsel Department of Veterans Affairs (VA) 810 Vermont Ave., NW Washington, DC 20204 Telephone: 202-461-4995 E-mail: jim.byrne@va.gov</p>	<p>Office of the Secretary</p> <p>Robert Charrow, General Counsel Office of the General Counsel Department of Health and Human Services 200 Independence Ave., SW Washington, DC 20201 202-690-7741 Email: robert.charrow@hhs.gov</p> <p>Admiral Brett Giroir Office of the Assistant Secretary for Health Assistant Secretary for Health Department of Health and Human Services 200 Independence Ave., SW Washington, DC 20201 202-690-7694 Email: ash@hhs.gov</p>
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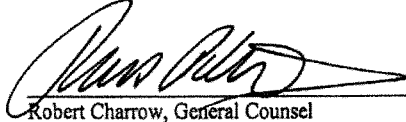
I. REVIEW/TERMINATION

This MOA may be terminated at any time by either host or parent agency if either party agrees that termination is in the best interest of the employees and/or the agencies concerned.

The undersigned agency representatives will review the benefits and efficacy of continuing to maintain this agreement.

Office of the Secretary for Health and Human Services:

APPROVED AND ACCEPTED



Robert Charrow, General Counsel
Department of Health & Human Services

8-22-18

Date



Admiral Brett Giroir, Assistant Secretary for Health
Department of Health & Human Services

8-22-18

Date

Approvals for the Office of the General Counsel:

Jim Byrne
General Counsel
Department of Veterans Affairs

Date

**Ranking Member Gary C. Peters
Post-Hearing Questions for the Record
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

1. In your testimony, when asked: “Is there is anything 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,” you answered—“no.” Do you believe that your previous involvement in federal labor negotiations – as a representative of HHS management and as an advisor to VA management – might present a conflict of interest with the duties of the FLRA General Counsel? Please explain your answer.

I answered no because, if confirmed, I could carry out the duties of the General Counsel position without reservation. Regarding potential conflicts in particular matters, I understand that if confirmed, I will meet with the Solicitor of the Federal Labor Relations Authority (FLRA) and develop a screening agreement, which I fully expect would address HHS matters. If the Solicitor finds that my prior involvement in a matter as an HHS official presents a conflict or otherwise recommends that I recuse myself from a particular FLRA matter, I will recuse myself. However, generally speaking, I do not believe that my ability to carry out the duties of the office is negatively impacted by anything in my background.

2. In your testimony you stated: “[Prior to 2017,] I did not have specific experience with federal labor law; however, I did deal with unions often as stakeholders in legislation that was coming before members that I worked with in the California State Senate.” Please describe at least one specific example of a bill or issue you worked on, for which unions were stakeholders. How, if at all, did the unions’ viewpoint(s) impact your approach to the bill or issue?

On multiple occasions, while working for the California State Senate, unions provided input on various pieces of legislation that I worked on. Each time, our office took their input into consideration – as we did with all stakeholder input.

For a specific example, I was the lead staffer for Senate Bill 168 (2015), Unmanned Aircraft System. This bill made it a criminal offense to fly a drone during specified public emergencies and provided first responders with immunity from civil liability for damage to an unmanned aircraft system, if the damage was caused while the emergency responder was providing emergency services. The California Professional Firefighters (CPF), one of the nation’s most influential public employee organizations, as well as many other unions, were active and important stakeholders during the drafting and development of the legislation. I worked closely with CPF throughout the process to incorporate their

suggestions. In addition to CPF, the bill was supported by the following organizations, among others: Air and Surface Transport Nurses Association, California Ambulance Association, CAL FIRE Local 2881, California State Firefighters Association, Emergency Nurses Association, Fire Districts Association of California, the Long Beach Police Officers Association, LIUNA Local 792, Los Angeles County Professional Peace Officers Association, Orange County Professional Firefighters Association, Local 3631, and the Sacramento County Deputy Sheriff's Association. The viewpoints of these unions, particularly the need for firefighters and first responders to safely carry out their jobs of protecting the public, informed my approach to the issues and were critical in advancing the legislation.

3. During your staff interview, you stated of your time working in the California State Senate, that you enjoyed the challenge of finding consensus among many stakeholders. Please describe at least one specific example of a time you were able to find consensus on an issue for which unions were a stakeholder.

Senate Bill 168 (2015) required a two-thirds vote in the California State Legislature, and thus needed bi-partisan support. In addition, the bill addressed complex issues of criminal liability, immunity to civil liability, regulation of a new technology, public safety and first responder safety, among others. As part of the legislative team, we worked hard to address the concerns of a broad array of stakeholders, including unions, drone manufacturers, technology centered groups, local governments, and others. Obtaining the support of these stakeholders and addressing their competing concerns was challenging and ultimately rewarding, as we were successful in ushering the bill through both legislative chambers. The issues of particular concern to the unions involved immunity from civil liability in certain circumstances, and protecting the safety of first responders and the communities they serve. I believe my efforts effectively advanced these interests in a manner that could be supported by the other stakeholder groups and the State legislature.

4. Please describe your experience in the practice of law prior to joining HHS in May 2017, including the following:

- a. Have you ever tried a case before any judicial or administrative adjudicatory body? If so, please identify the venue, the party you represented, and the disposition of the matter.

No, prior to joining HHS, I worked primarily in the legislative branch of the California State Government and did not have the opportunity to participate in litigation.

- b. Have you ever been the lead attorney for any written motion, brief, pleading, or similar filing before any judicial or administrative adjudicatory body? If so, please describe those written products and the related proceedings.

No, see 4a.

- c. Please describe any additional legal proceedings in which you participated substantively as an attorney, even if you were not the designated lead.

No, see 4a.

- 5. Please describe your experience in the practice of law since the time you joined HHS in May 2017, including the following:

- a. Have you ever tried a case before any judicial or administrative adjudicatory body? If so, please identify the venue, the party you represented, and the disposition of the matter.

I served in the Immediate Office (IO) of the General Counsel. Attorneys in the IO, do not try cases as a general rule. Trials in federal court are usually handled by the Department of Justice and administrative trials are usually handled by either our divisional or regional counsel. I have been involved and assisted with Freedom of Information Act (FOIA) litigation and administrative adjudicatory matters.

While I would not consider myself to be a trial attorney, I believe I have the skills, training, and ability to oversee and manage the prosecution of cases led by the FLRA Senior Executive Service (SES) management team. Throughout my career I have used my legal training to assess the specific facts and relevant law of a situation and to apply the relevant law to those facts. Should I be confirmed, I intend to use these analytic techniques and skills to reach fair and impartial decisions. Additionally, in my role at HHS, I successfully oversee a division with fourteen SES managers. This experience has provided me with the necessary tools to oversee the SES management team at FLRA.

- b. Have you ever been the lead attorney for any written motion, brief, pleading, or similar filing before any judicial or administrative adjudicatory body? If so, please describe those written products and the related proceedings.

No. Please see my answer to 5.a., above.

- c. Please describe any additional legal proceedings in which you participated substantively as an attorney, even if you were not the designated lead.

I have participated substantively in drafting motions, affidavits, and briefs in FOIA litigation. I have also assisted substantively in establishing a record to be used in administrative proceedings before the Merit Systems Protection Board and the Equal Employment Opportunity Commission. These proceedings involve the adjudication of individual agency appeals with respect to matters involving charges of prohibited personnel practices and employment discrimination.

6. In response to the Minority Supplemental Pre-hearing Questionnaire (#4), you stated that you “assisted with the brief” on behalf of HHS before the Federal Service Impasses Panel. Please elaborate on your involvement, including the following:

a. Which articles of the HHS brief did you work on?

As part of the negotiation team, I worked on all articles that were submitted to the Federal Service Impasses Panel.

b. Were you the principal author of those articles?

No, each article was drafted as a team, and the lead decision maker was the HHS chief negotiator, David Mansdoerfer.

c. Did you draft any of the articles or position statements included in the brief? Which ones?

No, each article was drafted as a team, and the lead decision maker was the HHS chief negotiator, David Mansdoerfer

7. Since joining HHS in May 2017, you have held several positions at the Agency with a variety of responsibilities. Approximately what portion of your work for HHS has been on labor relations matters?

I would estimate about twenty-five percent of my time.

8. At any point during your involvement in labor negotiations on behalf of HHS, did the White House, Office of Management & Budget (OMB), or any entity outside of HHS provide direction or guidance on any proposals negotiators submitted? If so, please describe the nature and source of this direction or guidance.

To the best of my knowledge, HHS received no direction or guidance from outside entities, including the White House, on any proposals negotiators submitted.

9. Did the White House, Office of Management & Budget or other entity provide direction or guidance in your work on the VA contract? If so, please describe the nature and source of this direction or guidance.

Neither the White House, OMB or any other entity provided direction or guidance to me on my work on the VA contract.

10. In response to the Minority Supplemental Pre-hearing Questionnaire (#7), you stated that in your current role overseeing the Human Resources division at HHS you “have participated in investigations and have impartially evaluated the merits of allegations and disputes.”

- a. Please describe the general nature of the allegations and disputes you evaluated.

I have handled investigations on topics including misuse of government funds, fraud, and performance and conduct. These investigations have ranged from senior executives to front-line staff.

- b. Approximately how many such investigations have you conducted?

I would estimate between 20 and 30.

11. In response to the Committee's Pre-hearing Questionnaire (#8a), you stated: "I have worked swiftly to investigate whistleblower complaints brought to my attention and have ensured that no retaliation was taken against the whistleblower."

- a. How many whistleblower complaints have you personally investigated?

I have investigated approximately five such complaints.

- b. How did you ensure that no retaliation occurred?

I provided strong and specific guidance and direction to staff, in accordance with the Office of Special Counsel, to ensure no retaliation occurred.

12. In response to the July 12, 2019 Minority Supplemental Pre-hearing Questionnaire, you stated that you represented HHS as a member of the Interagency Labor Relations Working Group (LRG) established by Executive Order 13836 from approximately July 10, 2018 – Feb. 20, 2019.

- a. Over the course of your involvement with the Labor Relations Group, did the Group ever create or share drafts or templates for CBAs? Did you provide feedback or edits on drafts or templates for agencies besides HHS and VA? Which agencies?

While I was involved in the Labor Relations Group, to the best of my knowledge, the LRG did not create or share drafts or templates for collective bargaining agreements (CBA). I am unaware of what, if any, steps the group took after I ended my involvement. I did not provide any edits, comments, or other feedback on any draft CBA for any other agency.

- b. Did you have formal discussions regarding best practices or strategies for negotiating CBAs?

No.

13. In your staff interview and your hearing before the Committee, you expressed readiness to handle FLRA's low employee morale based on your experience conducting the Federal Employee Viewpoint Survey at HHS. While HHS is second among all large agencies in Best Places to Work, the agency subcomponent in which you currently serve – the Office of the Secretary – is ranked significantly lower (317 of 415 agency subcomponents), particularly in the area of "effective leadership." Please the efforts you have taken to address employee morale specifically in the Office of the Secretary.

When I became Principal Deputy Assistant Secretary for Administration (PDAS), I requested a briefing on results of the 2018 Federal Employee Viewpoint Survey (FEVS) for the Office of the Assistant Secretary for Administration, Office of the Secretary (OS), and the Department of Health and Human Services overall. I wanted to gain global insight into HHS employee perceptions of the working conditions, as I would have oversight for this function across the Department.

In the OS, the 2018 FEVS scores for employee engagement, global satisfaction, and effective communications each fell by at least one percentage point. I re-established an OS Integrated FEVS Program Manager team with representatives from each Staff Division. This team meets regularly throughout the year and partners with executive leadership to address workforce conditions in support of creating a positive, healthy, engaged, and innovative work environment. I ensured the head of every Staff Division received a briefing that highlighted their highest positive and negative FEVS scores. I initiated a campaign called "You Spoke, we listened, this happened" to connect leadership action as a result of the survey. The OS Integrated FEVS Program Manager team executed a seven-week communications plan to promote the 2019 FEVS. The campaign resulted in a nine percentage point increase in the response rate for the OS from 51% in 2018 to 60% in 2019 at the survey close.

In my role as PDAS, I strengthened organizational and individual accountability among members of the SES for using FEVS data to inform improvements in advancing the employee experience. In support of the achievement of successful organizational outcomes, all SES now have standard language in the "Leading People" element of their performance plans.

**Senator Maggie Hassan
Post-Hearing Questions for the Record
Submitted to Catherine Bird**

Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia

Tuesday, July 16, 2019

1. The Federal Service Labor-Management Relations Statute states that federal agencies have a duty to bargain in good-faith before requesting mediation or the assistance of the Federal Services Impasses Panel.
 - a. As Federal Labor Relations Authority General Counsel, what steps would you take when there is clear evidence that federal agencies have not negotiated in good-faith?

As with any case that comes before me, I would apply Chapter 71 of title 5 and applicable regulations and case law. If there were clear evidence that an agency refused to consult or negotiate in good faith, absent extraordinary circumstances, I would file a complaint against the agency.

- b. In your view, are federal agency actions such as ignoring union requests for information, refusing to discuss specific contract language, or requesting Federal Services Impasses Panel assistance when there is no sign of an impasse, indicative of a federal agency not negotiating in good-faith? If not, please provide your own examples.

While I cannot speak to any specific cases, if a federal agency is found to have committed a ULP, as defined Chapter 71 of title 5 and applicable regulations and case law, that would be considered an unfair labor practice.

Indications of a federal agency not negotiating in good-faith include not approaching negotiations with a sincere resolve to reach an agreement, not agreeing to meet at reasonable times and convenient places as frequently as needed, and causing unnecessary delays.

**Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

- 1) In addition to your involvement in the recent federal labor-management disputes with the VA and HHS that led to the filing of Unfair Labor Practice (ULP) complaints, you have been a member of a working group through OPM that brought together most of the federal agencies to discuss and develop Administration strategies for settling federal labor-management disagreements. Given your involvement in that type of group, as well as the situations with the HHS and VA labor negotiations where you had a direct role in negotiations, the chance of you needing to recuse yourself from some of your duties at FLRA seems high. I know you said in your questionnaire that you would follow agency guidance on recusal issues, and I appreciate that.
 - a. Are you concerned that your previous roles with the Administration will make it more difficult for you to be the impartial arbiter who follows the facts and case law that this position calls for? Why or why not?

I am not concerned that my previous roles will make it difficult to serve as an impartial arbiter. I fully appreciate that my role as General Counsel at the Federal Labor Relations Authority would be quite different from my current or prior role as an agency official or attorney. My responsibility was to represent management of HHS, and to a limited extent the VA, to the best of my ability. If confirmed, my duty will be to follow Chapter 71 of title 5 and all applicable regulations and case law, and to be an impartial decision maker, which I commit to doing.

- 2) Looking at the situation with HHS and the way those labor negotiations unfolded, and including the labor negotiations with the VA.
 - a. What do you wish you had done differently in those situations?

During these negotiations, my responsibility was to provide my best advice and counsel as part of the team representing management, which is what I did. I don't think there is anything I would have done differently.

- b. What do you feel like you could have done to avoid the Unfair Labor Practice complaints that both negotiations led to?

It is not within my ability to control when an unfair labor practice charge is made. While I understand that parties have different points of view and may not always agree on positions taken, I always negotiated in good faith.

- 3) I would be interested to know more about the Administration's working group on federal labor issues that you were involved with.
- a. Can you provide a brief rundown of your understanding of the working group's goals and the outcomes it achieved?

The working group's goals as I understood them were to carry out the responsibilities set forth in the relevant Executive Order establishing the group. These include analyzing provisions of term collective bargaining agreements (CBA) on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights, and examining general trends and commonalities across term CBAs, and their effects on bargaining-unit operations. Because I left the group in February, I am not aware of the outcomes the group has achieved.

- b. How did the group's efforts and findings influence the negotiating stance that the agencies took in either the VA or HHS labor negotiations that you were involved with?

To the best of my knowledge, it had no impact.

- 4) At the hearing, we discussed your experience for the General Counsel position with FLRA, and I had several follow-up questions along those lines.
- a. What experience do you have, from your entire legal career, working on, with, prosecuting or answering Unfair Labor Practice complaints?

Since I have been at HHS, I am not aware of any ULP complaints that have been filed against HHS.

- b. Do you feel you are qualified today to adjudicate a ULP charge? Why or why not?

Yes. While at HHS, I have been involved in addressing allegations of unfair labor practices. Prior to my tenure at HHS, a ULP charge was filed with the FLRA, and I have been involved in responding to that charge. In addition, my first-hand experience at the bargaining table and responding to grievances concerning unfair labor practices, as well as my legal training provide me with the knowledge and skill-set needed to evaluate a ULP charge and prosecute a ULP complaint.

- c. Given your limited experience with ULPs, what steps do you need to take to handle the challenging backlog of cases at FLRA?

I believe my experience with HHS labor issues is valuable experience that provides me with a solid foundation in labor management relations. However, I do not know specific steps needed at this point to reduce the backlog. I would look to the career attorneys in the Office of General Counsel, particularly the

career SES Deputy General Counsel and SES Regional Directors, to develop a project management plan which will focus on prioritization and set deadlines to eliminate the backlog.

- d. How do you answer concerns that your background does not contain enough federal labor law experience to be successful as General Counsel at the FLRA?

At HHS, I have been involved in all aspects of labor-management relations, including ensuring compliance with current CBAs, negotiations with labor organizations, and responding to allegations of unfair labor practices. I believe I have the skills, training, and ability to oversee and manage the prosecution of cases led by the FLRA SES management team. Throughout my career I have utilized my training in analyzing the specific facts of a situation, applying the applicable rules and regulations, and coming to fair and impartial decision. Additionally, in my role at HHS, I successfully oversee a division with fourteen SES managers. This experience has provided me with the necessary tools to oversee the SES management team at FLRA if confirmed as General Counsel.

- 5) How long have you been in a role to oversee the HHS Human Resources division? How many investigations have you conducted during this period and how many decisions have you issued based on those investigations?

I have been in this role for approximately one year. I have overseen approximately 20-30 investigations. As I was often not a sole decision maker, I do not have specifics on the number of decisions issued.

- 6) How many whistleblower complaints have personally you investigated? How many decisions related to whistleblower complaints have you issued?

I have personally investigated approximately five complaints. I was not the deciding official in those cases.

- 7) Please explain the nature and extent of your experience interacting with federal sector labor unions at HHS. What specific activities did you participate in and what was your role? Was there interaction beyond your involvement in the labor-management negotiations?

At HHS, I have interacted with federal sector unions primarily in negotiations and participated in employee and labor relations issues more generally. As Principal Deputy Assistant Secretary for Administration, part of my responsibilities have been to ensure that HHS management are aware of, and fully compliant with, all current active collective bargaining agreements in place at HHS.

**Senator Jacky Rosen
Post-Hearing Questions for the Record
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia
Tuesday, July 16, 2019**

1. During your time at the Department of Health and Human Services (HHS) you have represented management in labor contract negotiations. As General Counsel of the Federal Labor Relations Authority (FLRA), you would be charged with investigating and prosecuting unfair labor practice charges, including charges brought by workers against management.

- a. How will you determine when it is appropriate to recuse yourself from a case where it appears there may be a conflict of interest with your work at HHS?

I understand that if I am confirmed, I will meet with the Solicitor of the Federal Labor Relations Authority to develop a screening agreement, which I fully expect will address HHS matters. If the Solicitor finds that my prior involvement in a matter as an HHS official presents a conflict or otherwise recommends that I recuse myself from a particular FLRA matter, I will recuse myself.

- b. Can you provide some examples of the types of cases where you feel it would be appropriate to recuse yourself?

It would be appropriate to recuse myself from matters I have been personally involved with at HHS, such as negotiating as part of the HHS team. I would follow the advice of the Solicitor in identifying specific cases where recusal would be appropriate.

- c. If you do recuse yourself from a case, who at FLRA will make the decision whether and what cases to investigate and prosecute?

It is my understanding that the authority of the General Counsel would be delegated to the FLRA Deputy General Counsel.

2. In September 2018, you attended a mediation between a union representing federal employees and their employer, the Department of Veterans Affairs (VA).
 - a. Why did you attend the mediation, even though you worked for HHS and not the VA?

VA leadership asked that I attend to provide counsel, if needed by team.

- b. Was there written authorization for you to represent the VA in those negotiations, even though you were an employee of HHS?

Yes, I have provided the Committee with a copy of the Memorandum of Agreement (MOA) between HHS and VA setting forth the terms of my detail, which authorized my participation.

- c. What was your role during the negotiations?

As stated in my supplemental questionnaire, I provided *ad hoc* support for the VA. While there was an MOA in place, in fact, during the detail, I provided only limited assistance on a sporadic basis. During the negotiations in September 2018, I was not at the negotiation table but provided limited counsel during caucus.

Opening Statement of Rainey R. Brandt
Nominee to be an Associate Judge of the District of Columbia Superior Court
July 16, 2019

Mr. Chairman and members of the committee, thank you for this opportunity to appear today, as you consider my nomination to serve as an Associate Judge of the Superior Court of the District of Columbia. The committee members and their staff have been very welcoming and I appreciate the hard work and careful consideration of my nomination. I would like to thank the DC Judicial Nomination Committee and its chair Judge Emmett Sullivan for recommending me to the White House, and the President for nominating me.

It is an honor to be seated here today with my colleague and friend, Judge Shana Matini. Our friendship began over twenty years ago when we clerked together at Superior Court. I am fortunate to have the support and guidance from many friends and colleagues, some of whom are here today. I thank you all for helping me get to this point. Five of them in particular who are present, I would like to recognize at this time: Chief Judge Robert Morin, as well as former Chief Judge Lee Satterfield, have been with me every step along my judicial journey. Deputy Director of Interpol, Michael Hughes, whose friendship is a source of support and guidance. Judge Michael Rankin and Judge Stephanie Duncan Peters, for whom I clerked, and learned so much about how to be a good judge.

I would like to observe that my mom, Eloise Ransom, who died 3 years ago, is in my heart and I know she is proud of what both her daughters have accomplished. My sister, Cricket Ransom, a dedicated DC public school teacher, is here today to offer her support. Last but certainly not least, I would like to thank my husband, Chief Robert Brandt of the United States Marshals Service. His unconditional love and support enable me to give 110% to DC Superior Court.

I have lived in the District of Columbia for over 30 years. Much of my legal career has been at Superior Court, first as a student practicing attorney, then judicial law clerk to Judges Michael Rankin and Stephanie Duncan-Peters, then as a special counsel to three chief judges, and now as a magistrate judge. In addition to my work as a lawyer and judicial officer, I teach at American University and have done so for over twenty five years. All of these experiences have given me the opportunity to be a good public servant, and prepared me to become an associate judge.

Since 2012, I have been a magistrate judge at DC Superior Court. During my tenure I have been assigned to the criminal, civil and domestic violence divisions. I am well-prepared to assume the additional responsibilities of an associate judge. In addition to my caseload responsibilities, I serve on a variety of court committees and have taken on the leadership role of currently being the Deputy Presiding Magistrate Judge.

Each day I see people from all walks of life, with varied degrees of temperament and vulnerability. I work diligently to ensure that all litigants who appear before me feel they are heard and each case handled fairly—all while preserving the rule of law.

It is an honor to serve the citizens of the District of Columbia as I maintain the court's mission of being open to all, trusted by all, providing justice to all. Thank you again 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).**
Rainey Ransom Brandt (formerly Rainey Eloise Ransom)
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
Magistrate Judges' Chambers 4450
500 Indiana Avenue, NW
Washington, DC 20001
(202) 879-4795
4. **Date and place of birth.**
March 12, 1966; LaGrange, GA.
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 Robert W. Brandt, Chief, United States Marshals Service, DC Superior Court, 500 Indiana Avenue, NW, Washington, DC 20001
6. **Names and ages of children. List occupation and employer's name if appropriate.**
I have no children.
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.**
The Catholic University of America Columbus School of Law, Washington, DC; 1992 – 1995; Juris Doctor awarded 1995.
American University, Washington, DC; 1990 – 1993; Doctor of Philosophy awarded

1993.

American University, Washington, DC; 1989 – 1990; Master of Science awarded 1990.

American University, Washington, DC; 1987 – 1989; Bachelor of General Studies awarded 1989.

Brown University, Providence, RI; 1984 – 1987; no degree received.

LaGrange High School, LaGrange, GA; 1980 – 1984; High School Diploma awarded 1984.

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 – present
 American University
 School of Public Affairs
 Department of Justice, Law and Criminology
 [Formerly Department of Sociology]
 4400 Massachusetts Avenue, NW
 Washington, DC 20016
 Adjunct Associate Professor

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 University SPA Adjunct of the Year (2017)
 Distinguished Alumnus Award, DC Law Students in Court (2015)
 Certificate of Service, Bar Association of DC (2013)
 Potter Stewart Award, Council for Court Excellence (2010)
 Adjunct Professor of the Year, American University (2009)
 Service Pin, District of Columbia Courts (2007)
 Teaching Recognition, Washington Semester Program (2007)
 Adjunct Professor of the Year, American University (2006)
 Board Pillar Award, DC Law Students in Court (2004)
 Medal of Excellence, Superior Court of the District of Columbia (2000)

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.**

Voices For A Second Chance
 [Formerly Visitors' Services Center]
 Board of Directors (2006 – 2013)
 President (2009 – 2012)

DC Law Students in Court
 Board of Directors (2000 – 2012)
 Secretary (2008 – 2010)
 Vice President (2006 – 2008)
 President (2002 – 2006)

- 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.**

D.C. Superior Court
 Judicial Mentoring Program (2013 – present)
 Criminal Justice Act Panel Committee (2014 – present)
 Judicial Education Committee (2015 – present)
 Pretrial Mental Examination Committee (2014 – 2016)

Bar Association of the District of Columbia
 Bar Association of the District of Columbia Member (2014 – 2017)
 Bar Association of the District of Columbia Foundation (2007 – 2014)

District of Columbia Bar (Court's Lawyers Committee) (2011 – 2012)

Women's Bar Association of the District of Columbia (Mentor) (2013 – present)

Thurgood Marshall Inn of Court (1999 – 2002)

American Bar Association (1999 – present)

Maryland State Bar Association (1996 – 2012)

American Correctional Association (1989 – 1995)

American Society of Criminology (1989 – 1998)

- 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.**

John Carroll Society (2016 – present)

Kappa Alpha Theta Sorority (1985 – 1987)

Kappa Alpha Theta Sorority is an all-female fraternity. Neither the John Carroll Society nor Kappa Alpha Theta Sorority discriminates or has ever 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.

District of Columbia, 2008 – present.

United States Supreme Court, 2001 – present.

Maryland, 1996 – 2012.

My membership has been inactive since 2012 because I am a Magistrate Judge in DC.

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

Co-Author, *Jurors in Capital Cases: What Can One Maryland Jury Teach Us?*, 14 CRIM. JUST.18 (1999).

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;

From 1996 to 1997, I served as a law clerk to the Honorable Michael L. Rankin, Associate Judge of the Superior Court of the District of Columbia.

During the summer of 1998, I served as law clerk to the Honorable Stephanie Duncan-Peters, then Associate Judge of the Superior Court of the District of Columbia.

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

I have never practiced law alone.

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

2012 – present
 Superior Court of the District of Columbia
 500 Indiana Avenue, NW
 Washington, DC 20001
 Magistrate Judge

1998 – 2012
 Superior Court of the District of Columbia
 500 Indiana Avenue, NW
 Washington, DC 20001
 Special Counsel to the Chief 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 1996 to 1997, I served as a judicial law clerk for the Honorable Michael L. Rankin, Associate Judge of the Superior Court for the District of Columbia. The majority of my clerkship involved researching, analyzing, and preparing orders for civil cases. In January 1997, the calendar assignment changed to an AFTC (Accelerated Felony Trial Calendar), and the remainder of my clerkship involved criminal law research and the preparation of orders.

In 1998, I briefly served as a judicial law clerk for the Honorable Stephanie Duncan-Peters, then-Associate Judge of the Superior Court for the District of Columbia. During that time, the focus of my work involved criminal case research and the preparation of orders.

In 1998, then-Chief Judge Eugene Hamilton hired me to be his legal advisor and designated the position Special Counsel to the Chief Judge. Initially, my primary duties were to provide legal support to the judge on sentencing and other issues related to corrections and parole. Examples of those duties included providing expertise to judges to ensure that sentences were legal, troubleshooting prisoner issues, and providing education on changes in the law.

Over the succeeding years, my role as Special Counsel expanded to include duties

of a Chief of Staff, senior court manager, and court ombudsman to other agencies, such as the Criminal Justice Coordinating Council, D.C. Department of Corrections, U.S. Attorney's Office, and D.C. Public Defender Service. Among the duties performed daily were briefing the Chief Judge on various matters, dealing with court operations issues, conducting meetings, making presentations, and a host of other responsibilities. During this time, I wrote numerous administrative orders and memoranda of understanding where the court was a party, developed forms and protocols for court functions related to criminal practice, and prepared reports for the Chief Judge and the presiding judges of the divisions.

In 2012 I was appointed as a Magistrate Judge at DC Superior Court. My initial assignment was in the Domestic Violence (DV) Unit. As the DV Magistrate Judge, my calendar handled cases that spanned the criminal, civil, and family areas of law. I was responsible for hearing all misdemeanor DV arraignments, detention hearings, temporary protection order requests, and child support matters in which an active civil protection order exists. Additionally, I took pleas, monitored deferred sentencing agreements that resulted from said pleas, imposed sentences, and handled probation show causes.

Since 2013, I have presided over a misdemeanor trial calendar in the criminal division. On a daily basis, I handle pleas, conduct status hearings, probation show causes, sentencing and trials. The cases range in subject matter from driving under the influence, leaving after colliding, unlawful possession of firearms to disorderly conduct. There are currently approximately 800-900 cases assigned to my calendar. I dispose of over 250 cases each month by trial, plea or dismissal. I hear an average of 40-50 cases per day.

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

As Special Counsel to the Chief Judge, my chief client was the D.C. Superior Court. I served the Court by providing guidance to judges, attorneys, staff, and the public in response to questions about sentencing, court procedures, inmate issues, and a variety of other topics.

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.**

When I was Special Counsel, I occasionally appeared in court as a court official because that position did not allow me to litigate matters. While in law school, I did represent clients in the DC Law Students in Court

Program, a non-profit legal clinic that allows third year law students to take cases under the supervision of staff attorneys. As part of this program and with the supervision of practicing attorneys, I represented adults charged with misdemeanor offenses. My duties included interviewing witnesses, writing discovery and pre-trial motions, preparing witnesses for testimony, and drafting questions for direct and cross examination. My clients were charged with an array of crimes such as theft, simple assault, shoplifting, drug possession, and sexual solicitation. I appeared in court approximately twice a month while a participant in the DC Law Students in Court Program.

(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.**

All appearances have been in D.C. Superior Court.

(3) What percentage of your litigation has been:

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

100% of the cases I handled while a student litigator in the DC Law Students in Court Program were 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.

Prior to becoming a magistrate judge, my position with the D.C. Superior Court did not involve litigation. However, while I was a student litigator in the DC Law Students in Court Program, I achieved an acquittal in one case and successfully won a motion for a civil protection order in another. In both matters, I was acting under the direct supervision of a practicing attorney.

(5) What percentage of these trials was to

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

One-hundred percent of the cases were decided by 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. District of Columbia v. James Barber, 2013 CDC 18385

During the early morning hours of June 7, 2013, a female correctional officer and her trainee officer were patrolling a cellblock within the D.C. Jail. It was alleged that several inmates exposed themselves in view of the officers. Eleven inmates were subsequently arrested and charged with disorderly conduct. All eleven defendants' trials were scheduled before me as separate trials with the same prosecutor. Some defendants have been represented by the Public Defender Service for the District of Columbia ("PDS"), but most have been represented by Criminal Justice Act attorneys. Before each trial, I disclosed my familiarity with the issue and potential government witnesses from previous trials; and gave both sides an opportunity to request a different judicial officer to preside. No one opted out. There have been five pleas, three dismissals, two guilty verdicts and one acquittal. James Barber's case was dismissed because of discovery issues raised by the defense that could not be cured. As the judge who has presided over each case, I had to compartmentalize the evidence so that my knowledge of the incidences as a whole did not taint my assessing of the evidence presented in each trial.

Counsel for the District of Columbia:

Jack Korba

Assistant United States Attorney

[then Assistant Attorney General for the District of Columbia]

555 4th Street, NW

Washington, DC 20001

(202) 514-1000

Defendants' Counsel:

Dana Page

Public Defender Service for the District of Columbia

633 Indiana Avenue, NW

Washington, DC 20004

(202) 824-2549

2. District of Columbia v. James Mitchel, 2012 CTF 18814 and 2013 CTF 7300

James Mitchell was arrested for suspected driving under the influence in October 2012 and again in May 2013. His attorney asked the Court to order a mental health forensic evaluation based on his interaction with Mr. Mitchell. That evaluation led to further evaluations and tests, ultimately leading the doctors to conclude that Mr. Mitchell was incompetent to stand trial. I convened a hearing so that the doctors and Mr. Mitchell could testify. After weighing the testimony and reviewing numerous medical reports, I found Mr. Mitchell incompetent.

Counsel for the District of Columbia:

George Peter Saba
Assistant Attorney General for the District of Columbia
441 4th Street, NW
Washington, DC 20001
(202) 727-4779

Defense Counsel:

Winston Yallery Arthur
Scott & Yallery ~ Arthur Law Offices
7306 Georgia Avenue, NW
Washington, DC 20012
(202) 882-5770

3. Nefisa Mussa Siraj v. Abdulaye H. Gassama-Himnou, 2009 SUP 1907

Parties to a civil protection order (CPO) who have children in common can open a paternity and support case that is handled by the Domestic Violence (“DV”) unit as long as the CPO is active. In light of the busy calendar obligations of the DV magistrate assignment, I expected to transfer this case back to the child support branch, since the CPO had expired. This would have resulted in a lengthy continuance of the case. Upon review of the file, and after hearing from the parties, I noted that this case had been in the DV unit since 2009, and I was the fourth judge to handle the matter. Since 2009, the respondent had amassed \$21,000.00 in child support arrearages. I concluded it was in the best interest of justice to keep the case and work to resolve the matter.

The government filed a Motion for Contempt against the respondent in 2011, which had not been resolved. I scheduled the matter for a hearing, where the respondent’s ability to pay was demonstrated, and I found him in civil contempt. I ordered him to jail for 30 days or until the purge amount of \$2700.00 was paid. The purge amount was paid in 7 days. At the next hearing, the respondent had retained counsel, and a new payment schedule was established.

Counsel for the District of Columbia:

Anita Monteiro
Assistant Attorney General for the District of Columbia
441 4th Street, NW

Washington, DC 20001
(202) 442-9815

Counsel for Respondent:

Claude Roxborough, Esq.

[Joined as Counsel for the respondent in May 2013]

[Deceased]

4. District of Columbia v. Juana Alvarado, 2015 CTF 0410

Juana Alvarado pled guilty to one count of driving under the influence and one count of leaving after colliding — property damage, for events that occurred in January 2015. Ms. Alvarado took her friend's car without permission, drove it while intoxicated, hit a fence, then proceeded down another street and hit a truck. The car she was driving was essentially totaled because the estimated cost to repair it was more than the car's actual value. At sentencing the government asked for restitution for the totaled car, and presented several different numbers (amount victim wanted, amount victim paid for the car a year ago, and the amount the insurance appraiser estimated for repairing the car). Ms. Alvarado's counsel disputed all proffered numbers in a very well thought out opposition, that not only countered the numbers, but also focused the Court on its restitution parameters per the statute.

Counsel for the District of Columbia:

Jamie Carter

Assistant Attorney General for the District of Columbia

441 4th Street, NW

Washington, DC 20001

(202) 727-6381

Defense Counsel:

Sharon Weathers, Esq.

717 D Street, NW, Suite 300

Washington, DC 20004

(703) 725-9674

5. District of Columbia v. Craig Tucker, 2014 CDC 4912

Craig Tucker was charged with one count of possession of an unlawful firearm, and one count of possession of unlawful ammunition stemming from events that occurred on March 20, 2014. Mr. Tucker was the building manager of a secure parking garage located on G Street, NW. Federal Protective Services received a series of anonymous phone calls from the same person reporting a handgun in the back seat of a dark truck located in the garage. Officers located the truck, but did not see a gun. The caller continued to call back, telling the officers to go back to the truck because he was looking at the gun right now. Officers returned to the truck, saw a gun, located the owner of the truck (Craig Tucker), and placed him under arrest. As this case progressed, the defense

filed a number of suppression motions and a motion to dismiss, citing Rule 16 discovery violations and Brady v. Maryland, 373 U.S. 83 (1963). The main defense argument was that the government failed to turn over the videos from the interior and exterior of the garage. According to the defense, that video would have shown not only the identity of the anonymous caller, but also that the caller planted the gun. That was the defense theory of the case. After reviewing the parties' pleadings, hearing arguments thereto, and reviewing much case law, I ruled in favor of the defense finding that the government had an obligation to preserve the video, and dismissed the case. The government filed a motion for review of my order to an associate judge pursuant of Super. Ct. Crim. R. 117(g)(1).

Counsel for the District of Columbia:

Brian Kim
Assistant Attorney General for the District of Columbia
441 4th Street, NW
Washington, DC 20001
(202) 727-3223

Defense Counsel:

Bernard Grimm
The Law Office of Bernard Grimm
1200 19th Street, NW
Washington, DC 20036
(202) 912-4888

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).**

As Special Counsel, I had the opportunity to write several administrative orders for Chief Judges Hamilton, King, and Satterfield. These orders, issued by the Chief Judge, give guidance and direction covering a wide variety of issues, such as how the court will function during emergencies, the process for appointing counsel to cases, and setting up protocol for the implementation of new laws passed by the D.C. Council that impact the court. One order that I wrote established and defined the parameters for courthouse release of prisoners, and another set the administration of the arraignment process.

Additionally, on August 5, 2000, parole for sentenced misdemeanants was abolished. The D.C. Superior Court became the paroling authority for misdemeanants serving sentences that predated the law change. The Presiding Judge of the Criminal Division became the granting official for this administrative process. As Special Counsel, I served as the recommending official for all misdemeanor parole packages submitted by the D.C. Department of Corrections. In order to arrive at a recommendation, I reviewed parole requests, which consisted of the offenders' case files, letters requesting parole

consideration, and any additional reports or commendations. Since parole is discretionary, I developed a checklist of items to consider in order to ensure consistency in the process. That checklist included a synopsis of the crime committed, institutional adjustment documentation, reports of disciplinary infractions, and how much of the sentence imposed had been served thus far. I submitted written recommendations to the Presiding Judge of the Criminal Division.

In 2007, Chief Judge King created a task force to investigate over-detentions and erroneous releases at the jail. I chaired that task force, which included the Director of the D.C. Department of Corrections, the U.S. Marshal for Superior Court, and the Director of the D.C. Superior Court's Criminal Division. We determined that releasing low-level offenders from the courthouse instead of the jail would decrease over-detentions and erroneous releases and accordingly devised a process through which defendants could be released after a series of records checks and completed paperwork confirmations. As part of this process, suitable clothing, Metro tokens, identification cards, as well as medical and community wraparound services information are currently provided for the defendants. Since 2008, the courthouse release program has resulted in reduced bureaucracy and over 2,500 low-level D.C. defendants being released to their families at an earlier time.

From January 2010 to March 2011, I wrote and helped implement an order that streamlined the Superior Court's initial presentment, or arraignment process. For many years, the initial presentment process had consistently drawn criticism because of its inefficiency and untimeliness despite many piecemeal attempts to improve the process. Most of the process is electronic now and information is readily available to attorneys and the public about the order and status of cases. This eliminated a tremendous amount of frustration, and of wasted time and money, and it resulted in eighty percent of all papering activity being completed before the courtroom opens. The practical changes span the gamut from restructuring the flow of paperwork to adding computer access for the attorneys.

As an adjunct professor in American University's Department of Justice, Law and Criminology, I have provided foundational legal instruction to undergraduate and graduate students for the past 26 years, through teaching courses like *Justice, Law and the Constitution*; *Critical Issues in Justice*; *Criminal Procedure*; and *Concepts of Punishment*.

As a magistrate judge I sit on several judicial committees, the two most significant being the Criminal Justice Act Panel Committee (CJA) and the Judicial Education Committee. All committee assignments are designated by the Chief Judge, which is important since I am a magistrate judge on two out of three of the most coveted committees. The CJA committee is responsible for selecting the court-appointed attorneys to represent indigent people charged with crimes. The vetting process for attorneys to be on that panel is detailed, highly selective and requires much time of the members who conduct investigations and interviews with the candidates.

The Judicial Education Committee is responsible for organizing training for the judges. Annually, we hold two, two-day sessions ranging a wide variety of topics. Each member is additionally responsible for producing a monthly training module. Since being a member of the committee, I have conducted training on the court's response during a pandemic emergency, and the aging brain.

The Judicial Coaching Program is a new, intensive approach to assist judges to be better jurists, while dealing with the work-life balance. It is required for all new judges, and optional for any judge who feels a coach would help them. Since the program started after I had been a judge for only two years, I volunteered to have a coach. The coaching theory is simple—you and your coach are to talk about things that have an effect on your being a judge. There are a variety of coaching skills and tools utilized, but it is not meant to teach the law or analyze cases and instead strengthens the judge as a whole. I gained great benefits and insights into my own way of doing things, and two years later, I was asked to become a judicial coach. I am currently coaching a new colleague in hopes of passing along all that I have learned to achieve success on the bench.

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 was appointed as a Magistrate Judge at DC Superior Court in 2012. The jurisdiction of DC Superior Court Magistrate Judges is set forth in DC Code Sections 11-1732 and 11-1732A. My initial assignment was in the Domestic Violence (DV) Unit. In that role I took pleas, monitored deferred sentencing agreements that resulted from said pleas, imposed sentences, and handled probation show causes. Currently, I preside over a misdemeanor trial calendar in the Criminal Division. I resolve over 250 cases each month by trial, plea or dismissal. My assignments thus far have not been the type that require written opinions.

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

District of Columbia v. Craig Tucker, 2014 CDC 4912. Craig Tucker was charged with one count of possession of an unlawful firearm, and one count of possession of unlawful ammunition stemming from events that occurred on March 20, 2014. Mr. Tucker was the building manager of a secure parking garage located on G Street, NW. Federal Protective Services received a series of anonymous phone calls from the same person reporting a handgun in the back seat of a dark truck located in the garage. Officers located the truck, but did not see a gun. The caller continued to call back, telling the officers to go back to the truck because he was looking at the gun right now. Officers returned to the truck, saw a gun, located the owner of the truck (Craig Tucker), and placed him under arrest. As this case progressed, the defense filed a number of suppression motions

and a motion to dismiss, citing Rule 16 discovery violations and Brady v. Maryland, 373 U.S. 83 (1963). The main defense argument was that the government failed to turn over the videos from the interior and exterior of the garage. According to the defense, that video would have shown not only the identity of the anonymous caller, but also that the caller planted the gun. After reviewing the parties' pleadings, hearing arguments thereto, and reviewing much case law, I ruled in favor of the defense finding that the government had an obligation to preserve the video, and dismissed the case. The government filed a motion for review of my order to an associate judge pursuant of Super. Ct. Crim. R. 117(g)(1). Judge Cushenberry issued an opinion reversing my ruling.

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 never been a candidate for an elected judicial or 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, I will resign from any boards I currently sit on that would present conflicts of interests. My employer, the D.C. Superior Court would remain the same. I would continue to teach as an adjunct faculty member at American University.
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.**
 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.**
 I intend to continue teaching as an adjunct faculty member at American University. I teach one class per semester at night, once a week.
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 would resolve any potential conflicts of interest 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 11-1501 (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 November 7, 2008.
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 have resided at the following addresses:



REDACTED

2010 – 2012
4000 Massachusetts Avenue, NW, Apt. 1021
Washington, DC 20016

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.**

Copies are attached.

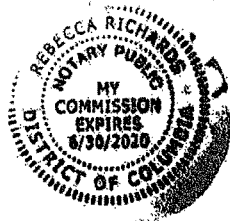
AFFIDAVIT

Rainey Brandt 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.

Rainey Brandt

SUBSCRIBED and SWORN TO before me this 14th day of September, 2017.

[Signature]
Notary Public



District of Columbia; SS
Subscribed and Sworn to before me
this 14th day of September, 2017
[Signature]
Rebecca Richards, Notary Public, D.C.
My commission expires June 30, 2020

**Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Rainey R. Brandt**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

- 1) The position you are nominated for is critically important, especially given the ongoing high number of vacancies within the D.C. Superior Court.
 - a. What efforts, if any, have you made outside the courtroom to prepare yourself for the position for which you are nominated?

Response: In my current role as a magistrate judge I manage high volume courtroom assignments, and preside over numerous bench trials and motions hearings. I have to balance a daily schedule that includes hearing cases, attending committee meetings and chambers time. Chambers time is spent reviewing and signing orders, going over prep for the next day's cases with my law clerks, and reading case law. Those routines have served me well and will continue if I am fortunate to be confirmed as an associate judge. Additionally, I have attended and will continue to attend judicial continuing education sessions to familiarize myself with subjects that I will have jurisdiction over if confirmed. Most recently, I attended probate training.

- b. As we consider your nomination to be an Associate Judge, I want you to cast forward to the end of your career. What do you hope your legacy as a judge will be when you leave the bench?

Response: I hope to be remembered as a well prepared, fair, impartial judge, who treated everyone with respect. I hope my judicial colleagues would say that I always answered the call when there was a need to discuss a matter or handle a docket, or just provide support and guidance.

- 2) As a Magistrate Judge, there is a limited jurisdiction. Associate Judges have an opportunity to handle many more cases and more issues.
 - a. As such, how would you go about preparing yourself to successfully meet the expanded scope of your new position, while still handling the day-to-day challenges of your new position and serving the public?

Response: I would prepare the same way I do now when we transition to a new division. Each division at Superior Court has its own particularized set of practice rules; thus, first I read the court rules for the new division and relevant law. Second, I attend court training sessions. Third, I do courtroom observations for the new assignment, then speak to the judge(s) who are currently on that

assignment to gain insights on things like docket management. To date, I have served in the criminal, civil and domestic violence divisions. That experience has well prepared me to assume the additional responsibilities of an associate judge.

- 3) As a judge, you may have litigants appear before you who do not have attorneys and may not fully understand the law and procedure.
- a. What do you believe the proper role is for a judge in helping litigants access information they may need to present their cases or obtain legal counsel?

Response: My most fundamental role as judge is to apply the law to the facts in each case. In my seven years as a magistrate judge, I handled thousands of cases where the litigants were *pro se*, when I presided in the civil and domestic violence divisions. In each case, I ensured litigants understood the process, and as needed, directed them to pro bono or low bono attorneys who assist the court. At DC Superior Court, we are fortunate that in four of our five divisions (civil, domestic violence, probate and family) we have attorneys who come to court daily to offer assistance to those individuals who have legal questions that cannot be asked of the judge. (The criminal division is different because all defendants are appointed a lawyer at their initial appearances.) Additionally, the Court has self help resource centers where litigants can seek assistance. Explaining the process and referring litigants to these resources helps them gain a better understanding of what to expect in court and be more prepared.



U.S. Department of Justice

Jessie K. Liu
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

July 9, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland
Security and Governmental Affairs
328 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Gary Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
724 Hart Senate Office Building
Washington, D.C. 20510

I am writing to express my support for the application of the Honorable Rainey Brandt for a position as a Superior Court judge. I am currently the Chief of the Sex Offense and Domestic Violence Section of the D.C. United States Attorney's Office. In 2013, I was the Deputy Chief of that Section, supervising new prosecutors, who handled misdemeanor domestic violence and sexual assault cases. In that role, in 2013, I observed Judge Brandt throughout her one year position as the Magistrate Judge presiding over Domestic Violence arraignments and detention hearings. I also had several conversations about her with the prosecutors who appeared in front of her day in and day out. In addition, I also knew her, and frequently relied on her with legal and procedural questions, when she was the Special Counsel to the Chief Judge. Although I have not been in as active touch with her since 2013, I remain familiar with her reputation and work. From this exposure, I can say with confidence that Magistrate Judge Brandt has the qualifications and temperament to be an outstanding Superior Court judge.

In my many experiences in Judge Brandt's courtroom I have been consistently impressed by the prevailing atmosphere of decorum, civility, and respect. That tone, essential in my view to the fair administration of justice, is set by Judge Brandt and reflects her strong commitment to treat everyone who comes into her courtroom fairly. That includes the lawyers, the witnesses,

the staff, the defendants, and the victims. The prosecutors I supervised in 2013 routinely reported that she managed her courtroom in a highly efficient manner and that she was always extremely courteous and treated all persons in her courtroom with respect. Part and parcel of that attitude is Judge Brandt's ever present desire to hear out both sides of an issue through robust debate. She listens thoughtfully to both sides of every case and issues prompt and sound rulings. She regularly outlines in detail the bases of her rulings. One prosecutor told me that often times when Judge Brandt ruled against him her reasoning was so persuasive that he found himself convinced that she had, in fact, arrived at the just resolution.

In my experience, and the uniform experience of the attorneys in my Section who appeared in front of her day in and day out in 2013, Judge Brandt takes an appropriate amount of time to issue her rulings. She elicits desired information from both sides, weighs the strengths and weaknesses of the arguments, and outlines the bases of her rulings. She does so without allowing either side to unnecessarily delay the proceedings. Further, she is not afraid to make a decision, even difficult ones. In short, her rulings are thorough, well-reasoned, and legally sound.

Judge Brandt also has a keen intellect and mastery of the law. For example, using a gentle but firm hand, she reigned in defense attorneys who tried (improperly) to use detention hearings to obtain pre-trial discovery. She also has a strong work ethic and remains impartial and objective at all times, even during highly emotional proceedings.

Judge Brandt is a pleasure to appear in front of. She has fulfilled her judicial duties at the highest level and has ideal judicial temperament. For these reasons, I strongly recommend her for a position as a Superior Court judge.

Please feel free to contact me if you have any additional questions. I can be reached at 202-252-7036.

Sincerely,



Sharon Marcus-Kurn
Chief
Sex Offense and Domestic Violence Section
United States Attorney's Office
555 4th Street, NW, Room 10-403
Washington, D.C. 20530

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

PUBLIC SAFETY DIVISION CRIMINAL SECTION

July 7, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland
Security and Governmental Affairs
328 Hart Senate Office Building
Washington, DC 20510

Re: Magistrate Judge Rainey R. Brandt

Dear Senator Johnson:

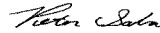
Throughout my almost two decades of practicing law, seldom have I seen a judge who is as dynamic as Magistrate Judge Brandt. She would be an outstanding asset to the Superior Court for the District of Columbia as an associate judge.

Magistrate Judge Brandt doesn't waver in her application of facts to law, and her ability to maintain impartiality and independence to ensure the most judicious outcomes are reached. Her rulings are thorough and complete, and she has an acute ability to piece together evidence that exceeds many. As well, Magistrate Judge Brandt holds everyone in her courtroom to the highest standards. Defendants are treated with respect and dignity in her courtroom while also being held strictly accountable for their actions. Attorneys know to come to her courtroom prepared and to conduct trials in a professional and competent manner.

Magistrate Judge Brandt is also a true leader and collaborator. The judiciary operates at the highest level when there exists communication and understanding among the various stakeholders. Despite the importance of this, there are few people who can bring these stakeholders together and encourage collaboration. Magistrate Judge Brandt has the leadership qualities needed. I have observed this first-hand as one of the stakeholders, being the prosecutor's office, and how she coordinated a more efficient and productive process in the magistrate courtrooms by bringing everyone together. Communication and productivity were at their height when she was a judge on our calendar.

I have the highest respect and confidence in Magistrate Judge Brandt. The judiciary needs leaders among its rank, balanced and responsible decision-makers, and accountability in courtrooms. Magistrate Judge Brandt delivers these qualities and outcomes. You may consider this my highest recommendation.

Sincerely,



Peter Saba
Chief, Criminal Section
Public Safety Division
Office of the Attorney General for the
District of Columbia
441 4th St., NW, Suite 1060N
Washington, DC 20001
(202) 442-9827

Offit | Kurman
Attorneys At Law

MARYLAND
PENNSYLVANIA
VIRGINIA
NEW JERSEY
NEW YORK
DELAWARE
WASHINGTON, DC

Ian Thomas, Associate Attorney
Direct Dial: 202-900-8592
ithomas@offitkurman.com

July 6, 2019

Via Hand Delivery

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
328 Hart Senate Office Building
Washington, D. C. 20510

The Honorable Gary Peters
Ranking Member, Committee on Homeland Security and Governmental Affairs
724 Hart Senate Office Building
Washington, D. C. 20510

Re: **Letter of Support for Magistrate Judge Rainey Brandt**

Dear Senators Johnson and Peters:

I am writing in support of the nomination of Magistrate Judge Rainey Brandt ("Judge Brandt") to become an Associate Judge on the Superior Court of the District of Columbia. Based on my experience appearing before Judge Brandt as a Magistrate Judge, it is clear to me that she possesses the temperament, character, and legal mind to be a great judge in this jurisdiction for years to come.

For nine months I appeared before Judge Brandt on the residential foreclosure docket. This docket is difficult to manage. The majority of the defendants who appear *pro se*, and in most instances they are faced with extremely difficult financial and personal circumstances that have resulted in their inability to make payments on their mortgage. As a result, successful management of this particular docket requires an abundance of patience and compassion to address the issues that many of the defendants are dealing with. At the same time, management of the docket also requires a dedication to the rule of law because the lending institutions that are pursuing these claims also have legal rights and are entitled to collect the monies that they are owed.

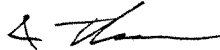
For almost a year I watched Judge Brandt successfully manage this delicate balance with upmost professionalism. She would take time each day to educate the *pro se* defendants about the process

they are faced with so that the legal system would be less opaque. Similarly, she would provide leeway where appropriate, but would not allow litigants to take advantage of their *pro se* status, or the fact that their circumstances may be sympathetic. At the same time, Judge Brandt was always fair to the institutional plaintiffs as well. She would move cases along at a reasonable pace and was always conscious of their rights and any prejudice that they may suffer as a result of her case management decisions. Perhaps most important, Judge Brandt would always allow every party – represented or *pro se* – the opportunity to be heard and would treat each person with dignity and respect. Considering the difficulties of this docket, it is my opinion that Judge Brandt unquestionably has the character and temperament to be an Associate Judge on the Superior Court.

Through her work on this docket, I was also able to observe Judge Brandt work through complicated legal issues in a fair, logical, and empirical manner. The magistrate judge that presides over this docket is frequently confronted with complicated issues on a variety of legal subjects, from service of process and pleading standards to complex questions of contract and property law. On a weekly basis I watched Judge Brandt work through these types of legal issues, each time in a methodical, logical, and rational manner. To be clear, I did not always agree with the ultimate decision that she arrived at, but I took comfort in the fact that the decision was not based on whim or caprice, but rather the byproduct of intense thought and consideration of the relevant authorities that were presented to the Court. As an attorney who frequently litigates in the District of Columbia Superior Court, that is the type of judge I want presiding over my cases.

At bottom, I have always thought that Judge Brandt would be a fantastic addition to the bench in the District of Columbia Superior Court and I am glad she is presently under consideration for the position. I hold Judge Brandt in extremely high regard and it is my honor to submit this letter in support of her nomination.

Respectfully,



Ian G. Thomas, Esq.

Opening Statement of Shana Frost Matini
Nominee to be Associate Judge of the Superior Court of the District of Columbia
July 16, 2019

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today, and thank you for considering my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I want to thank the Judicial Nomination Commission, and in particular the Commission's Chair, the Honorable Emmet G. Sullivan, for recommending me to the White House, and the President for nominating me. I also wish to recognize and thank Chief Judge Robert E. Morin, who is present today, for his support and leadership, and to thank the Committee staff for their hard work in preparing for this hearing.

I am pleased to be joined today by members of my family. My father, Robert, resides in California and could not be here today, but he is watching the hearing online with, no doubt, a great deal of pride. My mother, Lynda, traveled from her home in Florida to support me today, as she has done every day of my life. My husband, Ali, and our daughter, Sofia, are also present – their love and encouragement means the world to me and I am thankful to have them in my life. I am also joined by a number of friends and colleagues. I am grateful to each of them for their friendship.

It is a great honor to be considered for Associate Judge on the Court where my legal career began when the Honorable Richard A. Levie hired me to serve as his law clerk. I am forever indebted to Judge Levie, who is here today, for his guidance and unwavering support throughout my career. My clerkship also provided an opportunity to form long-term relationships with my fellow law clerks, including my friend and colleague Judge Rainey Brandt, who clerked the same year as I did.

Upon graduation from law school in the District and after my clerkship, I worked in both the private and non-profit sectors before joining the District of Columbia Office of the Attorney General, where I served the District and its citizens as an attorney in the Civil Litigation and Equity Divisions. As a litigation attorney for the Office of the Attorney General, I practiced regularly in the Superior Court, and always found the judges before whom I appeared to be thoughtful, fair and dedicated. Not only did I learn so much as a practitioner in Superior Court, but when I was appointed to serve as a magistrate judge, I was provided invaluable guidance from my Superior Court colleagues. Since my appointment as a magistrate judge, I have served the Court in the Civil, Criminal, and Family Divisions, and thoroughly enjoyed the challenges that each assignment presented and the ability to serve my community. I am humbled by this nomination and, if I am fortunate enough to be confirmed, the opportunity to continue serving the District of Columbia as an Associate Judge of the very Court where I started as a young lawyer and have learned so much. I look forward to answering any questions the Committee has for me.

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).**

Shana Lyn Matini (full legal name)
Shana Frost Matini (name used professionally)
Shana Lyn Frost (prior married name)
Shana Lyn Malinowski (maiden name)

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, NW Suite 4450
Washington, DC 20001
(202) 879-9962

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

April 18, 1970; Vineland, NJ.

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 Ali R. Matini, Optometrist at Georgetown Optician, 1307 Wisconsin Avenue, N.W. Washington, D.C. 20007.

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.**

Columbia University, New York, New York; approximately August 2000 – December 2000; no degree received.

District of Columbia School of Law (currently the University of the District of Columbia David A. Clarke School of Law), Washington, D.C.; August 1993 – May 1996; J.D. received in 1996.

George Washington University, Washington, D.C.; 1988 – 1992; B.A. received in 1992.

Birch Wathen School, New York, New York; 1984 – 1988; graduated in 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.**

Fall 1992 – Spring 1993

Language Teacher's Training College (Address Unknown)

Slupsk, Poland

English Teacher

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.**

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2014).

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2013)

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2012)

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2008)

Recipient of the Office of the Attorney General for the District of Columbia, Extra Mile Award (approx. 2008 or 2012)

District of Columbia School of Law, Dean's Cup for Outstanding Service to the Law School (1996)

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.**

Board of Directors, Council for Court Excellence
 Judicial Member (2016 – present)

Clydesdale Cooperative Board
 Board Member (approx. 2003 – 2004)

Help DC Help DC
 Co-Founder and Member of Board of Directors (2001 – 2003)

Local 1403, American Federation of Government Employees, American Federation of
 Labor and Congress of Industrial Organizations
 President (2014 – 2015)
 Acting President (2012 – 2014)
 Secretary (2010 – 2012)
 Member (2005 – 2015)

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.**

American Bar Association
 Past Member (cannot recall dates)

Women's Bar Association of the District of Columbia
 Member (2016 – present)

National Association of Women Judges
 Member (2018 – 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.**

Delta Gamma Fraternity
 Member (1990 – 1992)

Friends of the National Zoo
 Member (approx. 2012 – 2015)

GoPink!DC
 Member (2013 – present)

Help DC Help DC

Co-founder and Member of Board of Directors (2001-2003)

Hyde-Addison Parent Teacher Association
Member (approx. 2012-2016)

Local 1403, American Federation of Government Employees, American Federation of Labor and Congress of Industrial Organizations
President (2014 – 2015)
Acting President (2012 – 2014)
Secretary (2010 – 2012)
Member (2005 – 2015)

Smithsonian Associates
Member (2017 – present)

None of these organizations formerly discriminated or currently discriminates based on race, sex or religion; Delta Gamma Fraternity is an international sorority and is one of the oldest women's sororities in the country, and as such, membership may be restricted to women.

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 Bar
Member (1998 – present)

Maryland State Bar
Member (1996 – 1999)

U.S. Court of Appeals for the Fourth Circuit
Member (1998 – present)

Virginia State Bar
Member (1998 – 1999, inactive status and resigned voluntarily in 2016)

U.S. District Court for the District of Columbia, admitted May 5, 2003.

U.S. Court of Appeals for the Fourth Circuit, admitted June 1, 1998.

I was admitted to the Maryland Bar in December, 1996, and am currently an inactive member in good standing. I first went inactive with the Maryland Bar on February 6, 1997, and became active again September 4, 1997. I again went inactive on July 1, 1999 and have remained inactive since that time. I have always remained in good standing.

I was admitted to the Virginia State Bar in May, 1998. I became an inactive member in good standing of the Virginia State Bar in 1999, and remained inactive and in good standing until I requested to voluntarily resign from the Virginia State Bar in 2016. My request for voluntary resignation was granted on July 5, 2016.

My bar membership to the District of Columbia Bar has not lapsed.

I remained active on the U.S. District Court for the District of Columbia State Bar until July 1, 2013. At that time, I became a provisional member as I no longer practiced as an attorney in the U.S. District Court. I am currently a provisional member in good standing.

My membership to the U.S. Court of Appeals for the Fourth Circuit has not lapsed.

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

Co-Author, *Genetics in the Courtroom: Science and Cases in Neuro and Behavioral Genetics*, The Einstein Institute for Science, Health and the Courts (1999).

Editor-in-Chief, *Symposium on Juvenile Detention in the District of Columbia*, District of Columbia Law Review (Fall 1995).

Author, *A Matter of Trust: Imposing Employer Vicarious liability for the Intentional Tort of Employees*, 3 D.C. Law Rev. 167 (Spring 1995).

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 Richard A. Levie (retired) on the Superior Court of the District of Columbia from September 1996 to September 1997.

- (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 1996 – September 1997
The Honorable Richard A. Levie
Superior Court of the District of Columbia
500 Indiana Avenue, NW Suite 4450
Washington, D.C. 20001
Law Clerk

September 1997 – December 1998
Russell & Russell, P.C.
282 North Washington Street, Lower 100
Falls Church, VA 22046
Litigation Associate

February 1999 – January 2001
Einstein Institute for Science, Health and the Courts (no longer operational)
Legal Fellow

January 2001 – September 2004
ADR Associates (now JAMS)
1155 F Street N.W. Suite 1150
Washington, D.C. 20004
Associate

July 2003 – November 2003
Office of Police Complaints
1400 I Street N.W., Suite 700
Washington, D.C. 20005
Complaint Examiner

November 2004 – November 2015
Office of the Attorney General for the District of Columbia
441 Fourth Street, N.W.
Washington, D.C. 20001
Trial Attorney

November 2015 – present
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 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.

I began the practice of law with a focus on litigation through my work as a law clerk and a litigation associate. During my clerkship, I assisted the Honorable Richard A. Levie with cases on the complex civil litigation calendar and with his duties as Deputy Presiding Judge of the Civil Division and the Multi-Door Dispute Resolution Division. My duties involved researching and drafting Memorandum Opinions and Orders addressing numerous legal issues, including legal and medical malpractice, personal injury claims resulting from asbestos exposure, and tobacco use, contract disputes, and toxic torts.

Following my clerkship, I joined the firm of Russell & Russell, PC where I served as a litigation attorney and assisted in the firm's representation of a small college, advising and representing the college on issues involving higher education law, employment law, labor law, discrimination law, contract law, and general tort law. I also assisted in the defense of corporate clients in government investigations regarding alleged violations of health care law. In 1999, I was offered the opportunity to pursue an interest I had developed in the intersection of science with the law by working with the Einstein Institute for Science, Health and the Courts where I spent a great deal of time analyzing developments in genetics and the potential impact on scientific advancements on various areas of the law. I also assisted in the preparation and presentation of national and regional seminars to state, federal and foreign judges on science and the law.

In January 2001, I joined ADR Associates (which later merged with JAMS). While at ADR Associates, I assisted Judge Richard Levie with his duties as Special Master in *United States v. Philip Morris et al.*, C.A. No. 99-2496(GK), the largest civil RICO lawsuit ever brought by the United States. At that juncture, I refocused my practice from advocate to neutral lawyer assisting in the resolution of pre-trial motions addressing numerous discovery and privilege disputes. I also supervised two other full-time attorneys working for Judge Levie in his role as Special Master.

When the *Philip Morris* litigation advanced from the pre-trial stage to trial, I joined the Office of the Attorney General for the District of Columbia ("OAG"). From 2004 until 2015, my general practice was defensive civil litigation and largely consisted of defending constitutional and common law claims against the District and its employees. The vast majority of my cases involved the Metropolitan Police Department, and thus my primary clients were law enforcement officers and officials. I also served as Acting President and later President of Local 1403 of the American Federation of Government Employees, which represented approximately 300 attorneys in the OAG and in the Offices of General Counsel in the various executive agencies of the District of Columbia. From May 2015 until I left the OAG in November 2015, I was an Acting Section Chief. In that role, I supervised eight to ten trial attorneys and legal fellows, and was responsible for overseeing all litigation handled by the Section, including developing litigation and trial strategy and recommending and approving settlements.

In November 2015, I was appointed by former Chief Judge Lee F. Satterfield as a Magistrate Judge for the Superior Court of the District of Columbia. I was assigned to the Civil Division where I presided over matters on the Tax and Mortgage Foreclosure Dockets. In January 2017, I was assigned to the Criminal Division, where I currently preside over matters on the District of Columbia Traffic Docket.

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

While at the Office of the Attorney General, my primary client was the District of Columbia. I practiced generally in all areas of civil defense, including defense against common law claims of intentional torts and negligence, and various constitutional claims brought against the District of Columbia and its employees throughout all the District's agencies. I developed a specialty in handling allegations of police misconduct, including common law and constitutional claims of false arrest, excessive force, and violation of constitutional rights. I represented numerous members of the Metropolitan Police Department, from patrol officers to various members of the command staff, including the Chief of Police. I was also assigned to lead the defense of all cases brought under the District of Columbia's Unjust Imprisonment Act, and handled several lawsuits mounting First Amendment challenges to law enforcement responses to various large and small protests and public assemblies.

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.**

During my time working for JAMS and the Einstein Institute for Science, Health and the Courts, I never appeared in court. During my first five years at the Office of the Attorney General of the District of Columbia ("OAG"), I appeared in court frequently. During my last five years at the OAG, I appeared in court somewhat less frequently, as I became acting president of the Local 1403 Union, which represented all bargaining union employees from OAG. During this time, I maintained a 50% caseload in order to complete my union duties. I appeared in court infrequently during my time at Russell & Russell P.C.

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

- (a) **Federal courts (including Federal courts in D.C.):**
65%

- (b) State courts of record (excluding D.C. courts);
0%
- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
35%
- (d) other courts and administrative bodies.
0%

(3) What percentage of your litigation has been:

- (a) civil;
100%
- (b) criminal.
0%

(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 tried nine matters to verdict in Federal or Superior Court. I served as lead counsel or co-counsel in seven of these matters, and was associate counsel in the remaining matters.

(5) What percentage of these trials was to

- (a) a jury;
78%
- (b) the court (include cases decided on motion but tabulate them separately).
12%

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. Hector Molina-Aviles v. District of Columbia, et al., C.A. No. 10-953 (consolidated with nineteen other cases); Carl Jones v. District of Columbia, C.A. No. 2010 CA 6401 (consolidated with twenty-nine other cases) (Honorable Anita Josey-Herring, Presiding Judge).

These consolidated cases were brought by thirty individuals. All the cases arose from the Metropolitan Police Department's discovery in 2010 that the Department's breathalyzer instruments appeared to have been improperly calibrated for approximately 17 months. Each Plaintiff had been convicted of driving under the influence during the time period the instruments were believed to be affected. The cases in U.S. District Court asserted claims of violations of substantive due process against the District and the Metropolitan Police Department officer responsible for overseeing the calibration of the instruments. The cases in Superior Court primarily asserted claims of negligence against the same defendants. I was lead counsel for the District of Columbia in all cases. The cases of ten individuals were dismissed outright, others were dismissed without prejudice and re-filed. After responses to written discovery were filed, most Plaintiffs accepted offers of judgment, and the remainder settled their claims soon thereafter. The twenty remaining claims were resolved before any District employee was deposed. The cases were significant for the District insofar as the potential for liability was great in light of the fact that the convictions of hundreds of individuals were called into question, and the cost for defense would have been significant. I and my team were able to resolve relatively quickly the cases that were filed, and allow the District, the Metropolitan Police Department, and the Office of the Chief Medical Examiner to focus on improving the District's impaired driving program.

Dates of Representation:

2010 to 2012

Co-Counsel:

Robert DeBerardinis
Office of the Attorney General for the District of Columbia
441 Fourth Street, NW
Washington, D.C. 20001
(202) 724-6642

Chad Naso
Office of the Attorney General for the District of Columbia
441 Fourth Street, NW
Washington, D.C. 20001
(202) 724-7854

Opposing Counsel:

Jeffrey Hord

Paley Rothman
4800 Hampden Lane, 6th Floor
Bethesda, Maryland 20814
(301) 968-1648

David Oblon and Jeffrey Rhodes
Albo & Oblon, LLP
2200 Clarendon Boulevard, Suite 1201
Arlington, Virginia
(703) 312-0410

2. Christol English v. District of Columbia, C.A. No. 08-1337; U.S. District Court for the District of Columbia (Hon. James Robertson, Presiding Judge).

This matter was brought by the personal representative of Jason Taft, an individual fatally shot in the back by Metropolitan Police Department Detective Kevin McConnell while fleeing from an altercation between him and Detective McConnell. According to witnesses, Mr. Taft was behaving belligerently. Detective McConnell was driving by at the time and intervened. Some witnesses stated that Detective McConnell, who was not in uniform, identified himself as a police officer; others said he did not. A physical fight between Taft and Detective McConnell ensued. During the altercation, the decedent began to choke Detective McConnell, who reached for his service weapon and fired a shot. Mr. Taft began to flee the scene, and Detective McConnell fired several more shots, one of which was fatal. At trial, I was co-counsel with Assistant Attorney General Robert DeBerardinis, with whom I shared the defense of the matter equally. At the close of all the evidence, the jury returned a verdict for the Defendants. The case was significant for the District and Detective McConnell because the Defendants faced the prospect of a significant judgment including attorneys' fees.

Dates of Representation:
2008 to 2009

Co-Counsel:
Robert DeBerardinis
Office of the Attorney General for the District of Columbia
441 Fourth Street, NW
Washington, D.C. 20001
(202) 724-6642

Opposing Counsel:
Gregory L. Lattimer
Law Offices of Gregory L. Lattimer, PLLC
1200 G Street, NW, Suite 800
Washington, D.C. 20005
(202) 638-0095

3. Kirk L. Odom v. District of Columbia, C.A. No. 2013 CA 3239; Superior Court of the District of Columbia (Hon. Neal Kravitz, Presiding Judge).

On September 9, 1981, a D.C. Superior Court jury found Mr. Kirk Odom guilty of burglary and armed rape. Mr. Odom was sentenced to twenty to twenty-six years in prison, and his conviction was affirmed on appeal. Mr. Odom served over twenty-two years in prison, followed by eight years on parole as a registered sex offender before DNA evidence exonerated him at the age of fifty. Mr. Odom brought suit against the District of Columbia pursuant to the District of Columbia Unjust Imprisonment Act, D.C. Code § 2-421, *et seq.* Mr. Odom's lawsuit was one of several cases assigned to me filed in the District of Columbia by a group of lawyers who specialized in unjust imprisonment litigation. I had primary responsibility for conducting discovery, briefing and arguing issues of first impression, and trying the case. Given that the plaintiffs each suffered an extraordinary loss from decades of incarceration for crimes that they did not commit, the case was important to the District, as the potential liability for the District was massive. On February 27, 2015, Judge Kravitz issued findings of facts and conclusions of law in which he rejected the District's arguments that any damages award should be limited to time of actual incarceration and be subject to a set-off from Mr. Odom's settlement with the federal government, and awarded Mr. Odom damages in the amount of \$1000 per day for each day of incarceration, \$250 per day for each day of parole, and \$200 per day for each day between the period of exoneration and trial. Judge Kravitz later amended his award to include damages for future injuries that he had found Mr. Odom would suffer.

Dates of Representation:

2013 to 2015

Co-Counsel:

Rick Ferrini
(Deceased)

Opposing Counsel:

Nick Brustin and Peter Neufeld
Neufeld, Scheck & Brustin
99 Hudson Street, 8th Floor
New York, New York 10013
(212) 965-9081

Jeffrey S. Gutman
The George Washington University School of Law
2000 G Street, NW
Washington, D.C. 20052
(202) 994-7463

4. Jerome Vorus v. District of Columbia, et al., C.A. No. 11-1219; U.S. District Court for the District of Columbia (Hon. Beryl Howell, Presiding Judge).

Mr. Vorus alleged that he came upon officers conducting a traffic stop and began to photograph them when the officers told him that he could not photograph police officers without their consent, and that he needed to obtain permission to do so from the MPD's Public Information Office. Mr. Vorus further alleged that the officers asked for his identification, and appeared to run his name through a database in a mobile data terminal. Mr. Vorus asserted claims of violation of his First and Fourth Amendment rights. This case was significant to the District as, at the time, no formal policy had been issued on the manner in which photographing and video and audio recording could be regulated by police officers. Because Mr. Vorus highlighted in his amended complaint apparently inconsistent positions taken by MPD officials, the District sought his consent to stay the litigation, and endeavored to work with Mr. Vorus's counsel to develop a new MPD General Order that would clarify for members the law and the Department's policy. The District and the ACLU worked together to craft a general order that would address the rights of citizens not only in photographing and recording the public activities of police officers, but also to define procedures to seize such recording devices when there was reason to believe that the device contained evidence of criminal activity. As a result of the efforts of the District and the ACLU, MPD issued a new General Order and the *Vorus* litigation was settled for a reasonable monetary amount with no significant litigation.

Dates of Representation:

2011 to 2012

Opposing Counsel:

Arthur B. Spitzer and Frederick V. Mulhauser
American Civil Liberties Union of the Nation's Capital
4301 Connecticut Avenue, NW, Suite 434
Washington, D.C. 20008
(202) 457-0800

5. RayMing Chang, et al. v. United States, et al., C.A. No. 02-2010; U.S. District Court for the District of Columbia (Hon. Emmet G. Sullivan, presiding judge and Hon. John M. Facciola, Special Master).

I was assigned to the *Chang* case, as well as the companion case of *Barham v. Ramsey*, in October, 2009. At that time, the case had already been litigated for many years, and the trial team was reconstituted when allegations of discovery problems arose. This case, and the *Barham* case, arose from the arrests of more than 300 individuals in Pershing Park on September 27, 2002 during protests against the World Bank and International Monetary Fund. While the *Barham* case settled in 2010, the four remaining *Chang* Plaintiffs continued to litigate their claims. During my time on the case, I assisted with investigations to locate outstanding evidence, defended numerous depositions, responded to several sets

of discovery, participated in part in proceedings before the Honorable John M. Facciola who was designated as Special Master by the Honorable Emmet G. Sullivan, drafted several motions, and participated in the pretrial proceedings by working with Assistant Attorney General Causey to draft the joint pretrial statement, jury instructions, *voir dire*, pretrial motions in *limine* and prepare the case for trial. The case was set for trial on several occasions in 2015, but continued and eventually settled in April, 2016 after I left the Office of the Attorney General. This matter was significant to the District of Columbia as it, along with *Barham* and the case of *Benjamin Becker, et al. v. District of Columbia, et al.*, C.A. No. 01-0811 (PLF), substantially contributed to many policy and procedural changes in the District in the management of First Amendment assemblies and mass demonstration activity. It was also significant to the District in terms of the allegations as to how the District has managed evidence and its duties in defending litigation brought against it.

Dates of Representation:

2009 to 2015 (with some periods of inactivity during the Special Master investigation)

Co-Counsel:

William Causey
(retired)

Jonathan Pittman
Associate Judge, Superior Court of the District of Columbia
500 Indiana Avenue, NW
Washington, D.C. 20001
(202) 879-1920

Opposing Counsel:

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Washington, D.C. 20004
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Jonathan Turley
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Washington, D.C. 20052
(202) 994-7001

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 the matters addressed above, from January 2001 until September 2004, I participated in the matter of *United States v. Philip Morris, et al.*, which was a civil RICO action brought by the U.S. Department of Justice against nine major cigarette manufacturers and two tobacco industry trade associations. The Justice Department alleged that the Defendants engaged in a fifty-year conspiracy to deceive the public about the health effects of smoking and the addictive qualities of nicotine by engaging in knowingly false and deceptive advertising and publications. It was the largest RICO action that had ever been brought by the United States government. Now-retired Judge Richard A. Levie was appointed to be Special Master in the case by U.S. District Court Judge Gladys Kessler, who presided over the matter in U.S. District Court for the District of Columbia. As Special Master, Judge Levie was responsible for developing a case management plan and overseeing all aspects of discovery, including resolution of discovery and privilege disputes. Soon after his appointment as Special Master, Judge Levie hired me to assist him full time. Judge Levie and I conducted several meetings with counsel for all parties to develop a case management plan, which I assisted in drafting. Thereafter, I worked full time on the *Phillip Morris* matter for over three years, reviewing all motions filed by the parties, and preparing draft Special Master reports and recommendations for Judge Levie's review. In preparing draft reports and recommendations, I researched numerous legal issues related to pretrial discovery, including various privileges such as attorney-client privilege, the work product doctrine, and deliberative process and other executive privileges. My work also required me to review all documents claimed privileged by the

producing party that were the subject of a privilege challenge by an opposing party. Due to the voluminous work generated by the litigation, Judge Levie hired two additional attorneys, both of whom I supervised. My role in the *Phillip Morris* matter concluded once the non-jury trial began before Judge Kessler in September 2004.

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 am currently a Magistrate Judge at the Superior Court of the District of Columbia. I was appointed by former Chief Judge Lee F. Satterfield for a four-year term as a Magistrate Judge in November 2015, and was sworn in as a Magistrate Judge on January 4, 2016. From January 2016 through December 2016, I was assigned to the Civil Division. While in the Civil Division, I was responsible for the Tax and Mortgages Foreclosure Calendar, where my overall case load averaged approximately 2400 cases. In January 2017, I was reassigned to the Criminal Division and assigned to preside over one of the three DC/Traffic Calendars. In this assignment, I preside over criminal matters, including non-jury trials, for criminal traffic and other quality of life offenses including driving under the influence of alcohol or drugs, driving without a valid permit or after suspension or revocation, public consumption of marijuana, and indecent exposure. My average caseload in this assignment is about 560 cases, and since beginning the assignment I have conducted many non-jury trials.

Given the nature of the calendars to which I was assigned, I have had limited opportunity to issue written opinions. In my current criminal assignment, most rulings and all verdicts I have issued have been oral. I have attached the one memorandum opinion and order I issued in the matter of *District of Columbia v. Peter Lintault*, 2017 CDC 002190, denying the defendant's motion to withdraw his guilty plea. In my prior assignment on the mortgage foreclosure calendar, I issued numerous written orders pertaining to basic motions including motions to extend time, deem a defendant served by publication, and substitute a party. Likewise, on the tax foreclosure calendar, I issued many basic written orders granting judgment in favor of a tax certificate holder. These were rote orders finding that the plaintiffs had satisfied their burden without legal analysis.

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

I am not aware of any decisions which I have made which have been reversed or otherwise criticized on appeal.

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.

I have not held membership or office in any political party or election committee during the last ten years. In the spring of 2015, I assisted my neighbor, Leon T. Andrews, Jr. in obtaining signatures to be on the ballot for the Ward 4, District of Columbia City Council 2015 special election for councilmember.

- 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.

Friends of Leon Andrews, Jr.
\$100
January 17, 2015
Ward 4 City Council

Weaver 2014
\$50
July 31, 2013
District of Columbia City Council

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.

During the background investigation of me conducted by the Judicial Nomination Commission (JNC) in the summer of 2017, the JNC informed me, by way of a letter dated August 15, 2017, of the following information the JNC received from the FBI:

The FBI advises that in 1990, the FBI Los Angeles initiated an investigation for possible check kiting, based on your deposit of three checks, drawn on your personal account at the National Bank of Washington, to your account at Wells Fargo. All checks were returned "Non-Sufficient Funds." The FBI advises that federal prosecution was declined due to guidelines, and that the matter was referred to local authorities for further investigation.

The JNC asked whether I was aware of this investigation and requested that I provide an explanation of the facts and circumstances surrounding the investigation.

As I explained to the JNC, I was not aware that I was ever the subject of an FBI investigation until I received the correspondence from the JNC. I also was never informed that I was ever the subject of investigation by any local law enforcement authorities. I was particularly surprised to learn that there was such an investigation given that, in approximately 2002, the FBI conducted a background investigation of me for a top-secret security clearance to allow me to work with the Honorable Richard A. Levie.

In the absence of any personal knowledge, I speculate that the 1990 investigation may have been part of a broader investigation of my stepfather, Martin Silvestri, who was convicted in 1992 in U.S. District Court in Los Angeles of wire fraud and served a sentence for his conviction. To the best of my recollection, I believe, but am not sure of the precise time frame, that the incident involving the checks occurred in approximately the summer of 1989. I came to Los Angeles for the summer of 1989 after my freshman year of college and soon found two summer jobs. Although I had a bank account in Washington, DC where I resided most of the year for school, my stepfather encouraged me to also open a bank account in California so that I could easily deposit the money that I earned during the summer. At some point, my stepfather asked me to write some checks from my Washington bank account to deposit into my Los Angeles bank account. He told me that he needed me to be able to write checks for some work-related expenses that he had, as well as for household expenses, and assured me that he was expecting substantial payments from royalties for his music to cover the checks. It did not occur to me that he might not deposit money to cover the checks. I later learned that there were no funds to cover the checks that I wrote. At the same time, I began to have significant credit card issues resulting from the fact that my stepfather had asked me to make him a signatory to the credit card accounts that I had at that time. He also gave me a credit card that he asked that I only use in an emergency, explaining he wanted to be able to help me as I had helped him. I did not realize that the account was actually in my name and opened by him without my knowledge until I began to receive calls from the credit card company indicating that the account was in my name and significantly in default. At the age of twenty, I owed more money than I could imagine ever being able to repay. Over the years that followed, I worked very hard with the creditors to pay off as much of the debt that I could. I was able to re-establish myself and eventually rebuild my credit. I completed both college and law school with only my own student loans and grants that I earned. I disclosed the credit issues to the three Bars to which I applied (Virginia, Maryland, and the District of Columbia), and was admitted to practice in each.

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.

Shana Frost v. Eric Frost, 2011 DRB 2310 (D.C. Super. Ct.) and Shana Frost v. Eric Frost, 2011 LTB 23891 (D.C. Super. Ct.).

I was the petitioner in an uncontested divorce proceeding. I had also been advised to file the landlord/tenant action as I was the sole owner of the house in which I resided with my husband, but he soon agreed to leave the home and I was able to voluntarily dismiss the landlord/tenant action. I filed the action for divorce on July 22, 2011, and the judgment of absolute divorce was entered on February 16, 2012. I filed the landlord/tenant proceeding on August 30, 2011, and voluntarily dismissed it on September 20, 2011. My request for a divorce was granted, and I was awarded sole physical custody of our minor child with joint legal custody, and also awarded child support. Both parties were self-represented.

RayMing Chang, et al. v. United States, et al., 02-2010 (EGS/JMF).

During the course of the Special Master proceedings, I was called as a witness to testify on January 10-11, 2013 before Special Master John Facciola regarding the investigation into the alleged loss or destruction of evidence and the efforts made to retrieve missing evidence.

In June, 2013, I was called to testify, in my capacity as Acting President of AFGE Local 1403, at an administrative hearing before the Public Employees Relations Board pertaining to a recognition petition filed on behalf of a group of District of Columbia administrative law judges seeking to organize a bargaining unit. My testimony focused on the duties and responsibilities of bargaining unit attorneys at Office of the Attorney General, and was offered in the proceedings as a comparison to the work performed by administrative law judges.

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.**

I have never been disciplined or cited for breach of ethics for unprofessional conduct. I have had two complaints made against me during my career.

In the Special Master proceedings in RayMing Chang, et al. v. United States, et al., C.A. No. 02-2010 (EGS/JMF), the plaintiffs' lawyers alleged that I violated D.C. Bar Rule of Professional Conduct 3.7, and requested that Special Master Facciola refer me and other District of Columbia lawyers to Bar Counsel. Plaintiffs' lawyers also alleged that I and other lawyers for the District of Columbia engaged in witness tampering and should be referred for criminal investigation. After several hearings, the Special Master issued a lengthy report of factual findings on December 16, 2013. Chang, et al. v. United States, et al., C.A. No. 02-2010 (EGS/JMF), Report and Recommendation of the Special Master, Dkt. 982 (D.D.C. Dec. 16, 2013). The Special Master's Report did not conclude that any

evidence was lost or destroyed, or that there was any attempt to destroy evidence.

In July 2008, I learned that a witness (and former police officer with the Metropolitan Police Department) in the consolidated cases of *Ian Preddie v. District of Columbia*, 2004 CA 4583 and *Rebecca Smith v. District of Columbia*, 2004 CA 4555, tried before Judge Robert Morin in the Superior Court for the District of Columbia referred me to the Inspector General, asserting that I had shared confidential information regarding him with my former husband, who was also a member of the Metropolitan Police Department. The allegations were referred to an investigator at the Office of the Attorney General, who found the allegations to be unfounded.

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.

I am not aware of any investments, obligations, liabilities or other relationships which could involve potential conflicts of interest.

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 not, in my personal capacity, engaged in any activity during the last ten years 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. In my capacity as Acting President and later President of Local 1403, American Federation of Government Employees, the Union that represents the approximately 300 (non-management level) attorneys within both the Office of the Attorney General for the District of Columbia and the Offices of General Counsel for the various agencies subordinate to the Mayor of the District of Columbia, I often advocated for or against legislation that impacted the members of Local 1403's collective bargaining unit.

I specifically recall offering testimony before the District of Columbia City Council, Committee of the Whole in July 2013 in support of PR-20-330 and in June 2014 in support of PR-20-795, both of which addressed different Compensation Agreements between the District of Columbia Office of the Attorney General and the American Federation of Government Employees Local 1403, AFL-CIO (Compensation Unit 33). These resolutions

were required for the District of Columbia to formally accept and implement two collective bargaining compensation agreements negotiated by the Office of the Attorney General and Local 1403, which were ratified by Local 1403's membership and approved by its officials. I also provided testimony at an oversight hearing for the Office of the Attorney General conducted by the District of Columbia City Council Committee on the Judiciary in February, 2014.

Also in my role as Acting President of AFGE Local 1403, in March 2013 I offered testimony before the District of Columbia City Council, Committee on the Judiciary, in opposition to Bill 20-134, the Elected Attorney General Implementation and Legal Services Act. It was the position of Local 1403, as well as at least one former Councilmember, a former Attorney General for the District of Columbia, and various public interest groups, that the proposed legislation would adversely impact the provision of legal services in the District of Columbia by bifurcating the attorneys providing legal service to the District into two separate chains of command and threaten the legal autonomy of the Attorney General of the District of Columbia.

Also on behalf of AFGE Local 1403, in February, 2013 I participated in a public oversight roundtable sponsored by the District of Columbia City Council related to the Prohibition on Government Employee Engagement in Political Activity Act of 2010 in light of the passage of the federal Hatch Act Modernization Act of 2012.

- 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 am not aware of any current potential conflicts of interest. If I become aware of a conflict of interest, or if any conflict of interest arises in the future, I will resolve it in accordance with the 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 11 - 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, July 10, 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 April 2014, I have lived at [REDACTED]
From January 2004 to April 2014, I lived at [REDACTED]
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?**

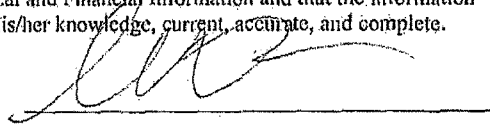
No.

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

Please see attached.

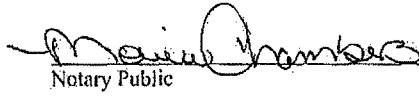
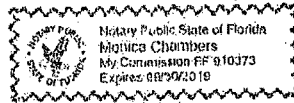
AFFIDAVIT

I, Shana Lyn Matini, 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 30th day of March 2018.

State of Florida
County of St. Lucie


Notary Public

**Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Shana Frost Matini**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior
Court of the District of Columbia
Tuesday, July 16, 2019**

- 1) The position you are nominated for is critically important, especially given the ongoing high number of vacancies within the D.C. Superior Court.
 - a. What efforts, if any, have you made outside the courtroom to prepare yourself for the position for which you are nominated?

Response: Prior to serving as a Magistrate Judge, I served as a trial attorney at the Office of the Attorney General for the District of Columbia. While there, I handled a heavy caseload of civil cases, and litigated a wide variety of issues. That position required me to regularly learn new subject matters, statutes, and regulations, and I became adept at quickly developing expertise in different areas of the law. Similarly, for each calendar to which I was assigned as a Magistrate Judge, I spent considerable time outside the courtroom learning the applicable law necessary to successfully handle my assignments. I also regularly attend trainings offered by the Court that address legal issues that arise before the different divisions of the Court.

- b. As we consider your nomination to be an Associate Judge, I want you to cast forward to the end of your career. What do you hope your legacy as a judge will be when you leave the bench?

Response: I hope the community remembers me as a thoughtful, hardworking and fair judicial officer who treated the litigants, attorneys, and courthouse staff with respect. I would like my colleagues to remember me as someone that they could rely on to assist when needed, and offer guidance when asked.

- 2) As a Magistrate Judge, there is a limited jurisdiction. Associate Judges have an opportunity to handle many more cases and more issues.
 - a. As such, how would you go about preparing yourself to successfully meet the expanded scope of your new position, while still handling the day-to-day challenges of your new position and serving the public?

Response: If I am confirmed to be an Associate Judge, I pledge to the Committee that I will continue to do what I have done throughout my career: work as hard as I can to learn areas of the law that are new to me. Since I joined the Superior Court as a Magistrate Judge, I have been assigned to two divisions of the Court (the Criminal Division and the Family Division) to preside over cases regarding

matters previously unfamiliar to me. In preparation for each new assignment, I reviewed relevant case law, observed proceedings before my colleagues, and attended training specific to the new subject matter. While preparing for the new assignment, I continued to preside over the cases in my current assignment, while also assisting to train the judge taking over the calendar that I was leaving. I will make these same efforts to prepare for new challenges that will be presented to me as an Associate Judge.

- 3) As a judge, you may have litigants appear before you who do not have attorneys and may not fully understand the law and procedure.
 - a. What do you believe the proper role is for a judge in helping litigants access information they may need to present their cases or obtain legal counsel?

Response: It is essential that individuals before the Court have a firm understanding of the process, and a judge should ensure that the process is explained to unrepresented individuals. While serving as a magistrate judge, I have regularly referred *pro se* litigants to resources available both at the Superior Court, including the self-help centers, as well as outside organizations and law schools that provide legal assistance to unrepresented individuals.

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William F. Causey
2737 Devonshire Place, N.W.
Apartment 411
Washington, D.C. 20008

June 21, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of Shana Frost Matini to the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

I write in strong support of the nomination of Shana Frost Matini for the position of Associate Judge of the Superior Court of the District of Columbia. Magistrate Judge Matini would make an excellent member of the Superior Court bench.

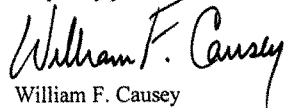
I worked with Shana when I served as an Assistant Attorney General for the District of Columbia in the Public Interest Division from 2011 to 2015. During that time, Shana was an Assistant Attorney General of the Civil Litigation Division of the Office. Together, Shana and I represented the District of Columbia and the Metropolitan Police Department in litigation filed in federal court arising out of the largest public demonstration in recent memory in the District. The case involved the arrest of over 400 people at Pershing Park in 2002 for unlawfully demonstrating during the World Bank-IMF Conference in the District. Dozens of law enforcement entities were sued, and case took over eight years to resolve. We handled dozens of depositions, numerous court hearings, oversaw the production of thousand of documents, and finally obtained a successful settlement for our clients in mediation before a former federal judge.

Shana's work during the case was exemplary. She had a mastery of the facts and the legal issues involved, wrote cogent, well-supported, and persuasive briefs, and worked efficiently with our Office staff to organize the case and keep it manageable. She always was courteous with opposing counsel and treated the court with appropriate deference and respect. Despite the

magnitude and sensitivity of the case, Shana always remained calm and level-headed. I was honored to work with her. Shana epitomized the best in a government lawyer.

Having worked closely with Shana on this case and other matters in the Office, I can state unequivocally that she was an outstanding attorney. I have no doubt she will be an outstanding Superior Court Judge.

Very truly yours,

A handwritten signature in black ink that reads "William F. Causey". The signature is written in a cursive, flowing style with a large initial "W".

William F. Causey

2737 Devonshire Place, N.W.
Apartment 411
Washington, D.C. 20008

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

June 7, 2019

Re: Nomination of Magistrate Judge Shana Frost Matini for the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

I write in strong support of the nomination of Magistrate Judge Shana Frost Matini to become an Associate Judge on the Superior Court of the District of Columbia. Judge Matini possesses the intellect, temperament, legal experience and writing skills to be a truly outstanding Associate Judge, as she already has demonstrated during her service as a Magistrate Judge on the Superior Court.

I was privileged to be one of Judge Matini's supervisors in the Civil Litigation Division of the Office of the Attorney General for the District of Columbia (OAG) from 2011 to 2016. She was a gifted attorney whose writing was clear, concise and persuasive and whose courtroom advocacy skills were outstanding. Judge Matini was the "go to" Assistant Attorney General in OAG for the large and sensitive litigation the office handled. Not only did Judge Matini distinguish herself with her legal skills, she litigated her cases with the highest degree of professionalism, often in the face of unscrupulous opponents. Her integrity garnered respect for the work of OAG.

Judge Matini also played a significant role in the union that represented attorneys in OAG. Requiring a deft hand and an ability to find compromises, Judge Matini was able to ensure a positive working relationship with the management of OAG while retaining the trust of her colleagues. Her involvement in non-litigation issues demonstrated her ability to be a good listener to many points of view and to fashion resolutions to what otherwise often appeared to be intractable problems. Judge Matini always was even-tempered and respectful in her dealings with others regardless of what job position they held in OAG. She was widely admired by all with whom she worked.

Because of her intellect, integrity, legal experience, and commitment to the District of Columbia, Judge Matini will make an excellent Associate Judge. Having practiced law for over 47 years as an attorney with the United States Justice Department, an Assistant United States Attorney, a District of Columbia law firm partner and a Deputy Attorney General in the OAG, and having litigated and appeared before hundreds of federal and state court judges, including many on the Superior Court, I believe I am uniquely well-suited to recognize the attributes of a good judge. Judge Matini possesses the essential qualities—intellect, experience in the courtroom, cogent writing, patience, the ability to listen, the wisdom to rule fairly, unimpeachable integrity and dedication to the community she serves—to be an outstanding jurist. She will elevate the reputation of the Court.

I also have had the pleasure of being Judge Matini's teammate on the GoPink!DC dragon boat team that paddles out of the Anacostia Boathouse and competes around the Mid-Atlantic region. The team is made up of breast cancer survivors and their supporters. Judge Matini is one of the team's biggest supporters (and one of its most awesome paddlers). (Her young daughter Sofia also is our unofficial mascot.) We are a group of diverse women with the goals of recovering from breast cancer and maintaining our health with the support our teammates. Judge Matini quickly became a leader on the team, not because of her title but because of her commitment to the women on the team. Thus, even in non-legal settings, Judge Matini is a natural leader to whom others are drawn for guidance and example. This simply is who she is regardless of the setting.

In sum, you have the opportunity to confirm a truly well-qualified nominee to be an Associate Judge on the District of Columbia Superior Court. The residents of the District of Columbia will be the grateful beneficiaries of your action.

Very truly yours,

A handwritten signature in cursive script that reads "Elizabeth Sarah Gere". The signature is written in dark ink and is positioned above the printed name.

Elizabeth Sarah Gere

May 20, 2019

The Honorable Ron Johnson, Chairman
Committee on Homeland Security and Government Affairs
328 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Gary Peters, Ranking Member
Committee on Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Peters:

I write in unreserved support of the nomination of Magistrate Judge Shana Matini to be an Associate Judge on the Superior Court for the District of Columbia. As I explain below, Judge Matini embodies the qualities that are critical to being an effective judge, and I have no doubt that if confirmed, she will serve with great distinction.

I first met Judge Matini on the day I began work as Assistant Deputy Attorney General for Civil Litigation for the District of Columbia Office of the Attorney General. I served in that position from 2007-2011, at which point I rejoined Boies Schiller Flexner LLP where I have been a partner since 2012. My responsibilities as Assistant Deputy included supervision of the work of the four General Litigation sections of the Civil Division, which represent the District of Columbia in lawsuits for damages. I also directly participated in cases of particular significance to the District of Columbia.

Judge Matini was a trial attorney in one of the General Litigation sections throughout my tenure as Assistant Deputy. Each section was led by a section chief, but there were two extended periods of time when Judge Matini's section had no section chief, one because the position was vacant and the other during an extended absence of the section chief. During this period, I directly supervised the section, including review of all written work product. I also worked closely with Judge Matini on other major cases. As an example, I served as co-counsel with her on a major wrongful-death case brought against the District of Columbia. As another example, I worked with her co-counsel and her on a difficult police shooting case and observed much of the trial.

I therefore had ample opportunity to form an opinion of Judge Matini's legal and communication skills, considerable civil litigation experience (including many trials), work ethic, temperament, knowledge of the law, professionalism, collegiality, innate sense of fairness and commitment to civility, and ability to handle pressure. All are first rate. She is a clear and effective writer and oral advocate with excellent analytical abilities. She also has a demonstrated ability to handle many different responsibilities at the same time while producing high-quality work and maintaining an even disposition. Attorneys in the General Litigation sections have large caseloads, and on top of the typical caseload, Judge Matini handled many of the most important and sensitive cases in the Division. She also was the primary caregiver during my tenure to her

daughter Sofia who was between the ages of 1 to 5 while I was Assistant Deputy. Despite these considerable personal and professional responsibilities, she always displayed an unflappable demeanor while operating according to the highest standards of professionalism and vigorous advocacy.

Judge Matini also has the precise combination of personal qualities that are important to a high quality judicial temperament. She is an inherently fair-minded person who marries a basic sense of kindness and diplomacy with a steely toughness, commitment to the law, and sense of conviction. She is confident with a firm sense of self without a trace of arrogance. The result was that she was universally well-liked and respected by all of her peers and supervisors, as well as by clients and witnesses. This included in particular the attorneys in the Office of General Counsel at the Metropolitan Police Department as well as the officers and expert witnesses with whom she worked on her police cases. Judge Matini also was invariably a vigorous advocate for her clients while always showing respect for opposing counsel and litigants. It is entirely predictable to me that Judge Matini has, as I understand it, earned uniformly positive feedback while serving as a Magistrate Judge for the Superior Court of the District of Columbia. She would make an excellent Associate Judge.

Should you have any questions or if I can be of any assistance, please do not hesitate to contact me at skaplan@bsflp.com or 202-274-1163.

Very sincerely yours,



Samuel C. Kaplan

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

June 4, 2019

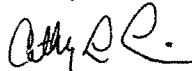
Dear Chairman Johnson and Ranking Member Peters:

As a former Chief of Police for the District of Columbia Metropolitan Police Department ("MPD"), I write to you and the Committee on Homeland Security and Government Affairs to offer my support of the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia. Based upon my knowledge of her work through her representation of MPD during the time I served as Chief of Police from 2007 until 2016, I believe she possesses the skill, temperament and intellect to be an excellent judicial officer.

During the time I served as Chief of Police, Shana was an Assistant Attorney General with the Office of the Attorney General for the District of Columbia in the Civil Litigation Division. She handled numerous matters on behalf MPD; her hard work and diligence were well-known throughout MPD. I and other members of the command staff appreciated her professionalism and dedication. During Shana's work on several class actions involving MPD, I had the opportunity to work personally with her prior to trial. Because of Shana's expertise in legal issues involving First Amendment assemblies, she was asked to provide training to newly-appointed MPD officials on the District's laws governing the right to peaceably assemble.

I highly recommend that the Committee confirm Shana's nomination to be an Associate Judge of the Superior Court of the District of Columbia. Her commitment to the District of Columbia as exemplified by her work with the Office of the Attorney General and her strong legal skills make her well-qualified for the position.

Sincerely,



Cathy L. Lanier

RICHARD A. LEVIE
2809 University Terrace, N.W.
Washington, D.C. 20016

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

Re: Judicial Nomination of the Hon. Shana Frost Matini

I write to support with the highest recommendation the nomination of the Honorable Shana Frost Matini for a position as an Associate Judge on the Superior Court of the District of Columbia.

I am a Senior Judge at the Superior Court, having been appointed in 1985 by President Reagan. Until March 2000 I was an Associate Judge at the Superior Court; commencing in April 2000 I took senior status. Since April 2000 I also have been involved in dispute resolution as a mediator, arbitrator and special master.

From September 1996 through September 1997 Judge Matini* was my law clerk at a time when I was on a Civil I calendar (complicated and protracted cases) and when I became the Deputy Presiding Judge of the Civil Division. Of my 15 law clerks, she was, without question, the best. Her analytical and writing skills were superb, and her judgment and insight into legal issues and people were well beyond her chronological years.

During Judge Matini's tenure as my law clerk, and again from February 1999 through January 2001, I worked with her in connection with the Einstein Institute for Science, Health and the Courts (EINSHAC) where she was a Legal Fellow and I was a member of the Board of Directors. In her role as a Legal Fellow, Judge Matini worked on the preparation and presentation of courses for federal and state judges on the handling of scientific issues in the courtroom. This project was funded by the Human Genome Project of the U.S. Department of Energy. In her duties at EINSHAC she worked closely with scientists and federal and state judges from throughout the country drafting course materials and preparing scenarios for teaching purposes.

In January 2001 I began work as the Special Master in the RICO case brought by the Department of Justice against the tobacco companies. (*United States v. Philip Morris et al.*, D.D.C.). My work with Judge Matini on the tobacco and other special master cases occurred from January 2001 through September 2004.

* I use the title "Judge" in this recommendation as a reflection of the nominee's current position, not in any presumptive manner.

In the role of special master, I handled development of case management orders and decided a broad array of discovery issues and privilege disputes. In the course of 4 years as Special Master in the *Philip Morris* case alone, I issued over 200 Reports and Recommendations, including a number which were several hundred pages in length. I had three attorneys who worked full time on the case. From the beginning of my work as Special Master, Judge Matini was the lead attorney assisting me. She was responsible for analyzing parties' arguments, reviewing documents for privilege (including highly sensitive Presidential communications) and work product, drafting memoranda for me and drafting Reports and Recommendations setting out the rulings. In addition to performing her own work, Judge Matini reviewed and supervised the work of the other two attorneys.

The *Philip Morris* case afforded her the opportunity to interact with outstanding attorneys from law firms throughout the United States and work on issues involving all of the governmental privileges, as well as the attorney client privilege, the work product doctrine and the application of the laws of foreign countries and treaties. Discovery in the case involved over forty million pages of documents, hundreds of depositions and many thousands of exhibits. Judge Matini's work in the *Philip Morris* case was exemplary in terms of analysis, research and drafting. She also demonstrated the ability to organize and deal with large amounts of material and complex legal arguments expeditiously and efficiently.

In addition to the *Philip Morris* case, she worked as my legal associate on two other special master cases: *APCC Services et al. v. AT&T, Sprint and Qwest* (D.D.C.) and *U.S. v. McDonnell Douglas* (D.D.C. – a criminal case).

In working with Judge Matini as a law clerk and as an associate on my special master cases, she always remained calm under stress, worked efficiently and effectively with time constraints, ably supervised other attorneys and retained her sense of humor. As the one ultimately responsible for the work, I always felt that I could (and did) trust Judge Matini's work product and advice.

In her work with the Office of the Attorney General of the District of Columbia, I know from speaking with judges before whom she appeared that her work product was highly respected. I believe it is fair to conclude that routinely assigning her complex and difficult cases reflected the confidence of that office in her work. Moreover, the fact that she handled a number of cases brought against the Court and its judges was another indicator that the OAG had a great deal of trust and confidence in her abilities.

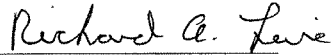
Since she became a Magistrate Judge in November 2015, I have observed Judge Matini in court more than a dozen times in her work in the Civil, Criminal and Family Court Divisions of the Court. In each instance, I saw her treat litigants and attorneys with respect and dignity. In carrying out her judicial duties and making decisions required by the law and facts of particular cases, she always showed an appreciation that there were real people with real problems before her. Judge Matini, at appropriate times and in dignified ways, demonstrated a sense of humor in a very human way and never at the expense of any litigant or attorney. She did not hesitate to make hard decisions, including incarceration, consistent with the law and the facts of the particular case.

All of Judge Matini's assignments as a Magistrate Judge have involved high volume courts. In each instance, she has run her courtroom with efficiency, but without compromising the dignity of the courtroom and without ever appearing to rule before affording all parties the opportunity to be heard.

Judge Matini has the intellect, common sense, instincts, intellectual curiosity, personality and senses of perspective, balance and humor to be an outstanding Associate Judge. She is very much a team player working in the best interest of the court and prepared to spend the time necessary to do a first rate job in any assignment and to assist other judicial officers to make sure litigants have their cases adjudicated in a timely manner.

Knowing that a Magistrate Judge is often the only judicial officer with whom members of the public come in contact, my observations of her in court show her to be a judicial officer who conducts herself in a manner that deals with litigants and counsel with dignity and respect, so that all parties appeared to leave the courtroom with the feeling that they had been heard. Watching her as a Magistrate Judge I am confident that, as an Associate Judge, she will reflect well on the Court, its role in serving the citizens of the District and the White House for having nominated her.

Please do not hesitate to contact me with any questions – rlevie@gmail.com or 202-253-9251.



Hon. Richard A. Levie
Senior Judge

May 7, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

As a former Attorney General for the District of Columbia and someone deeply committed to the improvement of the administration of justice in the District, I enthusiastically recommend that the Committee confirm the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia.

When I served as Attorney General for the District of Columbia from 2011 until the end of 2014, I dealt with Shana in two capacities. First, she was a trial lawyer in our civil litigation sections, and second she served as President of the labor union, Local 1403 of the American Federation of Government Employees, that represented all of our staff attorneys. In both capacities, she served with distinction, using her excellent legal skills and superb judgment to help the District prevail in difficult legal cases and to improve the working conditions and morale of our dedicated legal staff.

Prior to becoming Attorney General, I had been told by those who had worked with Shana, including a Superior Court judge with whom she had worked closely, about

Arnold & Porter

May 7, 2019

Page 2

her excellent analytical and people skills. Once in office, I soon observed those skills directly. Because Shana handled a number of high profile and complex cases in both the Civil Litigation and Equity Divisions of the Office of the Attorney General, I often met with her and other lawyers on her litigation teams to discuss defense and trial strategy. Shana always was well prepared for our meetings and was able to discuss the nuances of the various legal issues presented. I found her recommended strategies to be well reasoned, as borne out by the positive outcomes in her cases. I found her written work to be coherent, concise and persuasive. It was clear to me that Shana worked very hard to provide the best possible defense for the District of Columbia in all her cases.

As noted, during my tenure as Attorney General, Shana also served as President of the AFGE Local, the union that represents over 300 lawyers serving the District of Columbia. Shana met with me regularly in her union capacity to discuss concerns and issues raised by her colleagues, as well as issues of policy within the Office of the Attorney General. In her role as President, Shana advocated for better compensation, equipment, and support for the attorneys so that they, in turn, would be able to provide the highest level of legal service to the District of Columbia and its citizens. Shana was very involved in negotiating the successful collective bargaining agreement that the union and management reached while I served as Attorney General. Although we did not agree on every issue, Shana was respectful of my opinion and the opinion of others, and was well reasoned, sensible, and persuasive in her advocacy. We shared the focus and desire to make the Office of the Attorney General a top-notch law firm and a good place to work. Because Shana's mission was to improve the Office of the Attorney General overall, we were able to reach agreement on most issues and, as a result, improve the quality of the working conditions in the Office and the legal services provided.

After leaving the Office of Attorney General, I continued to interact with Shana when she joined the Council on Court Excellence (CCE), on which I serve as President of the Board of Directors. CCE is a non-profit organization, made up of lawyers, judges and lay people, dedicated to improving the administration of justice in the District. Shana joined the Board of Directors as a Judicial Director Member and currently serves on the organization's Justice Education Committee, which strives to educate the District of Columbia community about local justice issues and sponsors legal training for attorneys and judges. I continue to be impressed with Shana's skills and dedication to the District of Columbia.

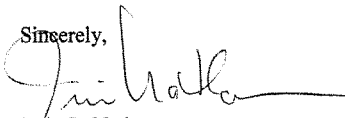
As you know, Shana currently serves as a Magistrate Judge for the Superior Court of the District of Columbia. I have had a chance to observe her work and have been advised by other lawyers who have similarly had an opportunity to assess her performance as Magistrate Judge. In that role, she has demonstrated that her sound legal

Arnold & Porter

May 7, 2019
Page 3

knowledge, work ethic, integrity, and temperament make her an excellent judicial officer. If she is confirmed, I have no doubt that Shana will continue to work hard to serve the citizens of the District of Columbia and will make a solid contribution to the administration of justice in the District as she has done throughout her career.

Thank you for your consideration.

Sincerely,

Irvin B. Nathan



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

May 9, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

RE: Nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

As Chief of Police for the District of Columbia Metropolitan Police Department (“MPD”), I write to you and the Committee on Homeland Security and Government Affairs to offer my strong support of the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia. I believe she possesses the skill and intellect to be an excellent judicial officer.

I first met Shana when I was called as a witness for a deposition in the case of *Towhanna Boston et al. v. District of Columbia*, C.A. No. 05-7232 (D.C. Super.), involving the death of two children who were struck by a driver fleeing from MPD officers. At the time, I was an Assistant Chief of Police, and Shana met with me to prepare me for my deposition and to discuss the pursuit case. I found her to be well-prepared and quite knowledgeable about the law and MPD’s General Orders governing pursuits. Her extensive knowledge of this area of law led Shana to be assigned to several cases involving the defense of police pursuits, including *Greer Hodges, et al. v. District of Columbia*, C.A. 07-2091, in which she and her co-counsel obtained a directed verdict at trial in the U.S. District Court for the District of Columbia.

Because Shana was assigned to defend many other high-profile MPD matters, I had the opportunity to observe her work often, and was impressed by her litigation skills, negotiation skills, and her work ethic. She worked with several other members of MPD’s command staff who were likewise impressed by Shana’s skill and her wide-range of knowledge with respect to MPD’s operations, policies, and procedures. Because of her demonstrated ability to defend difficult matters involving MPD, she was assigned to work on some of the more challenging cases, including class actions such as *Carr v. District of Columbia* and the matters of *Jeffrey Barham, et al. v. District of Columbia, et al.* and *RayMing Chang, et al. v. Charles Ramsay, et al.* (in which she represented me in my professional capacity). Shana was asked to join the defense team in the *Barham/Chang* matters after issues with the discovery process arose. As a

The Honorable Ron Johnson
The Honorable Gary Peters
Re: Nomination of Shana Frost Matini
Page 2

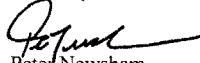
result of the claims of discovery violations, Shana worked to ensure that thorough searches for potentially responsive materials were conducted in all possible locations of the Department. She conducted numerous interviews with employees at all levels of the Department and defended the District and its employees in countless depositions. Even when faced with accusations against her and others at the Office of the Attorney General that later were deemed to be meritless, Shana continued to perform her job diligently and to provide the best possible defense for the District. She also trained newly-appointed officials with respect to the laws in the District governing First Amendment assemblies.

Shana also developed an expertise in the area of use of force by law enforcement officers by working with members of the training staff and outside experts to understand how officers are trained on the use of force. With this expertise, she successfully handled many cases involving alleged excessive force where she obtained a number of favorable decisions on motions to dismiss or for summary judgment. She also obtained a notable defense jury verdict in the case of *Derrek Arrington v. U.S. Park Police, et al.*, C.A. 01-1391, tried in December 2008 in the U.S. District Court for the District of Columbia. There, the jury returned a verdict in favor of an off-duty MPD officer who was accused of using excessive force in the arrest of an individual who the MPD officer had just observed shoot a U.S. Park Police officer in the face. Because the MPD officer was off-duty at the time, he did not have his service weapon on him when he intervened to assist the officer who had been shot, but was able to physically restrain the shooter while a Park Police canine was brought in to assist in disarming the perpetrator. Shana argued to the jury that the force used by the officer was reasonable under the extremely stressful circumstances of the situation. Also in the U.S. District Court for the District of Columbia, Shana and her co-counsel obtained a defense verdict in November 2009 in the case of *Chistol English v. District of Columbia, et al.*, C.A. 08-1337. In that case, the plaintiff asserted that the MPD officer used unreasonable and excessive force when he shot plaintiff's decedent after an altercation where the decedent had resisted the officer in the course of an arrest and tried to choke the officer.

Shana also agreed to take on a series of challenging and previously unprecedented unjust imprisonment cases brought by individuals who had been convicted of serious felonies and were later exonerated by DNA evidence after serving lengthy terms of incarceration. Due to the age of the original criminal prosecutions, the cases required Shana to locate and search through very old homicide files in storage, locate and interview individuals who had retired from the Department, and research policies and procedures that the Department had in place in the early to mid 1980s.

In short, I highly recommend that the Committee vote to confirm Shana's nomination to be an Associate Judge of the Superior Court of the District of Columbia. Shana's commitment to the District of Columbia as exemplified by her work with the Office of the Attorney General and her strong legal skills make her well-qualified for the position. I thank the Committee for its consideration of my recommendation.

Sincerely,



Peter Newsham
Chief of Police

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

PUBLIC SAFETY DIVISION CRIMINAL SECTION

May 21, 2019

The Honorable Ron Johnson
Chairman, Committee of Homeland
Security and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on Homeland
Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

Re: The Honorable Shana Frost Matini

Dear Chairman Johnson and Ranking Member Peters:

Magistrate Judge Shana Matini has served the District of Columbia with the utmost competence and professionalism during her career. I have had the opportunity to work with her both at the Office of the Attorney General for the District of Columbia ("DCOAG") and during her tenure as a magistrate judge for the D.C. Superior Court.

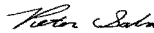
Magistrate Judge Matini was one of the most respected attorneys to have ever worked for the DCOAG. Her name was known among everyone in the agency for her outstanding civil litigation on behalf of the District. Magistrate Judge Matini was the pinnacle of how an Assistant Attorney General should conduct litigation, carry themselves professionally, and serve the community. Magistrate Judge Matini brought these same qualities to the bench. My prosecutors practiced before her daily for two years in 2017 – 2018. They describe her as fair, thorough, and diligent in all aspects of her judgeship. She administrated efficient court dockets, consistently made sound legal rulings, and ensured fair trials were conducted in her courtroom. My prosecutors further reported that Magistrate Judge Matini had the proper temperament for a judge and treated everyone in her courtroom with respect and professionalism.

I often met with Magistrate Judge Matini, in her capacity as a judge, to discuss court procedures, attorney performance, and important initiatives. Magistrate Judge Matini was always thoughtful, engaged, and active in determining ways to improve the judicial system. I strongly believe that she possesses the temperament necessary to be a balanced and fair judge at the D.C. Superior Court. Magistrate Judge Matini would be a huge asset to the court and would be able to immediately assist the bench with any area of law due to her vast experience and thoroughness in analyzing legal issues, learning the law, and most importantly applying the law in a fair and just manner.

In conclusion, Magistrate Judge Matini is an ideal candidate for associate judgeship at the D.C. Superior Court. My recommendation is based from nearly twenty years as an attorney and having practiced before many judges both in the District and the State of Maryland. A judge who has proper temperament, makes balanced and fair rulings, and whom is thorough in their understanding and application of law are needed in the judicial system. Magistrate Judge Matini is that type of judge.

Thank you, and feel free to contact me with any further questions.

Sincerely,



Peter Saba
Chief, Criminal Section
Office of the Attorney General for the
District of Columbia
441 4th St., NW, Suite 1060N
Washington, DC 20001
(202) 442-9827

May 13, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Government Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member, Committee on
Homeland Security and Government Affairs
725 Hart Senate Office Building
Washington, DC 20510

Re: Support for judicial nominee Shana Frost Matini

Dear Senators Johnson and Peters:

I provide my enthusiastic and unqualified support for the Senate's confirmation of Shana Frost Matini as an Associate Judge on the Superior Court of the District of Columbia. Her experience, intellect, and temperament make her exceptionally well-qualified for this important position.

I am able to speak knowledgably about Shana's qualifications because I am an attorney who worked with her professionally for many years at the Office of the Attorney General for the District of Columbia ("OAG"), before she became a Magistrate Judge at Superior Court. I also know her personally, as we are teammates on a competitive canoe team in the District of Columbia.

Shana has all the characteristics necessary to be an outstanding Associate Judge. At the OAG, she demonstrated a calm, reflective demeanor. She respects and listens to opinions from all others. She holds herself to the highest ethical standards. She has a strong intellect and has shown a mastery of the law. In addition, she possesses common sense and good judgment that earned her the trust and respect of her peers and OAG management.

At the OAG, Shana was adept at unraveling cases involving complex constitutional, statutory, and common law issues. She will be able to readily

analyze whatever issues come before her as an associate judge and efficiently enter her ruling and explain it to the parties.

In addition, Shana and I paddle together on a competitive “dragon boat” canoe team on the Anacostia River in the District of Columbia. She is a consummate team player and always treats her teammates and coaches with respect.

In short, I give my strong and enthusiastic support for Shana’s confirmation. She will be an outstanding Associate Judge on the Superior Court.

Sincerely yours,

/s/ Mary L. Wilson

MARY L. WILSON
1812 Kenyon Street N.W.
Washington, D.C. 20010
(202) 320-5400


AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Dr. Everett B. Kelley
National Secretary-Treasurer

J. David Cox, Sr.
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

July 12, 2019

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

Honorable Gary C. Peters
Ranking Member
Senate Committee on
Homeland Security and
Governmental Affairs
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia government employees who serve the American people in 70 different agencies, I urge you to oppose the confirmation of Catherine Bird as General Counsel to the Federal Labor Relations Authority (FLRA) when it comes before the Homeland Security and Governmental Affairs Committee for a vote.

The job of the FLRA Office of General Counsel, by its own description, is to promote effective labor-management relations by investigating and prosecuting allegations of unfair labor practices, determining union representation matters, providing guidance and training to managers and unions and providing alternative dispute resolution services. The role of the General Counsel requires an objective, unbiased individual with an impeccable record of impartiality and independence from the Administration's political influence. This is not a responsibility Ms. Bird is qualified to fulfill.

Ms. Bird has repeatedly played a biased and politically-driven role in labor contract negotiations at her employing agency, the Department of Health and Human Services, which has resulted in multiple Unfair Labor Practices charges for refusing to bargain in good faith. This alone should disqualify her from holding the top job tasked with adjudicating those charges.

Additionally, she has provided unauthorized counsel to at least one other agency, the Department of Veterans Affairs, as they are currently engaged in negotiating a new collective bargaining agreement with AFGE. While the agency representatives removed her from the bargaining room when her presence was questioned, she remained on site at two significant intervals of bargaining and was observed providing direction to agency representatives. Agency representatives were observed seeking her counsel before refusing to continue bargaining. The agency told union officials Ms. Bird instructed the agency not to make any movement in negotiations.

By refusing to bargain in good faith and intervening in at least one agency's bargaining under dubious circumstances, Ms. Bird has shown herself to either be above the rules or simply contemptuous of labor law. If she were to hold the position of FLRA General Counsel, she would not only have to recuse herself from cases in which she is directly named, but she would



not be qualified to issue an objective ruling in any collective bargaining case before the Authority. Ms. Bird has an inherent conflict in every case that is before or may come before her as FLRA General Counsel that deals with unlawful bargaining by any agency. Decisions she would make involving the prosecution of an agency for bad faith bargaining could absolve Ms. Bird of responsibility for her own unlawful behavior while she was at HHS.

The General Counsel demonstrate impartiality toward federal collective bargaining rights and procedure and should be above reproach with respect to fostering an apolitical civil service.

For these reasons, AFGE does not believe that Catherine Bird's professional career demonstrates the appropriate experience and temperament to serve as General Counsel for the FLRA. I urge you to oppose her confirmation.

Sincerely,

A handwritten signature in black ink that reads "J. David Cox, Sr." in a cursive style.

J. David Cox, Sr.
President



July 12, 2019

Senator Ron Johnson
Chairman
Homeland Security and
Governmental Affairs Committee
340 Dirksen Senate Office Building
Washington, DC 20510

Senator Gary Peters
Ranking Member
Homeland Security and
Governmental Affairs Committee
442 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

As National President of the National Treasury Employees Union, representing 150,000 federal employees in 33 agencies, I am writing to share my concerns with the nomination of Catherine Bird to be the General Counsel of the Federal Labor Relations Authority (FLRA) and to urge you to oppose her nomination. Ms. Bird is unqualified for this position.

Over the course of the past year, as NTEU attempted to work with the Department of Health and Human Services (HHS) to develop a new collective bargaining agreement (CBA) for our members, Ms. Bird, a political appointee at HHS, played an instrumental role in the negotiations and repeatedly engaged in bad faith bargaining -- eagerly championing a scheme to weaken federal-sector unions and strip employees of long-standing collective bargaining rights by minimizing any collective bargaining with NTEU to ensure that the dispute would promptly be sent to the Federal Services Impasses Panel (FSIP), where management's proposals to gut much of the contract would be imposed.

Federal law expressly states that collective bargaining is in the public interest and the General Counsel of the FLRA makes decisions on whether to issue unfair labor practice (ULP) complaints for violations of the Federal Service Labor-Management Relations Statute based on charges filed by unions and agencies. ULPs could involve issues related to the duty to bargain and bargaining in good faith, failure to respond to information requests, interfering with the rights of bargaining unit employees to collectively bargain or exercise their other statutory rights, discrimination based on bargaining unit status, and other matters related to the collective bargaining process. Throughout the negotiations with HHS, Ms. Bird repeatedly demonstrated a fundamental lack of understanding of that Statute. She is new to federal sector labor law, and her actions at the HHS table do not give NTEU any confidence that she will make impartial or legally correct decisions about whether to issue complaints or dismiss unfair labor practice

charges filed by unions. In fact, throughout the course of our recent negotiations with HHS, NTEU filed an ULP against the agency as well as five national grievances. These filings concern HHS's bad faith bargaining, including failing to discuss contract language at all; ignoring and failing to respond to NTEU's information requests on issues that were open at the table; and the unprecedented request by the agency for mediation assistance after one day of bargaining and then its request for assistance from the FSIP when no impasse had been reached and the parties had not even discussed 32 of the 34 contract articles open for negotiation. Given Ms. Bird's central role in these actions and continued efforts at HHS to undermine collective bargaining rights, it is highly likely that if she is confirmed, the FLRA General Counsel will be weaponized to continue to further weaken union rights and protections by failing to prosecute union-filed charges of statutory violations.

During NTEU's engagement with HHS on a new CBA, HHS was clear in its intent to severely limit employee and union rights and eliminate more than 41 issues from the grievance process. Important employee benefits like telework and leave, for example, have become essentially discretionary, meaning supervisors would have the ability to allow or disallow it without any consistency or justification and employees would be nearly powerless to object when they are treated unfairly. HHS is also trying to undermine the ability of the union to assist employees when they are mistreated by, for example, limiting the time that union leaders are given to provide such assistance. In nearly every instance, HHS' intent was to weaken the employees' voices in the workplace and undermine collective bargaining altogether. And despite NTEU's numerous attempts to discuss the proposed contract changes, seek information on HHS' concerns, and develop possible alternative proposals that the parties could agree on, HHS forced the term contract through the statutory impasse process to have its proposals imposed. HHS's conduct, led in part by Ms. Bird, is antithetical to the statutory obligation of both parties to bargain in good faith and to make a sincere effort to reach an agreement.

The actions of Catherine Bird throughout her tenure at HHS demonstrates her lack of qualifications to be the General Counsel of the FLRA, including her lack of knowledge of the Federal Service Labor-Management Relations Statute and her dogged efforts to undermine union rights. NTEU strongly opposes her nomination and urges you to do the same.

Sincerely,



Anthony M. Reardon
National President