

**NOMINATIONS OF DONALD L. MOAK,  
WILLIAM D. ZOLLARS, HON. MARK A. ROBBINS,  
CARL E. ROSS, AND ELIZABETH J. SHAPIRO**

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**HEARING**

BEFORE THE

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

SECOND SESSION

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NOMINATION OF DONALD L. MOAK TO BE GOVERNOR, UNITED STATES  
POSTAL SERVICE, WILLIAM D. ZOLLARS TO BE GOVERNOR, UNITED  
STATES POSTAL SERVICE, HON. MARK A. ROBBINS TO BE AN  
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA,  
CARL E. ROSS TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA, AND ELIZABETH J. SHAPIRO TO BE AN  
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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**NOMINATIONS OF DONALD L. MOAK,  
WILLIAM D. ZOLLARS,  
HON. MARK A. ROBBINS,  
CARL E. ROSS, AND ELIZABETH J. SHAPIRO**

**WEDNESDAY, JUNE 3, 2020**

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

The Committee met, pursuant to notice, at 9:01 a.m., via video conference, the Hon. James Lankford presiding.

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

**OPENING STATEMENT OF SENATOR LANKFORD<sup>1</sup>**

Senator LANKFORD. Good morning, everyone. This is a virtual hearing of the Homeland Security and Governmental Affairs Committee (HSGAC) and it will come to order. This morning we will consider two nominees for the Governor of the United States Postal Service (USPS), Donald Lee Moak, I should say—and William Zollars. We will also consider three nominees to the D.C. judiciary system, Mark Robbins, Carl Ezekiel Ross, and Elizabeth Shapiro, to be Associate Judges of the Superior Court of D.C. Let me do a brief introduction of each.

Donald Lee Moak is currently the Chief Executive Officer (CEO) of the Moak Group. Previously he served as the President of the Air Line Pilots Association and was a captain with Delta Airlines for 31 years. Mr. Moak also served as an officer in the United States Marine Corps (USMC) and the United States Navy Reserves. Thank you so much for that service.

William Zollars currently serves on the board of directors for Main Street Data, C2FO RedStone LLC, Cerner Corp, Prologis, and he was the Chairman and CEO of YRC until 2011. Prior to that he served in senior leadership positions with the Ryder Systems Incorporated and the Eastman Kodak Company.

Mark Robbins currently serves in the Office of Personnel Management (OPM's) Office of General Counsel (OGC) as a general counsel position, he also held from 2001 to 2006. From 2012 to 2019, Mr. Robbins served as a member of the United States Merit Systems Protection Board (MSPB). Prior to that he served as an attorney in complex civil litigation cases at the State and Federal

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<sup>1</sup>The prepared statement of Senator Lankford appears in the Appendix on page 35.

trial court level and was the Executive Director of the Bush White House Privacy and Civil Liberties Oversight Board, and also served as a Senior Rule of Law advisor for the State Department, where he advised on the development and modernization of an Iraqi provincial legal justice system. Thanks for doing that as well. Exceptionally complicated.

Carl Ezekiel Ross—who goes by his middle name, Ezekiel, by the way—serves as Counsel for the House of Representatives Committee on Ethics. From 2009 to 2017, he served as Assistant United States Attorney with the Civil Division in the United States Attorney’s Office in Washington, D.C. Prior to that Mr. Ross worked as a litigation associate at Arnold & Porter and served as a law clerk for The Honorable James Spencer of the United States District Court for the Eastern District of Virginia. Most importantly in his resume, to me, is he is also a graduate of OR University in Tulsa, Oklahoma.

Elizabeth Shapiro has been with the Department of Justice’s (DOJ) Civil Division, Federal Programs Branch since 1991, serving in various roles. Currently she is the Deputy Director of that department. Previously, Ms. Shapiro served as an attorney advisor in the Department of Labor’s (DOL) Office of the Solicitor and also served as a law clerk for The Honorable Stephen Eilperin and Honorable Susan Winfield of the D.C. Superior Court.

The Committee takes these nominations extremely seriously. We are pleased to have these nominees before us. Committee staff reached out to many of the colleagues and affiliates of the nominees. They spoke exceptionally highly of all your professional abilities and fitness to potentially serve in the roles for which you have been nominated. Staff has interviewed all the nominees on an array of issues. Each has thoughtfully and competently answered each question.

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

I now recognize the Ranking Member, Maggie Hassan, for her opening statement.

#### **OPENING STATEMENT OF SENATOR HASSAN<sup>1</sup>**

Senator HASSAN. Thank you, Mr. Chairman, and thank you to the nominees for your participation in this process and for your willingness to serve the American people.

We find ourselves today in the midst of an unprecedented time in our nation’s history. More than 100,000 Americans have been killed by a deadly pandemic, a number that continues to grow. Forty million Americans are out of work, and our entire country is reeling from the senseless killing of George Floyd, and the reality of unequal access to justice, health care, education and economic advancement many Americans face because of the color of their skin.

We have much work ahead of us. One of the issues before us today is the future of the United States Postal Service, an agency that is committed to serving all Americans in every part of the

<sup>1</sup> The prepared statement of Senator Hassan appears in the Appendix on page 37.

country, from urban centers to rural roads. And during this pandemic, the Postal Service has been an especially vital lifeline for medications, food, and other supplies for many Americans.

Unfortunately, the United States Postal Service is in a dire financial condition, one that has been worsened by the coronavirus disease (COVID-19) pandemic. The Postal Service estimates it will lose \$13 billion in revenue this year, and may run out of funds as early as September.

A collapse or reduction of postal services would negatively impact all Americans, but it would disproportionately affect those who live on rural delivery routes, people with disabilities, and seniors who might have mobility issues.

The Postal Service is often the only carrier that will deliver mail that last mile to rural homes. Supporting the Postal Service so that it can continue to offer equity and universal service for all Americans is of vital importance, especially now.

The Postal Service, the District of Columbia, and our nation face big problems that our nominees, if confirmed, are going to have to grapple with, and it will not be an easy job. But it is a job of vital importance to our Nation, and I applaud our nominees for their willingness to serve the American people in these important roles.

Though this time is dark, I remain optimistic that we will find ways to solve our problems, that the resilience and resourcefulness of the American people will win out, and that we will all get through this together.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you, Senator Hassan. It is the custom of this Committee that we do swear in all of our witnesses that appear before us, so I would ask you to raise your right hands. You do not have to stand there. Also we would not be able to see you, probably, so just raise your right hand. Do you swear that 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?

Mr. MOAK. I do.

Mr. ZOLLARS. I do.

Mr. ROBBINS. I do.

Mr. ROSS. I do.

Ms. SHAPIRO. I do.

Senator LANKFORD. I ask that the record reflect that all witnesses answered in the affirmative. Thank you very much for that.

We have an opening statement from each of you, and I am going to recognize Mr. Moak for his opening statement first. If you would open up your microphone, and you will have 5 minutes. And please give us your opening statement and we will be pleased to be able to receive all of those after yours. Thank you.

**TESTIMONY OF DONALD L. MOAK,<sup>1</sup> TO BE A GOVERNOR,  
UNITED STATES POSTAL SERVICE.**

Mr. MOAK. Good morning Chairman Lankford, the Ranking Member and Members of the Committee. It is an honor for me to address you today, and I want to thank you for considering my nomination.

I believe government service is a high calling and I consider it an honor to serve my country. My government service began in the summer of 1977, when I commenced the United States Marine Corps Officer Candidate school. Ultimately, I was commissioned as a Second Lieutenant and served in the Marine Corps as a fighter pilot, flying the F4 and the F18. I did two tours of duty in Asia and upon return did a Navy exchange tour at Cecil Field, Florida. After 9 years of active duty, I left the Marine Corps and transitioned to the Navy Reserve, where I continued to fly fighter jets until I retired from the military with the rank of Commander in 2001.

After my time on active duty, I also became a pilot for a commercial air carrier. As a commercial airline pilot, when not performing my primary duty of safely transporting passengers, I volunteered and was elected as a representative to the Air Line Pilots Association (ALPA), an association that was originally conceived in 1931 to represent air mail pilots.

I had many appointed and elected positions in the association, ultimately becoming the President of ALPA from 2011 to 2014. I represented more than 50,000 U.S. and Canadian pilots at over 30 companies on contractual, safety, and government policy matters. I led a team to address complex bankruptcy restructurings, mergers, and retirement, healthcare, and benefit matters. Nothing was easy in the airline and labor business, and all stakeholders had to work together to settle negotiated agreements. I also served on numerous government aviation safety committees, including the Federal Aviation Administration's (FAA), Management Advisory Committee (MAC), the NextGen Advisory Committee (NAC) on air traffic services, and recently I was appointed to the FAA's Drone Advisory Committee (DAC). Last year, I also co-chaired the Department of Transportation's (DOT) Special Committee to Review the FAA's Certification Process.

When I was nominated for a position on the Board of Governors of the USPS, I was truly honored. More importantly, I am motivated to get to work to help the Postal Service thrive and meet its Universal Service Obligation (USO). As a proud American citizen and a veteran of our armed forces, I am forever grateful for the mail that was sent from my parents in the United States to me at the mail call near my tent in South Korea in 1983. Today, I send mail to my youngest son, Lieutenant Junior Grade Moak, stationed on the USS Bataan, which is currently at sea deployed to the Middle East.

Whether it is letters to and from our men and women in uniform, birthday cards from beloved family members, essential the Coronavirus Aid, Relief, and Economic Security (CARES) Act stimulus checks, or routine correspondences like bill payments, the

<sup>1</sup>The prepared statement of Mr. Moak appears in the Appendix on page 38.

USPS and its mission of delivering reliable, affordable, universal mail to the American people is an enterprise that I am motivated to ensure continues and succeeds.

In preparing for this nomination I have reviewed some of the information detailing the compound financial and service challenges facing the United States Postal Service today. If confirmed, I intend to spend intensive time working with the current Board, the new Postmaster General (PMG), USPS management, USPS labor, and all stakeholders to better understand the problems they are facing.

Though I am not a postal expert and I am still only at the beginning stages of understanding the Postal Service's current challenges, what I am is someone who believes that any problem is solvable and as I have stated previously, I have worked on complex issues concerning many of these same challenges with multiple stakeholders with differing agendas, and have found success. I believe that by identifying all issues, working with all stakeholders, driving consensus on a comprehensive plan, then deciding how to execute that plan with thorough, measured and transparent oversight, success will follow.

If confirmed, I look forward to working on the challenges facing the United States Postal Service and I am confident that we will work together to continue to meet the expectations of the American people and uphold the mission of the USPS.

Thank you, Chairman Lankford and Members of the Committee, and I look forward to your questions.

Senator LANKFORD. Thank you, Mr. Moak. Mr. Zollars.

**TESTIMONY OF WILLIAM D. ZOLLARS,<sup>1</sup> TO BE A GOVERNOR,  
UNITED STATES POSTAL SERVICE**

Mr. ZOLLARS. I would like to thank President Trump for the honor of being nominated, and thank the Senate for your consideration of my appointment to the Board of Governors of the U.S. Postal Service.

The last time I was in a position to serve my country directly was 1970, when I enlisted in the Army National Guard. In the 50 years since, I have accumulated substantial experience that I believe will help me make a contribution in solving the important challenges facing the Postal Service and give me an opportunity, once again, to serve my country.

The Founders obviously thought the Postal Service was important enough to include in the Constitution, and the fact that it has remained an integral component of American life throughout our history is a confirmation of their foresight. As a resident of Kansas, I can verify the added importance of this vital service to rural America, where the Postal Service is a reliable, dependable, and trusted symbol of government promises kept. It is for these important reasons that I am committed to helping solidify the long-term future of this important part of America.

During my years in private industry I have led large organizations in three different Fortune 500 companies and served on the board of directors of four different Fortune 500 companies.

<sup>1</sup>The prepared statement of Mr. Zollars appear in the Appendix on page 94.

My last position was the most relevant to the Postal Service since it was a nationwide, unionized logistics network of over 50,000 associates. The company was on the brink of financial failure when my team took over, but, by working in concert with our union workforce on a strategy focused on mutual success, we were able to deliver four consecutive years of record revenue and profitability. In the process, we delivered outstanding service to our hundreds of thousands of customers, whether they were in Manhattan, Kansas, or the island of Manhattan. I mention this to illustrate that I am familiar with turnaround situations.

During my 15 years at YRC, we served every ZIP Code in the country—our own version of the “Universal Service Obligation.” We delivered shipments to our customers on time, regardless of distance or density, and in the most efficient way possible. We were also able to offset a labor cost disadvantage with a knowledgeable and experienced workforce enabled by an optimized network and effective technology.

At YRC we were also a direct participant in the postal delivery process by providing consolidation and de-consolidation services on behalf of the USPS. In addition we were able to effectively deal with billions of dollars of unfunded liability in some of the multi-employer health and pension funds.

Beyond YRC and from a broader governance perspective, I have worked effectively for nearly 20 years on public boards in the health care, technology, real estate, and transportation industries. I also have had the opportunity to experience postal service outside the United States. Five years in Europe, three in Canada, and a year in Japan gave me a view of different approaches to mail and package delivery.

Finally, and very importantly, even though the Postal Service has complex and significant challenges ahead, they also may have a sustainable competitive advantage—last mile, last touch density. No other competitor has that, and it is why the United Parcel Service (UPS), Federal Express (FedEx), and Amazon use the Postal Service on a regular and frequent basis to complete their deliveries. Although I do not yet have an in-depth knowledge of the Postal Service, I am anxious to learn as much as possible about the potential in this and other areas of advantage.

So, if I am fortunate enough to be confirmed, I will work with Congress, the Postal Regulatory Commission (PRC), and the Board of Governors to oversee and guide management to ensure a sustainable future for this required and fundamentally important and great American asset, the United States Postal Service.

Thank you, and I look forward to your questions.

Senator LANKFORD. Thank you. Mr. Robbins.

**TESTIMONY OF THE HONORABLE MARK A. ROBBINS,<sup>1</sup> TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. ROBBINS. Chairman Lankford, Ranking Member Hassan, and Members of the Committee, I appreciate this opportunity to present my qualifications and respond to your questions regarding

<sup>1</sup> The prepared statement of Mr. Robbins appears in the Appendix on page 144.

my nomination to be an Associate Judge on the Superior Court of the District of Columbia. I want to thank the President for the honor and privilege of his nomination, and the District of Columbia Judicial Nomination Commission (JNC) for its recommendation to the President. If confirmed, I pledge to prove my worthiness of this appointment by carrying out my responsibilities with the highest degree of professionalism and integrity.

This is the second time I have been honored to have a nomination considered by this Committee. The last time was in March 2012, when I was nominated for a 7-year term as a Member of the U.S. Merit Systems Protection Board. In fact, I have a long professional history of productive and successful interaction with this Committee, its members and staff, both majority and minority as those roles have shifted over the years, since its inception in present form in 2005, and before that with the Senate Governmental Affairs Committee going back to 2001.

I believe that my 30 year legal career has prepared me well for this new position. I have served for 13 years as a commercial civil litigation attorney with a broad variety of experience at the State and Federal trial court level, at both law firms and as in-house counsel. As the Chairman noted, I was a member and acting Chairman of the MSPB for 7 years, where I adjudicated over 4,000 cases. I am presently serving as General Counsel (GC) at OPM. I have been a three-time General Counsel to two Federal agencies. I was an international Rule of Law Advisor managing the development and modernization of an Iraqi provincial legal and justice system with the Army's 172d Infantry Brigade. I have been a member of the White House staff in two administrations, and a Legislative Assistant to two Members of the U.S. House, covering justice and judicial issues. Serving as a judge on the D.C. Superior Court would be the honor of my lifetime and the crowning achievement of my career.

As I noted in 2012 at my confirmation hearing, I was conscious of moving from the professional role of a legal advocate, whether in public service or in private practice, to that of an adjudicator. I am proud to say that I have made that adjustment quickly and successfully. I enjoy adjudication.

Before concluding, I would like to thank those who have assisted me in this process: my friends and colleagues who have given me their moral support and future colleagues at the D.C. Superior Court who have lent me their encouragement. Finally, and most importantly, I especially want to thank my family. My mother passed away 3 years ago, but she and my father were here, in person, when I was last before this Committee. They, my sister and brother, and their families, are present today either in spirit or through technology during these challenging and difficult times.

Mr. Chairman, again, thank you. I look forward to responding to any questions the Committee may have.

Senator LANKFORD [continuing]. For your questions being shorter because you went shorter on your opening statement as well, so you will get a bonus on that.

Mr. ROBBINS. Thank you.

Senator Lankford. Thank you, Mr. Robbins. Mr. Ross.

**TESTIMONY OF CARL E. ROSS,<sup>1</sup> TO BE AN ASSOCIATE JUDGE,  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. ROSS. Good morning, Mr. Chairman, Ranking Member, and Members of the Committee. It is an honor to be considered for an associate judgeship with the D.C. Superior Court, and I want to thank the Members of the Committee and the dedicated Committee staff for considering my nomination.

I would like to thank the JNC and its Chair, the honorable Emmet Sullivan, for recommending me to the White House, and the President for nominating me. I would like to thank my parents, Carl and Gwen Ross, for teaching me the value of hard work, and my siblings, Marsha, Della, and Cecil, for keeping me grounded. I would like to thank my in-laws, Pastor Gerold and Wendy LeBlanc, for always leading by example, and I would like to thank my family, friends and mentors, including the Honorable James Spencer, the Honorable Hannah Lauck, the Honorable Rhonda Reid-Winston, and the Honorable Rudolph Contreras for their continued guidance and support.

I would like to thank the members and staff of the House Ethics Committee, including Chairman Ted Deutch and Ranking Member Kenny Marchant, for their leadership and for allowing me to work alongside them in the Committee's pursuit of justice. And most importantly, I would like to thank my incredible wife for her unrelenting love and support.

I am a proud third-generation Washingtonian who was taught from an early age the importance of giving back to the community and living by the principle "to whom much is given, much is required in return." My parents dedicated their professional careers to government service, and they now dedicate their retirement years to caring for children in need and running a treatment foster care agency.

Following in their public service footsteps, I began my legal career clerking for the Honorable James R. Spencer of the Eastern District of Virginia. During my clerkship, I witnessed first-hand the characteristics that make a good judge, and I learned the importance of patience when dealing with civil and criminal litigants. I went on to work for a large international law firm here in Washington, D.C., where I learned to handle large and complex legal matters, and through my pro bono work, many of the challenges facing indigent litigants in the district.

For 7 years, I served beside some of the most talented and dedicated attorneys in the country as an Assistant United States Attorney (AUSA) in the Civil Division of the U.S. Attorney's Office for the District of Columbia. During my tenure as an AUSA, I managed a large and complex case docket and represented the United States in more than 100 civil cases in Federal district and appellate courts.

For the past 3 years, I have had the great honor of serving as Investigative Counsel for the U.S. House of Representatives Committee on Ethics, where I have investigated criminal and civil matters and helped prepare those matters for adjudication by the Committee. During my time with the Ethics Committee, I have moved

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<sup>1</sup> The prepared statement of Mr. Ross appears in the Appendix on page 176.



away from traditional advocacy on behalf of an individual or entity and learned to review evidence and testimony with an eye toward adjudication. I have seen first-hand the importance of handling matters without pre-judgment, understand the need to move matters expeditiously, and comprehend the importance of ensuring that each individual that comes before the Committee receives proper due process.

It would be an incredible honor to now use the techniques, insights, and skills that I have developed throughout my career to serve my fellow residents of the District of Columbia as an Associate Judge with the D.C. Superior Court. If confirmed, I will ensure that all litigants are treated fairly, I will faithfully enforce the rule of law, and I will be steadfast in upholding the Constitution.

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

Senator LANKFORD. Mr. Ross, thank you very much. Ms. Shapiro.

**TESTIMONY OF ELIZABETH J. SHAPIRO<sup>1</sup> TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. SHAPIRO. Good morning, Chairman Lankford and Ranking Member Hassan, and Members of the Committee. It is a great privilege to be here. I am deeply grateful for the opportunity to appear before you as you consider 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 its chair, Judge Emmet Sullivan, for recommending me to the White House, and the President for nominating me. Finally, I would like to express my thanks and appreciation to the Committee Members and the dedicated Committee staff for their hard work in considering my nomination, particularly during this difficult period.

I would like to single out my husband and life partner, Amos Gelb, for his love and support over the last 25 years. Without him, I could not have accomplished all that I have professionally, or managed to raise our three wonderful children. To my children, Noa, Eliya, and Mica, I thank you for being the light of my life, for being the strong and independent-minded individuals that you are, and for sharing your mother with one of this country's great institutions, the Department of Justice. I love and cherish each of you.

To the men and women of the Department of Justice, working with you has been the honor of a lifetime. You are the best and brightest colleagues imaginable. I particularly thank my colleagues in the Federal Programs Branch for being part of my extended family for the past 29-plus years. Your commitment to excellence and devotion to public service is second to none.

I am a native Detroiter and graduate of the University of Michigan. From there I moved to Washington, D.C. to attend law school, and I have never left. My children were all born and raised here in D.C. My oldest daughter is a local actress and casting director. My second daughter is a soccer player, studying athletic training in college. And my son is an offensive lineman, playing football for the University of Michigan.

<sup>1</sup> The prepared statement of Ms. Shapiro appears in the Appendix on page 203.

I started my career as a judicial clerk at the Superior Court. I then spent 2 years working appellate cases at the Department of Labor. From there I moved to the Department of Justice. In the Civil Division of DOJ I began as a line attorney, handling a wide variety of cases on behalf of the Executive Branch. I then became a supervisor specializing in government information, and ultimately I served as the Deputy Director of the Federal Programs Branch. I was also privileged to serve as Special Assistant United States Attorney for a limited time.

I have been honored to represent the Department not just in court, but also on the Federal Rules Committees created under the Rules Enabling Act. The inclusive and transparent nature of those proceedings is a model for the judiciary, as are the civility and open-mindedness, qualities that I hope and expect to bring to the bench.

Thank you again for considering my nomination and I look forward to answering any questions you might have.

Senator LANKFORD. Thank you very much, all of you, for giving your opening statements, and extremely timely. I had mentioned before that I am going to defer my questions to the very end, to allow other Members to be able to jump in and ask their questions first, except for one thing. We have a set of mandatory questions that every person that is before this Committee needs to be able to answer. And so this will be a little more awkward than normal, because typically I can call on each person. But there will be a short question. I would ask all five of you to unmute your microphone, and I am going to ask you a yes-or-no questions and call each of you by name as I go through these.

So the first of these questions, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. Moak.

Mr. MOAK. No.

Senator LANKFORD. Mr. Zollars.

Mr. ZOLLARS. No.

Senator LANKFORD. Thank you. Mr. Robbins.

Mr. ROBBINS. No, sir.

Senator LANKFORD. Mr. Ross.

Mr. ROSS. No.

Senator LANKFORD. Ms. Shapiro.

Ms. SHAPIRO. No.

Senator LANKFORD. Thank you. The second question. Do you know of anything person 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?

Again, Mr. Moak.

Mr. MOAK. No.

Senator LANKFORD. Mr. Zollars.

Mr. ZOLLARS. No.

Senator LANKFORD. Mr. Robbins.

Mr. ROBBINS. No.

Senator LANKFORD. Mr. Ross.

Mr. ROSS. No.

Senator LANKFORD. Ms. Shapiro.

Ms. SHAPIRO. 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?

Mr. Moak.

Mr. MOAK. Yes.

Senator LANKFORD. Mr. Zollars.

Mr. ZOLLARS. Yes.

Senator LANKFORD. Mr. Robbins.

Mr. ROBBINS. Yes, sir.

Senator LANKFORD. Mr. Ross.

Mr. ROSS. Yes.

Senator LANKFORD. Ms. Shapiro.

Ms. SHAPIRO. Yes.

Senator LANKFORD. Great. Thank you very much. I am going to then defer questions on to Senator Carper. I think Senator Hassan is not there. She had to be able to cutoff to another committee. So Senator Hassan, if you are still there you need to let us know real quick. But I think she had to cut to a different committee. If not, Senator Carper, you are up.

#### OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Good morning, Mr. Chairman.

Senator LANKFORD. Good morning.

Senator CARPER. Good morning to each of our nominees, and thank you for not only your willingness to serve in these capacities, these positions to which you have been nominated, but thank you for joining us today.

I was privileged, earlier in my life, to serve as a naval flight officer (NFO) for a while during the Vietnam War, and I must say, Mr. Moak, are you retired Marine or Navy?

Mr. MOAK. I am a retired Navy commander but son of a retired Marine master sergeant.

Senator CARPER. There you go. I am the son of a retired Navy chief petty officer and retired Navy captain. I love the Navy. I had uncles who served in World War II, Korea, in the Army, Navy, and Marine. My grandmother is a Gold Star mother. And so like your family we know what it means to serve, and we are pleased that each of you are willing to serve in the capacities to which you have been nominated.

Mr. Zollars, did I understand that you also served in uniform? Did I hear that?

[Pause.]

Mr. ZOLLARS. Yes. Army National Guard.

Senator CARPER. That counts. I used to be commander in chief of the Delaware National Guard. I loved doing that. I wondered why they took a Navy guy and made him the commander in chief of the Army and the Air Force forces. There is probably a lesson there. I do not know. They did OK.

Mr. ZOLLARS. I was proud to serve.

Senator CARPER. I also, when I was privileged to be Governor, this is to our judicial nominees, I had the privilege to nominate, over 8 years, dozens probably scores—of people serving in all the

courts of Delaware, which played a major role in punching above my weight in Delaware when it comes to the judiciary, and I was very proud and privileged to be able to do that.

I would say, in reading the bios of each of our nominees, Mr. Chairman, and listening to you speak this morning, what excellent nominees. I think we are privileged and really fortunate that you are willing to serve.

I want to ask a question, if I can, of Commander Moak, also known as Mr. Moak, and to Mr. Zollars. What have you learned about the Postal Service so far, going through this nominating and this confirmation process? What have you learned that has direct bearing on the ability of the Postal Service not just to limp along, not just to need Band-Aid after Band-Aid, but what have you learned about how we might, by addressing the root causes of their challenges, how might we enable the Postal Service not just to survive or linger but actually thrive?

Mr. Moak, can you just go first please. What have you learned through this confirmation process? Maybe something you did not know. Maybe something that has been a new approach for to you.

Mr. MOAK. I reviewed a few of the reports, and this might be a little naive but this seems like other problems that we have dealt with in the past where everyone needs to come together, and that is Congress, that is the Chairman of the Board of Governors, that is having a fully functioning Board of Governors, that is USPS management, that is our front line employees doing an incredible job every day, USPS labor, and most importantly, their customers, the citizens of the United States.

We have many benefits here where we have mail delivered under the USO all across the country, and around the globe really, and that is quite an advantage that perhaps has not been looked at.

But the solution to this problem, I think, Senator, is that everyone has to recognize that they have a part in it and you need to first identify all the challenges here and then get everyone to step up in a transparent fashion, decide how to go from A to B—I believe it is very doable—and then make sure you have someone leading from A to B and hold everyone accountable from A to B.

Senator CARPER. Right. Hold it right there.

Mr. MOAK. I think it is solvable. It believe it is very solvable.

Senator CARPER. Thank you. That is good. I like that optimism.

Mr. Zollars, what have you learned going through this confirmation process to change the long-term survivability and recovery, if you will, of the Postal Service?

Mr. ZOLLARS. Senator, first of all I have learned that there are—

Senator CARPER. Can you speak just a little bit louder?

Mr. ZOLLARS. Sure. First of all, Senator, I have learned that there are some very complex problems here, but they look very similar to some of the problems I faced on the commercial side at YRC. Those problems include a cost disadvantage, service challenges. We had a similar situation with respect to unfunded liability. So there are a lot of things that are similar on the challenge side.

I would echo a little bit of what Lee said, which is I think the solution to this is probably also very complex and involves looking

at network optimization, looking at services that can be provided, looking at where we would have a competitive advantage in that last-mile delivery, which I think is something that probably we can focus a little bit more on once I get a little bit more knowledge under my belt.

But at the end of the day I think the real answer is to get a strategy that is comprehensive, that everyone buys into, but that does not have a 10-year horizon. I think we need a strategy that has sequencing, where you can get some success early, build on that success, build on the momentum, and get everybody in the entire organization behind that strategy execution, and then work with Congress and the PRC to make sure that they also buy into that strategy.

So it is really getting that transparency and buy-in from everybody in this challenge and getting them moving in the same direction.

Senator CARPER. Albert Einstein used to say, "In adversity lies opportunity." And in the Bible it says, "In all things give thanks." And there is plenty of adversity here for the Postal Service. There is also some opportunity. And the requirement to go to basically every mailbox in the country, roughly 6 days a week, that is a burden but it is also an opportunity. And it has all been partially realized, and maybe we will have a chance in the second round of questions to come back and explore some of those opportunities.

Thank you all, and again to the judicial nominees, I look forward to asking you a question or two, particularly with respect to the core values that guide you. Thank you.

Senator LANKFORD. Senator Carper, thank you. Senator Hawley.

#### **OPENING STATEMENT OF SENATOR HAWLEY**

Senator HAWLEY. Thank you, Mr. Chairman. Thanks to the nominees for being here.

Mr. Moak, I wanted to come back to you and pick up on the line of questioning that I think Senator Carper was just pursuing there. I could not hear all of it but I gather he was asking about some of the service commitments of the Postal Service and also the opportunities for reform.

So let me just ask you, Mr. Moak, in light of the disruptions to its service that the Postal Service has experienced over the last few years, for a variety of reasons, even before the COVID-19 pandemic—I am thinking of the changes in demand due to changing technology and so on—can you talk to us about what you think a path for reform is, to make sure that the Postal Service, which has been with us for 250 years, and is absolutely vital, I want to say, to my State, to rural areas in my State. I think the goal has to be to see the Postal Service exist for another 250 years and continue to serve the people of this country, especially the people of our areas that are hard to reach, that are hard to get to, who really rely on the Postal Service to be that lifeline.

Can you give us a sense of what your priorities will be and your sense of what the Postal Service could do in the 21st Century to make sure it continues to meet its service obligations?

Mr. MOAK. First I am not a postal expert but I can tell you that I work very hard and I am intense in my drive to make sure I solve these problems and share your views on the USO, I believe.

That being said, it is easy to say the last mile but I would like to focus quickly on the first mile. The postal worker, day in and day out, may be the only government employee that in rural America, or even in urban America, that any American ever sees. They pick up that mail, they pick up that package, they take that out.

Now we are focusing on the last mile when we are bringing something to them, but I think we focus on exactly what we do, how we do it, and we balance that customer service challenge that we have in front of us, from how we do it in a financially responsible, economically viable way going forward.

I really believe that it is solvable, and I really believe that it is important. We have a tendency to forget that even today, even today we are all relying on the Postal Service to deliver those CARES Act checks, to deliver other information to rural America, to all Americans.

So all I see is opportunity here. All I see is the ability to solve these problems. And again, when I have time to get in there and really look at it, I think the challenges will be met.

Senator HAWLEY. Tell me about your view of the Universal Service Obligation and its role in the USPS mission.

Mr. MOAK. Well from what I have read, OK, the first thing is Congress has given us a statutory requirement that we need to execute on. Now there is a lot of debate on what that is and the specificity that needs to be with the USO. But as far as my role on the Board, working with the chairman of the Board, and working to fulfill that, I believe it is delivering mail and packages to every address in the United States in a timely fashion.

Senator HAWLEY. Do you have a view on the new mission statement that was adopted on I believe it was April 1, by the USPS Board of Governors?

Mr. MOAK. I am not aware of that.

Senator HAWLEY. Why do you not make yourself aware and get back to me. How about that?

Mr. MOAK. I would be glad to do that.

Senator HAWLEY. Good. I will hold you to that.

Mr. Zollars, let me ask you, many communities, again, in my State of Missouri, depend on the USPS as a critical lifeline for First-Class Mail and for package delivery. How can we ensure that rural communities continue to receive mail at a fair price, even as we consider modernizing reforms that will help preserve USPS for this next century? Give us your views on that.

Mr. ZOLLARS. Senator, as you know I am a neighbor so I can fully appreciate the fly over country aspect of this challenge. I think it goes back to what I had kind of talked about a little earlier at YRC. People would come to me at YRC and ask me whether I wanted lower cost or better service, and my answer was always "yes, that is what I want. I want lower cost and I want better service." I think the same mindset, that that mindset has to be translated into the USPS. I think they are not mutually exclusive.

As I said in my opening statement, we served every ZIP code in the country, regardless of distance or density. We found a way to

get products to customers on time at a reasonable cost, and I think that has to be our goal at the USPS. It is not an easy problem to solve. It has to be broken down into pieces, but I think it is solvable.

Senator HAWLEY. Give me a sense of whether or not, if you are confirmed, if you willing to commit to protecting access to USPS and delivery service for rural Americans. Can you commit to that for me, Mr. Zollars?

Mr. ZOLLARS. Absolutely. It is part of the mission, so I absolutely can commit.

Senator HAWLEY. Give me a sense—you just mentioned some of the work you did at YRC. Give me a sense of your turnaround experience and the lessons that you learned from that. In particular, how did you manage to maintain all of your services at your fleet?

Mr. ZOLLARS. There was a tough situation when I got there with my team. We were in really bad financial shape, for a number of reasons. We had declining revenue, we had increasing in costs. I think the first part of the solution was following what Jim Collins said about getting the right people on the bus. You need a leadership team that has a common vision and a common mission, and then you need to permeate that throughout the organization.

I think one of the real advantages we developed was that vision was transparent and really obvious to everybody in the organization, all 50,000 of the associates. And once we got them on board with the strategy and what we were trying to get done and began to show some results then you reach a tipping point when things pick up momentum on their own, and then I think you are in a good position to get the problem solved.

But it is a multifaceted problem. It starts with getting everybody on the same page with respect to what you are trying to get done and how you are trying to get it done.

Senator HAWLEY. Very good. Thank you, Mr. Chairman.

Senator LANKFORD. Senator Hawley, thank you very much. For fear that our judicial nominees would feel overlooked I am going to pepper you with questions for a little while, and then we will transition to Senator Hassan as well.

For all three of our candidates, I want to be able to walk through a series of questions here. I want to be able to get your responses on this, beginning with Ms. Shapiro. The D.C. Superior Court is extremely busy. It is backlogged. I know that you know that already on this. When there is a delay in actually getting to a case there are all kinds of challenges. But there is also a bad habit of some attorneys not coming well prepared and asking for extensions and delays, which means the people that are trying to get to actual justice, to be able to get to an answer, they are delayed as well.

So my two full questions here, what is your perspective on catching up on the backlog, and how will you handle that? And the second part about this is, how will you hold attorneys and individuals accountable for being prepared so that those individuals that need to get justice can actually get an answer?

Ms. Shapiro, you are first.

Ms. SHAPIRO. Thank you. I very much appreciate the backlog and the problem that the Superior Court faces and it is one of the most significant challenges that exists there. I certainly would hope to

come up to speed and be as efficient as possible in moving my docket. I also think that it is important to set expectations, to go to your second question, with litigants so that they understand my courtroom rules and they understand what is expected of them in terms of appearances.

I have spent virtually the entirety of my career in the Federal courts, which has much less of a volume problem. It still faces challenges. But I think Federal lawyers, when they go to Federal court, they have an understanding of what is expected and that can go a long way in helping to control those issues of delay that you referenced.

Senator LANKFORD. Good. Mr. Ross, same question.

Mr. ROSS. Yes. So I echo Ms. Shapiro's statements. I believe that the backlog that D.C. Superior Court is facing is one of its largest challenges and one of the most difficult challenges for all of the D.C. Superior Court judges. And promoting judicial efficiency and moving cases along will be one of the most difficult challenges that I will face.

In terms of setting expectations and accountability for the attorneys that appear before the court, like Ms. Shapiro said, setting expectations is one of the key factors. Also making extensions a little bit more difficult in the sense of requiring extensions to be filed in advanced is one technique that a number of the Federal judges in D.C. use that I have found to be efficient. And forcing those litigants to come before the court and explain the reasons why they are seeking an extension can help ensure that they are prepared and that they do not seek extensions frivolously.

Senator LANKFORD. Good. Mr. Robbins, same questions.

Mr. ROBBINS. Thank you, Mr. Chairman. I want to echo what my two colleagues have both said. The backlog caused by the pandemic is going to be something that hits us in the face if we are lucky enough to be confirmed. And I would only note, as you well know, thanks to my term on the MSPB I am a bit of an expert on backlogs at this point.

So I would offer to the—and I also note that the D.C. Superior Court is in the process of selecting a new chief judge. So I would hope to be able to offer whatever skill sets I have to the new chief judge to utilize as he or she sees appropriate.

With regard to case management and holding parties before the court responsible for their caseloads, I understand. I think all litigation attorneys understand that there are pressures with time and caseloads. I think the easiest way to deal with it is up front. Attorneys and parties before the court need to be honest, and early honest with the court, so that these lack of preparations do not surprise the judge at the last minute. You can usually work with parties if there are scheduling issues, but I have found with my service on the board that I did not like to be surprised.

I would note that the legal practice before the board entails quite a few pro se litigants, and we hold those folks responsible to meeting their deadlines. So it is not, I think, unfair to hold attorneys responsible for meeting their deadlines.

Senator LANKFORD. That sounds reasonable. Mr. Robbins, I am going to ask you this first question as well. All of you have areas that you have practiced in before and you have some expertise in



the law and some experience there. You also have some areas where you are not experienced.

So my simple question to you is, what are you going to do to prepare yourself and get yourself ready to be able to hear cases in areas where you do not have experience, whether that be in civil or criminal?

Mr. ROBBINS. Is that for me, Senator?

Senator LANKFORD. It is.

Mr. ROBBINS. Thank you, Mr. Chairman. I am going to do what I do when I start any new job. I am going to work hard to learn those things that I do not know as well as others, right off the bat.

My mother asked me an interesting question once. She said, "You have an interesting career path. How do you know what to do on the first day of a new job?" And I thought that was very interesting, and my response was, "I have never applied for or accepted a job where I was uncomfortable, that I would not be able to negotiate the learning curve quickly."

And you are right. There are areas of the law that I am not as experienced in as others. I like to learn new things. I am usually quick at it, and I will just roll up my sleeves and get busy and learn.

Senator LANKFORD. OK. Mr. Ross, same question. What will you do to prepare yourself for areas where you are not as strong?

Mr. ROSS. So like Mr. Robbins said, I will take the same steps and ensuring that I become familiar with those areas of the law when I have a new case, when I maybe have a different rotation, and so family court or an area of the law where I do not have familiarity. There will be a learning curve, but throughout my career I have stepped into different positions and handled all different types of litigation where there was a similar learning curve. I will use the same experience and skills that I used to get up to speed in those matters to make sure that I am up to speed and that the court can operate efficiently.

Senator LANKFORD. OK. Ms. Shapiro.

Ms. SHAPIRO. I have been fortunate to have a good deal of civil experience and at least a little bit of criminal experience. I will likewise need to learn the other areas and divisions of the court where I have not had experience. The training program at the Superior Court is reputed to be excellent, and I expect it to be a fire hose of information, and I look forward to processing it and learning all that the superior court does.

Senator LANKFORD. Great. We will anticipate that, for all of you to be able to step into that. All of us have some areas of strengths and some areas of weaknesses, but when you sit on the bench obviously the person that is in front of you expects to be strong in the area that they are dealing with right now. So I appreciate your commitments to tenaciously learning it and making sure you are up to speed in all areas on that. I appreciate that.

Senator Carper, you had asked for a second round of questions, and we have quite a few members that are joining us at 10 o'clock, to be able to also ask some questions. So Senator Carper, would you like to ask another round of questions?

Mr. SPINO. Chairman Lankford, I think he just stepped away for a few minutes but should be coming back any moment now.

Senator LANKFORD. OK. Let me ask one more quick question then of our judicial nominees while we wait on Senator Carper slipping back in again. That is, obviously D.C. has issues, like every community around the country does. So short question. What do you consider one of the most critical areas that you can serve D.C. while you are on the bench, whether that be family law, whether that be criminal or civil. What is the issue? And if you would be as specific as you can, obviously, as you know D.C. All three of you live here and know the dynamics that we face. What is a specific area that you look at and say, "This is an area where I think I can step in and be a help to D.C. from the bench?"

I am going to start with you, Ms. Shapiro.

Ms. SHAPIRO. I think I can immediately jump into the civil and criminal dockets, as those are the areas where I have the most expertise. I go back to your question earlier about backlog, and I think getting up to speed quickly and moving cases is a great service to the constituents of D.C.

Senator LANKFORD. Great. Mr. Ross.

Mr. ROSS. I, like Ms. Shapiro, I believe that the best way that I can serve immediately is to step into the civil docket and begin to handle some of D.C. Superior Court's civil cases. While there is a tremendous backlog because of the speedy trial provisions, a lot of the resources are shifted toward the criminal docket, and so the civil docket sometimes gets in an even heavier backlog because a lot of the resources have to go to the criminal docket. While I am comfortable stepping in and helping out in any way that D.C. Superior Court needs me and can utilize me, I do believe stepping into the civil docket and helping move those cases along efficiently is the best way that I can step in and help the residents of D.C.

Senator LANKFORD. Mr. Robbins.

Mr. ROBBINS. Mr. Chairman, like my colleagues I have a background in civil litigation. But to be honest with you, what intellectually excites me the most at this point is the possibility of doing some criminal, family, and probate law issues. I enjoyed family law, I enjoyed probate in law school. I have always kept sort of an intellectual curiosity about that in my career and have read up on articles. So that possibility actually excites me.

But to be honest, I will do anything that the chief judge tells me to do.

Senator LANKFORD. Great. Thank you. He or she will probably want that in writing. So I appreciate that engagement.

Senator Carper, do you have additional questions that you want to be able to ask as well?

Senator CARPER. I do. Let me ask a question of the judges. When I was privileged to be Governor, when I ran for Governor I had been a treasurer—I had been Navy, treasurer, a Congressman, got to be Governor. And a wonderful guy ran—this is my Republican opponent that year—we had 35 joint appearances at the base. A lot of them. Nobody ever asked one question about what kind of qualities would we look for in our judges. And which, in my State, we had supreme court and court, chancery court, and a variety, superior court, a lot of courts that have national and international reach, no one ever asked me that.

And, over time, among the qualities that I learned to look for was judges who know the law, who understand the law, who are able to apply it fairly and judiciously, judges who have good judgment, judges who are able to make a decision and hopefully the right decision, judges who treat the folks who come before them fairly, judges who have an open mind—not an empty mind but an open mind. And judges who work hard. I never wanted to nominate judges to serve in these important positions who were going to sort of like retire on the job.

Would each of you just take maybe half a minute and just saying, starting, Mr. Ross, with you, are those qualities that I just mentioned, do any of those describe you? Would your wife say any of those describe you?

Mr. ROSS. Yes, Senator. So I believe my wife would say that fairness is one of the qualities that describes me. And to answer your question more directly, I believe the qualities of fairness, impartiality, and patience are amongst the most important for any judge. Judges are human beings, and they come in with their own beliefs and opinions. And one of the most important things for them to do is to set their predispositions aside and to ensure that each person that comes before them is treated fairly, equally, that they are serving in an impartial role, and that they are applying the law to the facts that are before them.

Senator CARPER. OK. I am going to ask you to hold it right there, because I need to hear from the other nominees. That was a very good response.

Mr. Robbins, please, just briefly. Same question, Mr. Robbins.

Mr. ROBBINS. Thank you, Senator. While I agree with my colleague that impartiality and fairness are probably the primary skill sets necessary to be a good judge, on top of obviously knowing the law, I think my friends and family would consider me to be impartial, very patient. I have demonstrated through my service on the MSPB an ability to put aside personal preferences, personal biases, personal philosophical, religious, political views in order to adjudicate cases on the merits.

Senator CARPER. All right. Thank you. Ms. Shapiro.

You are right in the middle of my screen. How could I miss you?

Ms. SHAPIRO. Senator, each of the qualities that you mentioned are qualities that I absolutely agree are important to being a good judge and qualities that I think I have. I would add to that list civility. I think that is an important quality. Just because we have adversaries in an adversarial system that does not mean adversaries cannot be civil. I think that civility generally helps rather than hurts the resolution of—

Senator CARPER. I could not agree more. When all else fails, use the Golden Rule, treat other people the way that you want to be treated.

Let me come back to our nominees for the postal Governor. I explained when I was elected State treasurer I could barely spell cash management. And, of course, after a week on the job I learned that one of the first things I get to do is to issue revenue anticipation notes. I said, "What are those?" And they said, "We sell these packages of notes, short-term notes. They mature around April 15, and we use the money to meet payroll and pensions." We had no

cash management system, we had no cash, and the bank was about to go under. We had nothing beyond the Federal Deposit Insurance Corporation (FDIC) insurance. And we had no pension plan. And that is why we had the worst credit rating in the country.

They elected a great Governor, a guy named Pete duPont. I was elected State treasurer the same year [inaudible] him. Six years later, we had a AA credit rating. And about 15 years later when I got to be Governor [inaudible] and when one of my friends like James Lankford, Gary Peters, and others in the Senate, we had a AAA credit rating. We still have a AAA credit rating.

I remember when the credit rating was released in my last couple of years as Governor, the AAA, by all the rating agencies, each of them had the same message for me. They said you have a liability in Delaware that you have not recognized, much less funded. I said, "What is that?" They said [inaudible] pension. I said, "We have a pension fund that is fully funded." And they said, "Yes, that is true but we now have health care liability for all those pensioners that you have not set any money aside, and you need to fund it." So we began funding it, very slowly. We are still funding it very slowly.

As it turned out, a lot of businesses, a lot of government had that same liability. For the most part they have not funded it. They are not even recognizing it. The Postal Service, we said they had to recognize that liability and pay it off literally in 10 years. Not 20, not 30, not 40, but 10. If you look at the Fortune 100 companies, Fortune 500, Fortune 1000 companies, they have not even recognized it in a lot of cases, much less funded it.

And we want to treat the Postal Service like a business of the future, in many respects. That is one of the issues that we will be before you, and before us in the Congress.

The second issue is a question of pricing, the pricing of products and something called the PRC. And they have been going through an exercise of [inaudible] prices that are charged to different kinds of—whether it is packages, whether it is magazines, whether it is newspapers, it is First-Class Mail or Standard Mail. What should they be charging? We have to find a solution providing long-term stability.

I think the last one, one or both of you said that part of the lesson here is to figure out how do we take this burden of going to every mailbox 6 days a week, and actually find ways to make money that are consistent with what the Postal Service is doing. Those are some things I would like to leave with you, we can discuss virtually, but actually in person and with the other Governors on the board of trustees.

There are plenty of challenges here but there is opportunity as well. The key in all of this is leadership, leadership from you, when you are confirmed to serve on this Board, and the Postmaster General who you selected. Initially I was frankly not real excited about that choice, but I think maybe I may have misjudged that choice. I think it may be a much better choice than I thought. And the other thing is leadership from us, those of us who serve, especially on this committee.

But thanks very much and I look forward to getting to know you well, and I certainly work with you in taking a 200-plus year old institution and make it shiny.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you, Senator Carper. Senator Hassan.

Senator HASSAN. Thank you, Mr. Chairman, and thank you again to our nominees for your willingness to serve the American people.

My first question is to Mr. Moak and Mr. Zollars. As I stated in my opening remarks, we find ourselves in a time of crisis due to the COVID-19 pandemic. The Postal Service has projected revenue losses up to \$13 billion this year and \$10 billion next year, and there are concerns that it may run out of funds by September if Congress does not intervene.

What, in each of your experiences, has prepared you to take on this massive challenge, and if confirmed, what will you do as a member of the Board of Governors to address the financial problems facing the U.S. Postal Service?

Mr. Moak, why do you not go first.

Mr. MOAK. Senator, again, I am not a postal expert but I would like to give an example of where I have dealt with issues like this in the past, if I was to pivot and tell you that it is often hard to get people to act, to get groups to act collaboratively. If you look at the challenges that are facing the Postal Service, as you just pointed out, I believe we need to do something sooner than later. And right now with the challenges that they are facing, I think this is going to be the time that we can bring all the stakeholders together so that we can come up with a solution collaboratively and put the Postal Service on the proper footing, not only for this fall but the future, so that it cannot just be sustainable but it can actually thrive. I believe now is the time.

Senator HASSAN. I take it you believe there are things in your past experience that will help you build that kind of consensus and action?

Mr. MOAK. Absolutely.

Senator HASSAN. Thank you. Mr. Zollars.

Mr. ZOLLARS. Senator, this is the big question, right, and I am a big believer in it is easier to solve a problem with a burning platform, and we certainly have a burning platform in front of us with the USPS. I would not pretend to know all the answers to this but I can say that some of the challenges look very similar to my past life—the challenges about declining revenue, increasing costs, cost disadvantage against the competitors, unfunded liabilities. Although I will say that my research into the liability situation looks like about two-thirds of the liability is coming from health care and the other third from pension. The other thing that is actually good news is it is 85 percent funded in all cases.

I guess my answer is this is going to be a complicated problem to solve, but I think if you can break it down into component parts and put together a strategy that is comprehensive, that addresses all of the issues, including the services we provide, the cost of those services, optimizing the network, making sure we have effective technology, and then putting it together in a plan that everybody

can embrace, I think we have a very good chance of solving this. I do not think we have time to waste.

Senator HASSAN. Well thank you for that. I have one more question for Mr. Moak and Mr. Zollars, and I will ask you to be relatively brief in your answers so I can ask one question of our judicial nominees.

But to Mr. Moak and Mr. Zollars, even as it struggles financially and faces some of the unprecedented challenges due to COVID-19 that we have discussed, the Postal Service continues to deliver mail and packages across the United States. The men and women of the postal workforce are risking their health to serve their fellow Americans, and we have to find ways to ensure that the Postal Service can continue to serve the American people while keeping its workforce safe.

So what role does the Board play in protecting the postal workforce from this deadly virus, and how will you, if confirmed, prioritize worker health and safety?

Mr. Zollars, why do we not start with you?

Mr. ZOLLARS. I think this has to be our No. 1 priority. The safety of the associates is always at the forefront. We really do not have a Postal Service without the postal delivery front end of this, and so it has to be a top priority right from the beginning.

Senator HASSAN. Thank you. Mr. Moak.

Mr. MOAK. I think we have to prioritize the health and safety of our customers to citizens, and therefore to protect them we also have to prioritize the health and safety. We have a duty to do that, to the United States Postal Service employees. And by doing that we achieve both of those.

We have had these challenges before in this country, back during September 11, 2001 (9/11) and other times, and I think, if anything, we are up to that, and working with the Board we will be focused on safety.

Senator HASSAN. Thank you. I hope so. And we may follow up with some questions for the record on that issue.

Let me move to our other nominees for a minute. To Mr. Robbins, Mr. Ross, and Ms. Shapiro, it is vital that all Americans are treated equally in our justice system, regardless of the color of their skin, and if confirmed you will have an important role in ensuring the fair treatment of Americans in the D.C. Superior Court system.

If confirmed, what measures will each of you take to ensure that all of those who enter your courtroom are treated equally? And we will start with Mr. Robbins.

Mr. ROBBINS. Senator, I think any individual who is honored to sit on a bench as a judge owes the people that come into his or her court an ability to put aside any personal bias they may have, to put aside their philosophy, their religious and political views, and to treat individuals based solely on the circumstances that have brought them to the court and apply the law as it needs to be applied to address their circumstances.

I am pleased that, at least at an appellate level, I was able to do that for my 7 years on the Merit Systems Protection Board, adjudicating over 4,000 cases. I can honestly tell you there were times when I probably, in my personal life, would not have approved of

the conduct of some of the parties. I would not have enacted the legislation that turned into statute that I was applying. But you learn to do that, and you do it uniformly and you do it fairly for everyone.

Senator HASSAN. Thank you. Mr. Ross.

Mr. ROSS. So I agree with Mr. Robbins that it starts with the judge, and it is your job, as the judge, to make sure that you are putting aside your predispositions and personal bias and ensuring that each litigant that comes before you is treated equally and fairly, that their matters are heard on the merits, and to set that same expectation for your entire court staff.

Senator HASSAN. Thank you. Ms. Shapiro.

Ms. SHAPIRO. Senator, I completely agree with the premise of your question, that treating all litigants fairly is absolutely a vital function of the court. I would intend to do that. I would also try to get as much representation for pro se and indigent parties that is possibly available.

Senator HASSAN. Thank you. That is an incredibly important point, the last one, because it really does make a difference to have representation in the courtroom, and we see increasing numbers of pro se litigants. So thank you very much, all of you, again, for your willingness to serve, and thank you, Mr. Chair.

Senator LANKFORD. Thank you, Senator Hassan. I want to recognize the Ranking Member of the full Committee, Senator Peters.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman. I appreciate that. My question is to Mr. Moak and Mr. Zollars. First off, thank you for being here. Thank you for your willingness to serve.

In 2012, the Postal Board of Governors launched a 10-year plan of postal reforms that relied largely on cuts, including planned closures of processing facilities as well as post offices. There was also a reduction in service standards that affected how quickly people actually receive their mail, as well as workforce reductions. Certainly Congress stepped up and called many of these actions out and halted some of these plans, including a second wave of facility closures that would impact the ability for the Postal Service to provide the kind of service that people expect from the Postal Service.

So my question is, as you work toward ensuring sustainability, which we have to be focused on for the Postal Service and so their finances are sustainable, how would you devise an operational strategy that does not rely upon damaging cuts in order to get through the current financial situation?

Mr. MOAK. Senator, this is Lee Moak. So on your question you are saying in 2012, a 10-year plan. If you look back to 2012, when that plan was developed, it appears shortly thereafter the Board of Governors stopped to function as a quorum. So you have a plan that you do not have all stakeholders have bought into, that is over a decade, and you do not have functioning Board of Governors that oversees the plan, and then Congress executed its fiduciary responsibility to step in and halt some of the things that were not perhaps properly coordinated.

What I believe is it needs to be looked at in great detail, with all stakeholders. There needs to be a shorter executable plan that

is transparent, that has proper oversight, and that there is a methodology to get from the beginning to the end, that everyone agrees on. And that is the key to success.

Senator PETERS. Right. Mr. Zollars.

Mr. ZOLLARS. I think a little bit of this is redundant, but I think this is really our focus on better service at lower cost. I think the mission requires us to be a universal provider of service. So that is kind of where this all starts.

As I said earlier, you can do both. They are not mutually exclusive. But I think this has to be something that is divided up into actionable pieces so that we can actually move the entire challenge forward. I think a 10-year plan, to be honest, in my mind, is not really a plan. I think we need a strategy that has alignment of all the stakeholders, including the PRC and Congress as well as the rank and file of the USPS and the Board of Governors. And once you get that alignment and everybody buys into that strategy, I think you sequence the execution in a way that allows you to make progress quickly and build on that progress to build momentum, to get to the end of the goal, which is to be a sustainable service that provides service to everyone in the country.

Senator PETERS. Thank you. This question is to both of you again. In your statements and discussions with the Committee you have recognized, and I appreciate that, that the postal workforce is the key asset of the Postal Service, a vibrant and professional workforce. Postal workers are certainly the heart of the Postal Service. They are front-line workers that you see every day when you go into the Postal Service. They deliver for you every day. They check in with you. They work rain and shine, which they are famous for. And as you know, the Board's strategic and financial decisions certainly directly affect this workforce in a very tangible and very real way.

So my question to both of you is how will you ensure the Board takes into consideration the human impact of any cost benefit analysis, and will you commit to seeking the view and ideas of postal workers as part of your strategic planning?

Mr. ZOLLARS. This is Bill Zollars and let me start and Lee can jump in here. I think this is really one of the fundamental keys to progress is making sure that the people that are actually doing the work understand and buy into the strategy of the organization. So I think it is a fundamental requirement to get the entire workforce of the USPS, which is really the strength of the organization, to understand and embrace the strategy before you go to step two. I think that is really the fundamental first step.

Mr. MOAK. Senator, this is Lee. I think we do our best work when we have the USPS postal workers working with management, telling the Board, advising the Board on the best way to do it. So workers, labor, and management working collaboratively together is a key element of success.

Senator PETERS. My final question to both of you as well is that changes to the pricing of Postal Service products, as you know, can certainly impact affordability and accessibility of these products across the country. Particularly I have found it in rural areas. The Postal Regulatory Commission has determined that packages are currently covering their costs and their fair share of overhead



costs. One major concern about raising prices is the impact on accessibility. Many individuals and small businesses particularly in rural areas across Michigan simply cannot afford price increases, and the Postal Service, as all of you know, is vital to their business.

So my question to both of you is how would you work to ensure that Postal Service products maintain fair prices that do not limit consumer access, and how would you ensure pricing decisions do not create disparities in access to various communities based on pricing?

Mr. ZOLLARS. This is Bill again. I think this is another area where some of my previous experience can pay off. As I mentioned earlier, in my former life we delivered to every ZIP code in the country, and we did it in a way that was competitive. I think one of the real interesting examples of how important the Postal Service is is the fact that all of their competitors use the Postal Service for that last mile touch, and that is not by accident. It is because they do it more efficiently than anybody else.

I think we need to take advantage of some of those attributes that the Postal Service has and make sure that we deliver service that is acceptable to the customer at an acceptable price.

Mr. MOAK. Senator, the customer is very important. Market-based pricing to ensure that the Postal Service becomes sustainable and profitable is also important, so that you do not limit access to rural America or any Americans to the point that it then affects the elasticity of actually using the service.

I recognize exactly what you are saying. I think it is important. And we need very good data, up-to-date data so that we can make sure that we address those issues.

Senator PETERS. Great. Thank you, gentlemen. Thank you both for your answers and your willingness to serve.

Senator LANKFORD. Thank you, Senator Peters. Senator Rosen is recognized.

#### **OPENING STATEMENT OF SENATOR ROSEN**

Senator ROSEN. Thank you, Mr. Chairman, and thank you, everyone, for being here today and again for your willingness to serve. I do not have to tell anybody here that the post office touches every single American and every single business 6 days a week, week in, week out, 52 weeks a year. And the past several months has taught us that neither snow, nor rain, nor global pandemic is going to stop the incredible men and women of the U.S. Postal Service from doing their jobs.

And so tens of millions of Americans out of work, countless others are staying home because they are sick or immunocompromised. Stores are closed because of the pandemic. But the Postal Service and its employees have never been more important to us. Nevadans and all Americans are relying on the USPS to receive their medicine, their CARES Act stimulus checks, their social security benefits, any needed supplies from personal protective equipment (PPE) to laptops for those students who now have to learn at home.

And so our current public health situation highlights a role that the Postal Service has had for decades in responding to crisis.

Since the 1990s, the postal plan has outlined the role of USPS in delivering antibiotics to residents during a catastrophic event, using the inherent efficiency of the USPS infrastructure. That is because we have become keenly aware during the pandemic that the United States Postal Service, its uniquely expansive network, gives us the ability, on a daily basis, to touch everyone. It cannot be replaced or replicated.

And so for both Captain Moak and Mr. Zollars, as we continue to combat COVID-19 and also prepare for our next pandemic or any other crisis we may consider, how do you think the Postal Service can use its network to innovate and aid the Nation when other institutions or entities are unable to function normally, like they are now?

We will go to Captain Moak. I see you. We will have you go first there.

Mr. MOAK. Thank you, Senator. If confirmed, I intend on looking into great detail on the very matters you are talking about. But my experience says that what we have been dealing with recently, and over the last decade, especially after September 11, 2001, really emphasizes just how important the Postal Service is to the Nation.

I agree with all that. I think the challenge is how we continue to improve on that very vital service that you talk about, and at the same time make it an economically viable enterprise going forward. I believe that that can be done. We just need to focus and we need input from all stakeholders, and we have to agree on how to do that going forward.

Mr. ZOLLARS. Senator, this is Bill Zollars. First of all, it really does point out how smart our Founders were to put this in the Constitution. And the fact that it is provided for is just the beginning, really, as a vital service to the population.

At the end of the day, this is really a huge logistics network, probably the biggest in the world. I think my background in logistics and network optimization could probably add a little bit to the solution here. I think it is going to be a difficult challenge, a pretty substantial set of problems, but I think it is a solvable problem because it has been solved by others in the past in smaller logistics networks. I think this is another opportunity for us to bring some of that to bear on this challenging issue.

Senator ROSEN. I appreciate that, and I actually think now that I am listening to both of you in this hearing that we should include the USPS in all of our United States disaster planning missions, domestic disaster planning missions, whether they be from infectious disease or other things that we try to protect our homeland for. So I think we need to push for that.

But in that light, when we do, how do you think us, as legislators, can put the Postal Service in a better position to respond, whether it is financially or with regulation or legislation, to help them do what they need to do to support the American people in the time of any crisis, whether it is a flood or hurricane, a pandemic, or another?

I can ask both of you again, please.

Mr. MOAK. Senator this is Lee Moak. Again, if confirmed, I look forward to working with the Chairman of the Board of Governors, the other Governors, as we go to fill out this Board to a fully

staffed and functioning board, listening to USPS management, the new Postmaster General, and all other stakeholders involved so that we can come back and answer these very critical questions that the Congress is asking. It is going to take everyone working together to first understand exactly where we are at, and then decide where we want to go. And then we have to focus on the leadership it takes to get there, and then execute on that so that we cannot only make it vital but improve on the USPS, as you have stated.

Senator ROSEN. Thank you.

Mr. ZOLLARS. Sorry. This is Bill, and I would say the first step is to have an open mind, and that we would be very interested in the ideas coming from Congress on that specific example that you gave, because I think it is a critical part of the response that we need to have ready, and at least require a strategy. But I would be very interested in ideas coming from Congress as well as the other stakeholders.

Senator ROSEN. Yes. I think especially in the event of natural disasters that may be localized—wildfires in Nevada, hurricanes, tornadoes, or floods in other places—how does the post office help us get through that as well for critical things like medication and checks and all of that.

I appreciate your willingness to serve. Thank you for being with us today.

Senator LANKFORD. Thank you, Senator Rosen. Senator Sinema is recognized.

#### **OPENING STATEMENT OF SENATOR SINEMA**

Senator SINEMA. Thank you, Mr. Chairman. I appreciate the nominees joining us today and I look forward to our discussion. My questions today will focus on our two nominees for U.S. Postal Service Board of Governors, and I will have questions for our judicial nominees that I will submit later for the record.

The U.S. Postal Service is a critical lifeline for communities across Arizona and the entire nation. During this pandemic, we need a strong Postal Service to help families stay connected, deliver prescription drugs to those in need, and support Arizona businesses.

The Postal Service also plays an important part in critical initiatives such as the U.S. Census and voting. It is critical that Congress, the Administration, and the Board of Governors work together to ensure a successful future for the Postal Service.

My first question is for both of our postal nominees. Mr. Moak, if you could speak first and then we will turn to Mr. Zollars. In 2011, the Postal Service completed several area mail processing studies and determined that a number of processing plants, including the Cherrybell plant in Tucson, Arizona, should be consolidated or closed to cut costs. So, as we know, the USPS was unable to carry out these consolidations and the plants remain open today, but the Postal Service has also never formally removed the plants from the consolidation list.

If the Postal Service Board determined that further processing plant consolidations are needed, would you support moving forward with consolidations based on those 2011 mail studies or would you

want to see updated data before the Board makes a decision, and why?

Mr. MOAK. Senator, a study done in 2011 obviously needs to be updated to today, and I look forward to participating in that study and looking at that data. I will say if it is determined that you need to consolidate or close processing centers, probably it might be a consideration to look at a process much like what was used in the 1990s, when they were looking at military base consolidation or closures.

But the 2011 study should not be executed on today. It definitely should be updated, and again, all stakeholders and a strategic plan developed before we move forward.

Senator SINEMA. Thank you.

Mr. ZOLLARS. Senator, this is Bill Zollars. I would say that any network optimization that is done must be done without jeopardizing the service to the residents of the country, and I think that can happen. I do not know much about the analysis but I would agree that that is probably way out of date now, particularly because of the events of the last several months.

But network optimization is definitely something that needs to be looked at, though it has to be looked at from the context of not jeopardizing the service to the individuals and the country.

Senator SINEMA. I appreciate those responses.

Mr. Zollars, I will have you answer this second question first and then we will go back to Mr. Moak. In some parts of Arizona we have aging, out-of-date postal infrastructure and processes, partly due to our very high levels of population growth. Many towns made improvements in how the mail is delivered, such as moving away from or greatly improving post office box delivery. And other offices need to increase staff so they can better serve customers.

As a Board member, how would you navigate a situation where there is a dueling need to control costs due to falling mail volume nationwide while also investing in service improvements so the Postal Service can meet its mandate to provide service to every American?

Mr. ZOLLARS. This is really at the crux of the problem, and as I have said before, in my previous life people have come to me and asked whether I wanted lower costs or better service and my answer was always "yes, we want both." So I take—this is a problem that really has to look at all of the aspects—the services offered, the network optimization, the technology tools we have, our ability to service the various channels and leverage that logistics network, particularly the last mile, in a way that it is most effective for the Postal Service and deliver the best service.

I do not think on this one there is any easy answer, but it is one that I have looked at before and I am anxious to get into the USPS information and see what is in there. I would expect this would be a central part of what I would be looking at.

Senator SINEMA. Thank you. Mr. Moak.

Mr. MOAK. Senator, I believe that we should always be trying to improve service, never step back. With improved service, and when you are looking at this complex part of the problem, where you have aging infrastructure, you have to balance the capital expenditures that are necessary going forward that will improve that serv-

ice, perhaps make it more efficient, but then make it also cost effective. So you cannot do one without the other, and you need a plan for tomorrow. You need a 1-year plan, a 3-year plan, and a 5-year plan, and you need the ability to execute on it, and then you can address those issues.

Senator SINEMA. Thank you. This is my last question, again, for both of you. It is always going to cost the Postal Service more to deliver the mail in rural areas. Letters and packages have to be carried over longer distances with less address density, of course, and higher gas costs. But rural America needs the Postal Service more than urban areas, and the Postal Service is a lifeline for rural communities and businesses.

What ideas and experiences would you bring to the Board that show you are ready to help protect rural Postal Service?

Mr. ZOLLARS. I can start again. This is Bill. I was just coming out of an organization where we have had exactly that problem, at YRC, where we had to deliver to customers regardless of distance or density, and we found a way to do that effectively and competitively. I think it goes back to the structure of the logistics network and how you approach this mission.

But clearly the mission is to either improve or at least keep services the same for rural America. I happen to live in Kansas so I am very familiar with the rural America value that the Postal Service delivers every day, and it is something that I really focus on making sure we do not let deteriorate.

Senator SINEMA. Thank you so much. Thank you, Mr. Chairman. Hold on. I think we wanted to get a second response from Mr. Moak. I apologize.

Mr. MOAK. Just a quick response. I think you focus on improved service, and I believe that this is a fundamental part of the mission of the USPS for rural America, and I look forward to getting in there and tackling the challenges, if confirmed.

Senator SINEMA. Thank you, and I apologize for my oversight in almost skipping you.

Mr. Chairman, thank you.

Senator LANKFORD. Thanks, Senator Sinema. Let me ask a couple of questions to Mr. Moak and Mr. Zollars as well. We are heading down the home stretch so let me do a little bit of lighting round questions with you, to be able to go through. And let me give you something nice and simple to be able to cover.

International mail coming in is notorious for also carrying in contraband, whether that be fentanyl, opioid products, other things. Managing what is inside a package of international mail has some unique challenges.

So for Mr. Zollars and Mr. Moak both, what would you do to be able to help improve the process and the oversight to be able to make sure that we know what is in a package when it is coming into the United States?

Mr. ZOLLARS. Unfortunately, Senator, this is an area where I have some experience as well, because our network at YRC was very attractive to people doing bad things and shipping bad things through our network because it was high velocity and we went everywhere. So we worked very effectively with local law enforcement and national law enforcement, including the Federal Bureau of In-

vestigations (FBI), Customs, and the rest of the justice organizations to make sure that there was a real transparent conversation going on, in a real-time way, between those organizations and our organization. We had a lot of information that would allow us to pinpoint things that did not look quite right and then pass that on and work closely with law enforcement.

Mr. MOAK. Senator, I look forward to learning more about this problem. I believe it is solvable, especially with new technologies, and we tackle this because it is unacceptable for fentanyl and other drugs to be coming into this country and using the USPS.

Senator LANKFORD. Yes, I would agree. There are some technology solutions. We need to be more aggressive in how we are actually managing mail before it enters into the United States, but it will be an ongoing issue that is solvable, but it is still an issue at this point to try to get it resolved, with the right technology, and get it implemented as quickly as possible.

Let me switch to a financial issue. USPS made a request at the beginning of the pandemic that they estimated that they would be \$25 billion short this year. There was a \$10 billion loan that was extended out from Treasury and the Federal Reserve to USPS, to be able to make sure they carry them through. Now as we see the numbers coming in obviously there is a dramatic increase in packages. It looks like, actually, USPS will do financially better this spring than they did last spring. And so instead of a huge drop there was actually an enormous increase during this time period.

That is helpful for USPS. That is attributable also to the great employees and the folks that work all over the country for the Postal Service. We are very grateful for what they have done, how they worked through this process, and how many people have been at home asking for packages to be delivered. But it goes back to asking the question again, doing estimates, engaging, getting the right numbers, and getting rapid numbers to Congress.

Mr. Moak, let me begin with you. How will you handle estimates, doing requests to Congress for additional appropriations or for additional requests, or to be able to manage predicting finances, knowing that pandemics are impossible to predict? It is the nature of it. But trying to be able to get as accurate numbers as possible so that we can all make the right decisions.

Mr. MOAK. My experience with airline bankruptcies and the black swan events, whether it is a pandemic or H1N1 or a terrorist event let me to understand one thing about forecasting, that is 100 percent true every time, and that is that the forecast is wrong. It is a little more; it is a little less. What we need here in this situation with USPS is we need to get good data in a timely fashion so that the Congress, the Board of Governors, and the USPS management can make timely decisions and adjust quickly when need be.

Senator LANKFORD. Mr. Zollars.

Mr. ZOLLARS. I would just add to what Lee said, that we need to come to you with a comprehensive plan that has the input of all of our stakeholders, and make sure that we have your support as we go forward with that plan. I think, it is really important to ensure that we are all in alignment on what needs to be done and when.

Senator LANKFORD. I completely agree. We will have unique challenges but it is a trust-building experience as well to be able to make sure we get as good of an estimate as possible and update those numbers as rapidly as possible so we are all able to keep good flow of information going back and forth.

In 2018, the Trump administration had a task force on USPS and talked about the unsustainable path that is there. They recommended 25 administrative and legislative recommendations. I am not going to ask you to go through all 25. I assume that you have seen them and had the opportunity to be able to review those. But do any of those 25 stand out to you in particular, and say this is going to require more of a look, that you would say I either strongly disagree or strongly agree, or this is going to be one that really comes to mind quickly, of the 25 recommendations of that task force from 2018?

Mr. Moak.

Mr. MOAK. I would say that what stands out to me in the report is, interweaved all through the report is the concept that Congress has to make some decisions, and they need to work with not only the Board of Governors, the PRC, the USPS management to define not only USO in more specificity but also what they want USPS to be, going forward. I think that is a common thread all through the report, all through the task force report.

Senator LANKFORD. OK. Mr. Zollars.

Mr. ZOLLARS. Yes. I think I have said this a couple of times but it is worth repeating. I think there is an opportunity here to leverage the last mile, or first mile, which end of the package or letter you are looking at, in a way that maybe we have not fully embraced at this point. It is clearly a sustainable advantage for the Postal Service and one that I really am interested in looking at more closely, to see if we cannot leverage it more effectively.

Senator LANKFORD. OK. That would be helpful. I have one last question. It is more of a philosophical question where you see the lanes here. We have an Inspector General (IG), we have a PRC, we have a Board of Governors. Obviously there is a lot of dialogue and a lot of dreaming and visioning that happens in all of those, and a lot of recommendations that happen in all of those. What lane do you see that is specific to the Board of Governors that you would say IG has this lane, PRC has this lane, and we want to make sure that we dominate in this lane of information in assistance to the USPS?

Mr. Zollars, can you go first on that?

Mr. ZOLLARS. Yes. I think it is really important for the Board of Governors to drive the discussion on this. We really own the development of the strategy along with the other stakeholders, so I think it is up to us to lead that discussion, bring whatever plan we think is most effective to Congress and to the PRC, and try and get alignment among all of the stakeholders. But I really believe that the Board of Governors is responsible for developing it.

Senator LANKFORD. OK. Mr. Moak.

Mr. MOAK. The Board of Governors has the strategic tasking to come up with the plan while working with all of the stakeholders, and needs to do it in a transparent fashion. So it should be happy to have the Inspector General come in at any time and look at

what the Board of Directors is doing. But again, the Board of Governors should be working with the PRC, the IG, the Congress, all stakeholders, USPS management, and the USPS employees to make sure that we have the best customer service at a sustainable and thriving, fiscally economic environment.

Senator LANKFORD. I would say that the Congress and the American people are very dependent on all of those for good information, but uniquely the strategy, the focus, the responsibility, it is why this Committee has worked so hard in the last couple of years to be able to make sure that we get a quorum, keep a quorum, because we need a functioning Board of Governors to be able to not just be there and look for who has the ball but for them to understand that they have the ball. There is an expectation that now that they have a quorum that they can actually move on the issues that need to be done, and to be able to help make this sustainable, and to make those recommendations that need to be made to the Legislative branch, because I do agree with the President's task force. Congress has a responsibility that they have not taken up and that needs to be addressed in the days ahead.

And let me pause for a final moment to see if other Senators have a final question. If not, I am going to wrap up. So are there any other final questions from other Senators?

[Pause.]

I am going to take that as a no then, and go ahead and wrap up.

Let me say thank you to all of our nominees. We very much appreciate you going through the process. This has not been an easy process from the beginning. Many of you have been in this process many months to years, to be able to get to this spot. So that you know that we understand, we want to say thank you to you for going through this long, arduous evaluation process. That is not done, obviously. This Committee still has to be able to take a vote, and then the full Senate has to be able to take a vote for the final confirmation. But today was a major milestone in that process. So thanks again for going through all this.

The nominees have made financial disclosures.<sup>1</sup> Those are provided, and they have provided their responses to those biographical prehearing questions.<sup>2</sup> All of those have been submitted to the Committee.<sup>3</sup> Without objection, this information will be made part of the hearing record,<sup>4</sup> with the exception of the financial data,<sup>5</sup> which is on file and available for public inspection in the Committee offices.

The hearing record will remain open until noon tomorrow, June the 4, for the submission of statements and questions for the record.

Thank you again to all of you. With that, the hearing is adjourned.

Mr. MOAK. Thank you, Senator.

Senator LANKFORD. Thank you all.

<sup>1</sup> The information of Mr. Moak appears in the Appendix on page 40.

<sup>2</sup> The information of Mr. Zollars appear in the Appendix on page 96.

<sup>3</sup> The information of Mr. Robbins appear in the Appendix on page 147.

<sup>4</sup> The information of Mr. Ross appears in the Appendix on page 178.

<sup>5</sup> The information of Ms. Shapiro appears in the Appendix on page 204.



[Whereupon, at 10:43 a.m., the hearing was adjourned.]



## A P P E N D I X

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**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia**

**June 3, 2020**

*As prepared for delivery:*

Good morning. This virtual hearing of the Homeland Security and Government Affairs Committee will come to order.

This afternoon, we will consider two nominees for Governor of the United States Postal Service: Donald Lee Moak and William Zollars. We will also consider three nominees for the D.C. judiciary system: Mark Robbins, Carl Ezekiel Ross, and Elizabeth Shapiro to be Associate Judges of the Superior Court of D.C.

**DONALD LEE MOAK** is currently the Chief Executive Officer of the Moak Group. Previously, he served as the President of the Airline Pilots Association, and as a Captain with Delta Airlines for 31 years. Mr. Moak also served as an officer in the U.S Marine Corps and U.S Navy Reserves.

**WILLIAM ZOLLARS** currently serves on the Board of Directors for Main Street Data, C2FO, Red Stone LLC, Cerner Corp, and Prologis. He was Chairman and CEO of YRC until 2011 and prior to that served in senior leadership positions with Ryder Systems Incorporated and the Eastman Kodak Company.

**MARK ROBBINS** currently serves in OPM's office of General Counsel as a General Counsel, a position he also held from 2001 to 2006. From 2012 to 2019, Mr. Robbins served as a member of the U.S. Merit Systems Protection Board (MSPB). Prior to that he served as an attorney in complex civil litigation cases at the state and Federal trial court level, was the Executive Director of the Bush White House Privacy and Civil Liberties Oversight Board and also served as Senior Rule of Law Advisor for the State Department where he advised in the development and modernization of an Iraqi provincial legal and justice system.

**CARL EZEKIEL ROSS** serves as Counsel for the House of Representatives Committee on Ethics. From 2009 until 2017, he served as an Assistant United States Attorney with the Civil Division at the United States Attorney's Office in Washington, D.C. Prior to that, Mr. Ross worked as a litigation associate at Arnold and Porter and served as a law clerk for the Honorable James Spencer of the United States District Court for the Eastern District of Virginia.

**ELIZABETH SHAPIRO** has been with the Department of Justice's Civil Division, Federal Programs branch since 1991 serving in various roles. Currently she is the Deputy Director of that department. Previously, Mrs. Shapiro worked as an Attorney Advisor in the Department of

Labor's Office of the Solicitor and also served as a law clerk to the Honorable Stephen Eilperin and Honorable Susan Winfield of the D.C. Superior Court.

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 District of Columbia and the nation.

**U.S. Senate Homeland Security and Governmental Affairs Committee**

**“Nominations Hearing”**

**Opening Statement of Ranking Member Maggie Hassan**

**June 3, 2020**

Thank you, Mr. Chairman, and thank you to the nominees for your participation in this process and your willingness to serve the American people.

We find ourselves today in the midst of an unprecedented time in our nation’s history. More than 100,000 Americans have been killed by a deadly pandemic, a number that continues to grow. Forty million Americans are out of work, and our entire country is reeling from the senseless killing of George Floyd, and the reality of unequal access to justice, health care, education, and economic advancement that many Americans face because of the color of their skin.

We have much work ahead of us. One of the issues before us today is the future of the United States Postal Service, an agency that is committed to serving all Americans, in every part of the country – from urban centers to rural roads. And during this pandemic, the Postal Service has been an especially vital lifeline to medications, foods, and other supplies for many Americans. Unfortunately, the U.S. Postal Service is in a dire financial condition – one that has been worsened by the coronavirus pandemic.

The Postal Service estimates it will lose \$13 billion in revenue this year and may run out of funds as early as September. A collapse or reduction of postal services would negatively impact all Americans, but it would disproportionately affect those who live on rural delivery routes, people with disabilities, and seniors with mobility issues. The Postal Service is often the only carrier that will deliver mail that “last mile” to rural homes. Supporting the Postal Service so that it can continue to offer equity and universal service to all Americans is of vital importance, especially now.

The Postal Service, the District of Columbia, and our nation face big problems that our nominees, if confirmed, are going to have to grapple with -- and it will not be an easy job. But it is a job of vital importance to our nation, and I applaud our nominees for their willingness to serve the American people in these important roles. Though this time is dark, I remain optimistic that we will find ways to solve our problems, that the resilience and resourcefulness of the American people will win out, and that we will get through this together.

Thank you, Mr. Chairman.

**Written Testimony of Donald Lee Moak**  
**Before the Senate Committee on Homeland Security and Governmental Affairs**  
**Confirmation Hearing, the United State Postal Service Board of Governors**  
**June 3, 2020**

Chairman Lankford, Ranking Member Sinema, and members of the Committee, it is an honor for me to be here today, and I want to thank you for considering my nomination.

I believe government service is a high calling and consider it an honor to serve my country. My government service began in the summer of 1977 when I commenced the United States Marine Corps Officer Candidate school. Ultimately, I was commissioned as a Second Lieutenant and served as a Marine Corps fighter pilot, flying the F4 and F18. I did two tours of duty in Asia and upon return did a Navy exchange tour at Cecil Field, Florida. After nine years of active duty I left the Marine Corps and transitioned to the Navy Reserve, where I continued to fly fighter jets until I retired from the military with the rank of Commander in 2001.

After my time on active duty, I also became a pilot for a commercial air carrier. As a commercial airline pilot, when not performing my primary duty of safely transporting passengers, I volunteered and was elected as a representative to the Air Line Pilots Association (ALPA), an association that was originally conceived in 1931 to represent air mail pilots. I had many appointed and elected positions in the association, ultimately becoming the President of ALPA from 2011 to 2014. I represented more than 50,000 U.S. and Canadian pilots at over 30 companies on contractual, safety and government policy matters. I led a team to address complex bankruptcy restructurings, mergers, and retirement, healthcare, and benefit matters. Nothing was easy in the airline and labor business, and all stakeholders had to work together to settle negotiated agreements. I also served on numerous government aviation safety committees, including the Federal Aviation Administration's (FAA) Management Advisory Committee (MAC) and NextGen Advisory Committee (NAC), and recently I was appointed to the FAA's Drone Advisory Committee (DAC). Last year I also co-chaired the Department of Transportation's Special Committee to Review the FAA's Certification Process.

When I was nominated for a position on the Board of Governors of the USPS, I was truly honored. More importantly, I am motivated to get to work to help our Postal Service thrive and meet its Universal Service Obligation (USO). As a proud American citizen and a veteran of our armed forces, I am forever grateful for the mail that was sent from my parents in the United States to me at the mail call near my tent in South Korea in 1983. Today, I send mail to my youngest son, Lieutenant Junior Grade Moak, stationed on the USS Bataan, which is currently at sea deployed to the Middle East. Whether it is letters to and from our men and women in uniform, birthday cards from beloved family members, essential CARES Act stimulus checks, or routine correspondences like bill payments, the USPS and its mission of delivering reliable,

affordable, universal mail to and for the American people is an enterprise that I am motivated to ensure continues and succeeds.

In preparing for this nomination I have reviewed some of the information detailing the compound financial and service challenges facing the United States Postal Service today. If confirmed, I intend to spend intensive time working with the current Board, the new Postmaster General, USPS management, USPS labor, and all stakeholders to better understand the problems they are facing. Though I am not a postal expert and I am still only at the beginning stages of understanding the Postal Service's current challenges, what I am is someone who believes that any problem is solvable and as I have stated previously, I have worked on complex issues concerning many of these same challenges with multiple stakeholders with differing agendas, and have found success. I believe that by identifying all issues, working with all stakeholders, driving consensus on a comprehensive plan, then deciding how to execute that plan with thorough, measured and transparent oversight, success will follow.

If confirmed, I look forward to working on the challenges facing the United States Postal Service and I am confident that we will work together to continue to meet the expectations of the American people and uphold the mission of the USPS.

Thank you, Chairman Lankford and members of the committee, and I look forward to 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>
Member, U.S. Postal Service Board of Governors	March 2, 2020

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Donald	Lee	Moak	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 401 9 <sup>th</sup> Street NW, Suite 740		
<u>City:</u> Summerland Key	<u>State:</u> Florida	<u>Zip:</u> 33042	<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20004

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<small>Check if Maiden Name</small>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
None					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
<u>Year of Birth</u> (Do not include month and day.)	<u>Place of Birth</u>
1957	Tulsa, Oklahoma

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



<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Kathleen	Kennedy	Moak	

<i>Spouse's Other Names Used (current spouse only)</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)
Kathleen	Kennedy	Philippon			Est 08/1979 <input type="checkbox"/>	Est 08/1988 <input type="checkbox"/>
Kathleen		Kennedy		<input checked="" type="checkbox"/>	Est 05/1955 <input type="checkbox"/>	Est 08/1979 <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Hunter	Kennedy	Moak	
Sarah	Ashley	Moak	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/ online school)	<u>Date Began</u> <u>School</u> (month/year) (check box if estimate)	<u>Date Ended</u> <u>School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
University of West Florida	University	08/1977 Est <input type="checkbox"/>	03/1979 Est Present <input type="checkbox"/> <input type="checkbox"/>	B.A.	03/1979
Pensacola State College	State College	08/1975 Est <input type="checkbox"/>	04/1977 Est Present <input type="checkbox"/> <input type="checkbox"/>	A.A.	04/1977

## 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.

<b>Type of Employment</b> (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)	<b>Name of Your Employer/Assigned Duty Station</b>	<b>Most Recent Position Title/Rank</b>	<b>Location</b> (City and State only)	<b>Date Employment Began</b> (month/year) (check box if estimate)	<b>Date Employment Ended</b> (month/year) (check box if estimate) (check "present" box if still employed)
Active Military	United States Marine Corps	Captain	N/A	Est <input type="checkbox"/> 07/1977	Est <input type="checkbox"/> 10/1989
Reserve Military	United States Marine Corps	Captain	N/A	Est <input type="checkbox"/> 10/1989	Est <input type="checkbox"/> 01/1990
Reserve Military	United States Navy	Commander	N/A	Est <input type="checkbox"/> 01/1990	Est <input type="checkbox"/> 09/2001
Non-Federal	Delta Airlines	Captain	N/A	Est <input type="checkbox"/> 07/1988	Est <input type="checkbox"/> 02/2019
Association	Airline Pilots Assn.	President	DC	Est <input type="checkbox"/> 01/2011	Est <input type="checkbox"/> 12/2015
Self	The Moak Group	Chief Executive Officer	DC	Est <input type="checkbox"/> 12/2015	Est <input type="checkbox"/> Present <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.

<b>Name of Government Entity</b>	<b>Name of Position</b>	<b>Date Service Began</b> (month/year) (check box if estimate)	<b>Date Service Ended</b> (month/year) (check box if estimate) (check "present" box if still serving)
Federal Aviation Administration	Management Advisory Committee	Est <input checked="" type="checkbox"/> 06/2013	Est <input checked="" type="checkbox"/> 04/2017
Federal Aviation Administration	Institute Management Council	Est <input checked="" type="checkbox"/> 06/2010	Est <input checked="" type="checkbox"/> 12/2014
Federal Aviation Administration	NextGen Management Advisory Committee	Est <input checked="" type="checkbox"/> 06/2010	Est <input checked="" type="checkbox"/> 12/2014
Department of Transportation	Co-Chairman Special Committee to Review FAA Aircraft Certification Process	Est <input checked="" type="checkbox"/> 05/2019	Est <input checked="" type="checkbox"/> 01/2020

Department of Transportation	Member Drone Advisory Committee	02/2020	Present <input checked="" type="checkbox"/>
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#### **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.

As the President of the Airline Pilots Association I represented the views of the association on a host of matters related to the Aviation, safety and medical etc.

#### **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.

Military medals include, but are not limited to, Navy Commendations; Sea Service Ribbons; Expert Marksman, Pistol and Rifle; and, Navy Wings (aviator). [I do not currently have access to my DD214, which would provide a comprehensive list of medals and commendations, but one can be provided to the committee, if necessary.]

#### **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>
International Aviation Club	2010 to Present	Board Member
Aero-Club of Washington DC	2010 to Present	Member
Non-profit American for Fair Skies	2015-2020	Board Member
Non-profit Alliance for workers against repression everywhere	2016-2019 est.	Board Member
Non-Profit Your Grateful Nation	2015-2017	Board 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</u> (if applicable)
None.			

(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>
None.			

(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>
Wesley Reed	\$500	2014
John Bell Edwards	\$4,700	2015
Debbie Murcasal-Powell	\$1,000	2018
Amy Klobuchar	\$1,000	2018
Peter DeFazio	\$500	2018
Dan Ward	\$500	2018
Tina Smith	\$500	2018
Mary Landrieu	\$2,600	2014

Tim Kane/Hillary Clinton	\$2,700	2016
Charlie Christ	\$1,700	2018
Kyrsten Sinema	\$250	2018

### 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.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
None.		

(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.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
None.		

(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 18<sup>th</sup> 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 pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately 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>
None.				

(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>
See attached list.				

(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.

Not applicable.



### 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.

<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>
None.			

(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.

<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)
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**16. Additional Financial Data**


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

REDACTED

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.

  
Donald Lee Moak

This 7 day of April, 2020.

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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March 5, 2020

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

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors, United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of Donald L. Moak, who has been nominated by President Trump for the position of Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

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.

The Honorable Ron Johnson  
Page 2

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: 2020.03.05 18:14:49  
-05'00'

David J. Apol  
General Counsel

Enclosures

**REDACTED**

**Donald L. Moak**

February 18, 2020

Natalie A. Bonanno  
Designated Agency Ethics Official  
Acting Associate General Counsel and Chief Ethics & Compliance Officer  
U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-1100

Dear Ms. Bonanno:

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 as a Member of the Board of Governors of the United States Postal Service.

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 continue to serve as the Chief Executive Officer of the Moak Group. In my role as Governor, 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 the Moak Group or any prospective client with whom I am negotiating a consulting agreement, 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 also will not participate personally and substantially in any particular matter involving specific parties in which I know that a client or former client of mine is a party or represents a party, for a period of one year after I last provided service to that client, unless I am authorized to participate in the matter, pursuant to 5 C.F.R. § 2635.502(d).

I have been advised that the duties of the position of Member may involve particular matters affecting the financial interests of transportation companies, including airlines. I currently have equity in two airline companies, Air France and Delta Airlines. Through my consulting company I also have clients in the airline industry. The agency has determined that my recusal from particular matters in which these interests pose a conflict of interest will not substantially limit my ability to perform the essential duties of



the position of Member. Accordingly, 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 Delta and Air France, and any prospective clients with whom I am negotiating a consulting agreement, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). I have been counseled that participation under this recusal includes taking any action as an employee through decision, approval, disapproval, recommendation, or the rendering of advice. You have explained that particular matters of general applicability are much broader than particular matters involving specific parties because they include every matter that is focused on the interests of a discrete and identifiable class of persons.


I have been advised that I will likely serve on the Board of Governors for no more than 60 days in any period of 365 consecutive days. Accordingly, I understand that I may not, under 18 U.S.C. §§ 203(c)(1) and 205(c)(1), provide any representational services or act as agent or attorney for another in any particular matter involving specific parties in which I have participated personally and substantially as a government official. I also understand that I may not receive a share of any payment made for such representational services performed by another. I understand that additional requirements of 18 U.S.C. §§ 203(c)(2) and 205(c)(2) will apply to me if I serve for more than 60 days in any period of 365 consecutive days. In that event, I will comply with all applicable requirements, and I will consult your office if I have any questions about those requirements.

I will meet in person with you before my first meeting of the board 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 it is the Postal Service's position that an appearance of impropriety may be created by my holding any financial interests in its competitors, *i.e.*, companies that deliver mailable matter outside the U.S. mails (*e.g.*, Amazon, Federal Express, United Parcel Service, DHL, etc.). I agree that during my service as a member of the Board of Governors, I will not invest in any company that directly competes with the U.S. Postal Service (*e.g.*, Amazon, Federal Express, United Parcel Service, DHL, etc.).

Finally, I will recuse myself from participation on a case-by-case basis in any particular matter involving specific parties in which I determine that a reasonable person with knowledge of the relevant facts would question my impartiality in that matter, unless I am first authorized to participate, pursuant to 5 C.F.R. part 2635, subpart E.

Sincerely,

  
Donald L. Moak

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Donald Lee Moak to be  
Governor of the United States Postal Service**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to serve as a Governor of the United States Postal Service?  
  
No.
2. Were any conditions, express 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 Governor? 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.  
  
No.

**II. Background of the Nominee**

5. What specific background and experience affirmatively qualifies you to be a Governor of the Postal Service?

I have extensive board and shareholder experience, driving collaboration and consensus, opening more direct lines of communication, advocating for sound governance principles, pushing for public enterprise business principles and establishing a balance of power among constituents. I have proven ability to lead through crisis while achieving the trust and confidence, full engagement and consideration of multiple stakeholders and their issues.

For example, my experience includes:

2001-2003 Executive administrator for Airline Pilots Association during the September 11<sup>th</sup> terrorist attack and subsequent alignment of revenue vs costs during the following two years.

2005-2010 Chairman of the Board for the Delta Airline Pilots during the bankruptcy restructuring of the airline and industry. Led the Pilot Board of Directors through a complex merger and integration period that resulted in the Airline and industry's return to profitability.

2010-2015 President of the Airline Pilots Association, leading the 50,000 plus pilots as the industry again navigated a restructuring period.

6. If confirmed, how would your experience in the private sector prepare you to serve as a Governor of the Postal Service?

I have extensive experience with enterprises going through complex financial and operational reorganization. I have been successful securing a positive outcome so that the entity is positioned to compete and accomplish the mission going forward. I will apply this experience with the newly constituted Board of Governors to the best of my ability.

7. Please describe:

- a. Your leadership and management style.

My Marine Corps and Naval officer background instilled a keen sense of leadership by example. I work to listen, analyze, execute and reassess, then repeat as necessary.

- b. Your experience managing personnel.

I have managed and lead people in my roles as Marine Officer, Naval Officer, elected Association Officer, appointed Executive Administrator, elected President and elected Chairman of the Board.

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

Though I tend to describe it as a servant-leader (as outlined in question #5), I led the Airline Pilots Association, representing over fifty thousand members' interests in industry, safety and government policy issues.

### **III. Role of a Governor of the United States Postal Service**

8. Please describe your view of the Postal Board of Governors' (Board) core mission and a Governor's role in achieving that mission.

My view aligns with the mission statement as incorporated by the Board and articulated in statute.

The Board directs the exercise of the powers of the Postal Service, directs and controls its expenditures, reviews its practices, conducts long-range planning, approves officer compensation and sets policies on all postal matters. The Board takes up matters such as service standards and capital investments.

9. If confirmed, what specific contributions do you hope to make during your time on the Board?

My intention is to understand the challenges facing the USPS and work with the Chairman of the Board and other Board members to position the USPS for success going forward.

10. What do you believe are the functions and responsibilities of an individual Governor? What in your training and experience demonstrates your qualifications to fulfill these functions and responsibilities?

I will work with the Board within the boundaries of the Board charter to accomplish the goals of the Board and USPS while exercising due diligence of my fiduciary responsibilities. My experience in restructuring contracts during bankruptcy reorganization, airline consolidation and merger integration could have applicability for the many challenges facing the USPS.

11. What do you see as the main challenges facing the Postal Service? What do you believe should be the Board's top priorities in meeting those challenges?

If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

12. What do you believe should be the respective roles and functions of the Board and the Postal Service management? How do you believe the Board and management can best work together to meet the challenges facing the Postal Service?

The Board provides direction, guidance and accountability. Management executes on Board direction. My intention is to work with the Chairman of the

Board of the USPS and the other Board Governors to assess the situation, develop a plan and decide who and how to lead while executing that plan.

13. The Governors are chosen to represent the public interest generally. As a Governor, how will you plan to interact with various stakeholders interested in postal issues and how can you effectively represent their interests?

Stakeholder engagement is important and early engagement and communication is key to a successful outcome.

14. The Postal Accountability and Enhancement Act of 2006 (PAEA) requires that by the end 2015, at least four members of the Board have experience managing an organization of 50,000 employees or more. What are your views on this requirement for appointment to the Board of Governors?

As far as the Postal Accountability and Enhancement Act of 2006, I support Congressional legislative direction and oversight and believe it is prudent to review from time to time if the original intent of legislation and, in particular, this requirement is achieving the desired outcome.

#### IV. Policy Questions

##### *Postal Reform and Financial Issues*

15. Due to the projected economic effects of the COVID-19 pandemic on the Postal Service, the Board of Governors recently issued financial projections indicating that USPS expects its net operating loss to increase by \$22 billion dollars over the next 18 months and \$54 billion over the next decade.<sup>1</sup> However, USPS revenues for the first 7 weeks of the pandemic are down 2.78 percent.
- a. In your view, what should be the Board's role in equipping USPS to respond to economic instability resulting from the COVID-19 pandemic?

The severity and unpredictability of the COVID-19 Pandemic is creating economic instability in many US entities, private and public, including the USPS. This is making economic modeling and forecasting extremely challenging. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges including the impact of COVID-19 before the USPS, therefore it would be premature for me to answer the question.

<sup>1</sup> United States Postal Service, *Postmaster General Statement on U.S. Postal Service Stimulus Needs* (2020), available at <https://federalnewsnetwork.com/agency-oversight/2020/04/postmaster-general-usps-will-run-out-of-cash-this-fiscal-year-without-more-pandemic-funding>.

16. The Postal Service continues to experience volume and revenue losses. The Postal Service ended Fiscal Year (FY) 2019 with a net loss of \$8.8 billion, more than double FY 2018.

- a. In your view, what is the Board's role in overseeing the Postal Service's efforts to improve its financial condition and to increase postal revenue and cut costs, while also meeting its universal service obligations and other statutory requirements?

The principal role of the Board is to provide strategic direction and guidance and to ensure accountability and execution of that direction. The Board of Governors first needs to have a clear understanding of the statutory requirements, including the Universal Service Obligation, and the products provided by the USPS, and the revenue and expenses associated with producing these products. This understanding is the foundation that will enable the Board of Governors to develop a plan to have a viable and sustainable USPS going forward.

- b. How does the Board's role differ from the role of the Postal Regulatory Commission (PRC) or the role of Congress?

The USPS Board of Governors, the PRC and the US Congress all have substantially different roles and responsibilities. Ultimately to be successful, the Board of Governors needs to be mindful of these role differences and work together to accomplish the mission of the USPS in a long-term sustainable manner.

17. Postal Service volumes and revenues associated with its letter mail and other market dominant products continue to decline, and First-Class Mail in particular is projected to significantly decline over the next decade.<sup>2</sup> At the same time, the volume of packages and its competitive products have grown significantly in recent years.

- a. How can the Postal Service remain viable as letter mail volume declines?

Letter volume is an issue, however it is not the only issue affecting USPS revenue. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, particularly as it relates to mail volume declines, therefore it would be premature for me to answer the question.

- b. How can the Postal Service take advantage of the growing popularity of e-commerce and package delivery?

<sup>2</sup> See Office of the Inspector General, United States Postal Service, *RARC-WP-18-004, A New Reality: Correspondence Mail in the Digital Age* 14 (2018), available at: <https://www.uspsoig.gov/sites/default/files/document-library-files/2018/RARC-WP-18-004.pdf>.

Now more than ever, we are seeing both the promise and challenges of e-commerce. If confirmed, I intend to listen, analyze the data and develop an understanding of the issues affecting the USPS as it competes for e-commerce delivery business. But, I have not had access to sufficient information or subject matter experts to allow me to do a comprehensive analysis of these challenges, therefore it would be premature for me to answer the question.

- c. What new actions should the Postal Service take to maintain its viability and competitiveness in both its traditional lines of business and in potential growth areas?

Again, if confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

- d. What do you believe are the proper limitations of the Postal Service with respect to competition with the private sector?

As a government entity that competes against (and often partners with) private industry, USPS must carefully adhere to the prohibitions that prevent it from competing unfairly, while still fulfilling the objectives set by Congress. If confirmed, I intend to listen to and analyze the arguments made by subject matter experts on this topic, however, I have not had access to information that would enable me to do a comprehensive analysis of this subject, therefore, it would be premature for me to answer the question.

- e. How proactive should the Board be in identifying areas for the Postal Service to cut costs quickly so that it can cover its operating expenses?

If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, particularly cost cutting, therefore it would be premature for me to answer the question.

- f. What are the Board's role and responsibilities in identifying opportunities for the Postal Service to increase volume?

Again, if confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

18. What are your views on the “universal service obligation”?
- I support the statutory requirement of the universal service obligation. Additionally, what should be considered is not just the requirement of universal service obligation but also the quality of the service provided by the USPS in meeting this important obligation.
19. How do you view current service standards and delivery frequency with respect to the obligation for service to every American?
- Excellent customer service is important in any enterprise and in particular should be a focus when public service is involved. If confirmed, I would look forward to gaining an in-depth understanding of the interaction between delivery frequency and service standards, but I have not had access to sufficient information to allow a comprehensive analysis of all of the challenges before the USPS, therefore it would be premature for me to answer the question.
20. The COVID-19 pandemic has highlighted USPS’s vital role in the global supply chain, especially in regard to the delivery of pharmaceuticals and medical supplies within the United States.
- a. What can the Board do to protect and enhance USPS’s delivery of these essential services?
- The COVID-19 Pandemic has identified many areas for improvement in the public and private sectors. If confirmed, I intend to listen, analyze the data—particularly as it relates to USPS’s performance during the pandemic—and develop an understanding of the business, financial, personnel and other issues at play. Until such an assessment is done, however, it would be premature for me to make conclusions.
21. The Government Accountability Office (GAO) again included the Postal Service on its High-Risk List in 2019 because of its current financial condition. GAO re-included the Postal Service’s financial condition on its high-risk list in 2009, after removing it in 2007.
- a. In your view, what should be the Postal Service’s strategy for improving its financial condition and restructuring its business model to ensure its long-term viability, in addition to any measures the Postal Service has announced as part of its new business model?
- As described in Question #10, I believe the Board has a fiduciary responsibility to ensure that USPS faithfully provides the services envisioned and authorized by Congress, within the bounds set by law. As for specific recommendations to



change its business model, before I could offer meaningful insight, I would first need to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS.

- b. What short and long-term actions should Congress take to assist the Postal Service in achieving financial viability?

Again, if confirmed, I would need to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS, before it would be prudent to offer Congress advice on what actions it should or should not take.

22. In its FY2019 annual financial report, USPS estimated its future cash obligations to be approximately \$180.1 billion.<sup>3</sup> How do you believe the Postal Service should address its unfunded liabilities?

I have extensive experience with unfunded liabilities associated with defined benefit pensions, healthcare and disability plans. The underfunding is a complex problem especially in a low interest rate environment. These issues are solvable and need to be addressed sooner than later to have the best outcome for all involved. To answer the question more thoroughly I will need an in-depth review of the USPS's particular plans and situation. On a personal note my pension was terminated during Bankruptcy restructuring and resides at the Pension Benefit guarantee corporation at a reduced level.

23. In recent years, postal management has indicated that the Postal Service has been financially unable to make the investments necessary to replace its aging vehicle fleet or make other necessary capital investments in order to remain viable and competitive in the coming years. What steps do you believe the Board should take to prioritize key capital investments and allocate the resources necessary to make them?

Having a fully staffed and functioning Board of Governors listening, analyzing and directing USPS management is critical to prioritizing CAPEX. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

#### *Postal Rates and New Products*

<sup>3</sup> United States Postal Service, *2019 Report on Form 10-K* 43 (2019), available at: <https://about.usps.com/what/financials/10k-reports/fy2019.pdf>.

24. One of the core principles of 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 PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 39 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, specifically the requirement that the cap did not allow for long-term financial stability of the Postal Service or for the Postal service to maintain high quality service standards.

a. Do you believe the inflation-based rate cap has met the objectives and factors laid out in 39 U.S.C. § 3622?

If confirmed, I intend to listen, analyze the arguments made and develop an understanding of the issues affecting the USPS and how it set rates. Today, however, I have not had access to sufficient information that would enable me to confidently opine on this a highly technical question.

b. Which of these objectives or factors, if any, do you believe should be weighted above others?

Again, if confirmed, would look forward to developing the understanding, as described in the preceding question.

25. The PRC also recently proposed adjusting the rate cap to allow the Postal Service to raise prices above inflation on market dominant products. 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 volumes?

Again, if confirmed, I intend to listen, analyze the arguments made and develop an understanding of the issues affecting the USPS and how it set rates for its various products. Today, however, I have not had access to sufficient information that would enable me to confidently opine on this a highly technical question.

26. The Postal Service has requested legislation authorizing greater flexibility in offering non-postal products.

a. Under what circumstances should the Postal Service be permitted to offer non-postal products?

If confirmed, I intend to listen, analyze the arguments both for and against non-postal products, and develop an understanding of the issues affecting the USPS and the mailing industry as a whole. I have not had access to information that would enable me to do a comprehensive analysis of all these challenges, therefore it would be premature for me to answer the question.

- b. To what extent do you believe the Postal Service should rely on the provision of non-postal products in its efforts to generate additional revenue?

Again, if confirmed, I intend to listen, analyze the arguments both for and against non-postal products, and develop an understanding of the issues affecting the USPS and the mailing industry as a whole.

- c. How would you ensure the Postal Services does not compete unfairly with the private sector in selling non-postal products?

If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

27. How can the Postal Service take better advantage of its current authorities to make the mail more appealing and valuable to customers and attract additional mail volume?

The tastes and needs of customers change, and if confirmed, I would look forward to hearing from marketing subject matter experts on how best USPS can adapt to the evolving market. Today, however, I have not had access to the information that would enable me to do this comprehensive analysis.

*Facility Closings and Service Changes*

28. What role should the Board have in decisions to realign postal retail and mail processing networks, including decisions to close specific facilities?

The Board of Governors should provide the strategic direction and guidance, and ensure compliance with congressional intent while following public enterprise business principles, but should generally leave day-to-day decisions to management, and leave the design of retail and processing networks to logistics subject matter experts.

29. How can the Board ensure the Postal Service communicates with its customers and employees so that they are aware of updated information on the consolidation process, as it becomes available?

USPS management should communicate extensively with customers and provide data on that communication and feedback to the Board of Governors so that they can fulfill their oversight role.

30. The Postal Service is required to deliver mail to every address in the country, creating the need for retail postal locations in low-density counties and towns. How would you balance the Postal Service's universal service obligation and the need for rural counties to have reasonable access to the postal services when looking at ways to improve the Postal Service's financial condition?

The universal service obligation (USO) is a statutory foundational mission of the USPS that requires postal services provide prompt, reliable, and efficient services to patrons in all areas. Striving to improve Rural and low-density area customer service is important to the USPS. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USO and USPS.

31. According to GAO, approximately 41 percent of postal revenue comes from alternate retail channels such as the Postal Service website, automated postal centers, and contract postal units. Do you believe the Postal Service should increase the use of alternate retail channels, and if so, how should this be accomplished?

If confirmed, I intend to listen, analyze the data and develop an understanding of the various ways that USPS interacts with and serves its customers. I have not, however, had access to information about specific retail strategies, therefore it would be premature for me to answer the question.

32. The Postal Service has, in the past, proposed both the elimination of Saturday delivery of some classes of mail and has nearly eliminated the overnight service standard.

- a. What is your opinion of the Postal Service's proposals to eliminate Saturday delivery of some classes of mail and lower certain service standards?

As previously described in response to Question #19, if confirmed, I would look forward to gaining an in-depth understanding of the interaction between delivery frequency and service standards, but I have not had access to sufficient information to allow a comprehensive analysis of all of the challenges before the USPS, therefore it would be premature for me to answer the question.

- b. What steps should the Postal Service take to ensure that any service changes it makes do not disproportionately harm any subset of postal customers and are consistent with the Postal Service's universal service obligation?

The universal service obligation and excellent customer service are important to a viable and sustainable USPS. If confirmed, I would look forward to gaining an in-depth understanding of how service standards change impact USPS's ability to meet its essential universal service obligation.

- c. How do you believe that changes to service affect customers' attitudes towards and use of the Postal Service?

Changes to any service, good or other, can have an effect on the customer's attitude, so it is imperative to take this into account when planning and executing a change.

- d. How should the Postal Service balance the potential cost savings gained or potential revenue lost from changing service?

The ideal situation would be to increase revenue, decrease costs, all while enhancing the customer experience.

#### *Workforce-Related Issues*

33. Since 1999, when the workforce peaked at over 900,000 employees, the Postal Service has been reducing its workforce, including through hiring freezes, early retirements, incentive payments for some targeted attrition, and other ways. Does the Postal Service have sufficient flexibility to adjust its workforce to its operational needs? If not, what additional flexibility is needed?

Given the labor-intensive nature of postal services, effectively managing the workforce will be a key—if not the key—component of USPS's success. If confirmed, I intend to listen, analyze the data and develop an understanding how USPS manages its most important asset—its employee-partners. I have not, however, had access to information that would enable me to do a comprehensive analysis, therefore it would be premature for me to answer the question.

34. As an increasing number of postal executives, managers, and supervisors are eligible to retire, how can the Board work with postal management to address these challenging succession, continuity, and associated cost issues?

This is a principal role of the Board of Governors. They should provide direction, guidance and a process to ensure that these challenges are met.

35. In recent years, USPS has implemented performance-based compensation systems for postal executives, as well as managers and supervisors. The success of these systems depends on the credibility of the performance measures. How can the Board ensure the credibility of the Postal Service's performance-based compensation systems? Do you have an opinion about performance-based compensation?

I support performance-based compensation where appropriate. The challenge is the establishment of fair, meaningful Key Performance Indicators (KPI's) and the process of oversight and alignment to the mission objectives of the enterprise.

36. Please describe the kind of labor-management relationship you believe is most desirable at the Postal Service.

I believe we do our best work when labor and management work together in a collaborative manner. Although easy to say but hard to accomplish, the key to success is transparency, respect and communication.

*Accountability*

37. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from Members of Congress?

The chain of command and authority flows through the Board of Governors. If the USPS executives are not responsive to requests from Congress, the Board is accountable and should execute its oversight role.

38. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from the Postal Service Office of Inspector General (USPS OIG)? What do you believe should be the proper response of the Board to recommendations made by the USPS OIG to Postal Service management?

The chain of command and authority flows through the Board of Governors. If the USPS executives are not responsive to requests from USPS OIG, the Board is accountable and should execute its oversight role. The Board of Governors should review recommendations of the USPS OIG and thoughtfully and deliberately decide next steps.

39. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from the GAO? What do you believe should be the proper response of the Board to recommendations made by the GAO to Postal Service management?

The chain of command and authority flows through the Board of Governors. If the USPS executives are not responsive to requests from GAO, the Board is accountable and should execute its oversight role. The Board of Governors should review recommendations of the GAO and thoughtfully and deliberately decide next steps.

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

- a. During your career in the federal government, how did you address whistleblower complaints?

Not applicable.

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

I will review the current policies and discuss with the Chairman of the Board

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

Yes

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

Yes

#### **V. Relations with Congress**

41. 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

42. 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

43. 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**

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

Yes, these answers are my own. I have reviewed previous transcripts and hearing materials, the FY 2019 Annual Report, and the December 2018 USPS Task Force report "A Sustainable Path Forward". I have reviewed media and news stories, read a variety of postal-focused third-party analyses, and spoken

with Postal Service employees to gain background and context, all in anticipation of my confirmation hearing.



**Minority Supplemental Pre-Hearing Questionnaire  
For the Nomination of Donald Lee Moak to be  
Governor of the United States Postal Service**

**I. Nomination Process and Conflicts of Interest**

1. Have you sought advice from any employee or official of the Board of Governors of the United States Postal Service Board of Governors in preparation for your nomination process and potential role? If so, please describe the advice you were given.

Yes, as described in answer to Question #44 of the primary committee questionnaire, I have spoken to USPS employees, including those from the Board of Governors office. They advised me that being forthright and expansive in my answers would benefit me greatly during the nomination process.

**II. Background of Nominee**

2. Why are you interested in serving as a Governor of the United States Postal Service?

I consider public service an honor and a way to give back to my country. As a retired military veteran, I value the role of public service in creating a better America for all citizens.

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

I could answer this question in several different ways: I have had successes in my very different roles as a military officer, mentor, volunteer and elected Association leader. However, the definitive nature of the question compels me to state that raising successful, happy and fulfilled children is what I consider my greatest success.

4. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

My greatest failure would be not spending more time and follow-through on succession planning for organizations I have led. Succession planning should be incorporated in the strategic plan immediately by any new leadership team.

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

As a Marine Officer you are mentored to speak your mind and lead by example. In that context, I have always surrounded myself with people that do the same. In difficult, complex discussions, my opinion did not always carry the day, however, I assure you, I was always heard.

6. Do you seek out dissenting views and encourage constructive critical dialogue with colleagues? Please describe examples of times in your career when you have done so.

Yes – All substantive decisions are best made in collaborative team process, as compared to an authoritative one.

7. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of your agency or organization.

As a tactical flight instructor I have disqualified other officers from continuing in programs due to safety considerations.

8. Please describe your experience negotiating the needs and interests of diverse stakeholders and producing acceptable outcomes for the parties involved.

From 2001 to 2015, I was involved in the negotiation of numerous complex contracts involving issues effecting employees with diverse situations and needs. This included their individual and collective work rules, health benefits, retirement benefits, workplace safety, and vacation benefits.

9. Please describe your experience managing in times of crisis. How have you worked to resolve crises while maintaining transparency and open communication with stakeholders?

I have led and managed during the September 11<sup>th</sup> terrorist attacks and subsequent aviation shutdown. I have led and managed during multiple airline bankruptcy reorganizations, hostile takeovers and mergers. These were not only a crisis for the enterprises but for management and employees alike. Transparency, constructive engagement and communication is the key to a successful outcome.

### **III. Role of a Governor of the United States Postal Service**

10. Please describe your view of the core mission of the Board of Governors (Board) of the United States Postal Service. In what ways is it distinct from the role of corporate and nonprofit boards?

My view aligns with the mission statement as incorporated by the Board and articulated in statute. The Board directs the exercise of the powers of the Postal Service, directs and controls its expenditures, reviews its practices, conducts long-range planning, approves

officer compensation and sets policies on all postal matters. The Board takes up matters such as service standards and capital investments.

Corporate and non-profit Boards are different from the USPS in that a corporate private enterprise board constituent is their investors, a non-profit board constituent is their donor base, and the USPS constituents are the American public.

11. The Postal Service is “an independent establishment of the executive branch.” Please describe your understanding of the statutory requirements related to the independence of the Postal Service. If confirmed, how will you ensure the Postal Service maintains its independence?

The Board of Governors of the USPS is a Senate vetted and confirmed independent board with the charge of ensuring the USPS is, among other things, a self-supporting, independent federal agency. The Postal Service mission is to provide a reliable, efficient, trusted and affordable universal delivery service that connects people and helps businesses grow. Relying on my personal leadership and professional experience, I will fulfill my fiduciary responsibilities to the USPS Board.

12. Current law provides that the Board of Governors shall include nine Governors, no more than five of whom may be adherents of the same political party. The current Board includes four Governors, three of whom are adherents of the same political party. Please describe your views on the role of bipartisanship in making decisions concerning the Postal Service.

My view is to ensure that the USPS is successful and fulfills its core mission to the American public. This is best achieved by working with the Congress, Administration agencies, The Chairman of the Board, other Governors, the USPS management, USPS employees and other stakeholders in a manner focused on success for the American public.

13. If confirmed, how will you work to promote public transparency and oversight of the Postal Service’s operations and financial performance, as well as its management actions and overall integrity?

I will work diligently within the confines of the Board of Governors authority to ensure transparency and oversight of Board actions.

#### **IV. Policy Questions**

##### *Postal Reform and Financial Issues*

14. Some view the Postal Service as “a business” to serve paying customers; others see it as a government service that must continue to be available to all citizens regardless of financial profitability. Which view should take priority?

My view is that the USPS is an independent agency with federal statutory authority to provide universal service to all Americans.

15. The Postal Reorganization Act of 1970 (39 USC 101) provides that “The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.”

- a. How do you interpret this mandate of public service?

The Postal Service mission is to provide a reliable, efficient, trusted and affordable universal delivery service to all Americans that connects people and helps businesses grow.

- b. In considering reforms to the Postal Service due to its financial condition, how would you ensure that any changes do not impair the overall value of this service to the people or otherwise prevent the Postal Service from fulfilling its statutory mandates? On April 8, 2020, the Board unanimously approved financial projections indicating the Postal Service would lose \$13 billion in revenues in Fiscal Year 2020 due to the impacts of the COVID-19 pandemic and the economic downturn, with long-term losses totaling \$55 billion. The Board also unanimously approved legislative requests based on these projections, asking that Congress provide emergency appropriations and debt relief to offset these losses. How will you consider the long-term effects of this crisis in making financial and legislative decisions regarding the Postal Service?

The value and importance of the USPS to the American public cannot be overstated. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

16. Like many government entities and businesses, the Postal Service relies to some extent on debt financing. Statutory authorities allow the Postal Service to borrow from the Treasury Department, while also regulating the relationship between Treasury and the Postal Service and reserving for the Board the power to “direct and control the expenditures and review the practices and policies of the Postal Service.”

- a. What do you believe is the proper relationship between the Postal Service and the Treasury Department?

If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

- b. Under what circumstances, if any, would the imposition of borrowing conditions by the Treasury Department conflict with the Board's authority to manage Postal Service operations?

This is a complex question on USPS liquidity and the relationship with the US Treasury. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

- c. If confirmed, how would you ensure the Postal Service is able to borrow from the Treasury Department while maintaining its authority to direct and control Postal Service operations?

USPS borrowing authority is a complex issue that needs additional review -If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

17. The Postal Accountability and Enhancement Act of 2006 established a goal for the Postal Service to prefund 100 percent of its future retiree health benefits liability. Are you aware of any U.S. company that prefunds 100 percent of any retiree benefit liability? Do you believe this is a sound business practice? Please explain.

I am unaware of any company that is required to prefund 100 percent of retiree health benefits.

On whether or not this is in keeping with private enterprise best business principles and practices I will, if confirmed, listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

18. Rural post offices and postal services often play an outsized role in a local community's economy. When considering policy and operational changes, should the Postal Service take into account rural-specific factors? If so, which ones?

Yes they should. In any community but especially a rural community the USPS is an important face of government providing services that might not otherwise be available.

If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

*Postal Rates and New Products*

19. Since 2007, the Postal Service's rate increases on mail have been limited by a cap set at the rate of inflation. Further, the Postal Service is barred from entering new lines of business unrelated to its mail delivery function. Finally, while it has the freedom to set package and parcel rates, the Postal Service faces competition in that segment from private carriers. If confirmed, how would you balance these constraints with the objective of ensuring postal operations are self-sustaining?

As described in answer to Question #28 in the primary committee questionnaire, if confirmed, I intend to listen, analyze the arguments both for and against non-postal products, and develop an understanding of the issues affecting the USPS and the mailing industry as a whole, which would include the need for USPS to be self-sustaining. I have not had access to information that would enable me to do a comprehensive analysis of all these challenges, therefore it would be premature for me to answer the question.

20. How would you work with Postal Service management and the Postal Regulatory Commission (PRC) to ensure that any rate changes are sensitive to the needs of Postal Service customers and stakeholders?

USPS management and the PRC are two of many stakeholders that need to be engaged with to develop a sustainable path forward while maintaining and improving customer service. If confirmed, I intend to listen, analyze the arguments made and develop an understanding of the issues affecting the USPS and how it set rates. Today, however, I have not had access to sufficient information that would enable me to confidently opine on this a highly technical question.

21. Competitive products offered by the Postal Service, such as package delivery, must cover their costs and contribute a fair share to the Postal Service's overhead, or institutional costs. The PRC has determined that competitive products are currently meeting this requirement. Changes to the pricing of Postal Service products, including competitive products, can affect the affordability and accessibility of these products across the country, particularly in rural areas. If confirmed, how would you work to ensure these products maintain fair prices that do not limit consumers' access, while continuing to meet their costs?

Fair pricing is an important aspect of enhanced customer and product service. If confirmed, I intend to listen, analyze the arguments made and develop an understanding of the issues affecting the USPS and how it set rates. Today, however, I have not had access to sufficient information that would enable me to confidently opine on this a highly technical question.

22. The Postal Service faces several challenges in the area of ensuring fair and affordable rates, including the PRC's ongoing 10-year rate review. What do you believe the Board's role should be in meeting such challenges, and if confirmed, how would you prepare to fulfill this role?

For the American public and the USPS to achieve a sustainable path forward, a comprehensive plan which addresses these challenges must be developed, agreed to, and executed. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

#### *Service and Facilities*

23. How can the Board ensure the Postal Service focuses on strong service performance, so that mail delivery is both protected and improved for all constituencies, including rural communities?

Strong improved service is important to USPS success moving forward. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

24. Over the past several years, the Postal Service reduced delivery standards in order to consolidate a number of mail processing facilities. At the time, some argued that the savings achieved by diminishing the speed of delivery would outweigh the cost to the perceived quality of the product. What are your views on balancing the need to provide a quality product for all Americans versus a desire to lower costs?

The USPS should strive to increase revenue, and reduce costs while enhancing customer service.

25. America's population and the total number of delivery addresses continues to grow, but mail volumes are decreasing. That puts the Postal Service in the difficult position of expanding its delivery network despite shrinking demand. What role should the Board play in decisions to adjust postal retail and mail processing networks, including decisions to close specific facilities?

As described in answer to Question #28 in primary committee questionnaire, The Board of Governors should provide the strategic direction and guidance, and ensure compliance with congressional intent while following public enterprise business principles, but should generally leave day-to-day decisions to management, and leave the design of retail and processing networks to logistics subject matter experts.

26. When considering changes that could significantly affect the level of service available to customers, how should the Board measure and consider the consequences of such proposals, including their impacts on quality of service, service to rural communities, customer usage of the Postal Service, and mail volume?

In examining the totality of impact from a proposed change, data analytics are important sources of information to the Board to measure not only operational performance but customer service. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

#### *The Postal Workforce*



27. The Board's long-term strategic and financial plans for the Postal Service can help shape its decisions about workforce needs and the composition of the postal workforce. What do you view as the Postal Service's future workforce needs, in order to fulfill its universal service obligation, serve all Americans, and provide fair wages and benefits?

I have not seen a long-term strategic plan from the Board of Governors. I believe such a plan is important and USPS work force considerations would be an important component of this plan. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

28. During the COVID-19 pandemic, the Postal Service has been deemed an essential service for purposes of compliance with state or municipality shelter-in-place orders. Likewise, postal employees—who provide critical deliveries to individuals and businesses—have been recognized as essential workers.

- a. How should the Postal Service account for the fact that its employees provide every community with essential services when considering financial plans or other decisions that could affect the Postal Service workforce?

The COVID-19 Pandemic has stressed the USPS system and employees. From what I have seen, they have stepped up and delivered during this challenging time. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

- b. If confirmed, how will you ensure the Postal Service workforce can continue to provide essential services to all communities?

There are statutory requirements requiring the USPS to provide universal service to all Americans. USPS management should ensure the safety of the USPS workforce as it provides this service. If confirmed, I intend to listen, analyze the data—particularly as it relates to USPS's performance during the pandemic—and develop an understanding of the business, financial, personnel and other issues at play. Until such an assessment is done, however, it would be premature for me to make conclusions or offer suggestions.

29. By law, Postal Service employees can collectively bargain over compensation, benefits, and other conditions of employment. In your view, what role does collective bargaining play in productive workplaces, and in the Postal Service, in particular?

The right of association, communication and ultimately to collectively bargain should be viewed as an asset to providing a productive workplace and enhanced customer service.

30. The Postal Service is having difficulty recruiting younger workers. How should the Board approach this problem, in conjunction with management, to improve recruiting of younger workers?

This is not unique to the USPS. We must focus on recruitment of workers with an eye towards work ethic and value set. The USPS should be viewed as a great place to work. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel and other issues affecting the USPS. I have not had access to information that would enable me to do a comprehensive analysis of all the challenges before the USPS, therefore it would be premature for me to answer the question.

#### *Oversight*

31. The Board's meetings are open to the public unless the Board votes to close all or part of a meeting in line with exemptions permitted by the Government in the Sunshine Act.

- a. What do you believe is the proper balance between open and closed meetings?

Meeting should be as open as is possible in order to do the work of the American public.

- b. If confirmed, how would you ensure that the public has appropriate access to information regarding what occurred during closed meetings?

There are governance procedures in place to ensure transparency, and I support those procedures.

#### **V. Accountability**

32. If confirmed, do you pledge to consider thoughtfully recommendations made by the USPS OIG, Office of Government Ethics, the Office of Special Counsel or the GAO, and implement those that would improve the Postal Service's functions, operations or accountability?

Yes.

#### **VI. 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?

I will respond timely to the best of my abilities.

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 agree without reservation to reply to any reasonable request for information from members of Congress?  
Yes.
36. If confirmed, do you commit to take all reasonable steps to ensure that the Postal Service complies with deadlines established for requested information?  
Yes.
37. 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.
38. If confirmed, will you ensure that the Postal Service will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the GAO and the Congressional Research Service?  
Yes.
39. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations that improve the Postal Service's operations and effectiveness?  
Yes.
40. If confirmed, will you direct the Postal Service to fully and promptly respond to Freedom of Information Act requests submitted by the American people?  
Yes.
41. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?  
Yes.

**VII. Assistance**

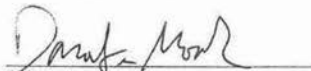
42. Are these answers completely your own? If not, who has provided you with assistance?

Yes.

Have you consulted with the Postal Service management or any other interested parties?  
If so, please indicate which entities.

I have reviewed previous transcripts and hearing materials, the FY 2019 Annual Report, and the December 2018 USPS Task Force report "A Sustainable Path Forward". I have reviewed media and news stories, read a variety of postal-focused third-party analyses, and spoken with Postal Service employees, including those from the Government Relations office and the Board of Governors office, to gain background and context, all in anticipation of my confirmation hearing.

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

  
(Signature)

This 18<sup>th</sup> day of May, 2020.

**Senator Rand Paul  
Post-Hearing Questions for the Record  
Submitted to Donald L. Moak**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

*On assessing the USPS' unfunded liabilities:*

I believe the Committee would benefit from regular updates on the financial condition of the USPS, including “decomposing” the agency’s long-term liabilities into their respective elements and developing a plan to improve the management of those liabilities.

1. Would you be supportive of efforts by the USPS Board of Governors to provide regular updates on the financial condition of the USPS to the Committee?

Yes.

*On overhead and labor costs:*

The USPS’s “costs are heavily concentrated in wages and benefits for both current employees and retirees.”<sup>1</sup>

1. In your opinion, what is the role of the USPS Board of Governors in reviewing the percentage of operating expenses that are attributable to labor?

In order to solve the United States Postal Service’s current problems and allow it not only to survive but to thrive and fulfill its statutory mission, the Board of Governors will need to review all revenue and expenditures, both short and long-term.

2. Would you be supportive of efforts by the USPS Board of Governors to review and conduct comparative analyses of the labor costs of the USPS relative to both its competitors as well as other public enterprises (such as transit systems, foreign posts, and quasi-government agencies such as the Tennessee Valley Authority)?

Yes, as part of a comprehensive analysis of revenue and expenditures, comparisons to other, similarly situated enterprises would provide valuable information. If confirmed, I intend to listen, analyze the data and better understand the USPS business model, and comparative data can be useful during this analysis.

*On pricing and organizational transparency:*

1. Would you be supportive of efforts by the USPS Board of Governors to review how USPS accounts for and allocates its costs among its various lines of business?

Yes.

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<sup>1</sup> <http://about.usps.com/who-we-are/financials/financial-conditions-results-reports/fy2018-q1.pdf>

2. Specifically, would you support analyses designed to determine whether and to what degree USPS "monopoly" products may be cross-subsidizing its competitive (parcel delivery) products? Would you support making the results of these analyses available to members of Congress and the public?

Any comprehensive revenue and expenditures analysis would necessarily have to examine the financial results of individual products and services. If confirmed, I intend to listen, analyze the data, and develop an understanding of the business, financial, personnel and other issues affecting the USPS. If confirmed, and as a newly installed member of the Board of Governors, I would be committed to the greatest level of transparency permitted, recognizing that there will be times when proprietary business information must be protected.

3. Where appropriate and if necessary, would you be willing to assist members of Congress in seeking additional information from the U.S. Postal Service on behalf of their constituents?

If confirmed, as part of my role as a Governor, I will work with the Chairman of the Board and other Governors to ensure proper transparency of USPS work.

**Senator Josh Hawley  
Post-Hearing Questions for the Record  
Submitted to Donald L. Moak**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. The Board of Governors adopted a new mission statement for the United States Postal Service (USPS) on April 1, 2020. Do you support this mission statement?

Yes, I do.

2. How do you interpret the universal service obligation that is mentioned in this mission statement?

In short, I interpret the universal service obligation as the responsibility given to the United States Postal Service to serve all areas of the country, with timely and professional service. I interpret the mission statement as a written commitment to help operationalize the various directions given by Congress through Title 39 of the U.S. Code.

3. What is one modernizing measure that you believe USPS or Congress should adopt in order to ensure that USPS can become an effective and sustainable institution for the twenty-first century?

Congress should fully staff the Board of Governors in a timely manner, as provided by law.

4. If confirmed, will you commit to protecting access to USPS and also delivery services for Americans living in rural areas?

Yes

**Ranking Member Gary C. Peters  
Post-Hearing Questions for the Record  
Submitted to Donald L. Moak**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. Financial projections unanimously approved by the Board of Governors in April 2020 indicated the Postal Service would lose \$13 billion in revenues in Fiscal Year 2020 due to the impacts of COVID-19 and the economic downturn, with long-term losses totaling \$55 billion. Because of COVID-19, the Board projects that the Postal Service will face insolvency by early Fiscal Year 2021. The Board has unanimously requested that Congress provide emergency appropriations and debt relief to offset these losses. **How do you believe your work as a Governor will change due to this crisis, and how would you approach the current financial situation?**

The severity and unpredictability of the COVID-19 pandemic is creating economic instability in many U.S. entities, private and public including the USPS. This is making economic modeling and forecasting extremely challenging. If confirmed, I intend to listen, analyze the data and develop an understanding of the business, financial, personnel, health, safety and other issues affecting the USPS. I will approach the financial situation with an open mind intent on solving the long term financial challenges while focused on maintaining and improving customer support.

2. The CARES Act authorized the Postal Service to borrow up to \$10 billion from Treasury. Our Committee is hearing reports that indicate Treasury will attempt to impose improper conditions on this loan, including giving the Treasury Department approval or decision-making authority over how the Postal Service manages its finances and its product prices. I cannot stress enough that these types of conditions are against the law and absolutely unacceptable. The statutes governing the Postal Service give the Board of Governors exclusive authority over the Postal Service's finances and operations – and clearly outline its fiduciary independence.
  - a. Are you committed to the fiduciary independence of the Postal Service and the Board of Governors? Please answer yes or no.  
  
Yes.
  - b. If confirmed, how would you react to borrowing conditions offered by Treasury that encroached on the Board's statutory authorities?

I am unfamiliar with these specific conditions, however, if confirmed, I intend to exercise due diligence to ensure that the USPS is able to meet its fundamental USO mandate while making smart, independent financial decisions that are in the best interest of the USPS and its customers the American citizens.



- c. Will you commit to carefully studying the Board's statutory authorities and exercising your fiduciary duty accordingly?

Yes.

- 3. The Postal Service is "an independent establishment of the executive branch" and its establishing statutes include multiple safeguards to ensure the Postal Service's independence from political influence by the Executive and other entities.

- a. If the President or an executive branch agency urged you to adopt a particular policy for the Postal Service, how would you respond?

I would listen and then use my best independent judgement to make a decision in the best interest of the USPS, keeping in mind that, if confirmed, I represent the general public interest of the American people in an efficient, timely and cost effective Postal Service.

- b. What specific measures would you take to safeguard against undue influence from other entities?

I would follow the process set out in the governance of the USPS. The USPS is an independent agency functioning on behalf of the American people. If confirmed I will take this special trust and confidence bestowed on me with the utmost sincerity.

**Senator Maggie Hassan  
Post-Hearing Questions for the Record  
Submitted to Donald L. Moak**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. As of May 21, 2020, at least 126 federal employees have died due to COVID-19 and 60 of those employees were Postal workers.<sup>1</sup> The United States Postal Service (USPS) has had twice as many employee deaths as any other federal agency.<sup>2</sup> The Postal Service is of vital importance to the American people, and the men and women of the postal workforce are now risking their health to serve their fellow Americans during the ongoing crisis. We must find real solutions for keeping them safe from this deadly virus as they fulfill their critical mission.

During the hearing I asked you about the role the USPS Board of Governors plays in protecting the postal workforce during the ongoing COVID-19 pandemic and *how* to prioritize worker health and safety. While I am encouraged that you agreed that prioritizing the health of postal workers is of great importance, I would like you to elaborate on your answers.

- a. If confirmed to the USPS Board of Governors, what actions will you take to keep postal workers safe? Please provide concrete examples.

My experience in the Airline industry, and before that the military, drilled into me the precept of “Safety First” and applying a disciplined approach even in the most stressful of situations. If confirmed, I will apply these principles in analyzing the health and safety measures put in place by USPS management, and specifically, whether we have met a duty of safety, not only to our customers, but to our employees. The Centers for Disease Control has given guidance on business and workplace safety measures during the COVID-19 pandemic, and, if confirmed, I will look at the practices taken by USPS management with a critical eye on employee safety.

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<sup>1</sup> Eric Katz, *These Federal Agencies Have Seen the Most COVID-19 Deaths*, Government Executive (May 21, 2020).

<sup>2</sup> *Ibid.*

**Senator Kamala Harris  
Post-Hearing Questions for the Record  
Submitted to Donald L. Moak**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
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Privatization

Critics of the U.S. Postal Service (USPS) have used its financial challenges as pretense to encourage privatization, including of market-dominant postal products, rather than looking for creative ways to increase revenue or decrease long-term liabilities.

1. If confirmed, would you seek to privatize any portion of the USPS?  
  
No.
2. Do you believe that private contractors instead of career public servants should maintain Postal Service operations?  
  
No.

Interactions from Treasury Department

According to Washington Post reporting, the Treasury Department is trying to use the \$10 Billion in borrowing authority in the CARES Act to gain greater control over USPS operations.

3. Do you think it is appropriate for the Treasury Department to use this leverage to do any of the following:
  - a. Increase rates on parcel delivery?  
  
No.
  - b. Increase rates for specific Negotiated Service Agreements?  
  
No.
  - c. Extract concessions from unions representing postal employees?  
  
No.
  - d. Review hiring decisions for USPS senior executives, including the Postmaster General and the Deputy Postmaster General?  
  
No.

If confirmed, I intend to listen, analyze the data and develop a more in-depth understanding of the challenges of the business model, financial, personnel and other issues affecting the USPS. The USPS is an independent agency, and while I understand that Congress has provided that the Treasury Department has a role, I have no knowledge or belief that they should or are trying to usurp the statutory authority of the USPS Board of Governors. The issues raised in the preceding questions fall squarely in responsibilities given to the Governors.

4. As a USPS Governor, would you delegate any of the USPS Board of Governors' statutory responsibilities to the Treasury Department? If so, which responsibilities, specifically, would you delegate?

No.

#### Deputy Postmaster General Selection

The incoming Postmaster General is the first in nearly twenty years to not be a career postal service employee. On April 30, USPS Governor David Williams, who was a former USPS IG, resigned reportedly in protest. Deputy Postmaster General Ronald Stroman is set to retire on June 1. With these three resignations, no one on the USPS BOG will have significant USPS operational experience.

One of the duties of the Board of Governors is to appoint, with the Postmaster General, a Deputy Postmaster General. Depending on when you are confirmed, you may be part of this decision.

5. Do you consider having significant operational experience a requirement for the new Deputy Postmaster General?

Yes.

6. How do you intend to supplement the lack of career postal service experience in postal operations on the USPS BOG?

The role of the USPS BOG is fundamentally different from USPS management, which has day-to-day and operational expertise. If confirmed, I intend to listen, analyze the data and develop a more in-depth understanding of the overarching challenges of the business model, financial, personnel and other issues affecting the USPS. USPS Governors have clear accountability in their oversight role of USPS management, and we must ensure that postal management is applying leadership and expertise so that postal operations are functioning properly.

#### Federal Workforce

The President's FY21 budget proposes drastic changes to the Federal Employees Retirement System (FERS) that would decrease work pay and lower pension benefits, by increasing employee FERS contributions, basing annuities on workers' highest five years instead of three years, eliminating special retirement annuity supplements, and slashing cost-of-living adjustments. These proposals would affect the Postal Service's employees.

7. If confirmed, do you plan to advocate for the President's proposed cuts to federal employee benefits?

If confirmed I intend to analyze the data and work on solutions that work best for the USPS and its workers.

#### Providing Financial Services

On January 27, 2014, the USPS Inspector General published a White Paper arguing that expanding financial services offerings could benefit not just the Postal Service but also the financial services community and the American public.

8. Have you reviewed the USPS Inspector General White Paper entitled, "Providing Non-Bank Financial Services for the Underserved?"

No.

- a. If you have not, will you commit to reading the White Paper?

Yes.

9. If confirmed, would you consider having the USPS offer non-bank financial services as a way to augment Postal Service revenue? If not, why not?

Yes, I believe we should explore any and all allowable products and services that have the potential to benefit the American people and USPS.

10. Could offering these services advance economic justice for non-banked and under-banked Americans who currently spend tens of billions each year on fees for alternative financial services such as payday loans?

I am not a banking expert and do not have enough information to fairly evaluate specific proposals at this time, but if confirmed, I am committed to having an open mind on this and other ideas that may help all American.

**Opening Statement of William D. Zollars**  
**Before the Senate Committee on Homeland Security and Governmental Affairs**  
**Confirmation Hearing, the United State Postal Service Board of Governors**  
**June 3, 2020**

Good morning Chairman Lankford, Ranking Member Sinema, and other committee members. I'm Bill Zollars and I would like to thank President Trump for the honor of being nominated, and thank the Senate for your consideration of my appointment to the Board of Governors of the US Postal Service.

The last time I was in a position to serve my country directly was 1970, when I enlisted in the Army National Guard. In the 50 years since, I have accumulated substantial experience that I believe will help me make a contribution in solving the important challenges facing the Postal Service—and give me an opportunity to, once again, serve my country.

The Founders obviously thought the Postal Service was important enough to include in the Constitution—and the fact that it has remained an integral component of American life throughout our history is a confirmation of their foresight. As a resident of Kansas, I can verify the added importance of the vital service to rural America, where the Postal Service is a reliable, dependable, and trusted symbol of government promises kept. It is for these important reasons that I am committed to helping solidify the long-term future of this important part of America.

During my years in private industry I have led large organizations in three different Fortune 500 companies and served on the board of directors of four different Fortune 500 companies.

My last leadership position was the most relevant to the Postal Service since it was a nationwide, unionized, logistics network of over 50,000 associates. The company was on the brink of financial failure when my team took over, but, by working in concert with our union workforce on a strategy focused on mutual success, we were able to deliver four consecutive years of record revenue and profitability. In the process, we delivered outstanding service to our hundreds of thousands of customers, whether they were in Manhattan, Kansas, or the island of Manhattan. I mention this to illustrate that I am familiar with turnaround situations.

During my 15 years at YRC, we served every Zip Code in the country—our own version of the “Universal Service Obligation.” We delivered shipments to our customers on time, regardless of distance or density, and in the most efficient way possible. We were also able to offset a labor cost disadvantage with a knowledgeable and experienced workforce enabled by an optimized network and effect technology.

At YRC we were also a direct participant in the postal delivery process by providing consolidation and de-consolidation services on behalf of the USPS.

In addition we were able to effectively deal with billions of dollars of unfunded liability in some of the multi-employer health and pension funds.

Beyond YRC and from a broader governance perspective, I have worked effectively for nearly 20 years on public boards in the healthcare, technology, real estate, and transportation industries.

I also have had the opportunity to experience postal service outside the US—five years in Europe, 3 in Canada, and a year in Japan gave me a view of different approaches to mail and package delivery.

Finally, and very importantly, even though the Postal Service has complex and significant challenges ahead, they also may have a sustainable competitive advantage—last mile /last touch density. No other competitor has that, and it is why UPS, FedEx and Amazon use the Postal Service on a regular and frequent basis to complete their deliveries. Although I do not have an in-depth knowledge of the Postal Service, I am anxious to learn as much as possible about the potential in this and other areas of advantage.

So, if I am fortunate enough to be confirmed, I will work with Congress, the Postal Regulatory Commission, and the Board of Governors, to oversee and guide management to obtain a sustainable future for this required and fundamentally important and great American asset—the United States Postal Service.

Thank you, and I look forward to 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>
Member, U.S. Postal Service Board of Governors	January 6, 2020

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
William	Don	Zollars	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 11513 Pawnee Circle		
City: Leawood	State: Kansas	Zip: 66211	City: Leawood	State: Kansas	Zip: 66211

<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)
None					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
<u>Year of Birth</u> (Do not include month and day.)	<u>Place of Birth</u>
1947	Minneapolis, Minnesota

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



<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Mary Beth	--	Zollars	

<i>Spouse's Other Names Used (current spouse only)</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)
Mary Beth		Alfano		X	8/1963 <input type="checkbox"/> Est	8/1994 <input type="checkbox"/> Est
Beth		Alfano		X	8/1963 <input type="checkbox"/> Est	8/1994 <input type="checkbox"/> Est

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Stephanie	Jean	Stroud	
Sara	Elizabeth	Conner	
Bradley	Don	Zollars	
Austin	Joseph	Zollars	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
University of Minnesota	University	<input type="checkbox"/> Est August 1965	<input type="checkbox"/> Est Present <input type="checkbox"/> June 1969	Bachelor of Arts	6/7/1969

### 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.

<u>Type of Employment</u> (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)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) "present" box if still employed)
Non-Government	Main Street Data	Director	Kansas City, Mo.	Est <input checked="" type="checkbox"/> August 2018	Present <input checked="" type="checkbox"/> Est <input type="checkbox"/>
Non-Government	C2FO	Director	Kansas City, Mo.	Est <input checked="" type="checkbox"/> August 2012	Present <input checked="" type="checkbox"/> Est <input type="checkbox"/>
Non-Government	Red Stone LLC.	Director	Kansas City, Mo.	Est <input checked="" type="checkbox"/> March 2013	Present <input checked="" type="checkbox"/> Est <input type="checkbox"/>
Non-Government	Cerner Corp.	Director	Kansas City, Mo.	Est <input checked="" type="checkbox"/> August 2005	Present <input checked="" type="checkbox"/> Est <input type="checkbox"/>
Non-Government	Prologis, Inc.	Director	San Francisco, Calif.	Est <input checked="" type="checkbox"/> August 2004	Present <input checked="" type="checkbox"/> Est <input type="checkbox"/>
Non-Government	Cigna Corp.	Director	Hartford, Conn.	Est <input checked="" type="checkbox"/> August 2005	Nov. 2019 Est <input type="checkbox"/>
Non-Government	YRC, Inc.	Chairman/CEO	Overland Park, Kans.	Est <input checked="" type="checkbox"/> Nov. 1996	June 2011 Est <input type="checkbox"/>
Non-Government	Ryder System Inc.	Senior Vice President	Miami, Fla.	Est <input checked="" type="checkbox"/> July 1994	Oct. 1996 Est <input checked="" type="checkbox"/>
Non-Government	Eastman Kodak Comp.	Managing Director	Various	Est <input checked="" type="checkbox"/> August 1969	July 1994 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)
None		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.

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.

None. 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.

Member of the academic honor society Phi Beta Kappa.

#### 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>
United Way of Kansas City	Dec. 2012 to Dec. 2016	Chairman

## 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</u> (if applicable)
None			

(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>
None			

(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>
Quinton Lucas, Mayor, Kansas City, Mo.	\$1,000	2019
Jeff Colyer, Governor, State of Kansas	\$2,000	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.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
None		

(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.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
None		

(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>
None*		

\* I have given informal remarks based on my time at Kodak, which I describe as the story of how the third most powerful brand in the world lost its way and ended in bankruptcy. Additionally, I made myself available to a speakers' bureau to give a more formal version of those remarks, but I have not actually given a paid speech as a result of the speakers' bureau listing. A video of the remarks can be found at this link: <https://premierespeakers.com/william-zollars/videos>.

### 9. Criminal History

Since (and including) your 18<sup>th</sup> 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 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>

(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>
02/07/2011	U.S. District Court, D. Kans.	Better v. YRC Worldwide, Inc.	Securities class action.	Following denial of class certification, plaintiff voluntarily dismissed complaint.

(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

**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 black ink, appearing to be 'L. R. J.', written over a horizontal line.

This 12 day of February, 2020

**REDACTED**UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

April 3, 2020

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

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of William D. Zollars, who has been nominated by President Trump for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

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.



The Honorable Ron Johnson  
Page 2

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: 2020.04.03 16:49:13  
-04'00'

David J. Apol  
General Counsel

Enclosures

**REDACTED**

**William D. Zollars**

3/31, 2020

Natalie A. Bonanno  
Designated Agency Ethics Official  
Associate General Counsel and Chief Ethics & Compliance Officer  
U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-1100

Dear Ms. Bonanno:

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 as a Member of the Board of Governors of the United States Postal Service.

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 continue to serve in the following positions:

- (1) Director, Cerner Corporation;
- (2) Director, Prologis, Inc.;
- (3) Director, C2FO;
- (4) Director, Redstone Logistics, LLC;
- (5) Director, Main Street Data Corporation; and
- (6) Trustee of revocable Family Trust.

In my role as Governor, 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 any of the above entities, 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 resigned from my position with Cigna Corporation in December 2019 but continue to hold equity in the company. 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 Cigna Corporation, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have been advised that I will likely serve on the Board of Governors for no more than 60 days in any period of 365 consecutive days. Accordingly, I understand that I may not, under 18 U.S.C. §§ 203(c)(1) and 205(c)(1), provide any representational services or act as agent or attorney for another in any particular matter involving specific parties in which I have participated personally and substantially as a government official. I also understand that I may not receive a share of any payment made for such representational services performed by another. I understand that additional requirements of 18 U.S.C. §§ 203(c)(2) and 205(c)(2) will apply to me if I serve for more than 60 days in any period of 365 consecutive days. In that event, I will comply with all applicable requirements, and I will consult your office if I have any questions about those requirements.

I will meet in person with you before my first meeting of the board 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 it is the Postal Service's position that an appearance of impropriety may be created by my holding any financial interests in its competitors, *i.e.*, companies that deliver mailable matter outside the U.S. mails (*e.g.*, Amazon, Federal Express, United Parcel Service, DHL, etc.). I agree that during my service as a member of the Board of Governors, I will not invest in any company that directly competes with the U.S. Postal Service (*e.g.*, Amazon, Federal Express, United Parcel Service, DHL, etc.).

Finally, I will recuse myself from participation on a case-by-case basis in any particular matter involving specific parties in which I determine that a reasonable person with knowledge of the relevant facts would question my impartiality in that matter, unless I am first authorized to participate, pursuant to 5 C.F.R. part 2635, subpart E.

Sincerely,



William D. Zollars

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of William Zollars to be  
Governor of the United States Postal Service**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to serve as a Governor of the United States Postal Service?  
  
No.
2. Were any conditions, express 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 Governor? 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. NO  
  
No.

**II. Background of the Nominee**

5. What specific background and experience affirmatively qualifies you to be a Governor of the Postal Service?  
  
I have extensive business experience, including logistics, networks and management of workforces represented by unions.
6. If confirmed, how would your experience in the private sector prepare you to serve as a Governor of the Postal Service?  
  
In addition to the above experience, I have more than 18 years of service on the boards of publicly traded companies.

7. Please describe:

a. Your leadership and management style.

Open, transparent, accessible, action oriented

b. Your experience managing personnel.

I have managed people over 40 years in three different Fortune 500 companies.

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

More than 60,000 at YRC Worldwide.

### **III. Role of a Governor of the United States Postal Service**

8. Please describe your view of the Postal Board of Governors' (Board) core mission and a Governor's role in achieving that mission.

The Board of Governors provides oversight of strategy development and execution. The Board also helps management insure effective and efficient performance. The Governors hire, and if necessary, fire, the Postmaster General, who has primary responsibility for running the Postal Service.

9. If confirmed, what specific contributions do you hope to make during your time on the Board?

My experience with logistics networks and leading large unionized organizations should be valuable.

10. What do you believe are the functions and responsibilities of an individual Governor? What in your training and experience demonstrates your qualifications to fulfill these functions and responsibilities?

The governance and oversight experience mentioned above will allow me to work effectively with other Governors to enable USPS performance.

11. What do you see as the main challenges facing the Postal Service? What do you believe should be the Board's top priorities in meeting those challenges?

The Postal Service needs to develop and execute a sustainable strategy to ensure a successful future for this great national asset. If confirmed, I will carefully study materials provided to the Board to develop an opinion on what the Board's priorities should be.

12. What do you believe should be the respective roles and functions of the Board and the Postal Service management? How do you believe the Board and management can best work together to meet the challenges facing the Postal Service?

The Board provides oversight and governance while management runs the organization and executes the strategy. The Governors and management must align on a strategy.

13. The Governors are chosen to represent the public interest generally. As a Governor, how will you plan to interact with various stakeholders interested in postal issues and how can you effectively represent their interests?

As a Governor I will seek out input from all stakeholders as part of forming my perspective. My various experiences have given me the opportunity to hone these skills.

14. The Postal Accountability and Enhancement Act of 2006 (PAEA) requires that by the end 2015, at least four members of the Board have experience managing an organization of 50,000 employees or more. What are your views on this requirement for appointment to the Board of Governors?

I think it is important to have experience running and leading large scale businesses.

#### IV. Policy Questions

##### *Postal Reform and Financial Issues*

15. Due to the projected economic effects of the COVID-19 pandemic on the Postal Service, the Board of Governors recently issued financial projections indicating that USPS expects its net operating loss to increase by \$22 billion dollars over the next 18 months and \$54 billion over the next decade.<sup>1</sup> However, USPS revenues for the first 7 weeks of the pandemic are down 2.78 percent.

- a. In your view, what should be the Board's role in equipping USPS to respond to economic instability resulting from the COVID-19 pandemic?

The Board should develop a plan working with management, Congress, and the Administration.

16. The Postal Service continues to experience volume and revenue losses. The Postal Service ended Fiscal Year (FY) 2019 with a net loss of \$8.8 billion, more than double FY 2018.

<sup>1</sup> United States Postal Service, *Postmaster General Statement on U.S. Postal Service Stimulus Needs* (2020), available at <https://federalnewsnetwork.com/agency-oversight/2020/04/postmaster-general-usps-will-run-out-of-cash-this-fiscal-year-without-more-pandemic-funding>.

- a. In your view, what is the Board's role in overseeing the Postal Service's efforts to improve its financial condition and to increase postal revenue and cut costs, while also meeting its universal service obligations and other statutory requirements?

The Board should work with all stakeholders as it develops a plan to improve its financial condition.

- b. How does the Board's role differ from the role of the Postal Regulatory Commission (PRC) or the role of Congress?

The Board needs to work with the PRC and Congress on a strategy that they will support. The Board, however, should drive the discussion.

17. Postal Service volumes and revenues associated with its letter mail and other market dominant products continue to decline, and First-Class Mail in particular is projected to significantly decline over the next decade.<sup>2</sup> At the same time, the volume of packages and its competitive products have grown significantly in recent years.

- a. How can the Postal Service remain viable as letter mail volume declines?

There is no easy answer. It is probably a combination of network optimization, product offerings, pricing, and cost management.

- b. How can the Postal Service take advantage of the growing popularity of e-commerce and package delivery?

By utilizing its unique and major competitive advantage of last mile touch.

- c. What new actions should the Postal Service take to maintain its viability and competitiveness in both its traditional lines of business and in potential growth areas?

I don't know enough give a specific answer. If confirmed, I will work hard to gain a better understanding of the Postal Service's traditional lines of business and potential growth areas.

- d. What do you believe are the proper limitations of the Postal Service with respect to competition with the private sector?

If confirmed, this an area I will want to explore in more detail.

- e. How proactive should the Board be in identifying areas for the Postal Service to cut costs quickly so that it can cover its operating expenses?

<sup>2</sup> See Office of the Inspector General, United States Postal Service, *RARC-WP-18-004, A New Reality: Correspondence Mail in the Digital Age* 14 (2018), available at: <https://www.uspsig.gov/sites/default/files/document-library-files/2018/RARC-WP-18-004.pdf>.

Addressing costs should be part of the Board's strategy development, focused on sustainability.

- f. What are the Board's role and responsibilities in identifying opportunities for the Postal Service to increase volume?

Again, this should be an integral part of the strategy development.

18. What are your views on the "universal service obligation"?

If confirmed, it will be important to understand how that term is defined in statute or otherwise. In general, I think it is important for the Postal Service to make its services available to all Americans, wherever they may live.

19. How do you view current service standards and delivery frequency with respect to the obligation for service to every American?

If confirmed, I assume I would be briefed on service standards and delivery frequency issues; at this time, however, I have an open mind.

20. The COVID-19 pandemic has highlighted USPS's vital role in the global supply chain, especially in regard to the delivery of pharmaceuticals and medical supplies within the United States.

- a. What can the Board do to protect and enhance USPS's delivery of these essential services?

The Board can ensure that the strategy includes this important point.

21. The Government Accountability Office (GAO) again included the Postal Service on its High-Risk List in 2019 because of its current financial condition. GAO re-included the Postal Service's financial condition on its high-risk list in 2009, after removing it in 2007.

- a. In your view, what should be the Postal Service's strategy for improving its financial condition and restructuring its business model to ensure its long-term viability, in addition to any measures the Postal Service has announced as part of its new business model?

Hopefully I can add some thoughts to the current strategy on network optimization, services, and labor management. At this time, I do not have enough data to critique the current strategy in detail.

- b. What short and long-term actions should Congress take to assist the Postal Service in achieving financial viability?

Congress will need to support the comprehensive strategy through appropriate legislation to ensure success.

22. In its FY2019 annual financial report, USPS estimated its future cash obligations to be approximately \$180.1 billion.<sup>3</sup> How do you believe the Postal Service should address its unfunded liabilities?

I would need to know more about where those liabilities exist (pension, benefits, etc.) and what's driving them in order to effectively address this question. If confirmed, I will carefully study the Postal Service's financial situation in order to inform my judgment on financial matters before the Board.

23. In recent years, postal management has indicated that the Postal Service has been financially unable to make the investments necessary to replace its aging vehicle fleet or make other necessary capital investments in order to remain viable and competitive in the coming years. What steps do you believe the Board should take to prioritize key capital investments and allocate the resources necessary to make them?

A capital plan needs to be developed as a key part of the overall strategy.

*Postal Rates and New Products*

24. One of the core principles of 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 PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 39 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, specifically the requirement that the cap did not allow for long-term financial stability of the Postal Service or for the Postal service to maintain high quality service standards.

- a. Do you believe the inflation-based rate cap has met the objectives and factors laid out in 39 U.S.C. § 3622?

My understanding is that the PRC has concluded that the current price cap does not, and it is in a better position to make that determination than I am at this time.

- b. Which of these objectives or factors, if any, do you believe should be weighted above others?

Because the factors are in a statute, Congress should determine the relative weight for each factor if the factors should be weighted differently.

<sup>3</sup> United States Postal Service, *2019 Report on Form 10-K* 43 (2019), available at: <https://about.usps.com/what/financials/10k-reports/fy2019.pdf>.

25. The PRC also recently proposed adjusting the rate cap to allow the Postal Service to raise prices above inflation on market dominant products. 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 volumes?

This question cannot be addressed in isolation. It must be part of a broader discussion on product mix and contemporaneous pricing strategies.

26. The Postal Service has requested legislation authorizing greater flexibility in offering non-postal products.
- a. Under what circumstances should the Postal Service be permitted to offer non-postal products?

The Postal Service needs to be innovative without compromising the core mission.

- b. To what extent do you believe the Postal Service should rely on the provision of non-postal products in its efforts to generate additional revenue?

If confirmed, this is an issue that I would study in greater detail than I have done so to date.

- c. How would you ensure the Postal Services does not compete unfairly with the private sector in selling non-postal products?

I would need more information and a better understanding of what non-postal products were being considered.

27. How can the Postal Service take better advantage of its current authorities to make the mail more appealing and valuable to customers and attract additional mail volume? Leverage last mile capability more effectively

#### *Facility Closings and Service Changes*

28. What role should the Board have in decisions to realign postal retail and mail processing networks, including decisions to close specific facilities?

The decision whether to close or consolidate facilities generally should be a part of the discussion of an overall strategy.

29. How can the Board ensure the Postal Service communicates with its customers and employees so that they are aware of updated information on the consolidation process, as it becomes available?

A communication strategy should be part of any strategy executed by management.



30. The Postal Service is required to deliver mail to every address in the country, creating the need for retail postal locations in low-density counties and towns. How would you balance the Postal Service's universal service obligation and the need for rural counties to have reasonable access to the postal services when looking at ways to improve the Postal Service's financial condition?

If confirmed, I would support management efforts to optimize the network in a way that is supported by key stakeholders.

31. According to GAO, approximately 41 percent of postal revenue comes from alternate retail channels such as the Postal Service website, automated postal centers, and contract postal units. Do you believe the Postal Service should increase the use of alternate retail channels, and if so, how should this be accomplished?

All retail channel innovations should be on the table for discussion.

32. The Postal Service has, in the past, proposed both the elimination of Saturday delivery of some classes of mail and has nearly eliminated the overnight service standard.

- a. What is your opinion of the Postal Service's proposals to eliminate Saturday delivery of some classes of mail and lower certain service standards?

I am not aware of any current proposals as described; if such proposals were made in the future, there would be a variety of factors that would have to be considered. If confirmed, I would give any such proposals due consideration, but I do not have enough information at this time to form an opinion.

- b. What steps should the Postal Service take to ensure that any service changes it makes do not disproportionately harm any subset of postal customers and are consistent with the Postal Service's universal service obligation?

I do not have enough information at this time to form an opinion on this hypothetical question.

- c. How do you believe that changes to service affect customers' attitudes towards and use of the Postal Service?

This is a difficult question to address in the abstract. How customers react to a change will depend on the changes and the associated costs and benefits.

- d. How should the Postal Service balance the potential cost savings gained or potential revenue lost from changing service?

Any change in service will have costs and benefits; those costs and benefits should be part of a much larger discussion about making the Postal Service financially sustainable.

#### *Workforce-Related Issues*

33. Since 1999, when the workforce peaked at over 900,000 employees, the Postal Service has been reducing its workforce, including through hiring freezes, early retirements, incentive payments for some targeted attrition, and other ways. Does the Postal Service have sufficient flexibility to adjust its workforce to its operational needs? If not, what additional flexibility is needed?

To answer this question adequately, I would need to have a much better understanding of the collective bargaining agreements than I do now. If confirmed, I would endeavor to understand those contracts better.

34. As an increasing number of postal executives, managers, and supervisors are eligible to retire, how can the Board work with postal management to address these challenging succession, continuity, and associated cost issues?

Personnel planning is another key component of a comprehensive strategy,

35. In recent years, USPS has implemented performance-based compensation systems for postal executives, as well as managers and supervisors. The success of these systems depends on the credibility of the performance measures. How can the Board ensure the credibility of the Postal Service's performance-based compensation systems? Do you have an opinion about performance-based compensation?

Performance based compensation systems can be very effective with right metrics and destructive with the wrong metrics. If confirmed, I would have the opportunity to take a close look at those metrics.

36. Please describe the kind of labor-management relationship you believe is most desirable at the Postal Service.

Both management and labor should be focused on the same objectives as defined by a well thought out and accepted strategy.

#### *Accountability*

37. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from Members of Congress?

It would depend on the situation, but in general I believe the Postal Service should be as transparent as possible with Members of Congress.

38. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from the Postal Service Office of Inspector General (USPS OIG)? What do you believe should be the proper response of the Board to recommendations made by the USPS OIG to Postal Service management?

It would depend on the situation, but the Board should ensure that management is timely responding to information requests and acting on all recommendations from the OIG or has adequately explained why it is not doing so.

39. What do you believe should be the proper response of the Board if Postal Service management is not responsive to requests for information from the GAO? What do you believe should be the proper response of the Board to recommendations made by the GAO to Postal Service management?

It would depend on the situation, but, as explained above, the Board should ensure that management is timely responding to information requests and acting on all recommendations from the GAO or has adequately explained why it is not doing so.

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

- a. During your career in the federal government, how did you address whistleblower complaints?

N/A

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

I believe in transparency and confidentiality but have no reason to believe that current policies do not encourage employees to bring constructive suggestions forward without the fear of reprisal.

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

Yes.

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

Yes.

**V. Relations with Congress**

41. 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.

42. 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.

43. 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**

44. Are these answers your own?

Yes.

Have you consulted with Postal Service management, employees, or any other interested parties? If so, please indicate which entities.

I provided a draft responses to the Postal Service and received comments back.

**Minority Supplemental Pre-Hearing Questionnaire  
For the Nomination of William Zollars to be  
Governor of the United States Postal Service**

**I. Nomination Process and Conflicts of Interest**

1. Have you sought advice from any employee or official of the Board of Governors of the United States Postal Service in preparation for your nomination process and potential role? If so, please describe the advice you were given.

No.

**II. Background of Nominee**

2. Why are you interested in serving as a Governor of the United States Postal Service?

I believe I can make a contribution and serve my county.

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

Openness, integrity, transparency, and communication.

4. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

Sticking with marginal performers. I should have replaced those people more quickly.

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

I repeatedly tried to get Kodak leaders to address the digital imaging threat. Obviously, I was not successful.

6. Do you seek out dissenting views and encourage constructive critical dialogue with colleagues? Please describe examples of times in your career when you have done so.

I have an open/transparent style and appreciate alternate views. I have sought out dissenting views and encouraged constructive critical dialogue with colleagues throughout my career.

7. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of your agency or organization.

Please see Kodak example, above.

8. Please describe your experience negotiating the needs and interests of diverse stakeholders and producing acceptable outcomes for the parties involved.
- I led YRC to record years of revenue and profit by incorporating input from Board, union and nonunion employees, investors, and community stakeholders.

9. Please describe your experience managing in times of crisis. How have you worked to resolve crises while maintaining transparency and open communication with stakeholders?

I managed YRC through the Great Recession without losing the business.

### **III. Role of a Governor of the United States Postal Service**

10. Please describe your view of the core mission of the Board of Governors (Board) of the United States Postal Service. In what ways is it distinct from the role of corporate and nonprofit boards?

The primary differences are around legal obligations (universal service obligation) and Congressional and PRC oversight.

11. The Postal Service is “an independent establishment of the executive branch.” Please describe your understanding of the statutory requirements related to the independence of the Postal Service. If confirmed, how will you ensure the Postal Service maintains its independence?

If confirmed, I would work to gain a better understanding of the statutory requirements related to the Postal Service’s independence.

12. Current law provides that the Board of Governors shall include nine Governors, no more than five of whom may be adherents of the same political party. The current Board includes four Governors, three of whom are adherents of the same political party. Please describe your views on the role of bipartisanship in making decisions concerning the Postal Service.

The Postal Service is a nonpartisan institution, and it is very important for the Board to work in a bipartisan manner, particularly in light of the need for Congressional support from both parties.

13. If confirmed, how will you work to promote public transparency and oversight of the Postal Service’s operations and financial performance, as well as its management actions and overall integrity?

I will support all efforts to promote transparency, to the extent appropriate, and integrity in management’s actions.

#### IV. Policy Questions

##### *Postal Reform and Financial Issues*

14. Some view the Postal Service as “a business” to serve paying customers; others see it as a government service that must continue to be available to all citizens regardless of financial profitability. Which view should take priority?

Neither, as it needs to be a combination of both – a viable, sustainable organization that delivers on its public mission.

15. The Postal Reorganization Act of 1970 (39 USC 101) provides that “The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.”

- a. How do you interpret this mandate of public service?

This defines the statutory aspiration for the Postal Service, which I support.

- b. In considering reforms to the Postal Service due to its financial condition, how would you ensure that any changes do not impair the overall value of this service to the people or otherwise prevent the Postal Service from fulfilling its statutory mandates? On April 8, 2020, the Board unanimously approved financial projections indicating the Postal Service would lose \$13 billion in revenues in Fiscal Year 2020 due to the impacts of the COVID-19 pandemic and the economic downturn, with long-term losses totaling \$55 billion. The Board also unanimously approved legislative requests based on these projections, asking that Congress provide emergency appropriations and debt relief to offset these losses. How will you consider the long-term effects of this crisis in making financial and legislative decisions regarding the Postal Service?

To answer these questions, I would need deeper understanding of the Board’s strategy, which, if confirmed, I will endeavor to obtain as rapidly as possible.

16. Like many government entities and businesses, the Postal Service relies to some extent on debt financing. Statutory authorities allow the Postal Service to borrow from the Treasury Department, while also regulating the relationship between Treasury and the Postal Service and reserving for the Board the power to “direct and control the expenditures and review the practices and policies of the Postal Service.”

- a. What do you believe is the proper relationship between the Postal Service and the Treasury Department?
- b. Under what circumstances, if any, would the imposition of borrowing conditions by the Treasury Department conflict with the Board's authority to manage Postal Service operations?
- c. If confirmed, how would you ensure the Postal Service is able to borrow from the Treasury Department while maintaining its authority to direct and control Postal Service operations?

While I do not have any knowledge of past or current negotiations, I would expect that any terms and conditions would have to be mutually agreed. If confirmed, I would want the Postal Service to achieve favorable financing arrangements on the most advantageous terms possible whether with the Treasury Department or any other lender. I do not believe that the Board would have to give up any of its authority to do so.

17. The Postal Accountability and Enhancement Act of 2006 established a goal for the Postal Service to prefund 100 percent of its future retiree health benefits liability. Are you aware of any U.S. company that prefunds 100 percent of any retiree benefit liability? Do you believe this is a sound business practice? Please explain.

I am not aware of any such company, but whether it is a sound business practice depends on the circumstances.

18. Rural post offices and postal services often play an outsized role in a local community's economy. When considering policy and operational changes, should the Postal Service take into account rural-specific factors? If so, which ones?

Yes, rural-specific factors should be considered, but at this time I do not have enough information regarding what those factors are or the relative importance of the factors.

#### *Postal Rates and New Products*

19. Since 2007, the Postal Service's rate increases on mail have been limited by a cap set at the rate of inflation. Further, the Postal Service is barred from entering new lines of business unrelated to its mail delivery function. Finally, while it has the freedom to set package and parcel rates, the Postal Service faces competition in that segment from private carriers. If confirmed, how would you balance these constraints with the objective of ensuring postal operations are self-sustaining?

The Postal Service needs a comprehensive strategy regarding its product mix and pricing. It may have one, but I am not aware of the details at this time.



20. How would you work with Postal Service management and the Postal Regulatory Commission (PRC) to ensure that any rate changes are sensitive to the needs of Postal Service customers and stakeholders?

See response to question 19.

21. Competitive products offered by the Postal Service, such as package delivery, must cover their costs and contribute a fair share to the Postal Service's overhead, or institutional costs. The PRC has determined that competitive products are currently meeting this requirement. Changes to the pricing of Postal Service products, including competitive products, can affect the affordability and accessibility of these products across the country, particularly in rural areas. If confirmed, how would you work to ensure these products maintain fair prices that do not limit consumers' access, while continuing to meet their costs?

See response to question 19.

22. The Postal Service faces several challenges in the area of ensuring fair and affordable rates, including the PRC's ongoing 10-year rate review. What do you believe the Board's role should be in meeting such challenges, and if confirmed, how would you prepare to fulfill this role?

The Postal Service's comprehensive strategy must address these issues in concert with PRC and Congress. If confirmed, I would expect to be briefed by management on pricing strategy.

#### *Service and Facilities*

23. How can the Board ensure the Postal Service focuses on strong service performance, so that mail delivery is both protected and improved for all constituencies, including rural communities?

The Postal Service must optimize its network and adjust its product portfolio to achieve this objective.

24. Over the past several years, the Postal Service reduced delivery standards in order to consolidate a number of mail processing facilities. At the time, some argued that the savings achieved by diminishing the speed of delivery would outweigh the cost to the perceived quality of the product. What are your views on balancing the need to provide a quality product for all Americans versus a desire to lower costs?

Network optimization should balance service quality and cost.

25. America's population and the total number of delivery addresses continues to grow, but mail volumes are decreasing. That puts the Postal Service in the difficult position of expanding its delivery network despite shrinking demand. What role should the Board play in decisions to adjust postal retail and mail processing networks, including decisions to close specific facilities?

The Board should be involved in developing a comprehensive strategy that addresses service, quality and cost.

26. When considering changes that could significantly affect the level of service available to customers, how should the Board measure and consider the consequences of such proposals, including their impacts on quality of service, service to rural communities, customer usage of the Postal Service, and mail volume?

The Board should consider measurable, accurate metrics and analyses.

#### *The Postal Workforce*

27. The Board's long-term strategic and financial plans for the Postal Service can help shape its decisions about workforce needs and the composition of the postal workforce. What do you view as the Postal Service's future workforce needs, in order to fulfill its universal service obligation, serve all Americans, and provide fair wages and benefits?

An employee development plan is a fundamental aspect of a comprehensive strategy.

28. During the COVID-19 pandemic, the Postal Service has been deemed an essential service for purposes of compliance with state or municipality shelter-in-place orders. Likewise, postal employees—who provide critical deliveries to individuals and businesses—have been recognized as essential workers.

- a. How should the Postal Service account for the fact that its employees provide every community with essential services when considering financial plans or other decisions that could affect the Postal Service workforce?

Employees are essential to provide the products and services offered by the Postal Service.

- b. If confirmed, how will you ensure the Postal Service workforce can continue to provide essential services to all communities?

The Postal Service needs a flexible, responsive workforce, and I will advocate for measures that support such a workforce.

29. By law, Postal Service employees can collectively bargain over compensation, benefits, and other conditions of employment. In your view, what role does collective bargaining play in productive workplaces, and in the Postal Service, in particular?

As a Governor, I would work to ensure that all employees and their representatives understand and support the Postal Service's strategy. This is absolutely essential for success. In my experience, unions and their leadership can help find solutions. The legally mandated collective bargaining process is only a part of the overall relationship; I would do my best to encourage an overall healthy relationship between management and the unions.

30. The Postal Service is having difficulty recruiting younger workers. How should the Board approach this problem, in conjunction with management, to improve recruiting of younger workers?

An effective message to attract and retain the best employees should be a part of the Postal Service's comprehensive strategy.

#### *Oversight*

31. The Board's meetings are open to the public unless the Board votes to close all or part of a meeting in line with exemptions permitted by the Government in the Sunshine Act.

- a. What do you believe is the proper balance between open and closed meetings?

Whether a meeting should be closed or open depends on the agenda. A meeting should be open whenever commercially sensitive matters, personnel matters, or other non-public information is not on the agenda.

- b. If confirmed, how would you ensure that the public has appropriate access to information regarding what occurred during closed meetings?

The minutes of board meetings should be available to the public.

#### **V. Accountability**

32. If confirmed, do you pledge to consider thoughtfully recommendations made by the USPS OIG, Office of Government Ethics, the Office of Special Counsel or the GAO, and implement those that would improve the Postal Service's functions, operations or accountability?

Yes.

#### **VI. 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 agree without reservation to reply to any reasonable request for information from members of Congress?  
  
Yes.
36. If confirmed, do you commit to take all reasonable steps to ensure that the Postal Service complies with deadlines established for requested information?  
  
Yes.
37. 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.
38. If confirmed, will you ensure that the Postal Service will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the GAO and the Congressional Research Service?  
  
Yes.
39. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations that improve the Postal Service's operations and effectiveness?  
  
Yes.
40. If confirmed, will you direct the Postal Service to fully and promptly respond to Freedom of Information Act requests submitted by the American people?  
  
Yes.
41. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?  
  
Yes.

**VII. Assistance**

42. Are these answers completely your own? If not, who has provided you with assistance?

Yes.

43. Have you consulted with the Postal Service management or any other interested parties? If so, please indicate which entities.

See answer to Question 44, above.

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

  
(Signature)

This 18<sup>th</sup> day of May, 2020

**Senator Rand Paul  
Post-Hearing Questions for the Record  
Submitted to William Zollars**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

*On assessing the USPS' unfunded liabilities:*

I believe the Committee would benefit from regular updates on the financial condition of the USPS, including “decomposing” the agency’s long-term liabilities into their respective elements and developing a plan to improve the management of those liabilities.

1. Would you be supportive of efforts by the USPS Board of Governors to provide regular updates on the financial condition of the USPS to the Committee?

Yes, I would support efforts to provide regular and transparent updates on USPS’s financial condition to Congress.

*On overhead and labor costs:*

The USPS’s “costs are heavily concentrated in wages and benefits for both current employees and retirees.”<sup>1</sup>

1. In your opinion, what is the role of the USPS Board of Governors in reviewing the percentage of operating expenses that are attributable to labor?

Based on my background in logistics, I know that an accurate analysis of cost and cost allocation is essential for any successful business plan. If confirmed, I would look forward to a thorough study and full understanding of USPS costs, cost allocation, and, in particular, its expense attributable to labor.

2. Would you be supportive of efforts by the USPS Board of Governors to review and conduct comparative analyses of the labor costs of the USPS relative to both its competitors as well as other public enterprises (such as transit systems, foreign posts, and quasi-government agencies such as the Tennessee Valley Authority)?

Yes, if confirmed, I would support a thorough analysis, which would be essential to understand the challenges and best path forward for USPS.

*On pricing and organizational transparency:*

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<sup>1</sup> <http://about.usps.com/who-we-are/financials/financial-conditions-results-reports/fy2018-q1.pdf>

1. Would you be supportive of efforts by the USPS Board of Governors to review how USPS accounts for and allocates its costs among its various lines of business? Specifically, would you support analyses designed to determine whether and to what degree USPS “monopoly” products may be cross-subsidizing its competitive (parcel delivery) products? Would you support making the results of these analyses available to members of Congress and the public?

As mentioned above, if confirmed, I would believe it would be absolutely necessary for the Board to have a thorough understanding of USPS costs and cost allocations. This a key area we must understand if we are to build a plan for success. This analysis needs to be shared as completely as is possible and prudent with all stakeholders in order to gain the alignment we need on a common strategy.

2. Where appropriate and if necessary, would you be willing to assist members of Congress in seeking additional information from the U.S. Postal Service on behalf of their constituents?

Yes, as much as is possible and appropriate, I would assist members of Congress and their constituents in seeking information from USPS.

**Ranking Member Gary C. Peters  
Post-Hearing Questions for the Record  
Submitted to William Zollars**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. Financial projections unanimously approved by the Board of Governors in April 2020 indicated the Postal Service would lose \$13 billion in revenues in Fiscal Year 2020 due to the impacts of COVID-19 and the economic downturn, with long-term losses totaling \$55 billion. Because of COVID-19, the Board projects that the Postal Service will face insolvency by early Fiscal Year 2021. The Board has unanimously requested that Congress provide emergency appropriations and debt relief to offset these losses. **How do you believe your work as a Governor will change due to this crisis, and how would you approach the current financial situation?**

The ongoing COVID-19 pandemic and the financial losses it will likely entail for USPS requires an even greater sense of urgency in developing a plan for a sustainable USPS that can continue to serve the American people.

2. The CARES Act authorized the Postal Service to borrow up to \$10 billion from Treasury. Our Committee is hearing reports that indicate Treasury will attempt to impose improper conditions on this loan, including giving the Treasury Department approval or decision-making authority over how the Postal Service manages its finances and its product prices. I cannot stress enough that these types of conditions are against the law and absolutely unacceptable. The statutes governing the Postal Service give the Board of Governors exclusive authority over the Postal Service's finances and operations – and clearly outline its fiduciary independence.
  - a. Are you committed to the fiduciary independence of the Postal Service and the Board of Governors? Please answer yes or no.

Yes.
  - b. If confirmed, how would you react to borrowing conditions offered by Treasury that encroached on the Board's statutory authorities?

There should be no encroachment of statutory authority.
  - c. Will you commit to carefully studying the Board's statutory authorities and exercising your fiduciary duty accordingly?

Yes.



3. The Postal Service is “an independent establishment of the executive branch” and its establishing statutes include multiple safeguards to ensure the Postal Service’s independence from political influence by the Executive and other entities.

- a. If the President or an executive branch agency urged you to adopt a particular policy for the Postal Service, how would you respond?

If confirmed, as a Governor I would want to hear from all stakeholders and would consider all possible viewpoints when approaching the problems confronting USPS, but I am committed to maintaining my independence and would serve the public interest generally when considering any particular policy.

- b. What specific measures would you take to safeguard against undue influence from other entities?

I have a 20-year history of performing as an independent director in a variety of organizations and environments, and if I faced undue or inappropriate influence, I would resign my position rather than give up that independence.

**Senator Maggie Hassan  
Post-Hearing Questions for the Record  
Submitted to William Zollars**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. As of May 21, 2020, at least 126 federal employees have died due to COVID-19 and 60 of those employees were Postal workers.<sup>1</sup> The United States Postal Service (USPS) has had twice as many employee deaths as any other federal agency.<sup>2</sup> The Postal Service is of vital importance to the American people, and the men and women of the postal workforce are now risking their health to serve their fellow Americans during the ongoing crisis. We must find real solutions for keeping them safe from this deadly virus as they fulfill their critical mission.

During the hearing I asked you about the role the USPS Board of Governors plays in protecting the postal workforce during the ongoing COVID-19 pandemic and *how* to prioritize worker health and safety. While I am encouraged that you agreed that prioritizing the health of postal workers is of great importance, I would like you to elaborate on your answers.

- a. If confirmed to the USPS Board of Governors, what actions will you take to keep postal workers safe? Please provide concrete examples.

The current situation requires urgent and effective action, and it is the Board's responsibility to ensure that management has taken all necessary and appropriate actions to protect employees and the American public. If confirmed, it would be my role to ensure that management has consulted with and is being led by expert guidance, including consultations with the Center for Disease Control, other federal health agencies, and state and local health authorities. I would expect operational plans that fully account for the necessary personal protective equipment, testing, effective tracking of those impacted, and even engineering details on how we can achieve social distancing, wherever appropriate. While management has the day-to-day responsibility to safely and effectively run postal operations, it is the Board's responsibility to ensure that they are doing everything possible to efficiently protect our most valuable asset—the front-line employees.

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<sup>1</sup> Eric Katz, *These Federal Agencies Have Seen the Most COVID-19 Deaths*, Government Executive (May 21, 2020).

<sup>2</sup> *Ibid.*

**Senator Kamala Harris  
Post-Hearing Questions for the Record  
Submitted to William Zollars**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

Privatization

Critics of the U.S. Postal Service (USPS) have used its financial challenges as pretense to encourage privatization, including of market-dominant postal products, rather than looking for creative ways to increase revenue or decrease long-term liabilities.

1. If confirmed, would you seek to privatize any portion of the USPS?

It is my understanding that, as presently authorized in statute, USPS is an independent agency of the Executive Branch, and so, any changes would require congressional action and a change in law. Fundamentally changing the way USPS is structured is outside the purview of the Board, and if confirmed, I would look to Congress and the law on these matters.

2. Do you believe that private contractors instead of career public servants should maintain Postal Service operations?

The vast majority of USPS activities should be handled by dedicated USPS employees, and I would expect contractors to only play a supporting role, where appropriate.

Interactions from Treasury Department

You said during your nomination hearing that the USPS should work with all stakeholders as it develops a plan to improve its financial conditions.

3. Do you consider the Treasury Department one of those stakeholders?

Given that Congress and statute has made USPS dependent on the Treasury Department for its business borrowing, the Treasury Department is a necessary stakeholder.

4. Did you talk to any Treasury official about your nomination to be a USPS Governor?

Yes.

- a. If yes, who did you speak with and what did you talk about during this conversation?

I spoke with Justin Muzinich, Deputy Secretary of the Treasury, who inquired about whether I had an interest in becoming a USPS Governor. I responded affirmatively, saying it would give me another opportunity to serve the country in an important way and that my logistics and network background could be helpful.

- b. If yes, did you and the Treasury official talk about any of the following:
  - i. Parcel delivery rates?

No.

- ii. Any specific Negotiated Service Agreement? If yes, which one.

No.

- iii. Collectively bargained payment or benefits?

No.

- iv. Any USPS Board of Governor hiring decisions, including the appointment of the Deputy Postmaster General?

No.

- 5. Did you talk to anyone at the USPS about your nomination or the role of a USPS Governor?

I spoke with Robert Duncan, Board Chairman, about the role and with USPS staff about the confirmation process.

According to Washington Post reporting, the Treasury Department is trying to use the \$10 Billion in borrowing authority in the CARES Act to gain greater control over USPS operations.

- 6. Do you think it is appropriate for the Treasury Department to use this leverage to do any of the following:
  - a. Increase rates on parcel delivery?

No.

- b. Increase rates for specific Negotiated Service Agreements?

No.

- c. Extract concessions from unions representing postal employees?

No.

- d. Review hiring decisions for USPS senior executives, including the Postmaster General and the Deputy Postmaster General?

No.

7. As a USPS Governor, would you delegate any of the USPS Board of Governors' statutory responsibilities to the Treasury Department?

No.

#### Prefunding Retiree Health Benefits

8. In what circumstance could you imagine prefunding 100% of retiree benefit liability a sound business practice?

Though I look forward to learning more about USPS's various retiree liabilities—pension and health care—I need more background to provide a definitive answer. As a general business principle, however, completely prefunding a liability provides an ironclad assurance to employees that their promised benefits will be there, regardless of future performance. That must be balanced, on the other hand, with the needs of the company for capital investment, to support current operations, or to take advantage of other business opportunities.

#### Deputy Postmaster General Selection

The incoming Postmaster General is the first in nearly twenty years to not be a career postal service employee. On April 30, USPS Governor David Williams, who was a former USPS IG, resigned reportedly in protest. Deputy Postmaster General Ronald Stroman is set to retire on June 1. With these three resignations, no one on the USPS BOG will have significant USPS operational experience.

One of the duties of the Board of Governors is to appoint, with the Postmaster General, a Deputy Postmaster General. Depending on when you are confirmed, you may be part of this decision.

9. Do you consider having significant operational experience a requirement for the new Deputy Postmaster General?

I believe the ideal Deputy Postmaster General would have broad and demonstrable leadership skills, a variety of operational experiences, and a track record of success.

10. How do you intend to supplement the lack of career postal service experience in postal operations on the USPS BOG?

As I have described in my pre-hearing questionnaires and during my confirmation hearing, my background leading a national, unionized, logistics company of more than 50,000 associates—that actually provided consolidation and deconsolidation services to the USPS—should help. Though I have not worked for USPS, my experience leading a profitable private-sector freight company may provide a valuable perspective. Additionally, as a resident of Kansas, I believe I can appreciate the vital role the Postal Service plays in rural America.

#### Federal Workforce

The President's FY21 budget proposes drastic changes to the Federal Employees Retirement System (FERS) that would decrease work pay and lower pension benefits, by increasing employee FERS contributions, basing annuities on workers' highest five years instead of three years, eliminating special retirement annuity supplements, and slashing cost-of-living adjustments. These proposals would affect the Postal Service's employees.

11. If confirmed, do you plan to advocate for the President's proposed cuts to federal employee benefits?

No. Though USPS employees participate in FERS, it would be outside of the scope of my responsibilities as a Governor, if confirmed, to interject in a debate best left to Congress.

#### Providing Financial Services

On January 27, 2014, the USPS Inspector General published a White Paper arguing that expanding financial services offerings could benefit not just the Postal Service but also the financial services community and the American public.

12. Have you reviewed the USPS Inspector General White Paper entitled, "Providing Non-Bank Financial Services for the Underserved?"

No.

- a. If you have not, will you commit to reading the White Paper?

Yes.

13. If confirmed, would you consider having the USPS offer non-bank financial services as a way to augment Postal Service revenue? If not, why not?

I don't have enough postal-specific information to offer a thoughtful answer to this question, but as a general business principle, successful companies should always be looking for new ways to profitably meet their customers' needs.

14. Could offering these services advance economic justice for non-banked and under-banked Americans who currently spend tens of billions each year on fees for alternative financial services such as payday loans?

Again, without the benefit of market data or an understanding of the particular constraints or prohibitions that may affect the USPS specifically, it would be premature to offer an answer. Whether it would be possible to offer certain services, and what impact these might have, would require careful analysis.

Opening Statement of Mark A. Robbins  
 Nominee to be an Associate Judge of the Superior Court of the District of Columbia  
 June 3, 2020

Chairman Johnson, Ranking Member Peters and members of the Committee:

I appreciate this opportunity to present my qualifications and respond to your questions regarding my nomination to be an Associate Judge on the Superior Court of the District of Columbia. I want to thank the President for the honor and privilege of his nomination, and the District of Columbia Judicial Nomination Commission (JNC) for its recommendation to the President. If confirmed, I pledge to prove my worthiness of this appointment by carrying out my responsibilities with the highest degree of professionalism and integrity.

This is the second time I have been honored to have a nomination considered by this Committee. The last time was in March, 2012, when I was nominated to be a Member of the U.S. Merit Systems Protection Board (MSPB). In fact, I have a long professional history of productive and successful interaction with this Committee, its members and staff – both majority and minority as those roles have shifted over the years – since its inception in present form in 2005, and before that with the Senate Government Affairs Committee going back to 2001.

In recommending candidates for nomination to the Superior Court, the JNC notes that “[t]here is no one, single professional path to the local courts. Judges in the District of Columbia come from a wide variety of professional, social, economic, and educational backgrounds. The JNC evaluates each applicant on the basis of merit[.]” To that point, I have taken an interesting but less conventional route to this nomination. Over the course of my 30 year legal career I have been a commercial civil litigation attorney with a broad variety of experience at the state and Federal trial court level at both law firms and as in-house counsel; a Presidentially-nominated, Senate-confirmed member of a quasi-judicial independent agency where I adjudicated over 4,000 actions; a three-time General Counsel at two Federal agencies; an international Rule of Law Advisor managing the development and modernization of an Iraqi provincial legal and justice system; a member of the White House staff in two administrations; and a Legislative Assistant to two Members of the U.S. House of Representatives covering justice and judicial issues. Serving as a judge on the D.C. Superior Court would be the honor of my lifetime and the crowning achievement of my career.

I first moved from Los Angeles to the District in 1979 to attend the George Washington University. I earned both my B.A. and J.D. from GW, the latter attending the night division while working full time at the White House from 1984 to 1988. Upon graduation from law school in 1988, I was admitted to both the California and D.C. bars and returned to Los Angeles to assume the private practice of law. I returned to D.C. in 2000 and have remained a resident of the District ever since.

I am presently serving as General Counsel of the U.S. Office of Personnel Management (OPM), a position I also held from 2001 to 2006. Prior to my current position, as I mentioned earlier, I served as a Member of the MSPB, having been nominated by President Obama and confirmed by the U.S. Senate in 2012 for a statutory seven-year term. In 2017, President Trump designated me Vice Chairman and acting Chairman. And in December, 2018, pursuant to 5 U.S.C. sec. 1201,



President Trump directed me to serve concurrently as acting Chairman of the MSPB and General Counsel of OPM, a dual position I held until my MSPB term ended in 2019.

As this Committee well knows, the MSPB, is a quasi-judicial, Article I tribunal which, pursuant to title 5 of the U.S. Code, adjudicates adverse actions by departments and agencies against Federal employees and certain claims by Federal employees and beneficiaries against the Federal government. The Board sits in lieu of a U.S. District Court. Its decisions are appealable, generally, to the U.S. Court of Appeals for the Federal Circuit. The three Presidentially-appointed, Senate-confirmed members sit as an appellate body to review the decisions of approximately 65 administrative law judges and administrative judges. During my term I participated in over 4,000 opinions. The total would have been closer to 5,200 but for the lack of quorum during the final two years of my service.

In addition to OPM, I have also served as General Counsel at the U.S. Election Assistance Commission and as the first executive director of the White House Privacy and Civil Liberties Oversight Board, now an independent agency.

From January, 2008 to August, 2009, I served as the State Department's Senior Rule of Law advisor in the Babil Provincial Reconstruction Team (PRT) in Al-Hillah, Iraq. Co-located with and supported by the Army's 172d Infantry Brigade, I was responsible for the development, implementation and coordination of U.S.-Iraqi reconstruction policy for provincial judicial, law enforcement, correctional and legal institutions. My responsibilities comprised elements of law and policy operations, and significant general contractor work. Among other things, I oversaw the development of a comprehensive judicial education program for local judges, lawyers and legal institutions, with the procurement, distribution of and training on computers, educational software, Arabic legal texts and requisite training. Construction projects included completing a new local courthouse; modernizing the local police academy, including installing a new forensics/crime lab; building a new local prison; renovating the Babil Judicial Union (bar association) headquarters; securing and managing two-year funding assistance for the operations of Al Meezan Legal Newspaper, the only independent legal journal in Iraq at that time; modernizing the Babil University Law School library and 12 regional court house law libraries; and security enhancements for provincial judges and their staff. For these accomplishments I received the U.S. Army Commander's Award for Meritorious Civilian Service, and two State Department Ambassador's Meritorious Honor Awards.

My life-long commitment to public service was supplemented by the private practice of law in Los Angeles from 1988 to 2000. I was a civil commercial litigator with a practice in both Federal and California state court. I worked at law firms, and in-house for a major corporation. Private practice afforded opportunities to work on a wide variety of issues. The career-enhancing advantage to being a litigation attorney is that once one learns the skill sets necessary to litigate, one is then free to learn a diverse set of subject matter issues with which to apply the litigation skills. I am a quick learner and enjoy the challenge of learning new issues.

Whether at law firms or in-house, I was fortunate to work for institutions that supported and encouraged pro bono legal activity. During my years in private practice, I participated in the Los Angeles County Bar Association LGBTQ+ division efforts to supply bankruptcy assistance to

AIDS/HIV+ individuals. In recent years while in public service, I have provided informal legal advice to my church, Georgetown Lutheran, currently celebrating its 250<sup>th</sup> anniversary and the original home in the 1970s to what eventually became the Whitman-Walker Clinic.

In addition to my legal background, I bring a good deal of public organizational management and administrative experience to my endeavors. In 2013 I was elected a Fellow of the National Academy of Public Administration. In short time there will be a new Chief Judge of the D.C. Superior Court, and I will gladly offer to him or her those skills to utilize as deemed necessary and appropriate.

As I noted in 2012 at my confirmation hearing, I was conscious of moving from the professional role of a legal advocate, whether in public service or private practice, to that of an adjudicator. I am proud to have made that adjustment quickly and successfully. I enjoy adjudication. Serving the District of Columbia as a trial judge would be a new role and I am excited by the prospect. My background and experience leave no doubt in my mind that I will be a successful trial court judge.

Before concluding, I would like to thank those who have assisted me in this process: my friends and colleagues who have given me their moral support; JNC, White House, Department of Justice and Senate staff; and my future colleagues at the D.C. Superior Court who have reached out with encouragement. I will always be grateful for the public service mentoring of two men who assisted me with my career over the years: the late Congressman John H. Rousselot of California, and Ambassador Robert H. Tuttle. Finally and most importantly, I especially want to thank my family. My mother passed away three years ago. But she and my father were here, in person, when my previous nomination was before this Committee. They, my sister and brother, and their families, are present today either in spirit or through technology during these challenging but interesting times.

Mr. Chairman, again, thank you. I look forward to responding to any questions the members of this Committee may have.

**REDACTED**

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

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**  
Mark Allen Robbins
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.**  
U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street NW  
Washington, D.C. 20415  
(202) 494-1731
4. **Date and place of birth.**  
June 7, 1959; Ann Arbor, MI.
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 single.
6. **Names and ages of children. List occupation and employer's name if appropriate.**  
None.
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.**  
George Washington University, Washington, D.C.; 1984 – 1988; J.D. received in 1988.  
George Washington University, Washington, D.C.; 1979 – 1981; B.A. received in 1981.  
University of Colorado, Boulder, Semester-at-Sea; Spring 1978; no degree received.

California Polytechnic University, Pomona, CA; 1977 – 1979; no degree received.

Glendora High School, Glendora, CA; 1974 – 1977; High School Diploma received in 1977.

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

2009 – 2010  
IDS International  
2500 Wilson Boulevard  
Suite 200  
Arlington, VA 22201  
Contractor

2000 – 2001  
Bush-Cheney Transition Team  
1800 G Street NW  
Washington, DC 20006 [address obsolete]  
Presidential Personnel Staff Member

1984 – 1988  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500  
Deputy Associate Director, Office of Presidential Personnel

1983 – 1984  
Congressman David Dreier  
Cannon House Office Building  
Washington, DC 20515 [address obsolete]  
Legislative Assistant

1981 – 1983  
Congressman John Rousselot  
Rayburn House Office Building  
Washington, D.C. 20515 [address obsolete]  
Legislative Assistant

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

Department of State Meritorious Honor Award (2) for service in Iraq (2009)

U.S. Army Commander's Award for Civilian Service (2009)

OPM Theodore Roosevelt Award for Distinguished Public Service (2006)

American Legion Honor Award (1977)

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.**

None.

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.**

None.

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.**

National Academy of Public Administration Fellow  
Member (2013 – Present)

Georgetown Lutheran Church Council  
Member (2009 – 2012)

Kalorama Homeowners Association Board  
Member (2009 – 2012)

International Network to Promote the Rule of Law  
Member (2008 – Present)

California Republican Party State Central Committee  
Member (1992 – 1994)

Los Angeles County Republican Party Central Committee  
Member (1992 – 1994)

Log Cabin Republican Club  
Member (1990 – 2010)

The Federalist Society  
Member (1984 – Present)

American Bar Association  
Member (1984 – 2001)

None of these organizations formerly discriminated or currently discriminates 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.**

I am an active, current member in the following state and federal courts:

California State Bar  
Member (1989 – Present)

District of Columbia Bar  
Member (1991 – Present)

U.S. Supreme Court, admitted in 2001.

U.S. Court of Appeals for the Ninth Circuit, admitted in 1989.

U.S. Court of Appeals for the District of Columbia Circuit, admitted in 2001.

U.S. Court of Appeals for the Federal Circuit, admitted in 2001.

U.S. District Court for the Northern District of California, admitted in 1989.

U.S. District Court for the Eastern District of California, admitted in 1989.

U.S. District Court for the Central District of California, admitted in 1989.

U.S. District Court for the Southern District of California, admitted in 1989.

U.S. District Court for the District of Columbia, admitted in 2001.

There have been no lapses in membership.

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

None.

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

I participated in public discussions and talks with the following organizations:

July 25, 2019: Fund for American Studies Law Graduation Advice Address, Washington, DC. I have no notes, transcript, or recording.

May 15, 2019: Federal Circuit Bar Association MSPB Summit, Washington, DC. I have no notes, transcript, or recording.

September 13, 2018: Kent School of Law Annual Employment Law Conference, Chicago, IL. I have no notes, transcript, or recording.

May 9, 2018: Federal Circuit Bar Association MSPB Summit, Washington, DC. I have no notes, transcript, or recording.

April 17, 2018: U.S. Navy Annual Employment Law Annual Conference, Joint Base Andrews, MD. I have no notes, transcript, or recording.

November 8, 2017: American Bar Association Employment Law Section Panel Discussion, Washington, DC. I have no notes, transcript, or recording.

September 14, 2017: Kent School of Law Annual Employment Law Conference, Chicago, IL. I have no notes, transcript, or recording.

August 9, 2017: Federal Dispute Resolution Annual Conference, San Francisco, CA. I have no notes, transcript, or recording.

July 28, 2017: Government Accountability Project Whistleblower Annual Conference, Washington, DC. I have no notes, transcript, or recording.

May 25, 2017: Federal Circuit Bar Association MSPB Summit, Washington, DC. I have no notes, transcript, or recording.

April 18, 2017: U.S. Navy Annual Employment Law Annual Conference, Joint Base Andrews, MD. I have no notes, transcript, or recording.

August 4, 2016: Federal Dispute Resolution Annual Conference, New Orleans, LA. I have no notes, transcript, or recording.

April 26, 2016: U.S. Navy Annual Employment Law Annual Conference, Joint Base Andrews, MD. I have no notes, transcript, or recording.

April 18, 2016: Federal Circuit Bar Association MSPB Summit, Washington, DC. I have no notes, transcript, or recording.

May 4, 2015: Federal Circuit Bar Association MSPB Summit, Washington, DC. I have no notes, transcript, or recording.

**16. Legal career.**

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

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

I have never served as a law clerk to a judge.

**(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.**

1988 – 1993  
Pepper Hamilton LLP  
350 South Grand Avenue Suite 3400  
Los Angeles, CA 90071  
Associate Attorney

1993 – 1994  
Belin Rawlings & Badal  
11601 Wilshire Boulevard 2200  
Los Angeles, CA 90025 [address obsolete]  
Associate Attorney

1994 – 1997, 2000  
Hancock Rothert & Bunshoft  
515 South Figueroa Street  
Suite 1230  
Los Angeles, CA 90071 [address obsolete]  
Associate Attorney (1994 – 1997)  
Of Counsel (2000)



1997 – 2000

Cigna Property & Casualty/ACE P&C  
333 South Grand Avenue  
30th Floor  
Los Angeles, CA 90071 [address obsolete]  
Managing Attorney

2001 – 2006

U.S. Office of Personnel Management (OPM)  
Office of the General Counsel  
1900 E Street, NW  
Washington, D.C. 20415  
General Counsel

2006 – 2008

The White House  
Privacy and Civil Liberties Oversight Board  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500 [address obsolete]  
Executive Director

2008 – 2009

U.S. Department of State  
Al-Hillah, Babil, Iraq [address obsolete]  
Senior Rule of Law Advisor

2010 – 2012

U.S. Election Assistance Commission (EAC)  
1201 New York Avenue NW  
Suite 300  
Washington, D.C. 20005 [address obsolete]  
General Counsel

2012 – 2019

U.S. Merit Systems Protection Board (MSPB)  
1615 M Street NW  
5th Floor  
Washington, D.C. 20419  
Member, Vice Chair, and Acting-Chair

2019 – Present

U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW  
Washington, D.C. 20415-1000

## General Counsel

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

Over the course of my 30 year legal career, I have been a commercial civil litigation attorney with a broad variety of experience at the state and Federal trial court level at both law firms and as in-house counsel (1988 – 2000). While working in private practice, my work involved pharmaceutical products liability and wrongful death defense work, patent law, securities and racketeering laws, contract, damages and general U.C.C. work, landlord-tenant, and bankruptcy. When I served as in-house counsel, my practice shifted to insurance defense. In addition, I have been a Presidentially-nominated and Senate-confirmed member of the U.S. Merit Systems Protection Board (MSPB), which is a quasi-judicial independent agency. At the MSPB, I adjudicated over 4,000 actions (2012 – 2019) concerning a range of topics, including employee adverse actions, retirement claims, Hatch Act and Whistleblower protection laws enforcement actions by the Office of Special Counsel. I have also been General Counsel at OPM twice (2001 – 2006 and 2019 – present) and the Election Assistance Commission (2001 – 2012). I have been an international Rule of Law Advisor, where I managed the development and modernization of an Iraqi provincial legal and justice system (2008 – 2009). Earlier in my career, I served as a White House staffer in two administrations (1984 – 1988, 2006 – 2008) and I worked as a Legislative Assistant to two Members of the U.S. House of Representatives, where I covered justice and judicial issues (1981 – 1984).

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

In private practice, I represented the commercial, civil interests of corporations, businesses, and individuals. I worked for two law firms and served as in-house counsel for a corporation (Cigna P&C). In my positions as an attorney with the Federal government, I have represented numerous Federal departments and agencies in the fields of administration law, Federal civil service and human resources law, election law, and international/security law.

**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.**

In private practice from 1988 to 2000, I appeared in both California Superior and Appellate Courts and in Federal District Court in trials, law and motion practice and discovery matters. As an attorney for the Federal government, I have acted in supporting roles to the U.S. Department of

Justice in actions brought by or against the United States pending in Federal court or various Federal administrative agencies.

- (2) **What percentage of these appearances was in:**
- (a) **Federal courts (including Federal courts in D.C.);**  
10%
  - (b) **State courts of record (excluding D.C. courts);**  
25%
  - (c) **D.C. courts (Superior Court and D.C. Court of Appeals only);**  
0%
  - (d) **Other courts and administrative bodies.**  
65% (this figure includes the MSPB as an administrative body)
- (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.**
- In the course of my private practice litigation career (1988 – 2000), I was an attorney of record in approximately 8-10 cases taken to verdict or judgment. Probably another 12 cases were resolved at the motion level. In two cases, I was the lead or sole counsel. In the rest, I was associate counsel.
- (5) **What percentage of these trials was to**
- (a) **a jury;**

15%

- (b) the court (include cases decided on motion but tabulate them separately).

85% (This figure represents matters decided on motion. I have had no bench trials in my career).

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. *Geophysical Sys. Corp. v. Raytheon Co.*, D.C. No. CV-85-8359-AWT, (C.D. CA, 1988, 1990), 988 F.2d 119 (9th Cir.), cert. denied, 510 U.S. 867 (1993).

Our client, GSC, was a seismic survey equipment maker. GSC purchased \$15 million worth of computer equipment and software from a subsidiary of Raytheon, SSC. This equipment was supposed to enable GSC to quickly furnish clients data, allowing them to identify and map potential oil drilling sites without any actual initial test drilling. However, the equipment never worked as represented and most of GSC's clients cancelled the service contracts. This resulted in Chapter 11 bankruptcy for GSC. The lawsuit alleged, inter alia, breach of contract and warranty, misrepresentation, violations of California's unfair competition law, and RICO violations. Following a two month trial, the jury handed down a verdict of \$48.3 million for GSC. At the time, it was the largest award of damages for a computer/software warranty claim ever. Upon further review, Judge A. Wallace Tashima granted Raytheon's motion for JNOV and reduced the damages award to \$1.9 million. A few months later, Judge Tashima granted Raytheon's motion for a new trial on some of the contract-related liability issues. The second trial also lasted two months, and this time the jury returned a verdict for Raytheon/SSC. We unsuccessfully appealed to the U.S. Court of Appeals for the 9th Circuit, and *cert.* was denied by the Supreme Court.

Co-Counsel:

Robert G. Badal (partner and lead counsel, now retired)  
(323) 933-8450

Opposing Counsel:

Do Not Recall

2. *AFGE v. FLRA*, 926 F.3d 814 (D.C. Cir. 2019) (Before: Henderson, Pillard and Wilkins, Circuit Judges)

The Office of Personnel Management (OPM) regulates how agencies calculate overtime pay for Federal employees. In 1968, Congress instructed OPM to devise a standard percentage calculation for overtime called “Administratively Uncontrolled Overtime.” As applied by agencies, however, different results were realized depending on how vacation and other leave was factored into the calculation. In 1997, OPM issued government-wide guidance to standardize overtime calculations. Immigration and Customs Enforcement (ICE, then-INS) did not comply with this guidance. In time, this discrepancy was noted during oversight investigations by the Office of Special Counsel and the Government Accountability Office and ICE changed the policy to conform with OPM guidance.

The employee union, AFGE, filed a grievance against ICE alleging it had committed an unfair labor practice under the Federal Service Labor-Management Relations Statute (FSLMRS) by unilaterally changing the overtime policy without first bargaining with the union. An arbitrator agreed with the union, but on further appeal to the Federal Labor Relations Authority (FLRA), the policy change was allowed to stand. The FLRA’s opinion rested on two conclusions: (1) ICE’s previous leave overtime policy was unlawful under OPM guidance and (2) ICE therefore had no duty under the FSLMRS to bargain with the union before changing its policy. AFGE appealed to the U.S. Court of Appeals for D.C., which sustained the FLRA opinion.

Co-Counsel:

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U.S. Department of Justice  
Civil Appellate Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
(202) 353-0261

Opposing Counsel:

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McGillivray Steele Elkin LLP  
1101 Vermont Avenue, NW  
Suite 1000  
Washington, DC 20005  
(202) 833-8855

3. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677 (2006)

Empire was a health insurance company that sued the estate of a deceased Federal employee who received \$157,000 in insurance benefits as the result of an injury. The wife of the Federal employee had won \$3.2 million in a separate lawsuit from those whom she claimed had caused her husband’s injuries. Empire sued her in Federal court invoking 28

U. S. C. §1331, which authorizes jurisdiction over “civil actions arising under the ... laws ... of the United States,” seeking reimbursement of the benefits paid to him on the grounds that a provision in the Federal insurance plan required paid benefits to be reimbursed when the beneficiary is compensated for an injury by a third party.

The Supreme Court affirmed the Second Circuit and the District Court, holding that Empire’s claim arose under state law and the Federal Employees Health Benefits Act of 1959 (FEHBA) does not authorize carriers to vindicate in Federal court their rights against enrollees under FEHBA-authorized contracts. Federal jurisdiction exists only if Federal common law governed Empire’s claim. The Court stated that courts may create Federal common law only when state law would (1) “‘significant[ly] conflict’ ” with (2) “‘uniquely Federal interest[s].’ ” Empire and the government maintained that its contract-derived reimbursement claim implicated “uniquely federal interest[s]” because (1) reimbursement directly affects the U.S. treasury and the cost of providing health benefits to Federal employees, and (2) Congress has expressed its interest in maintaining uniformity among the States on matters relating to Federal health-plan benefits. The Court acknowledged that the case involved such interests, but found that Empire and the government had not identified specific ways in which the operation of state law would conflict materially with the policies underlying FEHBA. Also rejecting arguments that FEHBA’s preemption provision independently conferred Federal jurisdiction, the Court emphasized that FEHBA makes no reference to a Federal right of action in, or Federal jurisdiction over, a contract-derived reimbursement claim.

Co-Counsel:

James Green  
14201 Marian Drive  
Rockville, MD 20850  
301-204-1210

Opposing Counsel:

Thomas Stock  
Contact Information Unknown

4. *NTEU v. Chertoff*, 452 F.3d 839 (D.C. Cir. 2006) (Before Randolph and Griffith, Circuit Judges, and Edwards, Senior Circuit Judge)

The DHS secretary, in consultation with the Office of Personnel Management, is authorized to promulgate regulations to “establish and from time to time adjust, a human resources management system.” However, such a system “shall ... ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law.” In 2005, DHS and OPM issued regulations establishing a human resources management system for the new department. Unions representing DHS employees challenged the regulations in the U.S. District Court for the District of Columbia.

The D.C. District Court held that the regulations promulgated by DHS and OPM would not ensure collective bargaining; would fundamentally and impermissibly alter the Federal Labor Relations Authority jurisdiction; and would create an appeal process at the Merit Systems Protection Board that is not fair. On appeal, the U.S. Court of Appeals for the D.C. Circuit held that the challenged regulations failed in two respects to “ensure that employees may ... bargain collectively,” as Congress required. The D.C. Circuit also held that the regulations effectively eliminated all meaningful bargaining over fundamental working conditions, thereby committing the bulk of decisions concerning conditions of employment to DHS’s exclusive discretion. Finally, the Court held that the regulations impermissibly attempted to alter the role of the Federal Labor Relations Authority, an independent agency operating pursuant to its own statute.

Co-Counsel:

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Davis Polk  
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(202) 962-7141

David B. Scholl (Retired)  
Contact Information Unknown

Opposing Counsel:

The Honorable Elaine Kaplan  
U.S. Court of Federal Claims  
Howard T. Markey National Courts Building  
717 Madison Place, NW  
Washington, DC 20439  
(202) 489-6527

Susan Grundmann  
Office of Congressional Workplace Rights  
John Adams Building  
110 2nd Street SE, Room LA 200  
Washington, DC 20540  
(703) 859-0100

5. *James v. Dale*, 355 F.3d 1375 (Fed. Cir. 2004) (Before Mayer, Chief Judge, Newman and Linn, Circuit Judges)

The Office of Personnel Management challenged the final decision of an arbitrator reversing the removal of Mr. Dale, an INS border patrol agent who was removed for associating with a “known or suspected law violator” in violation of the Border Patrol Handbook. At the time of the adverse action, Mr. Dale lived with his wife and two small children. He allowed a young woman who had been expelled from her mother’s home after multiple arrests for drug use to move into his family home. The arbitrator concluded

that Mr. Dale reasonably believed the woman was not guilty of drug use because she had not been convicted. The court, however, found that the arbitrator abused his discretion when he substituted his own charge by relying on a requirement for a conviction when none was necessary. The court held that the proper test is whether a disinterested observer with knowledge of the essential facts would reasonably conclude that the associate of the employee was a suspected law violator. Applying that standard, the court concluded the arbitrator abused his discretion and reversed the decision.

Co-Counsel:  
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Washington, DC 20439  
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Steve Abow  
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Office of the General Counsel  
1900 E Street NW  
Washington, D.C. 20415  
(202) 606-1700

Opposing Counsel:  
Mark D. Roth (Retired)  
Contact Information Unknown

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).**

Service in Iraq:  
From January 2008 to August 2009, I served as the State Department's Senior Rule of Law advisor in the Babil Provincial Reconstruction Team (PRT) in Al-Hillah, Iraq. Co-located with and supported by the Army's 172d Infantry Brigade, I was responsible for the development, implementation and coordination of U.S.-Iraqi reconstruction policy for provincial judicial, law enforcement, correctional and legal institutions. My responsibilities comprised elements of law and policy operations, and significant general contractor work. Among other things, I oversaw the development of a comprehensive judicial education program for local judges, lawyers and legal institutions, with the procurement, distribution of and training on computers, educational software, Arabic legal texts and requisite training. Construction projects included completing a new local courthouse (\$6 million), modernizing the local police academy, including installing a new forensics/crime lab; building a new local prison (\$350,000); renovating the Babil Judicial Union (bar association) headquarters; securing and managing two-year funding assistance for the operations of Al Meezan Legal Newspaper, the only independent legal



journal in Iraq at that time; modernizing the Babil University Law School library and 12 regional court house law libraries; and security enhancements for provincial judges and their staff. For these accomplishments, I received the U.S. Army Commander's Award for Meritorious Civilian Service, and two State Department Ambassador's Meritorious Honor Awards.

2006 Supreme Court Term:

During one Supreme Court term, while serving my first term as General Counsel at OPM, I had the honor and privilege of working with the Department of Justice in representing and presenting the views of the United States in three cases: *Empire Healthchoice Assurance v. McVeigh*, 547 U.S. 677 (2006), whether Federal law and regulation pertaining to the Federal Employee Health Benefits Program preempts state insurance law; *Whitman v. Dept. of Transportation*, 547 U.S. 512 (2006), whether Federal employees can sue in Federal court for employment grievances; and *Garcetti v. Ceballos*, 547 U.S. 410 (2006), whether a public employee has a First Amendment interest in speech expressed while performing official job duties.

Service on the U.S. Merit Systems Protection Board (MSPB)

For seven years, I served as a Member, Vice Chairman and acting Chairman of the MSPB, a quasi-judicial, Article I tribunal which, pursuant to title 5 of the U.S. Code, adjudicates adverse actions by Federal departments and agencies against employees and certain claims by Federal employees and beneficiaries against the Federal government, as an employer. It also adjudicates the prosecution by the Office of Special Counsel (OSC) of Hatch Act and Whistleblower Act violations, and veterans' preference claims. The Board sits in lieu of a U.S. District Court and its decisions are appealable, generally, to the U.S. Court of Appeals for the Federal Circuit. The Board has the authority to enforce its decisions and order corrective and disciplinary actions. The three Presidentially-appointed, Senate-confirmed members sit as an appellate body to review the decisions of approximately 65 administrative law judges and administrative judges. During my term, I participated in over 4,000 opinions. As acting Chairman from 2017-2019, I managed a Federal agency with an annual budget of \$48 million and a workforce of approximately 240 in headquarters and eight regional offices across the country.

Service as the General Counsel of Federal Agencies

I have twice served as General Counsel at the U.S. Office of Personnel Management (2001-06 and 2019-present) and as General Counsel at the U.S. Election Assistance Commission (2010-12). Both positions require a Top Secret security clearance with OPM also requiring SCI. The General Counsel of a Federal agency runs a small law firm, managing its personnel, responsibilities and legal litigation and case work.

As this Senate committee knows, OPM, with 5,200 employees and an annual appropriated budget of \$270 million, administers the Federal government's merit civil service employment system. It assists agencies with human resources management responsibilities, including workforce recruiting, examining, hiring, separation, training, and promoting (2.1 million employees). Until October 1, 2019, OPM also administered

the Federal government's employee background investigations. The agency still administers the health benefits program (8 million participants); two retirement systems (2.4 million participants); and the Combined Federal Campaign annual employee charity drive (\$169 million for 20,000 charities in 2018). It administers \$1 billion in revolving funds and \$89 billion in annual trust fund outlays with an asset base of \$690 billion. As General Counsel, I provide legal representational and advisory services to OPM, Department of Justice, OMB, and Federal human resources officials. I manage a staff of 37 and annual budget of \$4.8 million; work closely with senior management to initiate and implement Administration management and personnel policy; and ensure that Federal human resources programs and actions are administered lawfully. I am the chief agency ethics officer and responsible for agency labor-management relations.

Established by the *Help America Vote Act of 2002*, the Election Assistance Commission (EAC) is an independent, bipartisan, four-member, permanent commission charged with adopting and maintaining nation-wide voluntary voting system guidelines for Federal elections, and serving as a national clearinghouse of information on election administration. It accredits testing laboratories and certifies voting systems, as well as audits the use of approximately \$3.2 billion in Federal funds originally disbursed to states and entities for election systems modernization. It also maintains the national mail voter registration form authorized by the National Voter Registration Act of 1993. EAC submits an annual report to Congress and holds monthly public meetings and hearings. The General Counsel holds a statutory position, appointed to a four year term as the agency chief legal officer, designated agency ethics officer, and White House Liaison.

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.**

No.

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

Not applicable.

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

Yes. I was the 1992 Republican primary winner and unsuccessful general election candidate for the U.S. House of Representatives, then-29th District of California (Westside Los Angeles).

21. **Political activities and affiliations.**

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

1992 Republican primary winner and unsuccessful general election candidate for the U.S. House of Representatives, then-29th District of California.

Member, U.S. Merit Systems Protection Board, 2012-2019.

- **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.**

2016:

Jeb Bush, President, \$2,700

Donald Trump, President, \$250

Mike Dovilla, Ohio Senate, \$100

Rory Diamond, Neptune Beach, FL City Council, \$100

2014:

Mark Richman, Oregon House, \$100

Rory Diamond, Neptune Beach, Florida City Council, \$100

David Catanya, D.C. Mayor, \$100

Mike Dovilla, Ohio House, \$100

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

No.

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

No.

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

No.

## II. POTENTIAL CONFLICTS OF INTEREST

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

Yes.

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

None.

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

None.

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

None.

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

None.

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

No.

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

I will follow all District of Columbia judicial ethical protocols and guidance for recusal if there is a conflict or appearance of conflict of interest in any matter before me as a judge.

I have no trusts or other relevant agreements.

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 the bar of the District of Columbia on January 25, 1991 (Bar No. 426771).
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.

**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.**

Copies of my JNC questionnaire are attached.

**AFFIDAVIT**

MARK ALLEN ROBBINS 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.

Mark Allen Robbins

SUBSCRIBED and SWORN TO before me this 27<sup>th</sup> day of January 2020.

Joneisha Marie Best  
Notary Public



**Senator Rand Paul  
Post-Hearing Questions for the Record  
Submitted to Mark A. Robbins**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

*For Hon. Mark A. Robbins:*

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

Yes. I will abide by all decisions of the Supreme Court, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and relevant decisions of other controlling courts if called upon to adjudicate issues related to the Second Amendment.

**Senator Josh Hawley  
Post-Hearing Questions for the Record  
Submitted to Mark A. Robbins**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

- 1. One of the major distinctions between the federal court system and other U.S. court systems is that the bodies of law governing states and the District of Columbia often rely much more extensively on common-law principles, because sometimes in courts of general jurisdiction, the Constitution simply has very little to say on a particular issue.**

**How would you approach a case of first impression, where the District of Columbia had no law clearly on point and there was no clearly relevant constitutional authority?**

I would look first to the text of any relevant parts of the Constitution or District law. If the issue is absent or ambiguous, I would attempt to interpret the issue as the Founders would have applied the Constitution or the city council would have anticipated city law to apply. If all else fails, I have to rely on my own understanding of basic Constitutional principles or District law and how they should be applied to the novel issue at hand.

- 2. You mentioned on your questionnaire and in your testimony that you spent some time overseas working for the U.S. Department of State on the “rule of law” initiative in Iraq.**

**What was the most important insight about the functioning of an effective legal system that you took away from that experience, and how do you see that factoring into your service as a judge?**

Legal systems, in both the developing world and the developed world, do not work without the trust of those over whom they exercise jurisdiction. My work was in Babil Province, Iraq, about 70 kilometers southeast of Baghdad. There, they called the Saddam Hussein regime “the dictatorship.” Since the British mandate in the 1920’s, Iraq’s judiciary has been province-based. But like every other public institution under Saddam, the judiciary became a tool of oppression and control. When that happens, even the most elementary functions of a judiciary – resolution of family disputes, contract interpretation, basic tort claims – become opportunities for government control and subjugation. Even rational decisions become suspect. A legitimate judiciary requires the trust of the people. And before I could assist the Iraqis of Babil in rebuilding their court and justice system, we had to begin rebuilding a basic level of trust in the concept of “justice.”

If confirmed, for me as an Associate Judge on the District of Columbia Superior Court, establishing trust means conducting myself with the utmost amount of professionalism, the highest degree of ethical behavior, and as much transparency as is possible in the operations of the court.

**3. Are there circumstances when you believe judges should consider the policy results of their decisions when deciding a case? When might those circumstances arise?**

No. Policy considerations are for the political branches of government to consider and address. If applying the existing law to the facts at hand results in what might be considered “bad policy,” the executive or legislature should take note and address the issue.

**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Mark A. Robbins**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

**1. You have had a lengthy career across the Federal Government and private sector.  
What is the most rewarding legal issue you have been involved in and why?**

From January, 2008 to August, 2009, I served as the State Department's Senior Rule of Law advisor in the Babil Provincial Reconstruction Team (PRT) in Al-Hillah, Iraq. Co-located with and supported by the Army's 172d Infantry Brigade, I was responsible for the development, implementation and coordination of U.S.-Iraqi reconstruction policy for provincial judicial, law enforcement, correctional and legal institutions. My responsibilities comprised elements of law and policy operations, and significant general contractor work. Among other things, I oversaw the development of a comprehensive judicial education program for local judges, lawyers and legal institutions, with the procurement, distribution of and training on computers, educational software, Arabic legal texts and requisite training. Construction projects included completing a new local courthouse; modernizing the local police academy, including installing a new forensics/crime lab; building a new local prison; renovating the Babil Judicial Union (bar association) headquarters; securing and managing two-year funding assistance for the operations of Al Meezan Legal Newspaper, the only independent legal journal in Iraq at that time; modernizing the Babil University Law School library and 12 regional court house law libraries; and security enhancements for provincial judges and their staff. For these accomplishments I received the U.S. Army Commander's Award for Meritorious Civilian Service, and two State Department Ambassador's Meritorious Honor Awards.

I have had a rewarding and exciting career in many aspects of the law, but this experience was beyond anything I could have imagined in law school or while in private practice. In helping to establish the foundations for a modern and independent judicial system in a war-torn society deeply harmed by decades of abuse, I feel I made a positive and, hopefully lasting, difference in the lives of people who needed it.

**2. What is a legal issue that you found most difficult to be involved in and how did you successfully navigate it?**

Whether at law firms or in-house, I was fortunate to work for institutions that supported and encouraged pro bono legal activity. During my years in private practice I participated in the Los Angeles County Bar Association LGBTQ+ division efforts to supply bankruptcy assistance to AIDS/HIV+ individuals. In the late 1980s and early 90s an HIV diagnosis was generally terminal. My first firm had a very small bankruptcy practice exclusively dedicated to representing commercial landlords in commercial tenant actions. I was assigned to do minor claims filings and then track the progress of the case in U.S. Bankruptcy Court (U.S. District

Court for the Central District of California). In 1989, the L.A. County Bar put out a notice that they were seeking volunteers to assist AIDS/HIV+ individuals in small Chapter 7 filings. In most cases, the minimal assets of these individuals were exempt from creditor liquidation. I applied my initially minimal skills in this field and assisted probably 60-75 individuals over the decade I participated in this program. The work itself was not terribly difficult. But the work was the most emotionally draining of my career. The people I assisted were sick, in many cases having lost the support of their families. More than a few were angry at life and took it out on me, even as I was trying to assist them. And in the early years when there was a good deal of misunderstanding about how HIV was spread, there was an element of possible personal risk to my own health.

This experience has become more rewarding to me over time. It took me out of my comfort level and introduced me to people I would never have otherwise encountered.

**3. How would you describe your judicial philosophy, and what has shaped that philosophy?**

I believe that a good judge understands the significant differences between a legal advocate and an adjudicator. An advocate argues and persuades. An adjudicator must leave personal bias, philosophies, politics, and religious views behind, strictly applying law to facts. I successfully made that transition during my tenure as a member of the U.S. Merit Systems Protection Board where I adjudicated over 4,000 individual cases. If confirmed, I intend to bring that same judicial philosophy to the D.C. Superior Court.

**4. If you are confirmed and serve on the D.C. Superior Court, how will you hope your career on the bench is remembered when it is time for you to leave that position?**

At the end of my service on the D.C. Superior Court, I hope that my colleagues, court practitioners, and the community at large think that my courtroom was well run; my opinions and decisions were well-written, well-reasoned, easily understood and timely; that I brought management and administrative experience to the assistance of the Chief Judge when he or she thought it appropriate; and that in the end I brought honor to the court.

Opening Statement of Carl Ezekiel Ross  
Nominee to be an Associate Judge of the Superior Court of the District of Columbia  
June 3, 2020

Good morning Mr. Chairman and members of the Committee. It is an honor to be considered for an associate judgeship with the D.C. Superior Court, and I want to thank the members of the Committee and the dedicated Committee staff for considering my nomination. I would like to thank the JNC and its Chair, the honorable Emmet Sullivan, for recommending me to the White House and the President for nominating me. I would like to thank my parents, Carl and Gwen Ross for teaching me the value of hard work and my siblings, Marsha, Della, and Cecil for keeping me grounded. I would like to thank my in-laws, Pastor Gerold and Wendy LeBlanc for always leading by example, and I would like to thank my family, friends and mentors, including the Honorable James Spencer, the Honorable Hannah Lauck, the Honorable Rhonda Reid-Winston, and the Honorable Rudolph Contreras for their continued guidance and support. I would like to thank the members and staff of the House Ethics Committee including Chairman Ted Deutch and Ranking Member Kenny Marchant for their leadership and for allowing me to work alongside them in the Committee's pursuit of justice. And most importantly, I would like to thank my incredible wife Kimberly for her unrelenting love and support. I am truly blessed to have her by my side.

I am a proud third-generation Washingtonian who was taught from an early age the importance of giving back to the community and living by the principle that "to whom much is given, much is required in return." My parents dedicated their professional careers to government service and they now dedicate their retirement years to caring for children in need and running a treatment foster care agency. Following in their public service footsteps, I began my legal career clerking for the Honorable James R. Spencer of the Eastern District of Virginia. During my clerkship, I witnessed first-hand the characteristics that make a good judge and I learned the importance of patience when dealing with civil and criminal litigants. I went on to work for a large international law firm here in Washington, D.C., where I learned to handle large and complex legal matters and, through my pro bono work, many of the challenges facing indigent litigants in the district. For seven years, I served beside some of the most talented and dedicated attorneys in the country as an Assistant United States Attorney in the Civil Division of the U.S. Attorney's Office for the District of Columbia. During my tenure as an AUSA, I managed a large and complex case docket and represented the United States in more than one hundred civil cases in federal district and appellate courts. And for the past three years, I have had the great honor of serving as Investigative Counsel for the U.S. House of Representatives Committee on Ethics where I have investigated criminal and civil matters and helped prepare those matters for adjudication by the Committee. During my time with the Ethics Committee, I have moved away from traditional advocacy on behalf of an individual or entity and learned to review evidence and testimony with an eye towards adjudication. I have seen first-hand the importance of handling matters without pre-judgment, understand the need to move matters expeditiously, and comprehend the importance of ensuring that each individual that comes before the Committee receives proper due process.

It would be an incredible honor to now use the techniques, insights, and skills that I have developed throughout my career to serve my fellow residents of the District of Columbia as an Associate Judge with the D.C. Superior Court. If confirmed, I will ensure that all litigants are treated fairly, I will faithfully enforce the rule of law, and I will be steadfast in upholding the



Constitution. Thank you again for considering my nomination 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).**  
 Carl Ezekiel Ross  
 Zeke Ross
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**  
 I am a United States citizen.
3. **Current office address and telephone number.**  
 United States House of Representatives  
 Committee on Ethics  
 1015 Longworth House Office Building  
 Washington, D.C. 20515  
 (202) 225-7103
4. **Date and place of birth.**  
 I was born on December 10, 1977, in Washington, D.C.
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 Kimberly Sabrina LeBlanc-Ross, Senior Counsel at the American Red Cross, 431 18th Street, NW, Washington, D.C. 20006.
6. **Names and ages of children. List occupation and employer's name if appropriate.**  
 None.
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.**  
 William and Mary School of Law, August 2000 -- May 2003. Juris Doctorate received in May of 2003.

Oral Roberts University, August 1995 – May 1999. Bachelor of Arts received in May of 1999.

Largo Senior High School, August 1991 – June 1995. High school diploma received in June of 1995.

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.**

May 2003 – July 2003  
Williams Mullen  
1021 East Cary Street  
Richmond, VA 23219  
Summer Associate

August 2000 – May 2003  
College of William & Mary School of Law  
613 South Henry Street  
Williamsburg, VA 23197  
Graduate Research Fellow / Research Assistant

July 2002 – August 2002; Summer of 2001; May 2001 – August 2001  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219  
Summer Associate

May 2002 – July 2002  
Arnold & Porter LLP  
601 Massachusetts Ave, NW  
Washington, DC 20001  
Summer Associate

June 2000 – August 2000; Summer of 1999; June 1999 – August 1999  
University of Maryland Pre-College Programs  
University of Maryland Room 2101 West Education Annex  
College Park, MD 20742  
Activities Coordinator, Upward Bound

February 2000 – June 2000  
Association of Schools of Allied Health Professionals  
1730 M Street, NW Suite 500  
Washington, D.C. 20036

Director's Assistant

September 1999 – February 2000  
 Pat Taylor & Associates  
 1101 17th Street, NW, Suite 707  
 Washington, D.C. 20036  
 Temporary Paralegal

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.**

Performance Award, U.S. Attorney's Office (2015)

Virginia Trial Lawyers Award (2003)

Lawrence W. P'Anson Award (2003)

Regional Champion, ATLA Trial Competition (2002)

Best Brief and Third Best Oralist, National Constitutional Law Moot Court Competition (2002)

Chief Justice, William & Mary Moot Court Board (2002)

Associate Articles Editor, *William & Mary Law Review* (2002)

First-Place Champion, William & Mary Bushrod Moot Court Competition (2001)

Graduate Research Fellowship, William & Mary School of Law (2000)

Academic Scholarship, Oral Roberts University (1995)

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

The Barristers, Washington, D.C.

Member, Executive Board (2019 – present)

William Mary Law School's Alumni Association

Member, Board of Directors (2018 – present)

Good Children in the Making, Inc.

President, Board of Directors (2002 – 2008)

Consultant (Unpaid) (2008 – present)

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.**

National Bar Association  
Member (2004 – 2008)

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.**

Barristers in Washington D.C.  
Member (2016 – present)

Divine Harvest Ministries  
Member (2008 – present)

None of the above listed organizations formerly discriminated or currently discriminates 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.**

Virginia State Bar  
Member (2003 – present)

United States Court of Appeals for the Fourth Circuit  
Member (2004 – present)

District of Columbia Bar  
Member (2005 – present)

United States District Court for District of Columbia  
Member (2006 – present)

United States Court of Appeals for the District of Columbia  
Member (2010 – present)

On October 11, 2006, I was administratively suspended from the Virginia State Bar for failure to pay my bar dues in a timely manner. At the time, I was with Arnold & Port

LLP and the firm was paying for my Virginia and D.C. bar dues. An administrative mix up resulted in the check to the Virginia Bar being delayed and I was administratively suspended on the day of the payment deadline. Upon discovery of the error, the firm sent a check via Federal Express that was received the next day. I submitted the necessary paperwork for re-instatement and on October 23, 2006, I was restored to an active status in good standing. I was similarly administratively suspended from the District of Columbia Bar from October 1, 2010 to October 27, 2010 for submitting my bar dues payment after the deadline and also administratively suspended from October 1, 2017 through November 1, 2017 for submitting my bar dues payment after the deadline. Both incidents occurred when making my first bar dues payment after changing jobs and during time periods where I was not receiving correspondence from the D.C. Bar as a result of address and e-mail changes associated with new jobs. Otherwise, there have been no lapses in membership.

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

I have not published any writings.

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

I have not given any speeches in the past five (5) years.

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 from August 2003 through August 2004 to the Honorable James R. Spencer who served on the United States District Court for the Eastern District of Virginia.

- (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.**

2004 – 2009  
Arnold & Porter LLP  
601 Massachusetts Ave, NW  
Washington, DC 20001

## Litigation Associate

2009 – 2017

United States Attorneys' Office, Civil Division  
 555 4th Street, NW  
 Washington, D.C. 20530  
 Assistant United States Attorney

2017 – present

U.S. House of Representatives Committee on Ethics  
 1015 Longworth House Office Building  
 Washington, D.C. 20515  
 Investigative Counsel

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

I served as a law clerk to the Honorable James R. Spencer of the United States District Court for the Eastern District of Virginia from August 2003 through August 2004. During my clerkship, I helped manage a docket of over one hundred and fifty criminal and civil cases. During that time, I researched, analyzed, drafted bench memoranda and drafted opinions in matters involving contract disputes, trademark, trade dress, patents, ERISA, immigration, constitutional claims, social security claims, employment discrimination, environmental matters, as well as numerous criminal matters.

Following my clerkship, I worked as a litigation associate with Arnold & Porter, LLP from 2004 through 2009. In that role, I practiced civil litigation primarily defending large pharmaceutical companies. I also handled several matters pro bono including two political asylum cases, a matter involving funding for a pre-school program in the city of Atlanta, Georgia, and an appellate matter involving first amendment rights. While I worked at Arnold & Porter, LLP, I was selected for a six-month rotation with the Legal Aid Society of D.C.

From 2009 to 2017, I was an Assistant United States Attorney within the Civil Division at the United States Attorneys' Office in Washington D.C. In that capacity, I represented the United States in a variety of civil matters including employment discrimination, Freedom of Information Act matters, matters involving fraud under the False Claims Act, medical malpractice and other tort matters under the Federal Tort Claims Act, patent cases, and a variety of other civil litigation. I served as lead counsel in one probate related matter in D.C. Superior Court that involved a large gift to the Smithsonian Institute, but the overwhelming majority of my matters were before the United States District Court for the District of Columbia and the United States Court of Appeals for the D.C. Circuit.

I am currently counsel for the U.S. House of Representatives Committee on Ethics.

In my role as counsel, I manage legal matters from the start of an investigation through adjudication. My role differs from traditional litigation because I am not advocating for a particular position or client, but gathering evidence, interviewing and deposing witnesses, and drafting memos and Committee Reports that provide legal and factual analysis for the purpose of adjudication. I handle matters raising alleged violations of criminal law, civil law and Congressional rules and regulations. I also present my legal analysis during Committee hearings which are often times similar to an appellate hearing before a ten-member appellate court.

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

At Arnold & Porter my clients included large corporations, the indigent population of DC while rotating with the Legal Aid Society, individuals seeking political asylum, and a pre-school program.

While at the U.S. Attorney's Office my client was the United States of America. My matters were exclusively civil in nature and I handled a variety of matters including employment discrimination, medical malpractice, challenges to the Administrative Procedures Act, Bivens actions suing government officials in their personal capacity, allegations of civil fraud, patent cases, negligence cases under the Federal Tort Claims Act, Freedom of Information Act cases and a variety of other civil matters.

Finally, as counsel for the U.S. House of Representatives Committee on Ethics, my client is the Committee itself. My role with the Committee is to manage legal matters from the start of an investigation through adjudication by providing an unbiased factual record and legal analysis for final determination by the Committee. My work with the Committee involves alleged violations of both civil and criminal law including fraud, sexual harassment, alleged disclosure of classified information, impermissible use of campaign and congressional resources and other allegations. Finally, some of the matters have led to dual investigations by the Committee and the Department of Justice and high-profile indictments of sitting Members of Congress.

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

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

I appeared in court occasionally while working as an associate at Arnold & Porter, LLP. Between 2017 and 2009 I appeared in Court regularly while serving as an Assistant United States Attorney. In my current position with



the U.S. House of Representatives I do not appear in Court, but I appear before the Committee itself regularly.

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

**(a) Federal courts (including Federal courts in D.C.);**

90%

**(b) State courts of record (excluding D.C. courts);**

0%

**(c) D.C. courts (Superior Court and D.C. Court of Appeals only);**

5%

**(d) other courts and administrative bodies.**

5%

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

**(a) civil;**

80%

**(b) criminal.**

20%

**(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 tried two cases in Federal District Court to verdict; the first was a consolidated case with two plaintiffs *Ascom Hasler / Neopost Inc. v. United States Postal Service*, 00-cv-1401, 00-cv-2089 and the second was *Connor v. United States* 13-cv-1877. I also handled a political asylum merits hearing which was tried to verdict.

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

**(a) a jury;**

0%

- (b) the court (include cases decided on motion but tabulate them separately).

100%

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. *Aqualliance v. U.S. Bureau of Reclamation*, 15-5325 (D.C. Cir.)

*Aqualliance* was a Freedom of Information Act case that was fully briefed on summary judgment in U.S. District Court before Judge Ketanji B. Jackson. I represented the United States Bureau of Reclamation from approximately June 2014 through March 2016. Judge Jackson granted the government's motion for summary judgment and the matter was appealed, fully briefed, and argued before the D.C. Circuit, judges Brown, Millett and Wilkins. In *Aqualliance* the plaintiff sought documents from the United States Bureau of Reclamation regarding water well locations, depths, construction and other water rights information in California. The documents, however, were voluntarily submitted as part of water transfers in California and the U.S. Bureau of Reclamation sought to protect particular documents from disclosure. *Aqualliance* was a significant case because it raised issues of first impression before the U.S. District Court for the District of Columbia and the D.C. Circuit regarding application of the Freedom of Information Act's Exemption 9. *Aqualliance* also included an exercise in statutory interpretation and led to established precedent in the jurisdiction.

I served as the sole counsel on the matter during the District Court proceedings and lead counsel before the D.C. Circuit. I drafted the briefs in the District Court and the D.C. Circuit and handled oral argument before the D.C. Circuit. On May 9, 2017, the D.C. Circuit affirmed the District Court's decision and ruled in favor of the government.

Supervising Attorney:

Daniel Van Horn  
Civil Chief  
U.S. Attorneys' Office for the District of Columbia  
555 4<sup>th</sup> Street NW  
Washington, D.C. 20530

(202) 252-2500

Counsel for Plaintiff Aqualliance:

Matt Kenna  
Public Interest Environmental Law Firm  
679 E. 2nd Avenue, Suite 11B  
Durango, CO 81301  
(970) 749-9149

2. *Ascom Hasler Mailing Systems Inc. / Neopost Inc. v. U.S. Postal Service*, 00-cv-1401, 00-cv-2089 (D.D.C.)

In *Ascom Hasler*, I represented the United States Postal Service from approximately October 2009 through December 2012. In *Ascom Hasler*, the Court considered a consolidate matter where two plaintiffs sued the U.S. Postal Service based on alleged contract negotiations spanning decades. In *Ascom*, plaintiffs alleged that they spent millions of dollars developing technology and entering into the postage meter market. Plaintiffs alleged that when the U.S. Postal Service changed its regulations in 1995, it eliminated interest income relied upon by the plaintiffs and promised as an inducement to enter the postage meter market. The plaintiffs filed claims for alleged breach of express and implied contract, an alleged Fifth Amendment taking, unjust enrichment, and promissory estoppel. The plaintiffs initially sought damages in excess of \$90 million dollars but reduced their demand to approximately \$74 million dollars after their damage's expert was challenged during trial. The matter was tried to a verdict before Judge Paul Friedman and Judge Friedman ruled in favor of the U.S. Postal Service. The matter was both significant and challenging because it involved evidence, documents, and witnesses dating back to the 1970s, many of which was no longer available, complex legal arguments and significant potential liability.

I served as associate trial counsel in the matter. During trial I handled opening statement, a significant number of the witnesses, and the majority of the post-trial briefing.

Co-Counsel:

Darrell Valdez  
Assistant United States Attorney  
U.S. Attorneys' Office for the District of Columbia  
555 4<sup>th</sup> Street NW  
Washington, D.C. 20530  
(202) 252-2500

Counsel for Plaintiffs Ascom Hasler and Neopost:

Benjamin Boyd  
Sara Moghadam  
DLA Piper LLP  
500 Eighth Street, NW  
Washington D.C. 20004

(202) 799-4502

3. *Connor v. United States*, 13-cv-1877 (D.D.C.)

In *Connor*, the plaintiff, Kevin Connor sued the United States when a U.S. Postal Service truck ran into the ambulance he was traveling in. I served as counsel on behalf of the United States from approximately April 2015 through May 2016. Mr. Connor was a paramedic with the D.C. Government and was on duty traveling to an emergency at the time of the accident. Mr. Connor alleged that the accident was the result of a postal worker's negligence and that the accident resulted in permanent injuries. Mr. Connor sought \$2,000,000 in damages. The matter was tried to a verdict before Judge Tanya S. Chutkan. I served as associate counsel during trial and I handled the opening statement, approximately half of the lay and expert witnesses, closing arguments, and I drafted a significant portion of the post-trial briefing for the matter. Judge Chutkan issued a verdict in favor of the United States.

The *Connor* matter was significant because it involved complex medical issues including degenerative conditions and issues of causation. The matter also included questions of negligence and contributory negligence based on multiple, at times competing, provisions of the D.C. Code.

Co-Counsel:

Heather Graham Oliver  
Deputy Chief – Civil Division  
U.S. Attorneys' Office for the District of Columbia  
555 4<sup>th</sup> Street NW  
Washington, D.C. 20530  
(202) 252-2500

Counsel for Plaintiff:

William Lightfoot  
May Lightfoot PLLC  
3200 Martin Luther King, Ave, SE, 3<sup>rd</sup> Floor  
Washington, D.C. 20032  
(202) 431-3888

4. *Pirotty v. Broadcasting Board of Governors*, 11-5292 (D.C. Cir.)

In *Pirotty*, the Plaintiff, Mr. Salah Pirotty sued the Broadcasting Board of Governors alleging gender, national origin, and age discrimination in the decision to hire two individuals for an International Broadcaster position with Voice of America's Kurdish Service. The matter was significant because it involved extensive discovery, complex questions regarding employment law and the interplay of cultural sensitivities, and the matter went all the way to the D.C. Circuit. Judge Richard J. Leon presided over the matter in the U.S. District Court for the District of Columbia and on September 30, 2011, Judge Leon granted the Government's Motion for Summary Judgment. Plaintiff appealed the matter to the

D.C. Circuit and on March 7, 2012, Circuit Judges Henderson, Tatel, and Brown affirmed the District Court's decision and ruled in favor of the Broadcasting Board of Governors.

I represented the Broadcasting Board of Governors from approximately October 2009 through May 2012 and was the sole counsel during the District Court proceedings and the lead counsel responsible for drafting motions, briefs, and presenting oral argument before the D.C. Circuit.

Supervising Attorney:

Daniel Van Horn  
Civil Chief  
U.S. Attorneys' Office for the District of Columbia  
555 4<sup>th</sup> Street NW  
Washington, D.C. 20530  
(202) 252-2500

Plaintiff's Counsel:

Leslie D. Alderman, III  
Alderman, Devorsetz, & Hora PLLC  
1025 Connecticut Ave, NW, Suite 615  
Washington, D.C. 20036  
(202) 969-8220

5. *In the Matter of Allegations Regarding Representative Ruben Kihuen (2018)*

In the matter of Representative Ruben Kihuen, former Congressman Ruben Kihuen was accused of sexually harassing multiple women. I served as lead counsel on behalf of the U.S. House of Representatives Committee on Ethics throughout 2018 during investigative subcommittee proceedings and when the matter was presented before the full Committee on Ethics for final adjudication. The matter of Representative Kihuen is significant because it involved multiple witnesses who were afraid to participate in the investigation from fear of retaliation, a legal analysis regarding whether sexual harassment jurisprudence extends to unwanted advances outside of the direct employer / employee relationship, and an exercise in using congressional rules to address conduct that fell outside of traditional sexual harassment law. Both the Committee's investigative subcommittee and the full Committee chose to reprove Representative Kihuen and Representative Kihuen chose not to run for re-election to Congress.

Co-Counsel:

Katherine L. Dacey  
Goodwin Procter  
100 Northern Avenue  
Boston, MA 02210  
(617) 570-1060

Counsel for Representative Kihuen:

Joe Sandler  
 Sandler Reiff  
 1090 Vermont Ave, NW  
 Washington, D.C.  
 20005  
 (202) 479-1111

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).

I settled the following five matters shortly before trial was scheduled to commence. *Bell et al. v. Donley*, 09-cv-843 (D.D.C.). In *Bell*, I served as associate counsel and the matter settled on the first day of trial shortly before the start of jury selection. In *Bright v. F.C.C.*, 8-cv-755;10-cv-397 (D.D.C.), I was lead counsel and the matter settled a few weeks before the jury trial was set to commence. In *Lenkiewicz v. Donovan*, 13-cv-261 (D.D.C.), I was lead counsel and the matter settled a few days before the jury trial was set to commence. In *Ritchie v. Napolitano*, 13-cv-953 (D.D.C.), I was lead counsel and the matter settled a few months before the jury trial was set to commence. In *Norman v. Vilsack*, 12-cv-730 (D.D.C.), I was associate counsel and the matter settled approximately one month before the jury trial was set to commence.

I settled approximately twenty-six additional cases during discovery and/or before the Court resolved the matter based on dispositive motions. In each of these matters I served as the sole counsel on the matter.

Finally, I settled one matter, *Anderson, et al. v. U.S. Dep't of Education*, 06-cv-1565 (D.D.C.), while the matter was on interlocutory appeal to the D.C. Circuit. I was associate counsel in that matter.

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

I have never held judicial office.

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

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 elective, judicial, or any other public office.

**21. Political activities and affiliations.**

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

I have not held any public offices.

**B. 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 had any memberships, held any offices, or rendered any services to any political party or election committee in the last ten years.

**C. 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.**

I have not made any political contributions in the past five years.

**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, to my knowledge, I have never been investigated, and I have never been arrested, charged, or convicted by any law enforcement authorities for violations of any federal, State, county, or municipal law other than a minor traffic offense.

**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. I, nor any business of which I was an officer, director or owner have never been a party or otherwise involved as a party in any legal or administrative proceeding.

**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. I have never been disciplined or cited for a breach of ethics for unprofessional conduct, nor have I been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group.



## 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 sever all connections with my present employer, and any business firms, associations, and organizations if I am confirmed.

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

I have no financial arrangements, deferred compensation agreements, or continuing dealings with any law firm, business association or clients.

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

I have no investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest if I am confirmed.

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.**

I have had no business relationships, dealings, or financial transactions in the last ten years, neither for myself, nor on behalf of a client or as an agent, that could in any way constitute or result in a possible conflict of interest.

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 had no activity in which I 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 my work as non-partisan counsel for the U.S. House of Representatives Committee on Ethics where I worked on recently-enacted conflict of interest regulations for the House of Representatives.

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 have no plans, commitments, or agreements to pursue outside employment during my service as a judge.

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 have no potential conflicts of interest that I need to resolve. If a conflict arises, I will turn to the District of Columbia Code of Judicial Conduct, the Code of Conduct for United States Judges, and any other applicable sources to resolve the conflict of interest.

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

Yes, I expect to serve out my full term.

**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 have been a member of the District of Columbia bar since May 6, 2005.
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?  
I became a bona fide resident of the District of Columbia approximately October 1, 2004. I moved back to the District of Columbia after finishing my judicial clerkship and have lived in the District of Columbia continuously since that date.
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.

**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, I am not a member of the District of Columbia Commission on Judicial Disabilities and Tenure, nor am I a member of the District of Columbia Judicial Nominating Commission.

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

No, I have not been a member of either of those Commissions within the last 12 months.

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

I have provided four (4) copies of my District of Columbia Judicial Nomination commission questionnaire.

## AFFIDAVIT

Carl Ezekiel Ross 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.

Carl C. R.

SUBSCRIBED and SWORN TO before me this 13<sup>th</sup> day of February 2020.

District of Columbia: SS

Subscribed and sworn to before me, in my presence, this 13<sup>th</sup> day of February, 2020.

Kendra Nicholas  
Kendra Nicholas, Notary Public, D.C.  
My commission expires November 30, 2022.

[Signature]  
Notary Public



**Senator Rand Paul  
Post-Hearing Questions for the Record  
Submitted to Carl E. Ross**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

*For Carl E. Ross:*

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

Yes. The principle that “[t]he Second Amendment right is exercised individually and belongs to all Americans,” is cited as part of the United States Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court’s decision in *Heller*, and its foundational principles, are established precedent and must be followed under principles of *stare decisis*.

**Senator Josh Hawley  
Post-Hearing Questions for the Record  
Submitted to Carl E. Ross**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

1. **One of the major distinctions between the federal court system and other U.S. court systems is that the bodies of law governing states and the District of Columbia often rely much more extensively on common-law principles, because sometimes in courts of general jurisdiction, the Constitution simply has very little to say on a particular issue.**

**How would you approach a case of first impression, where the District of Columbia had no law clearly on point and there was no clearly relevant constitutional authority?**

In a case of first impression, I would first determine whether the matter is one over which the D.C. Superior Court has jurisdiction. I would then turn to the statutory or regulatory provision giving rise to the action and look at the plain language of the statute and attribute the ordinary meaning of those terms in an exercise of statutory interpretation. If I am unable to apply the law to the facts of the case based solely on the language of the statute, then I would look to other jurisdictions and consider their interpretations, and applicable court cases, of similar statutory provisions as persuasive, non-binding, authority to determine if there is consistency amongst the interpretations in other jurisdictions. Finally, I would be careful to craft any opinion in a limited fashion to ensure that it only applies the law to the facts of the case before the court and that it does not opine on how the law should be applied to other factual scenarios.

2. **Your questionnaire indicates that you clerked for Judge James R. Spencer, on the United States District Court for the Eastern District of Virginia, at the start of your career. The Eastern District of Virginia is well known as the “rocket docket” given how fast it brings cases from filing to trial.**

**What was the most important point of information you learned about judging or managing caseloads while serving as a law clerk, and how do you see that informing your service as a judge?**

It was a tremendous honor to clerk for the Honorable James R. Spencer, and while I learned a number of things about managing caseloads during my clerkship, the most important is the effect that setting clear expectations can have. In civil litigation matters, Judge Spencer required litigants to appear in person for an initial scheduling conference, after the Complaint and Answer were filed. During the initial scheduling conference, the parties would discuss how they anticipated proceeding during discovery, what they



anticipated with respect to dispositive motions, and what a robust pre-trial schedule would look like. The matter was then placed on a litigation track with concrete deadlines and the parties were encouraged to raise issues such as discovery disputes as soon as practicable and well before any deadline. The parties were also informed that the matter would not be taken off of its litigation track unless the parties appeared before the court and made a compelling case. Judge Spencer utilized a similar method of setting expectations with respect to criminal matters but provided additional flexibility when criminal defendants sought additional time to prepare for trial.

I anticipate setting similar expectations to help move cases efficiently.

**3. Are there circumstances when you believe judges should consider the policy results of their decisions when deciding a case? When might those circumstances arise?**

Judges have a duty to uphold the Constitution and must follow and apply established laws and precedent to the facts of the case before them even if they disagree with the law or underlying policy.

Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Carl E. Ross

Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020

- 1. Given the unique and less traditional role of your position as counsel for the U.S. House of Representatives Committee on Ethics, how do you feel your experience gathering evidence, interviewing witnesses, and presenting your legal analysis for the purpose of adjudication might influence the work expected of you as an associate judge in the Superior Court of the District of Columbia?**

Judges are charged with understanding the nuances of the law, making credibility determinations, and sifting through all the facts and evidence presented to determine if the relevant burden of proof has been met. The skills that I utilize and have cultivated in my position as counsel for the U.S. House of Representatives Committee on Ethics, mirror that work, albeit in a different context. Though decisions are rendered by Members, as counsel for the Ethics Committee, I am responsible for understanding and presenting the nuances of the laws and rules at issue, making recommendations on credibility determinations, and recommending whether the evidence gathered was sufficient to establish a violation of a law, rule, or regulation.

- 2. How do you approach balancing the rights of victims and defendants in the criminal justice system?**

The rights of criminal defendants and victims are generally not in conflict and the justice system works properly when the rights of both are protected. For example, the rights to a speedy and fair trial do not stand in conflict with the rights of victims to be informed of proceedings, the right to avoid unreasonable delay of proceedings, and the rights to attend and be heard in proceedings. Victims and defendants have rights that must be protected and by upholding those rights judges ensure that justice is served.

- 3. How would you describe your judicial philosophy?**

I would describe my judicial philosophy as one that promotes fairness and equality amongst all litigants and in all cases by applying the law to the facts and setting aside any biases.

- 4. If you are confirmed and serve on the D.C. Superior Court, how will you hope your career on the bench is remembered when it is time for you to leave that position?**

If confirmed, I hope to be remembered as a judge who promoted fairness and equality in each matter before me as described in my response to Question 3, and as a judge who issued timely and well-reasoned decisions.

Opening Statement of Elizabeth J. Shapiro  
Nominee to be an Associate Judge of the District of Columbia Superior Court  
June 3, 2020

Chairman Johnson, Ranking Member Peters, and members of the Committee, it is a great privilege to be here. I am deeply grateful for the opportunity to appear before you as you consider 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 its chair, Judge Emmet Sullivan, for recommending me to the White House. I want to thank the President for nominating me. Finally, I would like to express my thanks and appreciation to the Committee members and the dedicated Committee staff for their hard work in considering my nomination, particularly during this difficult period.

I want to single out my husband and life partner, Amos Gelb, for his love and support over the last 25 years. Without him, I could not have accomplished all that I have professionally, or managed to raise our three wonderful children. To my children, Noa, Eliya and Mica, I thank you for being the light of my life, for being the strong and independent-minded individuals that you are, and for sharing your mother with one of this country's great institutions, the Department of Justice. I love and cherish each of you. To the men and women of the Department of Justice, working with you has been an absolute privilege. You are the best and brightest colleagues imaginable. I particularly thank my colleagues in the Federal Programs Branch for being part of my extended family for the past 29 plus years. Your commitment to excellence and devotion to public service is second to none.

I am a native Detroiter and graduate of University of Michigan. From there I moved to Washington, D.C. to attend law school, and I have never left. My children were all born and raised here in D.C. My oldest daughter is a local actress and casting director. My other children are in college.

After starting my career as a judicial clerk at the Superior Court, I spent two years working appellate cases at the Department of Labor. From there I moved to the Department of Justice. In the Civil Division of DOJ I began as a line attorney, handling a wide variety of cases on behalf of the Executive Branch. I became a supervisor specializing in government information, and ultimately served as the Deputy Director of the Federal Programs Branch. I was also privileged to serve as Special Assistant United States Attorney for a limited time.

I have also been honored to represent the Department not just in court, but on the Federal Rules Committees created under the Rules Enabling Act. The inclusive and transparent nature of those proceedings is a model for the judiciary, as are the civility and open-mindedness, qualities that I hope and expect to bring to the bench.

Thank you again for considering my nomination and I look forward to answering any questions you might have.

**REDACTED**

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

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**  
Elizabeth Jane Shapiro
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.**  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20530  
(202) 514-5302
4. **Date and place of birth.**  
February 11, 1960  
Detroit, Michigan
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
I am married to Amos P. Gelb, Director, Washington Media Institute, 1779  
Massachusetts Ave., NW Washington, D.C. 20036.
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.**

Georgetown Law Center; 1983 – 1986; awarded JD in 1986.

University of Michigan; 1978 – 1982, including one year abroad (1979 – 1980) at Hebrew University; awarded B.A. in 1982.

Andover High School; 1975 – 1978; High School Diploma awarded in 1978.

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.**

July 1986 – November 1986 (approx.)  
MassPIRG  
294 Washington Street, Suite 500  
Boston, MA 02108  
Campaign Staff

October 1983 – May 1984 (approx.)  
Israel Military Industries  
3514 International Drive, NW  
Washington, D.C. 20008  
Administrative Assistant

November 1982 – March 1983 (approx.)  
Waltham Racquet Club  
249 Lexington Street  
Waltham, MA 02452  
Tennis Professional

1981 – 1985 (approx.) (summers)  
Tennis Europe, Inc.  
Larchmont, NY 10538  
Tennis Professional

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.**

Civil Division Outstanding Performance Awards (annually)

Department of Justice Special Commendation, *OPM Data Breach Team* (2017)

The Attorney General's Award for Excellence in Furthering the Interests of U.S. National Security (2016)

The Stanley D. Rose Award (the Civil Division's Highest Honor) (2012)

The Attorney General's Award For Distinguished Service (2010)

Impact Player of the Year, *Texas Lawyer* (2008)

National Security Division, Performance Award (2007)

Department of Justice Special Commendation, *Terrorism Designation Team* (2004)

Department of Justice Special Commendation, *Anti-Terrorism Team* (2002)

Phi Beta Kappa Society (1982)

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.**

None.

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.**

The American Law Institute  
Elected Member (2016 – present)

Advisory Committee on the Federal Rules of Evidence  
Member (2005 – present)

District of Columbia Bar Association  
Member (1989 – present)

Maryland Bar Association  
Member (1988 (approx.) – 1991) (currently inactive)

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.**

University of Michigan Alumni Association  
Member (1996 – present)

University of Michigan Letter Club  
Member (1982 – present)

United States Tennis Association  
Annual Member (appx. 2014 – present)

To the best of my knowledge, none of these organizations formerly discriminated or currently discriminates 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.**

United States District Court for the District of Columbia, last renewed on February 23, 2018.

United States Court of Appeals for the Fifth Circuit, admitted on April 24, 2015.

United States Court of Appeals for the D.C. Circuit, admitted on July 10, 2003.

United States Supreme Court, admitted on June 17, 1996.

United States Court of Appeals for the Tenth Circuit, admitted on January 8, 1993.

United States Court of Appeals for the Fourth Circuit, admitted on September 6, 1989.

District of Columbia Court of Appeals, admitted on June 21, 1989.

Court of Appeal of Maryland, admitted on June 14, 1988 (currently inactive).

There have been no lapses in membership.

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

*The Holy Land Foundation for Relief and Development: A Case Study*, United States Attorneys' Bulletin, September 2014, Vol. 65, No. 5.

*Israel, Jordan Mapping Plans To Link Transport Infrastructure*, The Journal of

Commerce, August 1, 1994.

*Arab-Israeli Agreement Opens New Opportunities in Region*, The Journal of Commerce, May 2, 1994.

*In Paris, Peace Means Business*, The Journal of Commerce, April 25, 1994.

*Israel, PLO Agree On Several Key Issues in Paris Trade Talks*, The Journal of Commerce, April 22, 1994.

I also wrote a number of other articles for the Journal of Commerce and the Bureau of National Affairs during 1992 to 1994, on the privatization of Slovenia and the Middle East Economic Talks in Casablanca, Morocco. I do not recall the titles of those articles, nor could I locate them on-line.

- 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.**

June 5, 2019: Panelist, "The Handling of Forensic Expert Evidence in Federal Courts in both Civil and Criminal Cases," Second Circuit Judicial Conference Executive Session. I have no notes, transcripts, or recordings.

November 2016: Panelist, "The Freedom of Information Act," Pennsylvania Bar Association. PowerPoint presentation supplied.

March 22, 2015 (approx.): Lecturer, "The Holy Land Foundation Trial," Alexander Muss High School in Israel. I have no notes, transcripts, or recordings.

March 10, 2015 (approx.): Guest Lecture, "Administrative Designations: What, Why, How and the HLF," Hebrew University. PowerPoint presentation supplied.

March 2015: Speaker, "Privacy in the Age of Social Media," University of Haifa Law School. PowerPoint presentation supplied.

December (annually 2015 to 2019): Speaker, "The Basics of Filing and Litigating Freedom of Information Requests," D.C. Bar Association. PowerPoint presentation supplied.

Over the past five years, I have also presented at internal Department of Justice and other agency seminars. These sessions were limited to only federal government personnel.

- 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 1989 to 1989 I served as a law clerk to the Honorable Stephen Eilperin of the D.C. Superior Court. For two months in 1989, I also served as a law clerk to the Honorable Susan Winfield of the D.C. Superior Court.

- (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.**

1987  
Goldfarb, Levy, Ginigar (now Goldfarb Seligman)  
98 Yigal Alon Street  
Tel Aviv, 6789141 Israel  
Legal Apprentice

1989 – 1991  
Office of the Solicitor, Department of Labor  
200 Constitution Ave., N.W.  
Washington, DC 20210  
Attorney Advisor

1991 – present  
U.S. Department of Justice  
Civil Division, Federal Programs  
Trial Attorney (1991 – 1996)  
Senior Counsel (1996 – 2002)  
Assistant Director (2002 – 2008)  
Special Assistant U.S. Attorney, Dallas, Texas (2004 – 2011)  
Deputy Director (2008 – present)

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

In 1991, I served as a law clerk first to the Honorable Stephen Eilperin, and then the Honorable Susan Winfield. During both clerkships, my duties involved researching and drafting memoranda, orders, and opinions addressing various civil and criminal issues. After clerking, I joined the Department of Labor's Office of the Solicitor. For two years (1989 to 1991) I primarily defended black lung benefit claims in the federal courts of appeals.

After two years at the Department of Labor, I joined the Civil Division's Federal Programs Branch. As a trial attorney I primarily defended federal agencies in district court against constitutional and statutory challenges to statutes, regulations, programs, and administrative decisions. Occasionally, the Federal Programs Branch is also called upon to bring civil enforcement actions. In 2001, while serving as senior counsel, I was appointed to the Civil Division's Terrorism Financing Task Force. As part of that task force, I defended the federal government against challenges to administrative decisions to freeze assets and block property under the International Emergency Economic Powers Act.

Following my work with the task force, I served as an Assistant Director from 2002 to 2008. As an Assistant Director, I supervised approximately 50 trial attorneys and specialized in the area of privileges and government information. I supervised cases involving the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Presidential Records Act, and the Federal Records Act. In 2004, I was appointed Special Assistant United States Attorney (SOUSA) in the Northern District of Texas, for purposes of prosecuting a complex terrorism financing and money laundering case. I handled the trials, significant portions of the appeal, and the entirety of the section 2255 proceedings. In 2008, I was appointed to the Senior Executive Service and now hold the title of Deputy Director of the Federal Programs Branch. My duties are essentially unchanged, although as senior management, I often am called upon to represent the Department's views within the Executive Branch. I also represent the Department of Justice on the Federal Advisory Committee on the Rules of Evidence, as well as represent the Deputy Attorney General on the Standing Committee on Rules of Practice and Procedure.

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

My main practice area is administrative law. I represent a wide variety of federal agencies, and on occasion, individual government officials sued in their personal capacity. In my supervisory capacity, I specialize in privileges and government information, in particular, issues of executive privilege, law enforcement and national security. Within the area of government information, I supervise litigation under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Federal Records Act, and the Presidential Records Act, among other statutes.

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

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

**dates.**

I have appeared in court regularly over the course of my career. Early in my career I appeared in federal appellate courts for approximately six oral arguments. Since joining the Department of Justice, my appearances have been in district court. As a trial attorney, I appeared whenever courts set motions for oral argument, with appearances varying from several times a month to every couple of months. When in trial, such as six months in 1999, and for several months in 2007 and 2008, I appeared daily. The frequency of my appearances have decreased in recent years commensurate with a decrease in the frequency of oral arguments being scheduled for civil motions. In my current role as a supervisor, I have tended to argue only matters with a higher profile, which arise in frequently.

- (2) **What percentage of these appearances was in:**
- (a) **Federal courts (including Federal courts in D.C.);**  
100%
  - (b) **State courts of record (excluding D.C. courts);**  
0%
  - (c) **D.C. courts (Superior Court and D.C. Court of Appeals only);**  
0%
  - (d) **other courts and administrative bodies.**  
0%
- (3) **What percentage of your litigation has been:**
- (a) **civil;**  
99%
  - (b) **criminal.**  
1%
- (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.**

With the exception of one criminal case that I tried to verdict before a jury in late 2008 (and tried to a hung jury the year before) with two other prosecutors, the cases I have handled are civil matters decided on the basis of dispositive motions. These cases, over the years, number in the dozens or even hundreds. Prior to becoming a supervisor, the cases that I handled were as lead counsel or sole counsel. Since becoming a supervisor, at any given time I am supervising approximately 50 cases and personally handling the occasional case. Currently, I handling the House Judiciary's Committee's petition to obtain a court order disclosing the grand jury information redacted from the Mueller Report.

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

**(a) a jury;**

1 %

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

99%

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) The New York Times Company, et al. v. Dept. of Justice, 915 F. Supp. 2d 509 (S.D.N.Y. 2013); 756 F.3d 100, 116 (2d Cir. 2014) (before Chief Judge Colleen McMahon)

These consolidated cases, brought under the Freedom of Information Act, challenged the government's withholding of information pertaining to the alleged use of unmanned aerial vehicles to target United States citizens abroad. These cases, and similar cases pending in the District of Columbia and Northern District of California, presented

important issues of balancing the legitimate needs of the Executive to protect sensitive national security information and confidential legal advice, against the public's legitimate desire for information about government activities in order to better inform the public debate. The government prevailed in district court on both the scope of the classified information requiring protection, and claims of privilege over confidential legal advice authored by the Department's Office of Legal Counsel. The cases raised and adjudicated the doctrines of "express adoption" and "working law" that are of universal significance to governmental claims of attorney client and deliberative process privilege. The Second Circuit reversed the district court in part.

I was co-lead counsel in the matter before the district court. On appeal, I assisted with the appellate briefs, but did not argue before the Second Circuit.

Counsel for the New York Times:

David McCraw  
The New York Times Company  
620 Eighth Avenue  
New York, NY 10018  
(212) 556-1009

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- (2) Holy Land Foundation for Relief and Development v. Ashcroft, et al., 219 F. Supp. 2d 57 (D.D.C. 2002), aff'd 333 F.3d 156 (D.C. Cir) (before Judge Gladys Kessler, U.S. District Court for the District of Columbia and Judges Ginsburg, Sentelle and Henderson before the D.C. Circuit).

This case presented a significant and novel challenge to the power of the President, the Attorney General, and the Secretaries of Treasury and State to designate a U.S. charity as a "Specially Designated Terrorist" under the International Emergency Economic Powers Act (IEEPA) and two Executive Orders. The Holy Land Foundation was designated, and its assets blocked, in December 2001 due to its financial support of Hamas. It brought a

motion for preliminary injunction to challenge the factual basis of the designation, as well as its legal underpinnings under the First, Fifth, and Fourth Amendments; the Religious Freedom Restoration Act; and the Administrative Procedure Act. The district court dismissed the case in its entirety, except for the Fourth Amendment claim. That claim survived a motion to dismiss at the preliminary injunction stage, but was voluntarily dismissed later in the case. The Court of Appeals affirmed, and the Supreme Court denied certiorari.

I was lead counsel in district court and counsel of record on appeal.

Counsel for The Holy Land Foundation:

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Co-Counsel:

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- (3) United States v. El-Mezain, et al., Crim. No. 3:04-CR-240 (N.D. Tex.), 664 F.3d 467 (5th Cir. 2011) (before Chief Judge A. Joe Fish and Judge Jorge A. Solis)

This criminal case was indicted in 2004 against seven individual defendants and a corporate entity, the Holy Land Foundation. The indictment alleged multiple counts of conspiracy, material support to a terrorist organization, and money laundering. Trial proceeded for over three months before Chief Judge A. Joe Fish in the Northern District of Texas, ultimately ending in a hung jury and mistrial. The retrial occurred between September and November of 2008, before Judge Jorge Solis, resulting in the conviction of all defendants on all charges. The defendants were sentenced in 2009, the convictions upheld in 2011, and certiorari denied in 2012. Habeas counsel petitioned the district court to vacate the sentences under 28 U.S.C. § 2255, alleging, *inter alia*, ineffective assistance of counsel and actual innocence.

This case was the most ambitious criminal at that time using the material support statutes. It involved years of previously classified surveillance as well as thousands of exhibits both seized through search warrants and obtained from other countries pursuant to Mutual Legal Assistance treaties. Pre-trial motions raised numerous and novel legal issues, such as whether witnesses, including an expert, could testify anonymously to protect their safety; whether the testimony of an expert who relies in part on testimonial hearsay violates the Constitution's confrontation clause; the extent to which defendants

can discover classified surveillance obtained through the Foreign Intelligence Surveillance Act when the government was not relying on the surveillance; whether the qualified reporters' privilege should apply in a criminal case; and whether the district court could appoint volunteer counsel to represent a corporation when the corporation had not itself authorized an appeal. The Fifth Circuit's decision addressing these and myriad other issues consumed 170 pages.

I was one of four prosecutors on the first trial, and one of three prosecutors on the second trial. I handled, with my colleagues, all facets of the pre-trial and trial proceedings, including discovery, motions, pre-trial hearings, Kastigar and Daubert proceedings, voir dire, argument to the jury, and preparation and examination of witnesses.

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Co-Counsel:

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(4) McKeever v. Barr, No. 17-5149 (D.C. Cir.) (September 21, 2018) (Judges Katsas, Ginsburg, Srinivasan) (before Judge Lamberth in district court)

This case presented the legal question of whether a district judge may rely on inherent authority to go outside the text of Criminal Rule 6(e) to authorize disclosure of grand jury information for reasons of historical interest. The plaintiff, an author and historian, was writing a book about the 1956 disappearance of Columbia University Professor Jesus de Galindez Suarez. Mr. McKeever argued that Prof. Galindez Suarez was kidnapped and murdered at the behest of Dominican dictator Raphael Trujillo. In search of evidence to support his thesis, Mr. McKeever petitioned the district court to unseal grand jury records related to the investigation and trial of a former U.S. intelligence agent who was charged under the Foreign Agents Registration Act, but never indicted for Galindez's murder. The case was important because until the D.C. Circuit ruled in this case that district courts lack inherent authority to deviate from Rule 6(e), district judges in the District of Columbia had held that they possessed the inherent authority to release such grand information, based on a balancing test developed by the Second Circuit and not found in the rule.

I represented the Department of Justice in district court, in this matter and the other similar matters that preceded it. *See, e.g., In Re petition of Kutler*, 800 F. Supp. 2d 42 (D.D.C. 2011); *In re Petition to Unseal Dockets Related to Indep. Counsel's 1998 Investigation of President Clinton*, 308 F. Supp. 3d (D.D.C. 2018).

Plaintiff's Counsel:

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 Stuart A. McKeever  
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 Johns Island, SC 29455  
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Co-Counsel:

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(5) Hatfill v. Mukasey, et al., Civil Action No. 03-1793 (D.D.C.)

Steven Hatfill, who became the focus of media attention following the anthrax mailings in October 2001, sued the Department of Justice, the FBI and several individuals under the Privacy Act, alleging improper disclosure and safeguarding of investigatory information about him. The case raised novel questions about the extent to which a plaintiff must identify the name of an alleged "leaker" as opposed to identifying only the agency from which the information came. In addition, plaintiff proposed to expand the Privacy Act to reach oral disclosures not directly derived and retrieved from a protected system of records. During discovery, several journalists were compelled by Judge Reggie Walton to divulge the sources for their reporting on the anthrax investigation. *See, e.g., Hatfill v. Mukasey, et al.*, 505 F. Supp. 2d 33 (D.D.C. 2007) (finding reporter Toni Locy in contempt and imposing daily, escalating fines). Ms. Locy secured an emergency stay from the D.C. Circuit. The appeal was argued, but became moot after the parties reached a negotiated settlement of all issues, resulting in a dismissal of the case.

I represented the Department of Justice and FBI as lead counsel, with two additional attorneys under my supervision.

Plaintiff's Counsel:

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Counsel for the Washington Post, Newsweek, and ABC:

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Counsel for Toni Locy and Gannett Corporation:

Robert C. Bernius  
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Counsel for the Associated Press, New York Times, and Baltimore Sun:

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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).**

I have many cases that have settled prior to trial, including Hatfill, above, which settled for a monetary payment. Another matter that settled prior to trial was the case of The Memphis Commercial Appeal v. FBI, (D.D.C.). I handled the case as a supervisor, together with an attorney in my office. I led a mediation session with a magistrate judge, and negotiated an unusual agreement that permitted the plaintiff to access certain FBI information from archived case files at the National Archives. I teach a CLE course for the D.C. Bar each year on the Freedom of the Information Act, and I regularly speak to government agencies about government information matters. In addition, I have lectured internationally on numerous occasions about aspects of terrorism financing and money laundering. Occasionally I have also guest lectured at national security courses at Georgetown Law Center and the George Washington University Law School.

Most recently, I am part of the Department of Justice team assigned to handle subpoena enforcement and other congressional actions filed in federal court. I am lead counsel representing the Department in its response to a petition for grand jury information from the Mueller investigation filed by the House Judiciary Committee.

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.

No.

A. List all court decisions you have made which were 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.
- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.
- 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.**

I have never been disciplined or sanctioned. I have been the subject of two complaints. First, plaintiffs' counsel in Alexander v. FBI, et al., 541 F. Supp. 2d 274 (D.D.C. 2008) moved for sanctions against my clients, and accused the government's attorneys of willful misconduct. In a written opinion, Judge Lamberth denied the sanctions and specifically found no misconduct by any of the Justice Department attorneys. *See id.* Second, Representative Conyers from Michigan, in a January 2010 letter to the Attorney General, requested that the Holy Land Foundation prosecutors be investigated for attaching a list of potential 801(d)(2)(E) co-conspirators and/or joint venturers to the government's trial brief, which was filed on the public record. The Office of Professional Responsibility (OPR) concluded that no further investigation was warranted. In addition, Department of Justice policy requires that any criticism of a Department lawyer be referred to OPR. There was one instance in which I was interviewed by OPR as a result of a trial judge's criticism of an attorney under my supervision. In another instance, I was asked to make a written submission to OPR. In both cases, these initial inquiries were closed without further action. In a more recent case, *Judicial Watch v. State*, Civil Action No. 14-1242, the plaintiff alleged that an attorney under my supervision engaged in misconduct, and the court ordered discovery. OPR declined to open an investigation.

## II. POTENTIAL CONFLICTS OF INTEREST

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

I will certain not conduct business on behalf of the Department of Justice, but intend to maintain personal and professional relationships formed during my many years there.

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

I am vested in DOJ retirement and Thrift Savings Plan. I also maintain a money market account at the Justice Federal Credit Union

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 currently have no plans, but would like

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 II - 150 1 (b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
Yes.
4. If the answer to Question 3 is "no" --
  - (a) Are you a professor of law in a law school in the District of Columbia?
  - (b) Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - (c) Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - (d) Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
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.

**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.**

Copies are attached.



## AFFIDAVIT

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

Elizabeth J. Shapiro

SUBSCRIBED and SWORN TO before me this 7<sup>th</sup> day of November 2019.

Tina And  
Notary Public



**Senator Rand Paul  
Post-Hearing Questions for the Record  
Submitted to Elizabeth J. Shapiro**

**Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020**

*For Elizabeth J. Shapiro:*

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

As an Associate Judge of the Superior Court of the District of Columbia, I will be bound to follow all Supreme Court precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and would certainly do so.

Senator Josh Hawley  
Post-Hearing Questions for the Record  
Submitted to Elizabeth J. Shapiro

Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020

1. One of the major distinctions between the federal court system and other U.S. court systems is that the bodies of law governing states and the District of Columbia often rely much more extensively on common-law principles, because sometimes in courts of general jurisdiction, the Constitution simply has very little to say on a particular issue.

**How would you approach a case of first impression, where the District of Columbia had no law clearly on point and there was no clearly relevant constitutional authority?**

I would look to the briefs of the parties, to the plain language of any pertinent statutes, to the common law in the absence of any statutory authority, and, finally, to analogous law where valid comparisons might apply.

2. In your questionnaire, you mentioned your previous involvement with MassPIRG. Being on the D.C. Superior Court would make your courtroom one of the first stops for all kinds of lawsuits filed by D.C. residents. But all lawsuits certainly are not created equal.

**How would you approach a case—for instance, a consumer protection case—where you thought the plaintiff might have a meritorious claim, but they really didn't meet the pleading requirements? Would you let such a suit go forward, or would you dismiss it?**

I would judge each suit individually regardless of subject, and a suit that is deficient on the pleadings, including for want of jurisdiction, should be dismissed before ever reaching consideration of the merits.

3. Over the last several years, the federal courts have seen aggressive theories of standing being advanced in environmental cases, like the one out of Oregon that challenged the U.S. government's entire emissions policy and demanded as a remedy that the government use as-yet-undeveloped technology to "draw down" carbon dioxide from the atmosphere. The standing theory in that case was simply based on plaintiffs' living in a world affected by greenhouse gases.

**Do you believe a court should find standing under those sorts of circumstances, where the claims of harm are alleged as occurring at a very high level?**

As a nominee, I cannot pre-judge a case. If I were confirmed, I would evaluate each case on its own merits, applying the law to the particular facts before me.

Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Elizabeth J. Shapiro

Nominations of Donald L. Moak and William Zollars to be Governors, U.S. Postal Service,  
and Hon. Mark A. Robbins, Carl E. Ross, and Elizabeth J. Shapiro to be Associate Judges,  
Superior Court of the District of Columbia  
Wednesday, June 3, 2020

**1. How would you describe your judicial philosophy?**

As a career civil servant, I do not have a judicial philosophy. I believe in adhering to the plain language of statutes, regulations and rules, and applying the law to the facts at hand.

**2. The pace and demands of this court will be substantial. You have had a long career in the Department of Justice and have previously indicated that your career has been very challenging and demanding long hours. Are you prepared to continue such a pace in the Superior Court of D.C.?**

Managing and litigating complex civil matters has required that I work long hours in my current job, and I intend to equally dedicate myself to the Superior Court of D.C. should I be fortunate to be confirmed.

**a. How will you manage the demanding caseload of the court?**

I will do my best to develop efficiencies in my own case management, and to set expectations of chambers and litigants early so that delays are kept to a minimum.

**3. What experiences at DOJ have best prepared you for this position and what areas of the law do you feel you will most need to learn in order to be successful in this role?**

**a. How do you plan to successfully learn those topics?**

My many years of managing and litigating complex civil matters on a range of issues have prepared me well for the court's civil docket. Similarly, my years as a Special Assistant United States Attorney litigating a complex criminal matter will help me with the criminal docket, as will my years working on the Advisory Committee for the Federal Rules of Evidence. As for those areas of Superior Court with which I am less familiar, I intend to study and observe, and to absorb the detailed information I will be provided as part of the training for new Superior Court judges.

**4. If you are confirmed and serve on the D.C. Superior Court, how will you hope your career on the bench is remembered when it is time for you to leave that position?**

I hope to be remembered for my intellect, fairness, demeanor, and open-mindedness. I want each litigant to leave my courtroom feeling that they were treated fairly and with respect.