

**NOMINATIONS OF THOMAS G. DAY,
KATHERINE E. OLER, JUDITH E. PIPE, AND
CHARLES J. WILLOUGHBY, JR.**

HEARING

BEFORE THE

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

FIRST SESSION

NOMINATIONS OF THOMAS G. DAY TO BE A COMMISSIONER, POSTAL
REGULATORY COMMISSION, KATHERINE E. OLER, JUDITH E. PIPE,
AND CHARLES J. WILLOUGHBY, JR., TO BE ASSOCIATE JUDGES,
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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**NOMINATIONS OF THOMAS G. DAY,
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AND CHARLES J. WILLOUGHBY, JR.**

THURSDAY, SEPTEMBER 21, 2023

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

The Committee met, pursuant to notice, at 11:22 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Gary Peters, Chair of the Committee, presiding.

Present: Senators Peters [presiding], Carper, Hassan, Sinema, Blumenthal, Scott, and Hawley.

OPENING STATEMENT OF SENATOR PETERS¹

Chairman PETERS. The Committee will now come to order.

I want to certainly apologize for the late start to this meeting. We had an all-Senators meeting with President Zelensky from Ukraine, which went a little over. So we are starting a little late, but we will make up for that time in the minutes to come.

Today, we are considering four nominations: Thomas G. Day to serve as a Commissioner for the Postal Regulatory Commission (PRC); as well as Katherine Oler, Judith Pipe, and Charles Willoughby, Jr., to be Associate Judges (AJ) on the Superior Court of the District of Columbia.

Welcome to each of our nominees and to those joining them at today's hearing. Congratulations on your nomination, and thank you for your willingness to serve in these very important positions. Each of these roles are essential to the Federal Government as well as the District of Columbia.

The Postal Regulatory Commission is a bipartisan body that provides key oversight for the Postal Service (USPS). Countless families rely on the Postal Service each and every day. This Commission helps to ensure that they are most effectively serving the American people. Last week, we were able to advance one nominee for the Postal Regulatory Commission with unanimous bipartisan support, and I hope we can do the same for Mr. Day's nomination and ensure that the Commission remains fully staffed and best positioned to carry out its very important work.

I would also like to thank Ranking Member Paul for working with me to quickly move Mr. Day's nomination through the Committee process.

¹ The prepared statement of Senator Peters appears in the Appendix on page 19.

The D.C. Superior Court functions as the State-level trial court in the nation's capital. The court has an extraordinary high number of cases, and each one impacts the livelihoods of individuals and families all across the District of Columbia. Unfortunately, judicial vacancies place serious burdens on judges and delay resolutions for the parties before the court. Filling open seats will help the court conduct its work more efficiently, and provide better service to the people of the District.

Welcome again to all four of you. Today's hearing is an important opportunity for the Committee to learn more about your qualifications and how you plan to serve in these new roles.

It is the practice of the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses. If each of you would please rise and raise your right hands.

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

[Witnesses respond.]

Thank you. You may be seated.

Our first nominee is Thomas G. Day, nominated to be Commissioner on the Postal Regulatory Commission. Mr. Day has served in the Federal Government for 45 years in both the U.S. Army and the U.S. Postal Service. During his 35 years at the Postal Service, he served in senior roles including Vice President of Engineering, Senior Vice President of Government Affairs, Senior Vice President of Intelligent Mail, and Chief Sustainability Officer. From 2007 to 2011, he also served as the Chair of the Standards Board at the Universal Postal Union, the U.N. agency that governs the international exchange of mail.

Since his retirement from the U.S. Postal Service in 2019, Mr. Day has worked at the International Post Corporation in Brussels, Belgium.

Mr. Day is a graduate of the U.S. Military Academy at West Point with a Bachelor of Science (B.S.) in engineering. He has a Master of Art (M.A.) in Management from Central Michigan University and was a Sloan Fellow at the Graduate School of Business at Stanford University with a Master of Science (M.S.) in Management.

Mr. Day, welcome to the Committee. You may proceed with your opening remarks.

**TESTIMONY OF THOMAS G. DAY,¹ TO BE A COMMISSIONER,
POSTAL REGULATORY COMMISSION**

Mr. DAY. Thank you, Senator.

Mr. Chairman, Ranking Member Paul, and distinguished Members of the Committee, thank you for the opportunity to appear before you today and for your consideration of my qualifications to be a Commissioner of the Postal Regulatory Commission. I would also like to thank President Biden for the opportunity he has afforded me through this nomination, and I am honored by his trust.

My wife, Young, has joined me today in this important event in our life together. We just recently celebrated our 40th wedding an-

¹ The prepared statement of Mr. Day appears in the Appendix on page 21.

niversary. Our two sons, Bill and Jim, and their wives, Lindsey and Gabi, along with our five grandchildren, could not join us today, but I am very thankful to all the support I received from my family through the years.

Almost my entire adult life has been in service to my country in either the U.S. Army or the U.S. Postal Service. It is a three-generation tradition in my family, with both my father and grandfather having spent their working careers as employees of the Post Office and as members of the American Postal Workers Union (APWU). I have prided myself for serving in the Federal Government, and I look forward to this opportunity to do it again.

My experience at the Postal Service is at every level of management, from frontline supervisor to senior officer and everything in between. My experience has been in a wide array of functional areas, including delivery, customer service, processing, transportation, engineering, and government relations.

As an officer of the Postal Service, I had frequent interaction with Commissioners and the staff of the Postal Regulatory Commission. In this role, I understood the need for cooperation and engagement between the Postal Service and the PRC to ensure that decisions were made in an appropriate and timely manner.

During my time at the Postal Service, I also chaired the Standards Board at the Universal Postal Union (UPU). The UPU is the United Nations agency with responsibility for the oversight and exchange of mail and packages among postal operators on a global basis.

After retiring from the Postal Service, I served as the Chief Commercial and Chief Financial Officer (CFO) of the International Post Corporation (IPC). The IPC is a not-for-profit organization comprised of 25 postal operators, including the U.S. Postal Service, which represents almost 80 percent of the global mail volume.

The experience at both the UPU and the IPC has provided me with a broad perspective into a variety of postal operators around the world. I have seen firsthand the success and failure of these organizations, as well as the operations and data management of a variety of posts.

My experience in the Postal Service and the interaction with other posts is an excellent fit to serve as a Commissioner. I can fully grasp the issues at hand and how they may impact service standards and performance measurement, potential cross-subsidization, transparency, and accountability. This is in keeping with the legislatively defined role of the regulatory commission.

This is a critical time for the Postal Service. It is certainly the most momentous change the Postal Service has experienced since it was created under the Old Post Office Department in 1970. The legislation that created the Postal Service in 1970 also created the Postal Regulatory Commission, originally the Postal Rate Commission. The various updates to Title 39 have continued to emphasize the importance of an independent regulator. The role of the regulator is clear—rate regulation, service standards, and service performance to ensure fair competition, to enforce the transparency and accountability of the Postal Service.

The critical time for the Postal Service comes after more than a decade of transition that is largely due to the impact of e-commu-

nications and e-commerce. E-communications has directly caused the ongoing decline of First-Class Mail volume, formerly the very core of the Postal Service network as well as the source of critical income. E-commerce has resulted in the extensive use of online shopping and the need to effectively manage processing, transport, and delivery of these items. In turn, there is also a need for an effective network that can manage the items that are being returned. Because of this dramatic decrease in traditional mail volumes, combined with the increase in package volume, there is an absolute need to modify the postal network. The Delivering for America 10-year plan is the Postal Service effort to modify that network. I agree there is a need for modification.

In keeping with the legislative direction provided in Title 39, it is essential that the PRC provide the oversight to ensure that the implementation of Delivering for America (DFA) is accomplished in a manner that provides fair competition, accountability, and transparency.

I am uniquely qualified to serve as a Commissioner. My educational training, combined with experience in domestic and global postal sector, provides me with the ability to understand the issues of importance. I am committed to working with the Postal Service and all of its key stakeholders to find the optimal practical solutions to create a postal system to best serve our country. I am honored to have been considered to serve in this role, and I hope you will confirm my nomination so that I may do so.

Chairman PETERS. Thank you, Mr. Day.

Before we turn to the judges, in addition to our nominees and their families here, which we welcome all the families, we are going to be talking about the PRC. We actually have a current PRC Commissioner in the audience.

I want to recognize Ashley Poling, who is a current Commissioner. We will be talking a lot about the PRC, and I will just say that part of her past experience, she was a member of my staff here on the Committee, so has outstanding credentials. Thank you for being here.

We will now turn to the court here. Our next nominee is Special Master Katherine Oler, nominated to be an Associate Judge on the Superior Court of the District of Columbia. She has served as a court-appointed special master for the U.S. Court of Federal Claims since 2017.

Previously, Special Master Oler served as an Air Force (USAF) Judge Advocate from 1996 to 2017, retiring from active duty as a Colonel. Among other assignments, she served as the Air Force's Chief Prosecutor and Chief Government Appellate Counsel at Joint Base Andrews, Staff Judge Advocate at Joint Base San Antonio-Randolph, and as Deputy Chief Trial Judge of the Air Force.

She received her Juris Doctor (J.D.) from Boston University School of Law in 1996 and her Bachelor of Art (B.A.) from Wellesley College in 1993.

Special Master Oler, it is wonderful to have you here. You may proceed with your opening remarks.

TESTIMONY OF KATHERINE E. OLER,¹ TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. OLER. Good morning, and thank you.

Chairman Peters, Ranking Member Paul, and Members of this Committee, I am deeply honored by the opportunity to appear before you today as a nominee to be an Associate Judge on the Superior Court of the District of Columbia. I would like to thank you and your Committee staff for considering my nomination.

I am especially grateful to President Biden for nominating me for this position. I would also like to thank the D.C. Judicial Nomination Commission, chaired by the Honorable Marie Johns, for recommending me to the White House.

I would not be here today without the tremendous love and support of my family. Here with me today is my husband of nearly 24 years, Colonel Retired Adam Oler; our two incredible teenage children who are undoubtedly my greatest accomplishment; my sister-in-law, Dr. Allison Oler Szapary; my cousin, Lee Senger, and her husband, Jeffrey Senger; my mother, Margaret Ellsworth, who worked tirelessly for 30 years as a schoolteacher and has been my lifelong cheerleader and supporter. My father, Paul Ellsworth, could not be here today due to health reasons, but I want to thank him for his unwavering love and support over the years.

In addition to my family, I am grateful to the countless fellow servicemembers whom I had the privilege of serving alongside for over 20 years. I hope in some way my presence here today can be seen as a reflection of their service and commitment, which is part and parcel of my own.

I am the fourth generation of my family to be born in Washington, DC. Though I grew up elsewhere, I returned to this city during and after my military service. My decision to join the Air Force was motivated by a lifelong desire to serve my country and my community. Earning my commission also added to my family's long history of military service. My father enlisted in the Army during the Vietnam era. My grandfather joined the Submarine Service as a teenager early in World War II and fought across the Pacific. My great-grandfather served in the artillery in France at the end of World War I and is buried at Arlington National Cemetery.

During my 21 years on active duty, I had the opportunity to serve across our great country and all over the world performing legal work that was both inspiring and challenging. My service as a prosecutor gave me the opportunity to work on scores of complex felony cases. It taught me the importance of hard work, preparation, and how critical it is to demonstrate the highest degree of professionalism, both as an attorney and an officer.

More fundamentally, the cases I tried imparted upon me that every case is distinct and that the fair and timely administration of justice is at the very heart of our judicial system. Those were the lessons that I took with me to the trial bench where I served for three years as my service's deputy chief trial judge and that I keep with me today in my current role as a special master on the United States Court of Federal Claims.

¹ The prepared statement of Ms. Oler appears in the Appendix on page 71.

Over my 26-year legal career, I have spent nearly nine years on the bench. I believe this work has prepared me exceptionally well to serve as a D.C. Superior Court judge. If I am fortunate enough to be confirmed, I would serve this city with the same level of dedication, hard work, and uncompromising commitment to the fair administration of justice that has guided me throughout my career.

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

Chairman PETERS. Thank you, Special Master Oler, for your opening statement.

Our next nominee is Judge Judith Pipe, nominated to be an Associate Judge on the Superior Court of the District of Columbia.

Judge Pipe has served as a Magistrate Judge for the District of Columbia Superior Court since 2020. Previously, she served as a staff attorney and a supervising attorney with the Public Defender Service for the District of Columbia from 2007 to 2019.

She received her J.D. from Catholic University's Columbus School of Law, magna cum laude, in 2007 and her B.A. from American University, cum laude, in 2003.

Welcome, Judge Pipe, you may proceed with your opening remarks.

**TESTIMONY OF JUDITH E. PIPE,¹ TO BE AN ASSOCIATE JUDGE,
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Judge PIPE. Good morning, and thank you.

Mr. Chairman and Members of the Committee, I am humbled and honored to appear before you today as a nominee to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank each of you for considering my nomination and the Committee's staff for their hard work in preparing for this hearing.

I thank the D.C. Judicial Nomination Commission and its chair, the Honorable Marie Johns, for recommending me to the White House and President Joseph Biden for nominating me.

I wish to recognize and thank Chief Judge Anita Josey-Herring for her leadership and support and former Chief Judge Robert Morin for encouraging me throughout my career and for appointing me to my current position as a Magistrate Judge in Superior Court.

I would like to take a moment to acknowledge my family, whose support has been critical to me reaching this honor of being before you today. First, to my husband, Chris Pipe, for his patience, support, and encouragement since the first day we met 21 years ago. Together, we have raised two amazing children, who are here with me today. They are my greatest pride and joy, and I cannot wait to see the amazing adults and community members they will undoubtedly become.

I would like to thank my parents, Dr. Jeffrey Malka and Dr. Susan Gelfand Malka, who have unconditionally supported me throughout my life. They have constantly emphasized and exemplified that a life of service to your community is a life well lived. I would like to thank my sisters, Jennifer Rudo and Deborah Friedman, who have also led lives of service to their communities. Jen-

¹ The prepared statement of Judge Pipe appears in the Appendix on page 100.

nifer is a special education teacher, and Deborah is an oncology nurse. A special thank you to my oldest sister, Dorothy Malka, who has lived her whole life paralyzed and with a significant brain injury. She is the kindest and gentlest person I know and has been a constant inspiration to me throughout my life.

I have dedicated my legal career to public service in the Superior Court of the District of Columbia. I currently serve as a Magistrate Judge in both the Criminal and Domestic Violence Divisions of Superior Court. Since my appointment to that position in January 2020, I have served on some of the most high-volume calendars and presided over hundreds of arraignments, preliminary hearings, and domestic violence temporary protection order hearings. In 2022, I was assigned to a misdemeanor traffic calendar where I presided over a dozen bench trials, hundreds of guilty pleas, sentencings, and a variety of other hearings that occur in the life of a criminal case. In that role, I cleared a backlog of cases that had accumulated over the pandemic by setting reasonable deadlines and coming to the courtroom prepared on the law and the facts.

On every calendar I have presided over I have consistently and repeatedly demonstrated my commitment to neutrality by objectively applying the law to the facts in every case before me. Prior to my appointment as a Magistrate Judge, I served first as a staff attorney and then as a supervising attorney at the Public Defender Service for the District of Columbia. In that role, I handled hundreds of cases from their arraignment to their conclusion in Superior Court. As a litigator, I was in court daily and appeared before dozens of current and former judges of Superior Court. I am thankful to have those judges support me throughout my career and during this process.

It has been a great honor to serve the District of Columbia community in Superior Court. I am humbled by the opportunity, if confirmed, to continue my commitment to public service and the rule of law by becoming an Associate Judge.

I thank you for considering my nomination, and I look forward to answering any questions you have.

Thank you, Chairman.

Chairman PETERS. Thank you, Judge Pipe.

Our final nominee is Charles Willoughby, nominated to be an Associate Judge on the Superior Court of the District of Columbia.

Mr. Willoughby has served as an Assistant United States Attorney (AUSA) in the U.S. Attorney's Office for the District of Columbia since 2014. He has held multiple leadership roles in that office and was appointed as a deputy chief in the Major Crimes Section of the Superior Court Division in 2023.

Previously, Mr. Willoughby was an Assistant Attorney General (AG) in the Criminal Division of the Virgin Islands Department of Justice (DOJ). He received a J.D. from Howard University School of Law in 2007, a B.A. from Belmont University in 2002, and a B.A. from Morehouse College in 2000.

Mr. Willoughby, welcome to the Committee. You may proceed with your opening remarks.

TESTIMONY OF CHARLES J. WILLOUGHBY, JR.,¹ TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. WILLOUGHBY. Yes, thank you.

Good morning, Chairman Peters, Ranking Member Paul, and Members of the Committee. I am humbled, honored, and grateful to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would also like to extend my sincere appreciation to the District of Columbia Judicial Nomination Commission and its chair, the Honorable Marie C. Johns, for recommending me to the White House and President Joseph R. Biden for nominating me.

Additionally, I would like to express my utmost gratitude to the current U.S. Attorney for the District of Columbia, Matthew Graves, as well as former U.S. Attorneys Ronald Machen, Vincent Cohen, Jessie Liu, and Channing Phillips, for their leadership and support. I would also like to thank former U.S. Attorney for the U.S. Virgin Islands Ronald Sharpe for his guidance and mentorship throughout my legal career.

I am thankful to my current and former colleagues at the U.S. Attorney's Office, the many law enforcement officials with whom I have had the opportunity to work, and the defense bar of the District of Columbia, who have all in some form or fashion inspired, encouraged, and challenged me.

There are no words to capture the appreciation and love that I reserve for my family and close friends, some of whom are with us today. It is because of their unwavering and unconditional support that I sit before you today.

Born as the eldest of two sons of Charles Willoughby, Sr., and Brenda Atkinson-Willoughby here in Washington, DC, my parents instilled in me early on the importance of being a public servant. My father, an attorney, worked as a public servant in local and Federal agencies for most of his legal career, including the U.S. Attorney's Office for the District of Columbia. My mother, an educator and administrator, served in various capacities in public schools and in institutions of higher education throughout D.C. While my late father is not with us today, it brings me great joy to have my mother in attendance. She continues to inspire me and reminds me of the importance of serving my community.

As a second-generation Washingtonian, it is a great honor to be considered for a judgeship on a court that I first visited as a young child more than 30 years ago, where my father appeared when he was an Assistant U.S. Attorney. Some of my fondest memories are of watching him in court, and it was no surprise to many when I followed in his footsteps and attended the Howard University School of Law, just as he had done.

Also with me today is my beautiful wife, Cassandra Vincent. We met in St. Thomas, where she was employed as a detective for the U.S. Virgin Islands Police Department and I was beginning my career as a prosecutor. Her love and dedication are underscored by the fact that she graciously relocated from her beautiful native island to support me when the opportunity arose for me to serve as

¹ The prepared statement of Mr. Willoughby appears in the Appendix on page 128.

an Assistant U.S. Attorney in the District of Columbia. Cassandra and I are blessed to have three sons. My two stepsons, Amileo and Dante, who could not be with us today, and our youngest son, Chaz, who is here.

Shortly after graduating from Howard, I began my legal career as an Assistant Attorney General (AAG) in St. Thomas in the U.S. Virgin Islands, where I began prosecuting misdemeanor matters and was soon elevated to prosecuting violent crime felonies. In 2014, after five years on the island, I returned to D.C. to join the U.S. Attorney's Office, where I have served as an Assistant U.S. Attorney for almost a decade. During my tenure at the U.S. Attorney's Office, I have appeared in both D.C. Superior Court and the United States District Court for the District of Columbia, prosecuting a wide range of criminal matters, including homicides and cybercrimes.

Throughout the course of my legal career, I have made it a priority to exercise sound judgment, be respectful to all whose paths I cross, and above all, maintain fidelity to the law. I am grateful for the opportunity to serve the residents and community of the District of Columbia in a new role, if I am fortunate enough to be confirmed to be an Associate Judge.

Again, I thank you for your consideration of my nomination, and I look forward to answering your questions.

Chairman PETERS. Thank you, Mr. Willoughby.

There are three questions that the Committee asks of every nominee. I am going to ask each of you to respond briefly with either a yes or no. We will start with Mr. Day and then work down the dais for these three questions.

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

Mr. DAY. No.

Ms. OLER. No, Senator.

Judge PIPE. No, Senator.

Mr. WILLOUGHBY. No, Senator.

Chairman PETERS. Second, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. DAY. No, Senator.

Ms. OLER. No, Senator.

Judge PIPE. No, Senator.

Mr. WILLOUGHBY. No, Senator.

Chairman PETERS. Last, do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted Committee of the U.S. Congress, if you are confirmed?

Mr. DAY. Yes, Senator.

Ms. OLER. Yes, Senator.

Judge PIPE. Yes, Senator.

Mr. WILLOUGHBY. Yes, Senator.

Chairman PETERS. Very well, thank you.

Mr. Day, the Postal Regulatory Commission plays an absolutely critical role in conducting oversight of the Postal Service, as you

know. It oversees prices, on-time delivery service, and more. For example, the PRC recently began an important public inquiry on proposed changes to the postal network. The PRC's oversight work is absolutely essential and to help to hold the Postal Service accountable to its mission of reliably serving every community and delivering to every address in this great country of ours.

You have had decades of experience as an executive at the Postal Service touching on multiple aspects of its operation. My question for you, sir, is how would you shift from the Postal Service to the PRC and apply your experience to ensure that the Commission acts as a strong regulator?

Mr. DAY. Thank you, Senator.

Throughout my entire career, whether military or Postal Service and then afterwards at the International Post Corporation, I have always been fully dedicated to the job that I am given to at that point in time. I view my experience as an executive at the Postal Service as giving me strength to perform that much better as a Commissioner because I fully understand how the operation takes place.

But at the same time, my loyalty is to fulfill what my role is as a Commissioner and all of the provisions that the legislation dictates under Title 39. Again, my career has been about service to my country in whatever job I am assigned to or, in this case, was nominated and hopefully confirmed to. I am more than willing and wanting to do that.

Chairman PETERS. Very good.

My next question will be to our judicial nominees here. Special Master Oler, Judge Pipe, and Mr. Willoughby. We will go in that order. I will ask all three of you to answer this question.

As all three of you know very well, the Associate Judges on the Superior Court face very heavy caseloads right now, especially as the court struggles with the many vacancies that are pervasive. My question to each of you is going to be how has your experience prepared you for the significant challenge that you will face, if confirmed, to serve on an already-strained court?

We will start with Special Master Oler and then to Judge Pipe and then Mr. Willoughby.

Ms. OLER. Thank you for the question, Senator.

During the course of my 26-year legal career, I have had the opportunity to serve for nearly nine years now as a judicial officer, six years in my current position as a special master on the United States Court of Federal Claims. In that capacity, I preside over a very heavy docket. We have a high docket in our court.

Additionally, in terms of criminal experience, not only as a litigator where I worked in the United States Air Force as a prosecutor and as a defense attorney, but I also served as a criminal trial judge where I presided over criminal cases. My experience as a judicial officer, I would draw on that, and I would attempt to be diligent, as I have in the past, to work through cases efficiently, to make sure that my expectations were completely understood by the parties to the litigation, and to come to court each day as prepared as possible to be sure that the proceedings were both efficient and fair.

Chairman PETERS. Very good. Judge Pipe.

Judge PIPE. Thank you, Senator.

As a Magistrate Judge in Superior Court for the last three and half years, I have presided over some of the most high-volume calendars in Superior Court. I have run those calendars efficiently and fairly by coming, first, to the courtroom prepared on the law and the facts. I set reasonable deadlines for the parties, and I make my expectations known for every hearing before me.

I allow the parties to argue the issues so that they may be heard, and then I deliver my rulings by objectively applying the law to the facts as they are presented.

If I am fortunate enough to be confirmed, I would continue that practice as an Associate Judge.

Chairman PETERS. Very good, Judge. Mr. Willoughby.

Mr. WILLOUGHBY. Yes, thank you, Senator.

I had drawn upon my experience of nearly 14 years as a prosecutor, investigating and prosecuting hundreds of cases. I am accustomed to working in a fast-paced and high-volume working environment, have appeared regularly in courts in two different jurisdictions, and I believe it is important to adjust to a role, if fortunate enough to be nominated, by preparing each day, making sure that the parties that are before you have an understanding, a clear and concise understanding of what is expected of them, and to ensure that all parties are treated fairly and respectfully.

I think that is the best way to move the docket along and to ensure that the court operates in an efficient manner.

Thank you.

Chairman PETERS. Thank you, Mr. Willoughby.

Mr. Day, the Postal Service Reform Act, which I led and worked to enact in the last Congress, requires that the Postal Service create a publicly available online dashboard where customers could see online or on-time delivery data for their local community, see exactly how their local post office is performing on a daily basis. Under the act, the PRC created regulations for the system and will continue to monitor it.

You clearly have significant experience with monitoring and managing service status. My question is, if confirmed, how would you work to ensure that the Postal Service faithfully reports service data, as required by the law, so that it is accurate, that it is detailed and actually a useful tool for the public?

Mr. DAY. Thank you, Senator.

You are correct. I do have extensive experience in this. I certainly will fulfill my role as a member of the Commission and work with the Postal Service.

As I indicated in my remarks, I do want to make sure that we continue to emphasize that positive working relationship with the leadership at the Postal Service. There is a wealth of data that is available. I am fully aware of how that system works.

They have near real-time information, and I want to make sure that we are taking best advantage to keep that information up to date and, as the Reform Act requires, make it publicly available.

But, yes, I think my experience and knowledge of how that system works will be very helpful to make sure we have, again, a positive, professional working relationship to make sure that is all in place.

Chairman PETERS. Very good. Senator Blumenthal, you are recognized for your questions.

OPENING STATEMENT OF SENATOR BLUMENTHAL

Senator BLUMENTHAL. Thank you, Mr. Chairman.

When Mr. Taub was here, I asked him about local service, and I know that you are not in charge of operational matters, but I have to tell you that town officials and citizens in two of our communities, Ridgefield and Litchfield, have requested that the Postal Service authorize a lease of a small portion of property in those two towns, Ridgefield and Litchfield, to facilitate local building projects that will enhance the neighborhood and actually the downtown area that the Postal Service serves.

They have been subject to lengthy month-long reviews and been denied without sitting down and trying to find common ground. My question to you is when the Postal Service fails to be responsive to a local community like that, is it within your authority and will you feel an obligation to come to the aid of those kinds of communities?

Mr. DAY. Yes, Senator.

My understanding and, as I have read Title 39 and understood how the Commission works, there are definitely processes and procedures that are defined in the manner in which the Postal Service should deal with local communities. I can tell you from my own experience as a District Manager, I did spend a great deal of time working with local officials to make sure we could provide, as a member of the Postal Service, the best service possible.

As a member of the Commission, our obligation is to comply with the guidelines provided in Title 39 to provide the oversight of what the Postal Service does to ensure that they are following those policies and procedures. I can assure you I am sure the current commissioners are doing it and myself, if I am confirmed to be a commissioner, I will do the same.

Senator BLUMENTHAL. What do you think about electric vehicles? Can they be used more widely?

Mr. DAY. Senator, I could go on for hours on electric vehicles. I am the former sustainability officer at the U.S. Postal Service. I was heavily engaged. I could actually say, as the Vice President of Engineering, we were running a test with one of the auto manufacturers in 2001 with electric vehicles. I have engaged with it for a long time.

It definitely can be done. There are challenges, but we can meet those challenges. My experience with working with posts around the world who have electrified major portions of their fleet, I am fully aware of how that has been done, and I am aware of the challenges that they have met.

It is the right thing to do. We ought to do it. It is the right thing. We have to deal with climate change. But at the same time, I do not write it off as an easy thing to do.

Senator BLUMENTHAL. Thank you. Thank you very much, Mr. Chairman.

Chairman PETERS. Thank you, Senator. Senator Scott, you are recognized for your questions.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Chairman.

First off, congratulations, each of you, for your nominations, and I wish you the best of luck as you go through the process. I have never heard anything but it is a pain in the butt. I wish you the best.

I just have a question today for Mr. Day. first off, I think we all like the Postal Service. We like to get nice things in the mail, and I think Postmaster General (PG) DeJoy is doing a great job.

I never understand why the Post Office cannot make money. Can you explain that?

Mr. DAY. Senator, thank you very much for that question.

Senator SCOTT. I thought I would start with an easy one, right?

Mr. DAY. I wish it were an easy one. There is no easy answer to that. I suppose if I did have it, I would be in a different position today.

But it is the balance between universal service obligations (USO), a commitment to provide a service to the entire country geographically as well as the full population. That is not an easy thing to do, but it has been done well through the history of the Post Office Department and then the Postal Service.

I think right now in particular, the financial challenge is because of this dramatic shift in the product that is being handled by the Postal Service. I started with Postal Service in 1984, and for the first almost 20 years or so of my career, it was nothing but growth. Growing organizations with growing product growing revenue are a bit easier to manage financially. In fact, by 2006, the Postal Service had paid off all debt and was showing a profit.

Senator SCOTT. Is that when you left? You should say, "That is when I left. I do not know what happened," right?

Mr. DAY. I wish the timing were so. But, no, Senator, I was still there.

The reality is we have also gone through a shift. This is a huge technology shift with e-communications and e-commerce, and it is dramatically shifting the business of the Postal Service and how it is conducted. Unfortunately, my closing answer is there is no easy answer to this, but I think in the end, the Postal Service must fulfill its obligation to serve this country as best it possibly can and all of its citizens.

Senator SCOTT. What can you do to ensure that costs are properly attributed and taxpayers are not sustaining U.S. Postal Service package delivery? Because my understanding is that the taxpayers should not be on the hook for that. Is that your understanding on the package delivery side?

Mr. DAY. Yes, Senator. One of the aspects of the role of the regulatory commission is to ensure that in the rate process, the rate-making process, there is proper assignment of cost to the various products, the market dominant and the competitive products.

Again, because the Postal Service is undergoing this significant shift in its very core to its business, it is important that that cost attribution continue to be looked at. That is part of the responsibility of the regulatory commission. It needs to be reviewed and will be reviewed on an ongoing basis, and so that is a critical as-

pect of what the Commission will do as well as the rate-making process itself.

Senator SCOTT. The Postal Service was supposed to break even after we made the change with this a year or so ago when we did the congressional relief on their time and benefits, and it has not happened. Can you explain that?

Mr. DAY. Senator, again, I wish I would have the full answer to that question. I am particularly, as a member of the public, I have been reading and keeping up on the situation. But I do not have the full depth of knowledge to understand it fully.

I will say this. Again, as I said in my opening remarks, I do fully understand that the Postal Service needs to modify the network. I do not disagree with that.

The plan that was put out and the objective of breaking even in 2023 will not be achieved. To a large extent, I can understand part of that due to as they planned for 2023, they did not fully understand inflation, what it would be and what the impact would be.

With that said, now as they go forward to 2024, inflation should be understood as they make that plan, and so I would expect this is the year, if this plan is going to be successful, we should start to see the break-even, if not a slight profit.

If we go through another year where it is not performing, then there is no longer the inflation was the reason, we may need to probably take a look at the plan itself. But I think they can achieve success in 2024 and hope they do.

Senator SCOTT. My understanding is what the Post Office puts out is that they are making money in some areas, but then they are losing money overall. Is that your understanding?

Mr. DAY. That is my basic understanding, Senator. I go back to my days of operations. Reading the Delivering for America plan, there is a shift of activity, how things will be transported, the logistics network, the processing, the delivery. There is the tradeoff, and I think that's got to be the critical part.

There are things you do in redesigning a network that will save you money in one place but cost you money somewhere else. Obviously, the best solution, the one that is going to get you to break even or profit, you'd better have a bigger savings than you have of cost, and that is the key.

Senator SCOTT. Do you think it is appropriate to have third-party audits of the Postal Service to make sure it is pricing properly?

Mr. DAY. Senator, just to be sure I understand.

Senator SCOTT. Do you think we would do a better job with pricing if we used an outside group to do it, basically?

Mr. DAY. Senator, I would have to take a closer look and fully understand how that might be done. To me, the Postal Service is an independent organization that has responsibility for the bottom line, to generate revenue, to reduce cost, and to hopefully have a break-even or positive net income.

If you start taking authority away from someone, I do not know how they are supposed to fully operate. I know if I was running an organization, I would not want someone else deciding the prices of my organization. That is my gut feeling, but I would have to take a closer look at it to see.

Senator SCOTT. Does the Postal Service do a pretty good job of measuring success and accountability and all those things?

Mr. DAY. Senator, I do not know how things are going under the current leadership. I can speak to when I was at the Postal Service. I thought they were very good at doing that. Again, I look back to the times when I was responsible for different districts, which were major organizations. I had responsibility for generally 10,000 to 15,000 employees, \$1 billion of revenue.

We had very careful measurement of success or failure, and we were held accountable for that. Bottom line is we went into, again, around 2006 as the PAEA was passed in 2006. The Postal Service was functioning quite well. Service performance was good. Financial performance was good.

I can tell you at a local level right all the way to the top of the ranks, there was real accountability for what we did.

Senator SCOTT. Thank you. Thank you, Chair.

Chairman PETERS. Thank you, Senator Scott. Senator Carper, you are recognized for your questions.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks so much.

Let me say to you, who served in the Army, I am a Navy guy for many years, and different uniforms, same team, and grateful for your service in that regard.

I also have always said whoever if they are in the Army, Navy, Air Force, Marines, and they are married, have a family, the family serves as well. I would say to your wife thank you for your service, too.

As our Chair knows, I have a longstanding interest in the Postal Service and will probably take that with me to the grave. In fact, my wife, when she asked me what I want on my tombstone for when I pass from this earth, I always tell her, "Return to sender." She is still working on that. We will see how it turns out.

But we are delighted to have you before us as a nominee, and thank you for all of your service.

I want to say welcome again to our judicial nominees. We have not always been very timely in terms of ways, how quickly we handle nominees for District of Columbia judgeships, and I know this Chair has been more judicious in moving them along. Justice delayed is justice denied. Thank you for your willingness to go through this process.

I want to ask—we have votes underway right now. I have like a couple of minutes before I can get there and vote, and then time will expire. But a question, if I could, for you, Mr. Day? Reflecting back on your time as part of the Postal Service and your experience outside of government and in the military, what would you say are some of the hallmarks of an effective commissioner of the PRC?

What are some of the hallmarks of really an excellent commissioner in this day and age? If confirmed, how do you plan to uphold those standards in order to ensure the Postal Service is meeting its obligations and making strides to improve service for its customers?

I will tell you, in our State over the last several years at times its service has been very disappointing. A fair amount of work has

been done to change that, but I am all about service, and I know you are, too.

But go ahead. Again, I am looking for some of the hallmarks of an effective commissioner.

Mr. DAY. I think there are several things. There is the Commission itself. I would just comment quickly on my own view, Senator, as I have looked at, again, 45 years of service. It is hard to believe it has been that long.

But I learned it in the military, and it has continued. It is what is good leadership? To me, it is trust and integrity. I want to work with people that I can trust. I think that will be true at the Commission. But it is just as true, we need to have trust and integrity between the Commission and the Postal Service leadership. Again, trust and integrity is critical.

What is key to me, being a Commissioner, is again improve the relationship where it is necessary between the Commission and the leadership of the Postal Service. But it is also enabling the staff and the technology that is available at the Commission to do the job effectively.

The real mission of the regulatory commission, yes, is oversight, but it needs to be done in an efficient and accurate manner, a timely manner, so that decisions can be rendered quickly to the Postal Service. I want to make sure that—and the staff has already done this, but there is always room for improvement—that everything is up to speed, technically capable, and a good, solid staff to do it with.

Senator CARPER. Good, thank you.

The Postal Service has, as you know, maybe if not the largest, one of the largest fleets in the country. For many years, the fleet has aged older and older and older, not always very reliable. But one thing that we could always count on as vehicles do is pollute the air.

There is an effort underway now to update the fleet, to phaseout the dirty, polluting vehicles. When you look at the major sources of carbon pollution in our country, which we are witnessing the results of these hottest days of the year on record, hottest summer, hottest record, incredible flooding and stuff like that—the biggest cause of climate change in this country is mobile sources, including our vehicle fleets and stuff.

Second is manufacturing. Third would be power plants. But the biggest one is mobile sources. The path that the Postal Service is on now, it is important to stick to it, all right? It is really important to set leadership by example. I would ask you to do that.

I have I think two minutes to go, but for our judicial nominees, take a minute each. Ms. Oler, will you take a minute, could you all take a minute to share with us. In spite of the backlog of judicial vacancies that the court is currently facing, how will you ensure that your fellow Americans are expeditiously and justly granted their day in court? What can you do?

We are trying to do a better job at our end, and what can you do to make sure that that happens? Go ahead.

Ms. OLER. Thank you for the question, Senator.

I have served not only as a special master now for almost six years, but as a trial judge in the United States Air Force for three years.

Senator CARPER. Navy salutes the Air Force. We need a Marine here, and we will have it made.

Ms. OLER. Thank you, Senator.

In addition to that, I have also been a prosecutor, a senior-level felony prosecutor, a defense attorney, the chief prosecutor. I have had many roles in the litigation arena, and as a result of that, I have developed a deep appreciation for the rights of the parties to a litigation to be heard.

If I were fortunate enough to be confirmed for this position, I would approach my cases the same way that I have in the past, which is through hard work, through effective communication to make sure that the parties to the litigation understand my expectations, and by coming to court as prepared as possible each day so that the proceedings can be fair and efficient.

Senator CARPER. Good. Thank you for that. That is great.

Judge PIPE, same question, just briefly, please. Go ahead.

Judge PIPE. Thank you. Thank you for the question, Senator.

How I have handled the cases in the last three and half years as a sitting Magistrate Judge is I hear every case before me without delay. I come in prepared so that I can quickly and objectively and efficiently apply the law to the facts and give the rulings and be clear and transparent with those rulings so that the parties and the community can understand the process and instill confidence in the system.

Senator CARPER. All right, good. Thank you. Mr. Willoughby.

Mr. WILLOUGHBY. Yes, thank you, Senator.

I would agree with my co-nominees. I might add that during my time as an Assistant U.S. Attorney here in the District of Columbia, I have had an opportunity to appear before multiple judges in various courtrooms. I would note and add to what my co-nominees said, in addition to preparation is to ensure that the parties that are before you understand what your expectations are as well, and that's that they be prepared, that they treat each other with courtesy and respect.

I would also add that, again, I believe that that does instill confidence in the process and in the community as they appear before the court.

Thank you.

Senator CARPER. Those are all encouraging responses. We wish you good luck in this confirmation process and, if confirmed, good luck. God bless. Thanks.

Navy salutes all of you. Thanks. And so does Delaware. Take care. Thank you.

Thanks, Mr. Chair.

Chairman PETERS. Thank you, Senator Carper.

I want to thank our nominees once again for joining us here today and for your willingness to serve in these important positions.

The nominees have filed responses to biographical and financial questionnaires,¹ and without objection, this information will be made part of the hearing record,² with the exception of the financial data,³ which already is on file and available for public inspection in the Committee offices.⁴

The hearing record will remain open until 12 p.m. tomorrow, September 22nd. It will be open for the submission of statements and questions for the record.

This hearing is now adjourned. [Whereupon, at 12:14 p.m., the hearing was adjourned.]

¹The information of Mr. Day appears in the Appendix on page 24.

²The information of Ms. Oler appears in the Appendix on page 73.

³The information of Judge Pipe appears in the Appendix on page 102.

⁴The information of Mr. Willoughby appears in the Appendix on page 130.

A P P E N D I X

Chairman Peters Opening Statement As Prepared for Delivery Full Committee Hearing: Judicial and Postal Nominations September 21, 2023

Today, we are considering four nominations: Thomas G. Day to serve as a Commissioner for the Postal Regulatory Commission, as well as Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby Jr. to be Associate Judges on the Superior Court of the District of Columbia.

Welcome to each of our nominees and to those joining them for today's hearing. Congratulations on your nominations, and thank you for your willingness to serve in these important positions. Each of these roles are essential to the federal government and the District of Columbia.

The Postal Regulatory Commission is a bipartisan body that provides key oversight for the Postal Service. Countless families rely on the Postal Service every day – this commission helps to ensure that they are most effectively serving the American people. Last week, we were able to advance one nominee for the Postal Regulatory Commission with unanimous bipartisan support.

I hope that we can do the same for Mr. Day's nomination, and ensure that the Commission remains fully staffed and best-positioned to carry out its important work. I'd also like to thank Ranking Member Paul for working with me to quickly move Mr. Day's nomination through the Committee process.

The D.C. Superior Court functions as the state-level trial court in the nation's capital. The court has an extraordinarily high number of cases, and each one impacts the livelihoods of individuals and families across the District of Columbia. Unfortunately, judicial vacancies place serious

burdens on judges and delay resolutions for the parties before the court. Filling open seats will help the court conduct its work more efficiently, and provide a better service to the people of the District.

Welcome again to all four of you. Today's hearing is an important opportunity for the Committee to learn more about your qualifications and how you plan to serve in these new roles.

Opening Statement of Thomas G. Day
Nominee, Commissioner, Postal Regulatory Commission
September 21, 2023

Mr. Chairman, Ranking Member Paul, and distinguished members of the Committee, thank you for the opportunity to appear before you today, and for your consideration of my qualifications to be a Commissioner of the Postal Regulatory Commission. I would like to thank President Biden for the opportunity he has afforded me through this nomination, and I am honored by his trust.

My wife Young joined me today at this important event in our lives together. We just recently celebrated our 40th wedding anniversary. Our two sons, Bill and Jim, and their wives Lindsey and Gabi, nor our 5 grandchildren could not join us today. I am very thankful to my family for all the support they provided through the years.

My entire adult life has been in service to my country in either the U.S. Army or the U.S. Postal Service. A three-generation tradition in my family, with both my father and grandfather having spent their working careers as employees of the Post Office and as members of the American Postal Workers Union. I have always prided myself in serving in the Federal Government and I look forward to this opportunity to do it again.

My experience at the Postal Service is at every level of management; from front-line supervisor to Senior Vice President and everything in between. My experience has been in a wide array of functional areas including Delivery, Customer Service, Processing, Transportation, Maintenance, Engineering, Government Relations, Public Affairs, Information Systems, Environmental Compliance and Sustainability.

As an officer of the Postal Service, I had frequent interaction with the Commissioners and the staff of the Regulatory Commission. In this role, I understood the need for cooperation and engagement between the Postal Service and the Regulatory Commission to ensure decisions were made in an appropriate and timely manner.

I also was the Chair of the Standards Board at the Universal Postal Union (UPU) from 2007 – 2011. The UPU is the United Nations agency with responsibility for the oversight of the exchange of mail and packages among Postal Operators on a global basis. In addition, I also served as the Chief Commercial and Chief Financial Officer of International Post Corporation (IPC) based in Brussels Belgium. The IPC is a not-for-profit organization that is comprised of 25

Postal Operators, including the US Postal Service, which represents almost 80% of the global mail volume.

These experiences at both the UPU and the IPC have provided me with a broad perspective into a variety of postal operators around the world. I have seen first-hand the success and failure of both operations and data management at a variety of Posts.

My experience in the Postal Service and interactions with other Posts is an excellent fit to serve as a Commissioner at the Regulatory Commission. I can fully grasp the issues at hand and how they may impact service standards and performance measurement, potential cross-subsidization, transparency, and accountability. This is in keeping with the legislatively defined role of the Regulatory Commission.

This is a critical time for the Postal Service. It is certainly the most momentous change the Postal Service has experienced since it was created from the old Post Office Department in 1970. The legislation that first created the Postal Service in 1970, also created the Postal Regulatory Commission. The various updates to Title 39 have continued to emphasize the importance of an independent Regulator. The role of the Regulator is clear – rate regulation, service standards and service performance, to ensure fair competition and to enforce the transparency and accountability of the Postal Service.

This critical time for the Postal Service comes from more than a decade of transition that is the result of the impact of e-communications and e-commerce. E-Communications has directly impacted the ongoing decline of First-Class Mail volume – formerly the very core of the Postal Service network, as well as the source of critical income. E-Commerce has resulted in the extensive use of on-line shopping and the need to effectively manage the processing, transport, and delivery of these items. In turn, there is also a need for an effective network that can manage the items that are being returned. Because of the dramatic decrease in traditional mail volumes, combined with the increase in package volume, there is an absolute need to modify the postal network.

The Delivering for America (DFA) 10-year plan is the Postal Service effort to modify the network. I agree there is a need to make a modification. In keeping with the legislative direction provided in Title 39, it is essential that the Postal Regulatory Commission provide the oversight to ensure that the implementation of DFA is accomplished in a manner that it provides fair competition, accountability, and transparency.

I am uniquely qualified to serve as a Commissioner of the Postal Regulatory Commission. My educational training, combined with experience in the domestic and global Postal sector, provides me with the ability to understand the issues of importance in the Postal Service. I am committed to working with the Postal Service and all its key stakeholders to find the optimal practical solutions to create a Postal System to best serve our country. I am honored to have been considered to serve in this role and hope that you will confirm my nomination so that I may do so.

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>
<u>Commissioner – Postal Regulatory Commission</u>	<u>September 11, 2023</u>

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Thomas	Gerard	Day	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 8510 Capo Court		
City: Vienna	State: Virginia	Zip: 22182	City: Vienna	State: Virginia	Zip: 22182

<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>	
Year of Birth (Do not include month and day.)	Place of Birth
1956	Mineola, New York

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

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Young	Chu	Day	

<i>Spouse's Other Names Used</i> (current spouse only)						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<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)
Young	Chu	Lee			April 30, 1956 Est <input type="checkbox"/>	July 17, 1983 Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
William	Joseph	Day	
James	Lee	Day	

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>
United States Military Academy, West Point NY	Military College	July 1974	July 1978	BS	July 7, 1978
Central Michigan University, Mount Pleasant MI	University - extension courses at McGuire AFB NJ	October 1979 <input type="checkbox"/>	November 1981	MA	December, 1981
Graduate School of Business at Stanford University	University	August 1995	June 1996	MA	June 1996

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)
Active Duty Military	US Army	Cadet	West Point NY	July 1974	July 1978
Active Duty Military	US Army	2LT	Fort Benning, GA	August 1978	December 1978
Active Duty Military	US Army	2LT/1LT	Fort Dix, NJ	January 1979	December 1981
Active Duty Military	US Army	CPT	Fort Harrison, IN	January 1982	July 1982
Active Duty Military	US Army	CPT	Camp Henry, ROK	August 1982	September 1983
Unemployed				October 1, 1983	March 16, 1984
Federal Government	US Postal Service	EAS-17 Management Associate	Northeast Region	March 17, 1983	March 16, 1984
Federal Government	US Postal Service	EAS-18 Management Associate	Northeast Region	March 17, 1985	April 1986
Federal Government	US Postal Service	EAS-21 Manager Operations and Distribution	New Brunswick NJ Division	April 1986	January 1987
Federal Government	US Postal Service	EAS-23	Trenton NJ MSC	January 1987	November 1987
Federal Government	US Postal Service	PCES Director City Operations	Newark NJ Division	November 1987	November 1989

Federal Government	US Postal Service	PCES Director Operations Support	Miami FL Division	November 1989	October 1992
Federal Government	US Postal Service	PCES District Manager	Triboro District NY	October 1992	July 1995
Federal Government	US Postal Service	PCES Sloan Fellow Stanford GSB	Stanford CA	August 1995	July 1996
Federal Government	US Postal Service	PCES District Manager	Southeast New England District	August 1996	November 2000
Federal Government	US Postal Service	PCES Acting Vice President Engineering	USPS HQ	November 2000	February 2001
Federal Government	US Postal Service	PCES Vice President	USPS HQ	March 2001	May 2005
Federal Government	US Postal Service	PCES Senior Vice President Government Relations	USPS HQ	May 2005	June 2007
Federal Government	US Postal Service	PCES Senior Vice President Intelligent Mail	USPS HQ	June 2007	November 2010
Federal Government	US Postal Service	PCES Interim Senior Plant Manager	Washington DC District	November 2010	March 2011
Federal Government	US Postal Service	PCES Chief Sustainability Officer	USPS HQ	April 2011	May 2019
Non-Government Employment	International Post Corporation	Head of Proactive Performance Management	Brussels Belgium	May 2019	June 2020
Non-Government Employment	International Post Corporation	Chief Commercial & Chief Financial Officer	Brussels Belgium	June 2020	August 2021
Not Employed				September 2021	October 2022
Self-Employed	Thomas Day Consulting, LLC	Owner / Operator	Vienna VA	October 2022	present

(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)
Postal Regulatory Commission	Consultant	January 2023 <input type="checkbox"/> Est	April 2023 <input type="checkbox"/> Est <input type="checkbox"/> Present

4. Potential Conflict of Interest

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

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

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.

US Army:

Army Commendation Medal

National Defense Service Medal

Korean Service Medal

Army Service Ribbon

Overseas Service Ribbon

US Postal Service:

Yellow Jersey Award for Outstanding District

Crystal Eagle Award for Outstanding Service Performance

Vice President Award

Deputy Postmaster General Award

Board of Governors Award

Individual Awards outside US Army and US Postal Service:

Individual Climate Leadership Award presented by the Climate Registry and the Environmental Protection Agency

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>
Association of Graduates US Military Academy	1978 – Present	None
Alumni Association Stanford University	1996 – Present	None
Alumni Association Graduate School of Business Stanford University	1996 – Present	None
The American Legion	1992 – Present	None
National Association of Environmental Managers	2012 – 2019	Board Member
Advisory Board MsX Graduate School of Business Stanford University	2007 – 2017	Advisory Board Member
Youth Network Business Committee	2022 – present	Advisory Board Member
National Rifle Association	2010 – 2016	None

7. Political Activity

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

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
NONE			

(C) 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>
NONE		

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>
The Autumn 2001 Anthrax Attack on the United States Postal Service: The Consequence of Response	Journal of Contingencies and Crisis Management	September 4, 2003
Postal Technology – Past Present and Future	Postal Reporter	2003
Full Service Intelligent Mail: The Cornerstone to the Success of the Mailing Industry	Mail Systems Technology	December 29, 2010

(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>
Statement of USPS Chief Sustainability Officer	Senate Committee on Homeland Security and Governmental Affairs	February 27, 2014

(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>
Homeland Security – Anthrax Attack - https://www.c-span.org/video/?167005-1/homeland-security-issues	White House Press Conference	October 29, 2001
Testimony before House / Senate Committees regarding response to Anthrax Attack - https://www.c-span.org/video/?167209-1/financial-state-postal-service - https://www.c-span.org/video/?167025-1/postal-safety - https://www.c-span.org/video/?176669-1/anthrax-detection-policies - https://www.c-span.org/video/?178789-1/safety-brentwood-post-office	House or Senate Committees	2001 - 2003
Sustainability at US Postal Service https://www.youtube.com/watch?v=B5SazNxvbFA	Sustainable Brands Conference – San Diego	2013
Sustainability at US Postal Service https://www.youtube.com/watch?v=fi4sSXOZwz8	International Post Corporation – Brussels Belgium	June 20, 2013
Sustainability at US Postal Service	International Society of Sustainability Professionals Portland, OR	July 5, 2018
Data requirements for Postal Remuneration	World Mail Express Conference (virtual)	June 10, 2021

9. Criminal History

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

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) - **NO**
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? - **NO**
- Have you been charged, convicted, or sentenced of a crime in any court? **NO**
- Have you been or are you currently on probation or parole? **NO**
- Are you currently on trial or awaiting a trial on criminal charges? **NO**

- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?
NO

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

- A) Date of offense:
- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
 - 2) Firearms or explosives: **Yes / No**
 - 3) Alcohol or drugs: **Yes / No**
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
 - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
 - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle 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>
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>
NONE				

(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.

<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?

12. Tax Compliance

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

REDACTED

13. Lobbying

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

NO

14. Outside Positions

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

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

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)
OGE Form 278					

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)
None		

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 read 'T G Day', with a horizontal line above the first part of the signature.

Thomas G. Day

This 12th day of September 2023

REDACTED**UNITED STATES OFFICE OF
GOVERNMENT ETHICS**
★

September 14, 2023

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Thomas G. Day, who has been nominated by President Biden for the position of Commissioner, Postal Regulatory Commission.

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

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

Sincerely,

**DEBORAH
BORTOT**

Deborah Bortot

Chief, Presidential Nominations Branch

Digitally signed by DEBORAH
BORTOT
Date: 2023.09.14 14:32:12
+0400

Enclosures

REDACTED

August 14, 2023

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

Dear Mr. Trissell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner, Postal Regulatory Commission. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 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 particular 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 an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program

regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local governments.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – THOMAS DAY CONSULTING, LLC

I am the sole proprietor of my consulting firm, which does business as Thomas Day Consulting, LLC. Upon confirmation, my firm will cease engaging in any business, including the representation of clients. I intend to dissolve the firm. During my appointment to the position of Commissioner, Postal Regulatory Commission and until the firm is dissolved, it will remain dormant and will not advertise. I will not perform any services for the firm, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the firm while it is in an inactive status or dissolve it. As Commissioner, Postal Regulatory Commission, 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 Thomas Day Consulting, LLC. All amounts owed to me by any of my clients will be fixed before I assume the duties of the position of Commissioner, Postal Regulatory Commission and I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of any of these clients to pay these amounts. Additionally, I will not participate personally and substantially in any particular matter involving specific parties in which I know a 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 first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 3 – YOUTH NETWORKING BUSINESS COMMITTEE OF THE ASIA-PACIFIC REGION (YNB)

I resigned from my position as a Board member with YNB on July 31, 2023. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know YNB, is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – ALPHASIGHTS LTD.

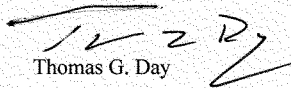
I resigned from my position as a consultant with Alphasights Ltd. on July 31, 2023. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my

resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Alphasights Ltd. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of Alphasights Ltd. is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 5 – PUBLIC POSTING

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

Sincerely,



Thomas G. Day

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

I. Nomination Process and Conflicts of Interest

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

During my conversations with the White House staff there were no reasons given as to why I was nominated.

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

There were no conditions, expressed or implied, attached to my nomination.

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

Have not made any commitments with respect to policies or principles in my role as a Commissioner.

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

I have no business relationships, dealings or financial transactions that will result in a conflict of interest.

5. Have you or any organization of which you were an officer, director, board member, owner, or have or had significant financial interest in, been the recipient of any Federal grants, loans, or other financial assistance (such as, but not limited to, Paycheck Protection Program Loans, Economic Injury Disaster Loans, Restaurant Revitalization Grants, etc.) within the past 10 years. If so, please list the program, amount, and date of receipt.

Neither any organization nor I, for which I was an officer, director, board member or owner had any financial interest, or been the recipient of any Federal Grants, loans, or other financial assistance.

6. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise.

I have not retained or contracted with any individual, law firm, consulting firm, lobbying firm, public relations firm, or any other entity.

II. Background of the Nominee

7. Why do you want to serve as a Commissioner of the PRC?

I have devoted 45 years of my professional career to service to my country. I look forward to the opportunity to serve even more. This is especially true given the significant point in the history of the US Postal Service and the challenges it faces. As required by legislation, the Postal Regulatory Commission requires oversight responsibility. At such a challenging time, it would be beneficial to have a Commissioner with extensive experience in the realm of the Postal Sector.

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

I have a combination of academic and practical experience that is focused on the activities of the US Postal Service. My academic background includes a BS in Engineering (my course focused on Systems Engineering) from West Point. In addition, I have a MS in Management from the Graduate School of Business at Stanford University; my electives were focused on Operations Management.

My practical experience was at all levels of management at the US Postal Service from front-line supervisor to Senior Vice President. I have experience in Delivery Operations, Customer Service Operations, Processing Operations, Transportation, Logistics, Engineering, Maintenance, Government Relations, Public Affairs, Information Technology, Environmental Compliance and Sustainability.

Additionally, I have experience in Global Postal Operations having served as the Chairman of the Standards Boards at the Universal Postal Union (the UN Agency that governs the cross-border exchange of mail among the 193 member countries) and as the Chief Commercial and Chief Financial Officer at the International Post Corporation (a not-for-profit organization comprised of 25 member countries including the United States)

9. How will you use your prior service at the Postal Service to enhance your service at the PRC, if confirmed? Do you have any concerns that your prior service will make it more difficult to shift into the role of regulator from the regulated entity?

My experience at the Postal Service provides me with the ability to fully understand the plans and activities presented by the Postal Service. I see no concern with my

prior service as to making it more difficult to shift into my role as a regulator. Since my earliest days as a cadet at West Point, I have understood the importance of fulfilling the needs of the role to which you are assigned.

10. Please describe your role in the passage of the Postal Accountability and Enhancement Act of 2006.

At the time of the passage of the Postal Accountability and Enhancement Act of 2006, I was the Senior Vice President – Government Affairs. In this role I communicated directly with the Members and Staff of both the House and Senate Oversight Committees. Within the Postal Service I worked directly with the Board of Governors, which included the CEO/Postmaster General. My key responsibility was to discuss and communicate the opinions of USPS Leadership as to what the Legislation would or would not include.

In addition, to communicating these positions between Congress and the USPS Leadership, I also was constantly communicating with leadership in the Mailing Industry and the Postal Unions.

11. Please describe:
 - a. Your leadership and management style.

My style is “Servant Leadership”, my two most important attributes are Integrity and Trust. As per the definition “the servant-leader shares power, puts the needs of others first and helps people develop and perform as highly as possible.

- b. Your experience managing personnel.

Since my commissioning as an Officer in the US Army, I have always been in the role of managing a staff. It has ranged from a small professional staff of just 2 or 3, all the way up to a nationwide staff of more than 60,000.

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

When I served as the Vice President – Engineering at USPS my responsibilities including the both the professional Engineering staff and the nation-wide Maintenance staff. This totaled over 60,000 people.

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

I believe that my greatest success took place in the 2001 – 2003 timeframe, when I lead the USPS response to the Anthrax Attack in 2001. I had an outstanding staff at USPS Engineering that took on the task of finding technical solutions to protect USPS Employees and Customers from possible future attacks and to decontaminate and restore operations at the two facilities that were closed from the incident. In the span of two years, the staff successfully implemented the necessary technology and

did so while still accomplishing their normal responsibilities. All of this was accomplished within the original timeframe of the plan and under the budget from the funds allocated by Congress (\$2.3B) to deal with these issues.

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

I was in a situation where I was asked to analyze the possibility of insourcing an activity to the US Postal Service. My analysis, and as I presented to USPS Leadership, showed that leaving this activity with a contractor was the best solution. Leaving the activity with the contractor would not only provide for lower costs, but it would also result in higher levels of performance.

Initially, my analysis was accepted. However, after a period it was determined that USPS would in-source the activity. Unfortunately, all the issues that I had presented as problematic turned out to be true. The insourcing led to the doubling of cost and a significant degradation in performance.

My failure was to not fully explain and communicate the problems that would occur. If I had done a better job, the incorrect decision would not have been made.

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

I view it as a critical aspect of my responsibilities to voice disagreement with my superiors. However, it must be done in a professional manner and in general terms "behind close doors". I not only disagree with a sound basis of facts to justify my position, but I must also offer alternatives to the proposal. My role is not to just be a chronic "naysayer". My role is to point out the issues and find alternative solutions to the problem.

Doing it "behind closed doors" is to fulfill my role as part of the leadership team. Once heard and a decision is made, I am a full supporter of whatever that decision may be. The only time I would publicly criticize a decision would be if it were either illegal or highly unethical.

I described one of the situations where this took place in question 13. I also found this to be true in the discussion with USPS Leadership as we were dealing with PAEA in 2006. What the Board of Governors wanted, and Congress was willing to provide was quite different. Finding acceptable positions that Congress was willing to include in the legislation that met the requirements of the BOG was difficult.

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

As part of my belief in Servant Leadership, I do encourage dissenting views. I realize that I do not know everything and that experts on my staff may have opinions that differ from mine. Their difference of opinion may make me aware of issues which I did not know or understand. Encouraging subordinates to voice these issues is important to achieving success.

Having a staff that simply says yes to everything you say has no purpose. There is no leader who is perfect and knows everything. Seeking professional dissension of ideas is critical to success.

During the response to the Anthrax Attack had a multitude of examples where dissenting opinions made me aware of better alternatives than what we initially considered.

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

In roles as a US Army Officer or as an Executive at USPS, I have rarely been engaged in decisions that have politically difficult choices. Perhaps that closest to that was as the Chief Sustainability Officer and my actions to internally advocate for alternative fuel, principally electric vehicles to replace the delivery fleet. While recognizing the impact of Carbon Emissions, I also saw the financial benefits that could be achieved by going from Internal Combustion Engines to an Electric Fleet.

17. Please describe how you build credibility and trust among staff as a leader.

Credibility and trust can only be achieved by your actions. In every new role I enter, I always explain to my staff as to how I operate and function. However, I know my words are not enough. They must see take actions that support what I said.

18. During your career, has your conduct as a government employee ever been subject to an investigation or audit by the Office of Special Counsel, Department of Justice, agency Equal Opportunity office or investigator, agency Inspector General, or any other similar federal, state, or local investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s).

No, I have not.

19. Please detail the roles you held as an employee and executive at the United States Postal Service, including any notable accomplishments and challenges.

Chief Sustainability Officer (2011 – 2019) [2016 Recognized By GRI and EPA for Outstanding Leadership]

Senior Vice President – Intelligent Mail and Address Quality (2007 – 2011)

Chair – Standards Board at Universal Postal Union (2007- 2011)

Senior Vice President – Government Relations (2005 – 2007)

Vice President – Engineering (2001 – 2005) [2003 Board of Governor Award]

District Manager – Southern New England (1996 – 2000) [2000 Recognized as #1 District in USPS]

Sloan Fellow – Graduate School of Business Stanford University (1995-1996)

District Manager – Triboro District (1992 – 1995)

Director Operations Support Miami Division (1989 – 1992)

Director City Operations Newark Division (1988 – 1989)

Director City Operations Trenton MSC (1987-1988)

Manager Transportation and Logistics New Brunswick Division (1986-1987)

Management Intern Northeast Area (1984 – 1986)

III. Role of the PRC and its Commissioners

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

The core mission of the Commission, as defined by legislation, is to provide an independent oversight of the US Postal Service with focus upon rate regulation, delivery service standards and performance measures. In doing so it insures that it prevents cross-subsidization and other non-competitive practices.

21. What do you believe are the most important responsibilities of the PRC, and what is your opinion of how those responsibilities have been fulfilled?

The focus of the PRC, again as defined by legislation, is rate regulation and service standards and accountability associated with them. Further, there is a need for transparency and a need to prevent cross-subsidization or other anti-competitive practices.

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

The Postal Service is facing its most significant transformation, at least in its time since creation in 1970. The PRC have oversight responsibilities as this change takes place. There is a need to improve the working relationship between USPS Leadership and the PRC.

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

- 1. Improve the working relationship with USPS Leadership**
- 2. Improve the technical capabilities of the PRC staff to improve the speed and accuracy with which it can perform analysis of the actions submitted by USPS to the PRC.**
- 3. Ongoing effort to keep PRC knowledgeable of USPS so that PRC can respond in an accurate and timely manner.**

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

The PRC must have the skills, abilities, and technology to independently analyze the information provided by USPS. If the PRC is lacking in this capability, then it would only be able to take information and analysis from USPS and "rubber stamp it."

25. The PRC's regulatory responsibilities require robust input from the public and postal stakeholders. What is your approach to effectively engaging postal customers?

There are two separate and distinct groups here – 1) the public and 2) the stakeholders. The stakeholders are the most direct; there are a variety of organizations that represent these stakeholders, for example Unions and a variety of trade associations. In all cases, there should be an ongoing interaction with these stakeholder groups.

As to the public, this is much more of a challenge. There certainly can be public meetings, but there are both physical and timing limitations that occur. Surveys are another means to gather information. Additionally, feedback from Members of Congress as to the comments they are receiving from their constituents can be useful.

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

As with all the new positions I have entered, I will engage personally with the staff. I know some from working with them in the past. I will be sure to engage the full staff to learn about them personally. It is what I have done in any job I've ever held.

27. The PRC's workforce handles broad responsibilities such as technical and data analysis, managing public input, and ensuring system security. What is your approach to maintaining a talented workforce?

The first key is retention and the key to that is effective engagement with the staff. It is important to interact with them in an ongoing manner. Understand what their skills are, but also know what their concerns are.

28. What lessons, if any, can the PRC learn from the work of other regulatory agencies in the United States and postal regulators in other countries?

Observing best practices at other US Regulators, as well as Postal Regulators on a Global basis, is an excellent practice. This is especially true when examining how they react to changes resulting from technology such as e-communications and e-commerce. The challenge is to determine to what extent can be implemented with the realm of guidelines set in legislation.

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

As a former executive of USPS, it is essential that I deal with independence on a personal level. My approach will not be dictated by the fact that I am a former executive at USPS. Rather, my decision will be made within the guidelines provided through legislation. I will make decisions as a Commissioner of an Independent Agency. My experience at USPS will simply better enable me to understand the issues at hand.

30. Given your past employment at the United States Postal Service, how would you approach the PRC's role as an independent regulator of the Postal Service, if confirmed?

As previously stated, my own training and experience places me in the position to understand the need to properly assume the role as an independent regulator, despite my experience as a Postal Executive.

31. As the mailing and shipping industries evolve over the next 10 years, how do you believe the role of the PRC may evolve?

The role of the PRC is defined by legislation. If that legislation is not changed, then the PRC role will not change. As the mailing and shipping industries evolve, it may be that the topics and proposals brought forth by USPS are likely to change.

IV. Policy Questions

Postal Ratemaking

32. What is the role of rate regulation in ensuring the Postal Service remains sustainable into the future and maintains service for customers who rely on it?

It is generally viewed there are 3 different approaches to Rate Regulation – 1. Command and Control; 2) Performance-based and 3) Management-based. The approach in place with USPS and PRC is performance-based. It is essential that over time the PRC sees results that confirm the impacts projected on both service and cost coverage are being achieved.

If they are not achieved, USPS should seek to modify their own doing. If they fail to do so, the PRC needs to cause them to do so.

33. The Postal Accountability and Enhancement Act of 2006 (PAEA) required the PRC to review the Market Dominant rate and classification system 10 years after enactment to determine if the system achieved the PAEA's nine objectives, including predictability in rates and adequate revenues, considering the 14 factors established by Congress. The PAEA allowed the PRC to make modifications or adopt an alternative system as necessary to achieve the objectives. What is your view of the PRC's role in carefully balancing the objectives and factors for the ratemaking system?

The PAEA required this examination and allowed for modification. I agree with the changes provided by the PRC and the flexibility granted to USPS. Given the fluidity of the market and the financial challenges faced by USPS, this was necessary.

- a. In November 2020, the PRC adopted final rules to modify the system for regulating rates and classes for Market Dominant products. The Postal Service has increased rates using its authorities under this system. Under the final rules, the PRC will undertake a holistic review of the system after 5 years to assess the effects of the changes and evolving trends affecting the mailing industry, with the possibility of earlier review of discrete aspects if necessary. How would you approach the PRC's responsibilities regarding this system?

Again, given the fluidity of the Market it essential to examine both the structure of USPS and the change in products they handle. The shift away from “traditional” mail (letters, magazines, newspapers, etc.) to packets and packages has a significant impact upon the cost structure and the way services are provided. It is essential to keep a very open mind as to how rates are established and still provide the ability to cover cost.

34. The Postal Service and mail users may request that the PRC change the Market Dominant and Competitive product lists by adding new products, removing current products, or transferring products between the lists. How should the PRC consider customer needs in this process?

Customer needs must be examined from both ends of the network. First, who are the producers/senders of the item to be sent through the network. Second, who are the recipients of the product being sent through the network. In examining the recipients, it must be understood if they represent a broad portion of the population or if there is some aspect of locality, i.e., rural vs. urban, that may impact customer needs.

35. How can the PRC ensure rates for Market Dominant and Competitive products are compliant and transparent, as the mix of Market Dominant and Competitive products changes?

Accurate cost attribution is essential. Particularly in the realm of the fixed cost associated with the “last mile” delivery network. Proper attribution of the cost among Market Dominant and Competitive products is essential. As USPS transitions away from “traditional” mail or the Market Dominant product to the Competitive products as is depicted in the Delivering for America 10-year plan, then proper cost attribution of these fixed costs is essential.

36. In accordance with 39 U.S.C. § 407, the PRC submits views to the Secretary of State on any treaty, convention, or amendment that alters rate or classification for a Market Dominant mail product. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

In discussing such treaties, it will be because of actions or proposals by the Universal Postal Union (UPU). In recent times, the UPU is more actively working through a Consultative Committee that goes beyond Postal Operators and includes Free Market Enterprises that are engaged in the logistics, transportation, and delivery of packets/packages. The UPU is taking action that will dictate not only cross-border operations, but also the data exchange required for cross-border movement of product. Any decision by the Secretary of State must consider overall economic impact, and not just USPS.

37. The PRC reviews proposed changes to rates not of general applicability, offered by the Postal Service to specific mailers through negotiated service agreements (NSAs). What do you believe the PRC can do to provide timely and thorough reviews of NSAs?

As one of my previous comments stated, it is essential that the PRC have the technical capability and staff skills to independently model and analyze the data provided by USPS. This independent analysis provides the ability to confirm the validity of the NSA being proposed.

Service Standards and Performance Measures

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

The responsibility of proposing changes to performance standards is that of USPS. The USPS analysis should include a combination of network capabilities, market demand and impact upon the individual consumer. The USPS analysis should also show the financial impact of the change that includes both Cost and Revenue impact and ultimately the impact on Net Income. The PRC has the responsibility to review this analysis and independently verify the validity.

39. The Postal Service is required to seek an advisory opinion from the PRC for any "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." What are your views on this process and its usage in recent years?

Having served in the Federal Government, I am aware of "advisory opinions". Many times, it is just viewed as a requirement on a checklist. It does not mean that the advisory opinion will result in any change in a proposal. That said, it is still necessary, and the PRC should clearly state its view on the change. At the very least it puts on record any concerns that may have arisen. Or, conversely it may serve as a strong supporter of the change that has been proposed.

40. The PRC evaluates service performance against the Postal Service's service standards and approves its service performance measurement systems. In your view, how can the PRC support the Postal Service in collecting more accurate and complete service data, and in providing such information to the public?

When I served as the Senior Vice President for Intelligent Mail, I engaged directly with the Commissioners and their staff on a bi-monthly basis as we implemented the new system for Service Measurement. At that time USPS shifted from a statistically valid measurement system conducted by an independent contractor to a near census version using unique barcodes on individual pieces of mail. The PRC provided feedback as to how the system could best report service measurement. This ongoing dialogue proved very useful.

41. The Postal Service Reform Act required the Postal Service to create a publicly available online “dashboard” that provides weekly, local service performance data to customers. The Act required the PRC to provide reporting requirements for this dashboard that are consistent with Postal Service structure and reflect a granular geographic level of data. The PRC promulgated requirements on February 16, 2023, and the Postal Service debuted the public dashboard on May 19, 2023. How will you approach the PRC’s ongoing responsibility to ensure the Postal Service measures and publish accurate service performance information?

I will be fully engaged and very knowledgeable as to how this system should operate. I look forward to interacting with USPS staff to understand how it operates.

Postal Service Oversight and Operations

42. The PRC conducts oversight of Postal Service operations, including monitoring Postal Service compliance with applicable laws and promoting transparency. What approach do you believe the PRC should take to oversight of the Postal Service, as the Postal Service undertakes its mission to provide prompt, reliable, and efficient services to customers?

The PRC must fulfill its legislative obligations to ensure compliance and transparency. In doing so, it must maintain a level of independence. However, this independence does not preclude the ability to establish a professional working relationship with the Executive staff at USPS and to some extent with the members of the Board of Governors. Such relationships do not mean there would be pre-determined agreement. Rather it should focus on professional interaction to allow both USPS and PRC to better understand the positions and opinions they hold.

43. The PRC’s oversight role includes enforcing requirements for quality, accuracy, and completeness of Postal Service data and data analysis. What role can the PRC play in ensuring Postal Service data is actionable and accessible? How can the PRC also improve its own transparency by making PRC information accessible to the public?

The PRC is seeking to improve the technology in place and augment the technology with a capable staff, with the possible need for additional staff to add the necessary skills and abilities. If this effort can move forward, then transparency and accessibility can be improved.

44. As the Postal Service contemplates or makes significant changes to its products and services, how can the PRC work to ensure a high level of service and accountability?

The legislatively defined role of oversight for the PRC requires it to provide oversight of the service performance at USPS. The PRC must ensure that USPS is accountable for updating service performance measurement systems so that they can be properly held accountable, or hopefully recognized for their outstanding performance.

45. The PAEA set forth a process for the PRC to adjudicate customer complaints against the Postal Service. What do you believe must be done to ensure the PRC reviews and resolves complaints promptly and fairly?

The process has been in place for an extended period. The key aspect is that the system is not bogged down by recurring complaints by individuals or small groups. This is not to say individuals or small groups should be ignored. However, it would be important to ensure that complaints arising from large groups across broader geographic areas are likely to deal with more systemics problems that could lead to significant finds and opportunities for improvement.

46. The PAEA allows any person served by a post office to appeal its closing or consolidation to the PRC. If confirmed, how would you approach this responsibility?

Since PAEA allows for this, it must be followed. As I answered in the previous question, a combination of these inquiries across a broader area and/or larger group of people is much more likely to identify systemic issues that need to be addressed.

47. Cost and efficiency are key considerations as the Postal Service seeks to provide postal services across the nation. In your opinion, how can the PRC help the Postal Service improve efficiency while ensuring robust service?

An improved working relationship between the PRC and USPS would be helpful. The PRC role must be recognizing success at USPS and where results fall below standards to work with USPS to understand the root causes and how they can be corrected. The role of the PRC cannot be to just serve as a critic – which I don't think it has.

V. Accountability

Whistleblower Protections

48. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.
- a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

I have never been engaged in a whistleblower complaint.

- b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at the PRC?

Should I be engaged in a Whistleblower complaint in the future, I will ensure I am in full compliance with the requirements of WPEA.

- c. If confirmed, what steps will you take to ensure that whistleblowers at the PRC do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

I will ensure that the Whistleblower is provided with all the protections provided by WPEA and that their complaints are handled appropriately.

Cooperation with Inspectors General

49. What is your view of the role of the U.S. Postal Service Office of Inspector General (OIG)? Please describe what you think the relationship between a PRC Commissioner and the OIG should be. If confirmed, what steps would you take to foster a working relationship with the Inspector General?

As a former Executive at USPS, I had a longstanding relationship with the OIG. In the various positions I held, my group was subject to a wide array of audits. I always worked to fulfill the requests for data and information from the Audit team. Having worked with the current OIG first when she was the Deputy OIG, I look forward to resuming the working relationship.

50. If confirmed, do you commit to ensuring that all recommendations made by the OIG to the PRC are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, fully implemented possible within a reasonable time period?

Yes, I will, This is in keeping with my previous working relationship with the OIG when I was an Executive at USPS.

51. If confirmed, do you commit without reservation to ensuring the OIG receives timely access to PRC records and to interview PRC employees?

I commit without reservation to provide timely access to PRC records and to interview PRC employees.

52. If confirmed, what steps will you take to ensure all PRC offices and employees cooperate fully and promptly with OIG requests?

I commit to ensure all PRC offices and employees cooperate fully with OIG request.

Cooperation with GAO

53. If confirmed, do you commit without reservation to ensuring the Government Accountability Office (GAO) receives timely, comprehensive responses to requests for information, including for records and meetings?

I commit without reservation to ensuring the GAO receives timely, comprehensive responses to requests for information, including for records and meetings.

54. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

I commit to fully cooperating in a timely manner with any audits, investigations, and other reviews related requests for information from GAO.

55. If confirmed, what steps will you take to ensure all PRC functions and employees cooperate fully and promptly with GAO requests?

I will ensure all PRC functions and employees cooperate fully and promptly with GAO requests.

VI. Relations with Congress

56. 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?

I agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if I am confirmed.

57. 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?

I 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 I am confirmed.

58. 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?

I 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 I am confirmed.

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

I am personally committed and will ensure my staff does the same to respond to requests for information in a timely manner.

60. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

I will direct my staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request.

61. 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?

I will keep this Committee apprised of new information if it materially impacts the accuracy of information my agency's officials have provided.

VII. Assistance

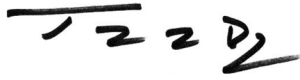
62. Are these answers completely your own? If not, who has provided you with assistance?

They are my own.

63. Have you consulted with the PRC, or any other interested parties? If so, please indicate which entities.

In completing this questionnaire, I have not consulted with anyone else.

I, Thomas G. Day, hereby state that I have read the foregoing Pre-Hearing Questionnaire 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 read 'T G Day', written over a horizontal line.

(Signature)

This 14th day of September 2023

**Post-Hearing Questions for the Record
Submitted to Thomas G. Day
From Senator Kyrsten Sinema**

**Nominations of the Thomas Day to be a Commissioner, Postal Regulatory Commission,
and Katherine Oler, Judith Pipe, and Charles Willoughby, Jr. to be Associate Judges,
Superior Court of the District of Columbia**

September 21, 2023

Question 1

USPS's "Delivering for America" Plan establishes strategies to achieve financial stability while meeting service standards by increasing systematic efficiency. However, it is not yet clear how this push for systemwide efficiencies will affect rural communities.

In Arizona, we have a lot of rural communities that have come to rely heavily on the Postal Service for vital services, including paying bills, receiving prescription medications, and maintaining connections to their loved ones. The Cherrybell processing and distribution Postal Service facility in Tucson, Arizona, serves more than 1.5 million people in Southern Arizona, many of whom are in rural communities. Despite its outsized impact on rural Southern Arizonans, the Cherrybell facility was being studied for potential consolidation or closure from 2011 until mid-2022. The Postal Service has not yet disclosed how the Delivering for America plan may affect Cherrybell in the future.

Could you discuss how the Postal Regulatory Commission can help ensure that achieving systemwide efficiency will not come at the expense of our rural and more sparsely populated communities?

My own experience in the US Postal Service included a 5-month assignment as an acting-Postmaster in a rural community. I am fully aware of the importance of the local Post Office in these communities. The Postal Regulatory Commission has clearly defined processes and procedures to deal with the proposed closure.

The Commission already has a public inquiry docket for DFA. This process will enable the Commission and stakeholders, which includes local government, to focus on issues that might otherwise be overlooked by the Postal Service in its effort to optimize the network.

Title 39 enables the Commission to conduct a formal advisory opinion process when the Postal Service proposes changes that affect service on a nationwide or substantially nationwide basis.

I can assure you that as a Commissioner I will insist that the Postal Service is in compliance with the provisions of Title 39.

Question 2

As you may know, Arizona's summer deadly summer heat significantly affects Postal Service workers, most of whom spend hours each day driving in aging vehicles that lack air conditioning. As the Chair of the Subcommittee on Government Operations and Border Management, I led a hearing in July 2022 examining this issue and how it negatively affects letter carriers' health and service in Arizona.

The Postal Service is currently in the process of updating their vehicle fleet. While the deployment of new, air-conditioned vehicles is primarily an operational matter, the Postal Regulatory Commission does have indirect jurisdiction because of the potential effects on service.

Could you discuss how the Postal Regulatory Commission can help ensure the Postal Service takes heat-related service concerns into account when deciding where to deploy new vehicles?

The deployment of new vehicles and the health and safety of Postal Service employees can fall under the general oversight of the Regulatory Commission. The Commission has the authority to examine issues that affect quality of service and cost. The Commission can certainly inquire about issues about heat injuries or death. There certainly an impact upon service performance, cost, and operations/

I would note that should the Postal Service not address the issue of heat-related injuries to its employees, it is best addressed by the Occupational Health and Safety Administration (OSHA). OSHA has the authority, and has done so in the past, to financially penalize the Postal Service should it fail to take appropriate action to protect the health and safety of its employees.

Question 3

While executing their Delivering for America plan, the Postal Service needs granular data to better understand what is going on at the ground level to ensure their changes are meeting the needs of the American people.

What is your stance on data-driven oversight and regulatory approaches? What do you think the PRC can do to improve its ability to use data to further its mission of ensuring transparency and accountability?

During my career at both the Postal Service and at the International Post Corporation I was directly involved in both the data-collection and data-analysis systems that are in place at Postal Operators. I could write an extremely lengthy response on this topic.

It is my understanding that the Commission is pursuing initiatives to increase its capacity to effectively manage/analyze data. However, this initiative has been impacted by a significant backlog of investment in technology, infrastructure, and personnel.

The combination of the Postal Reform Act of 2022 and the implementation of the Delivering for American 10-year Plan, create an environment in which the Regulatory Commission has an increased need to obtain, organize and analyze data. Given the history of “flat-lined” budgets, it is critical that these current budget requests be approved.

The bottom-line is that the Postal Service has an abundance of near real-time data that should be used to effectively manage the transportation, logistics, processing, and delivery portion of their network. This day-to-day analysis is the responsibility of the Postal Service. It provides the Postal Service with the ability optimize and/or adjust the network on an ongoing basis to ensure both efficiency and quality of service. The aggregation of this data, in defined geographic areas, should be the basis of publicly available reports on service performance. This is best accomplished by providing the aggregated data to the Postal Regulatory Commission and in turn provide the Commission with the budget to properly capture, organize, store, and analyze this data.

**Senator James Lankford
Post-Hearing Questions for the Record
Submitted to Thomas G. Day**

Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges, Superior Court of the District of Columbia

Thursday, September 21, 2023

1. You have served for 35 years in the Postal Service, which gives you great insight into the USPS operation. What do you see as the main obstacle preventing the Postal Service from being financially stable?

There is no simple answer to this question and the situation would require an extremely lengthy discussion. In simplest form the financial position of the Postal Service can be examined by looking at the 3 basic accounting statements of any organization – the Income Statement, the Cash Flow Statement, and the Balance Sheet.

I do not want to delve into the Balance Sheet and Cash Flow Statement other than to note the significant overpayment made by USPS to OPM with regards to CSRS retirees. It has been calculated to be in the range of \$50-55 Billion. However, this overpayment has not been paid back to USPS and awaits action by Congress as requested by OPM. If these funds are returned to USPS there will be a significant positive impact on both the Cash Flow Statement and the Balance Sheet.

The ongoing financial stability of the Postal Service is best defined by the Annual Income Statements. The Income Statement is simpler at USPS because Interest Expense is less than private organizations and there is no Tax Expense. Instead, the focus is on Revenue, Operating Expense and Depreciation.

Revenue at USPS is directly tied to Pricing, which in turn is tied to Cost Attribution. The guidance provided by Title 39 is that USPS, with oversight by PRC, must ensure that the various products offered are priced to cover cost. It is essential that USPS have an effective system to measure cost attribution, again with the oversight and approval of the PRC. Failure to do so will result in the sale of products that can immediately incur a loss.

The other issue that can result in a financial loss for a specific product is the impact of Elasticity of Demand. While in theory an increased price may cover cost; it may be priced so high as to drive customers to products/services offered by other companies or to simply not use the product/service at all. With a lower than anticipated number of products/services sold, you will then have less revenue than expected. This lower revenue does not always allow for Operating Cost adjustments to keep the product/services at least at break-even.

A major portion of the Delivering for America (DFA) plan deals with cost reduction as the result of the redesigning of the Network. This includes revision of the type and location of the facilities in the network. Revisions to the transportation, logistics, processing

technology, processing procedure and delivery operations are all part of this network change. As the network is revised portions will experience reductions, while others will have an increase. To state the obvious, the net result must be savings. For example, the Sort and Delivery Centers will centralize a variety of Delivery Units into a single center. The savings from reduced costs in processing and transportation must be more than the increased cost that will take place in delivery operations.

In addition to the cost/benefit associated with network redesign, there is also the capital investment required for network redesign. This cost is reflected in Depreciation. If the amount of upfront investment is underestimated, then the Net Income in the initial years of the plan will be less than anticipated.

As I first stated, this is a complex issue. This is just a quick summary of the issues at hand. All aspects of the plan must be understood and managed to achieve a break-even or profitable Net Income.

2. Regulators must be neutral; how will you ensure that you are not biased in favor of the place where you worked for so long?

I have served in a wide variety of positions in both the US Army and the US Postal Service. I have always understood the obligation to perform the duty for the position to which I am assigned, or in the case the position to which I have been nominated.

3. Last week, USPS rejected the PRC's budget request. As you are aware, the 2022 Postal Reform Act shifted control of the PRC budget from Congress to the USPS Board of Governors.

- a. Was providing the Postal Board authority to approve their regulators budget a good idea?

I have no issue with the method established to control the PRC Budget in the 2022 Postal Reform Act. I believe a professional and communicative relationship between the PRC and the BOG, as well as Senior USPS Management, is essential to effective and timely oversight as required by the Legislation.

If the role of the PRC and in turn the staffing and technical requirements necessary to fulfill this role, I see no problem in achieving a mutually agreeable budget for the PRC. The 2024 Budget decision by the BOG should be an anomaly, not the norm.

- b. Does the PRC have a sufficient budget to carry out their mission?

While the 2024 Budget approved by the BOG is less than the amount requested by the PRC, the Commissioners and the Staff are committed to fulfilling their required role. As I stated in the previous question, I would expect a mutually agreeable budget to be achieved for 2025.

4. The Postal Service reported a \$1.7 billion net loss for the third quarter in FY23 and could see an \$8 billion loss for the entire year. This is after Congress passed the Postal Service Reform Act last year that was supposed to stabilize the USPS financial situation.
 - a. Why is the Postal Service continuing to lose money?

As I referenced in question 1, there are several reasons why this is occurring. At this point I lack access to detailed information to better understand the situation.

I would note that the planned 2023 Budget was impacted by Inflation. US Inflation increase began in 2021 and peaked in the summer of 2022. Some level of forgiveness should be given due to inflation. However, the decline of inflation and the understanding of the impact of inflation should allow USPS to thoughtfully plan its budget for 2024. As such 2024 should be the year that USPS budget result is in sync with its plan. Should performance fall short of the DFA Plan, then a reexamination of the plan itself is necessary.

Such an examination should be prompted by USPS Management and the BOG. It should not require an action by the PRC. Of course, the PRC will be engaged in the oversight of any revisions to the plan.

- b. Do you see any situation where the Postal Service will need or ask for a taxpayer bailout?

As I mentioned in the answer to question #1, there is still the \$50-55 Billion overpayment of CSRS Retirees by USPS to OPM that has not yet been addressed. If at some point soon this overpayment is returned to USPS, it will significantly improve both the Cash Flow and Balance Sheet of the Postal Service.

5. USPS is investing in building out a package network while showing package revenue and volume declines. In Q3 of FY23, USPS reported a \$3 million decrease in revenue for packages with a 2.4% decline in volume. In Q2 of FY23 the decline in the loss was larger

with a decrease of \$162 million and a volume decline of or 5.0% for packages. All compared to the same quarter last year. First Class mail revenue increased by 4% while volume declined by 5.9%, this is after USPS raised the price of stamps from 63 to 66 cents on July 9th.

- a. Should the USPS continue to focus on building out a package delivery network?

The reality of the market that the Postal Service operates within is that “traditional” mail has declined and packages are increasing. Given the requirements of the market, there is little choice but to serve this network.

The Postal Service serves a network of 163 Million delivery points. A substantial portion of this network is not served by the Private Sector companies who provide package delivery or do so at extremely high prices. In addition, the Postal Service provides cost effective delivery of smaller packages (under 5 pounds). As such, there is a portion of the national network of package delivery that USPS can effectively serve.

6. The Postal Service Reform Act of 2022 eliminated the prefunding requirement for retiree health benefits, but USPS still struggles with high labor costs and pension plans.

- a. What percentage of the USPS budget goes toward labor costs and pension plans?

In 2022, the Total Operating Expense of the USPS was \$79.570 billion. Compensation and Benefits to employees was \$51.520 billion or 65%; Retirement benefits were 8.362 billion or 10.5%.

- b. Are reforms needed to address labor and pension costs?

If by the term “reform” you are referencing legislation, I would advise no. The Compensation and benefits are determined through negotiation and agreement with the unions and organizations that represent its employees. This is in keeping with the practice used in the private sector and should be left as is. The Retirement Benefit cost is established by the federal plan (CSRS or FERS) that the employee/retiree is enrolled in. USPS should remain in sync with the rest of the Federal Employees.

**Senator Josh Hawley
Post-Hearing Questions for the Record
Submitted to Thomas G. Day**

Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges, Superior Court of the District of Columbia

Thursday, September 21, 2023

1. Should the United States Postal Service be required to rebuild rural post offices that are damaged by natural disasters within a specified timeframe?

I have first-hand experience at the US Postal Service in dealing with the response to natural disasters. In 1992, I was the Director of Operations Support for the Miami Division of the Postal Service. In August 1992 Hurricane Andrew, a Category 5 Hurricane, devastated a major portion of southern Dade County. Several Post Offices were destroyed and many others seriously damaged.

The Postal Service was fully committed to the repair and restoration of all these facilities. However, the timeframe for completion varied significantly from one facility to another. Some facilities had to be completely taken down and a new one built. In other cases, the effort was simply to provide repair to the remaining structure.

Rather than specify a timeframe for completion, I would recommend that the Postal Service be given a specific timeframe to assess the situation and develop a plan for restoration. The Postal Service should then be held accountable for the timeframe established in their own plan.

Should the Postal Service not be cooperative and does not communicate with stakeholders, the Regulatory Commission could impose deadlines as a necessary next step.

OPENING STATEMENT OF KATHERINE E. OLER
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
September 21, 2023

Good morning and thank you. Chairman Peters, Ranking Member Paul and members of this committee.

I am deeply honored by the opportunity to appear before you today as a nominee to be an associate judge on the Superior Court of the District of Columbia. I would like to thank you and your committee staff for considering my nomination.

I am particularly grateful to President Biden for nominating me for this position. I would also like to thank the DC Judicial Nomination Commission, chaired by the Honorable Marie Johns, for recommending me to the White House.

I would not be here today without the tremendous love and support of my family. Here with me today is my husband of nearly 24 years, Col. (ret.) Adam Oler, our two incredible teenage children, who are undoubtedly my greatest accomplishment; my sister-in-law, Dr. Allison Oler Szapary; my mother, Margaret Ellsworth, who worked tirelessly for 30 years as a schoolteacher and has been my lifelong cheerleader and supporter; my father Paul Ellsworth could not be here today due to health reasons, but I want to thank him for his unwavering love and support over the years.

In addition to my family, I am grateful to the countless fellow servicemembers whom I had the privilege of serving alongside for over twenty years. I hope in some way, my presence here today can be seen as a reflection of their service and commitment, which is part and parcel of my own.

I am the fourth generation of my family to be born in Washington DC. Though I grew up elsewhere, I returned to this city during and after my military service. My decision to join the Air Force was motivated by a lifelong desire to serve my country and my community. Earning my commission also added to my family's long history of military service. My father enlisted in the Army during the Vietnam era. My grandfather joined the submarine service as a teenager early in World War II, and fought across the Pacific. My great grandfather served in the artillery in France at the end of World War I, and is buried in Arlington National Cemetery.

During my twenty-one years on active duty, I had the opportunity to serve across our great country and all over the world performing legal work that was both inspiring and challenging. My service as a prosecutor gave me the opportunity to work on scores of complex felony cases. It taught me the importance of hard work, preparation, and how critical it is to demonstrate the highest degree of professionalism, both as an attorney and an officer.

More fundamentally, the cases I tried imparted upon me that every case is distinct, and that the fair and timely administration of justice is at the very heart of our judicial system. Those were lessons that I took with me to the trial bench, where I served for three years as my service's deputy chief trial judge, and that I keep with me today in my current role as a special master on

the U.S. Court of Federal Claims. Over my 26-year legal career, I have spent nearly nine years on the bench. I believe this work has prepared me to serve as a DC Superior Court judge.

If I am fortunate enough to be confirmed, I would serve this city with the same level of dedication, hard work, and uncompromising commitment to the fair administration of justice that has guided me throughout my career.

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

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**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).**

Katherine Ellsworth Oler

- 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 Court of Federal Claims
Office of Special Masters
1401 H Street, NW
Washington, DC 20005

- 4. Date and place of birth.**

March 2, 1972
Washington, DC

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

I am married to Adam Oler. He is a lawyer and a professor at the National War College. NWC's address is: 300 D Street, SW, Washington, DC 20024.

- 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.**

Boston University School of Law, 1993 - 1996; J.D. awarded May 1996

Wellesley College, 1989 - 1993, B.A. awarded May 1993

Falmouth Academy, 1983 - 1989; high school diploma awarded June 1989

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.**

I served in the United States Air Force after graduation from law school from 1996 to 2017. I retired as a colonel and have an honorable service characterization. I have disclosed my military service later in this questionnaire.

Summer 1995
City, Hayes & Dissette
50 Congress St
Suite 200
Boston, MA 02109
Summer Associate

Summer 1994
United States Attorney's Office for the District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210
Unpaid Intern

Summer 1993
The Limited
Downtown Boston (address unknown)
Sales Associate

Summer 1992
MIT Concession Stand
77 Massachusetts Ave.
Cambridge, MA 02139
Clerk

Summer 1991
Mick's on 7th
Minneapolis, MN (no longer in business)
Server

Summer 1990
Bayberry's Log Cabin Restaurant
271 Cotuit Road
Sandwich, MA 02563 (no longer in business)

Table Busser/Food Runner

September 1989 - May 1993
Wellesley College
106 Central St.
Wellesley, MA 02481
Work Study Program

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.**

ADR Award, Office of Special Masters, 2021

Legion of Merit, 2017

Meritorious Service Medal, 2014, 2012, 2007, 2004, 2001

Air Education and Training Command, Legal Office of the Year, 2013

United States Air Force, Headquarters Air Force Judge Advocate of the Year, 2009

Top Graduate, Joint Military Judges Course, Army JAG School, 2008

Recognized for Academic & Judicial Excellence, ABA's National Conference of Specialized Court Judges, 2008

Judge Advocate Field Grade Officer of the Year, United States Air Forces in Europe, 2005

Air University Foundation's Legal Writing Award, 2003

Air Force Commendation Medal, 2000, 1998

Boston University School of Law, Schulman Scholar, 1994 - 1996

Wellesley College English Departmental Honors, 1993

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.

Women's Bar Association of the District of Columbia, member, 2023 - present

American Bar Association, Chair, Legal Assistance for Military Personnel, 2019 - 2022

American Bar Association, Nominations Committee Member, 2019 - 2020

Harvard Law School Trial Advocacy Workshop, 2019 - present

Washington Council of Lawyers, Pro Bono & Public Interest Committee, May 2018 – present; Training Subcommittee, September 2018 - present

National Association of Women Judges, 2018 - 2021, 2009 - 2011

American Bar Association Standing Committee on Armed Forces Law, liaison and appointed member, 2014 - present

National Institute for Trial Advocacy, Washington DC Program, 2012 - present

Judge Advocates Association, executive director, 2010 - 2011

- 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.**

Washington Wellesley Club, 2016 - 2021 (approximate)

St. Albans Student Exchange Shop Co-Chair, 2017 - present

Neither of these organizations has 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 Court of Federal Claims, admitted March 19, 2018

DC Court of Appeals, admitted March 10, 2017

United States Supreme Court, admitted January 25, 2010

Court of Appeals for the Armed Forces, admitted April 3, 1997

Air Force Court of Criminal Appeals, admitted April 4, 1997

Supreme Court of Florida, admitted September 27, 1996

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

Criminal Law and Litigation in the JAG Corps, Careers in Criminal Law, American Bar Association Criminal Justice Section, 2010.

Catch Me if You Can: Identity Theft Litigation in the Air Force, The Reporter, September 2003.

Co-author, *An Analysis of Juror Questioning in United States v. Abrams and Dunson*, Federal Court Judicial Forum, Vol. 1 (MCLE 1996).

- 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.**

Presenter, Ethics & the National Security Lawyer: Distinctions with a Difference, Duke Law School's 2019 LENS (Law, Ethics and National Security) Conference. Recording available at:

<https://www.youtube.com/watch?reload=9&v=sgLbRwkhIRk&feature=youtu.be>

Panelist, ABA's 29th Annual Review of the Field of National Security Law, Ethical Challenges of the National Security Lawyer. Recording available at:

https://players.brightcove.net/1866680404001/default_index.html?videoId=6111111044001.

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

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

I have not served as a law clerk.

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

I have not practiced alone.

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

I served on active duty in the United States Air Force from 1996 through 2017. Below is a list of my duty assignments.

December 1996 - December 1998
Howard Air Force Base
Republic of Panama
(The installation closed in 1999.)

December 1998 - June 2000
Keesler Air Force Base
81 TRW/JA
50 Fisher St.
Biloxi, MS 39534

June 2000 - June 2001
Osan AB, Republic of Korea
QD7C Area Defense Counsel
APO AP 96278

June 2001 - July 2004
Bolling Air Force Base
Eastern Circuit
2822 Doherty Drive
Washington, DC 20373

July 2004 - July 2007
U.S. Air Forces in Europe, Ramstein AB
USAFE/JA
66877 Ramstein-Miesenbach Germany

July 2007 - June 2008
The Pentagon
HQ AF/JA
1420 AF Pentagon
Washington, DC 20330

June 2008 - July 2011
Bolling Air Force Base
JAJTE
2822 Doherty Drive
Washington, DC 20373

July 2011 - July 2012

Joint Base Andrews
1500 W. Perimeter Road
Joint Base Andrews, MD 20762

July 2012 - July 2014
Randolph Air Force Base
1 Washington Circle, Building 100
JBSA-Randolph, TX 78150

July 2014 - November 2017
Joint Base Andrews, MD
1500 W. Perimeter Road
Joint Base Andrews, MD 20762

I have worked as a special master at the United States Court of Federal Claims from November 2017 through present.

United States Court of Federal Claims
Office of Special Masters
1401 H Street, NW
Washington, DC 20005

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

Before becoming a special master, I served on active duty in the United States Air Force as a Judge Advocate (JAG) for 21 years. While my work as a special master involves complex civil litigation, during my time in the Air Force, I worked in legal positions focused on criminal adjudication and litigation, including service as a military judge, a prosecutor, a defense attorney, a senior felony prosecutor, and ultimately as the Air Force's chief prosecutor and chief government appellate counsel.

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

During my time on active duty, I specialized in criminal litigation. While my client was typically the United States Air Force, I also served as a legal assistance attorney where I advised service members on a full range of civil law issues.

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

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

During my time as a criminal trial attorney in the United States Air Force, I appeared in court frequently. This was especially true from December of 1998 through June of 2004. During this time, I served as an installation-level prosecutor, a defense attorney, and a first chair felony prosecutor.

I also appeared in court frequently during my service as a military trial judge, from summer of 2008 through summer of 2011.

In my prior position as the Air Force's chief prosecutor and chief government appellate counsel, I appeared as a co-chair in approximately 15 total appellate arguments per year from 2014-2017 at both the Air Force Court of Criminal Appeals and at the U.S. Court of Appeals for the Armed Forces.

As a special master, I preside over complex civil proceedings approximately one time per month. During these hearings, the petitioner is represented by private counsel, and the Secretary of Health and Human Services is represented by the U.S. Department of Justice. As a special master, I function like a trial judge; I rule on objections, issue findings of fact and conclusions of law, and issue binding appealable decisions on entitlement and damages.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

100% of my practice has been in federal court.

(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;

35%

(b) criminal.

65%

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

I have tried approximately 75 cases to verdict or judgment as a prosecutor or defense attorney.

(4) What percentage of these trials was to

(a) a jury;

Slightly more than 50% of my cases were jury trials.

(b) the court (include cases decided on motion but tabulate them separately).

Slightly less than 50% of my cases were decided by the court.

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

1. In 2003, I prosecuted what was at the time, the largest MDMA case in DoD history, *U.S. v. Fredenburg*, ACM 35880 (A.F. Ct. Crim. App. 21 Nov 2005) (unpub. op.), in the United States Air Force Trial Court, Moody Air Force Base, Georgia, before Judge Lance Sigmon. The defendant was a drug trafficker who purchased 20,000 ecstasy pills in Germany and then smuggled them in his household goods to his next duty assignment, Moody Air Force Base, Georgia. The defendant also imported cocaine into the United States and attempted to manufacture methamphetamine. The case was investigated by the Drug Enforcement Administration and the Air Force Office of Special Investigations. Special agents from both federal law enforcement agencies testified at the trial. The defendant was sentenced to 10 years in jail and received a dishonorable discharge.

Co-counsel:

Ryan Oakley
12th AF/JA
Davis-Monthan AFB, AZ
Telephone number unknown

Opposing Counsel:

Richard V. Stevens
Military Defense Law Offices of Richard V. Stevens, P.C.
Washington, DC
888-399-0693

2. *U.S. v. McClour*, 76 M.J. 23 (CAAF 2017). For decades, Air Force juries have been instructed that if they are firmly convinced that a defendant is guilty beyond a reasonable doubt, they must follow the law and find the accused guilty. In my third year as the Chief Prosecutor and Chief Government Appellate Counsel, a defendant appealed his conviction for abusive sexual conduct, arguing the instruction invaded the purview of the jury. Had the defense prevailed in *U.S. v. McClour*, countless jury trials that resulted in conviction would have been overturned. However, by providing a survey of similar instructions from across federal practice (including the District of Columbia), the Federal Judicial Center's Pattern Criminal Jury Instructions, and citing other precedent, my appellate team prevailed. The Court of Appeals for the Armed Forces allowed the instruction to stand; it remains in use to this day.

Co-counsel:

Mary Ellen Payne
United States Air Force
Government Trial and Appellate Counsel Division
1500 West Perimeter Road
Joint Base Andrews, MD
202-612-4800

Opposing Counsel:

Jeffrey H. Palomino
Senior Counsel
Cybersecurity Enforcement at TSA
Contact information unknown

3. In 2002, I prosecuted one of the first identity theft cases in the Air Force in the United States Air Force Trial Court, Langley Air Force Base Virginia, before Judge Anne Shane. *U.S. v. Bivens*, No. 05-0167, 61 M.J. 150 (petition for review denied, Apr. 20, 2005). The defendant was involved in a conspiracy to create fraudulent military identification cards and then open lines of credit using these stolen identities. Proving the case required the prosecution team to organize and marshal vast amounts of documentary evidence in order to secure a conviction on all 32 counts against the defendant. The four military victims testified during the trial along with approximately thirty other witnesses. Airman Bivens

pled not guilty and the military judge convicted her of all charges, sentencing her to three years in jail and a dishonorable discharge.

Co-counsel:

John P. Taitt
3540 Deininger Road
York, PA
301-503-6913

Opposing Counsel:

Greg D. McCormack
484 Viking Drive
Suite 190
Virginia Beach, VA
888-490-0876

4. In 2002, during my first year as a senior felony prosecutor, I litigated a multi-week murder trial involving the death of an 11-month-old child before Lt. Col James Flannery in Hurlburt Field, Florida. *U.S. v. Harrow*, 65 M.J. 190 (CAAF 2007). The United States contended (and proved) that the child's mother, an active duty Airman, shook her baby and threw her at a wall. The ensuing brain injury ultimately caused the child's death. This case required months of pretrial preparation and extensive work with my forensic pediatrics expert and forensic pathologist to understand the effect of trauma on the brain and how to best articulate that science to the jury. Since the defense theory of the case was that the baby's father had killed her, establishing a minute-by-minute timeline of the events leading up to her death was necessary to secure a conviction. This case was especially significant to me because of the victim; I felt an obligation to ensure that she received justice. Ultimately, the case resulted in a finding of guilty and a 25-year jail sentence.

Co-counsel:

Steve J. Grocki
U.S. Department of Justice
Chief, Child Exploitation and Obscenity Section
950 Pennsylvania Avenue, NW
Washington, DC
202-514-5780

Opposing counsel:

Martin Mitchell
Veterans Law Judge
Department of Veterans Affairs
425 I Street, NW
Washington, DC
571-331-1734

5. I prosecuted an Air Force non-commissioned officer accused of sexually abusing his two

daughters before Lt. Col Kevin Koehler in Joint Base McGuire, New Jersey. *U.S. v. TSgt Timothy Pierce* (2003). The case required extensive preparation in order to secure a conviction. Both girls were traumatized by the abuse, and were afraid to go to trial so establishing their trust in me took a long time. The case was also challenging because many of the crimes happened months to years before the law enforcement investigation; this meant there was no physical evidence to corroborate the girls' testimony. Through the trial team's pretrial preparation, we were able to find a witness whom one of the girls spoke to about the abuse. This conversation took place years before she reported to law enforcement, making it especially persuasive. Ultimately, we were able to secure a conviction and a 10-year sentence, bringing justice and some degree of closure to both victims.

Co-counsel:

Michael Carrasco
Alvaraz & Marsal
700 Louisiana Street #3300
Houston, TX
832-504-0909

Opposing Counsel:

Brent C. Harvey
Attorney-Manager
Department of Defense
Office of the General Counsel
1600 Defense Pentagon, Room 3A734
Washington, DC
703-697-8343

2. **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).**

After completing my assignment as a criminal trial judge, the Judge Advocate General (the Air Force JAG Corps' top general, a three star) selected me to speak before Congress about the military's rape statute. I discussed my experience as a trial judge and the challenges associated with the statute (Article 120, Uniform Code of Military Justice) with twelve congressmen and women. One congresswoman asked me to return to the Hill to have a more in-depth conversation about several specific legal issues surrounding sexual assault.

I have also been involved in significant volunteer legal activities with the American Bar Association (ABA), the Washington Council of Lawyers, the National Institute of Trial Advocacy (NITA), and Harvard Law School.

I was the chair of the ABA LAMP (Legal Assistance for Military Personnel) Committee from 2019-2022. The committee works to enhance the scope, quality, and delivery of free

of affordable legal services to military members, veterans, and their families. LAMP also manages the military pro bono project, an access to justice initiative that matches volunteer attorneys with junior active-duty military personnel facing civil legal challenges. In my three years as the LAMP Chair, the pro bono project netted more than \$3 million in donated billable hours to needy lower-income service members and their families.

My work with the Washington Council of Lawyers, NITA, and Harvard Law School involves training students and young attorneys on trial advocacy.

- 3. 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 served as a military trial judge in the United States Air Force from 2008-2011. As a military member, my service as a trial judge was a military assignment action, specifically approved by the Judge Advocate General of the Air Force. During my tenure in this position, I presided over criminal cases and did not issue written opinions. None of my evidentiary decisions resulted in reversal by a higher court.

I have served as a special master on the United States Court of Federal Claims from November 2017 through present. Although I am not a judge, I was appointed to my position and serve as a judicial officer. Copies of my published decisions are attached.

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

Two of my decisions issued during my time as a special master have been reversed or remanded.

1. *Heller v. Sec'y of Health & Hum. Servs.*, No. 15-792, 2022 WL 16575744 (Fed. Cl. Spec. Mstr. Apr. 15, 2022); remanded by 162 Fed. Cl. 621 (2022). I issued the following decision on remand: *Heller v. Sec'y of Health & Hum. Servs.*, No. 15-792, 2023 WL 1495555 (Fed. Cl. Spec. Mstr. Jan. 4, 2023).

2. *Contreras v. Sec'y of Health & Hum. Servs.*, No. 19-491; remanded by 2022 WL 1580602 (Fed. Cl. 2022). I issued the following decision on remand: *Contreras v. Sec'y of Health & Hum. Servs.*, No. 19-491, 2022 WL 2302208 (Fed. Cl. Spec. Mstr. May 31, 2022).

- 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.**

I have never held or sought such an office.

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

Member, Democratic Party

- **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 cited for a breach of ethics or unprofessional conduct. In 2017, a former criminal defendant filed an ethics complaint against me with the Florida Bar, alleging that I withheld discoverable information while I served as the prosecutor on his case. The Florida Bar determined the complaint to be unfounded and dismissed it. When I received notification that an investigation had been opened, I forwarded this information

to the Air Force JAG Corps' professional responsibility committee. They conducted their own investigation, and also found the complaint to be without merit.

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.**

My spouse and I both receive military retirement benefits. In addition, my spouse and I both have retirement benefits from our former and current employers. Estimates of these amounts are detailed in my financial net worth statement.

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

I have no such potential conflicts.

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

None.

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

None.

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

I intend to continue with my volunteer service with the ABA, Washington Council of Lawyers, NITA, and Harvard Law School, to the extent that this work would not create conflicts with my judicial work.

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 abide by the ethical canons included in the Code of Judicial Conduct. If any potential conflicts arise, I will apply the ethical canons and recusal standards; if necessary, I will confer with judicial ethics officials to determine, as appropriate, whether I should recuse

myself from a particular matter.

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

Yes.

III. FINANCIAL DATA

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

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-150.1(b), as amended.

1. Are you a citizen of the United States?

Yes.

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

Yes.

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

I was admitted to the DC Bar on March 10, 2017.

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.

Since 2017, I have lived at my current residence, [REDACTED]

[REDACTED]

REDACTED

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

No.

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

No.

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

A copy of my Judicial Nomination Commission Questionnaire is attached.

AFFIDAVIT

Katherine Oler 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.

Katherine Oler

SUBSCRIBED and SWORN TO before me this 17 day of July 2023.

[Signature]
Notary Public



**Post-Hearing Questions for the Record
Submitted to Katherine Oler
From Senator Kyrsten Sinema**

**“Nominations of the Thomas Day to be a Commissioner, Postal Regulatory Commission,
and Katherine Oler, Judith Pipe, and Charles Willoughby, Jr. to be Associate Judges,
Superior Court of the District of Columbia”
September 21, 2023**

Question 1

The D.C. Superior Court currently faces a significant case backlog. In criminal matters, speedy trials are not only a constitutional right, but a critical tool for maintaining public safety. In civil cases, long delays can have a devastating impact on harmed consumers and others seeking help through the courts.

Can you discuss the backlog currently facing the Superior Court? In your view, are there ways that the Court could be more efficient?

Response: The D.C. Superior Court is currently facing a significant backlog of cases. The Court has acknowledged this backlog and, to help increase efficiency, has initiated a campaign called “Reimagining the Courts” where litigants can appear remotely at various court proceedings. Judges on the court have an important role in resolving the backlog. If confirmed as a D.C. Superior Court judge, I will address each case diligently, ensure all parties to the litigation understand my expectations of them, and come to court every day as prepared as possible. This will help ensure the proceedings move forward both efficiently and fairly.

Question 2

Increasing access to justice and the courts is a problem facing communities across our country, including the District of Columbia. And even when civil disputes do end up in court, far too many litigants can’t afford a lawyer and end up representing themselves – despite their unfamiliarity with complex evidentiary and procedural rules.

What role do you see for the Court in increasing access to justice? And if confirmed, how would you help ensure pro se litigants – often those who cannot afford counsel – can effectively argue their cases?

Response: Access to justice is a critical issue facing the Court. “Access” can include many things, including overcoming financial, educational, and language barriers. Trial judges have an important role in ensuring these and other barriers do not interfere with a litigant’s ability to have his or her case heard, with full due process. To ensure pro se litigants understand the legal process, judges should use language that is clear and readily understood. Virtual and telephonic participation by the parties can sometimes take the place of a personal appearance. This use of technology can allow litigants, who may otherwise be unable to participate in the judicial process, to have their

cases heard. Everyone who appears in D.C. Superior Court should be treated with the same high level of dignity and respect, regardless of whether they are represented or pro se. I have significant experience addressing access-to-justice challenges. For example, between 2019 and 2022, I was the Chair of the ABA's Legal Assistance for Military Personnel (LAMP) Committee, which ran the military pro bono project. My duties included overseeing the provision of \$3M in donated billable hours to lower-income military members who likely would otherwise not have had access to the judicial system.

Question 3

The jurisdiction of the Superior Court is broad and expansive. From criminal cases to landlord-tenants disputes to complex civil litigation, judges on the Court need to be prepared to impartially adjudicate disputes across a wide range of subject matters.

Although your professional background in public service is impressive, no one is an expert on everything. In areas of law where you may be less familiar, how would approach these cases?

Response: I would draw on my 26 years of legal experience both as a special master and as an active duty judge advocate. In those roles I learned how to address matters of law and procedure that were new to me. My legal career has involved many transitions. For example, I had ten different assignments during my 21 years on active duty, many of which required me to develop proficiency in a new field. If confirmed, when faced with an area of the law that was less familiar to me, I would work diligently to learn the law, seek out advice from my experienced colleagues, and fully participate in the D.C. Superior Court's excellent training program.

Senator Lankford

Post-Hearing Questions for the Record

Submitted to Katherine E. Oler

Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges, Superior Court of the District of Columbia.

Thursday, September 21, 2023

On Judicial Philosophy:

- 1) How would you describe your judicial philosophy?

Response: In my nearly six years as a special master, and in my three years as a military trial judge, I approached all my cases with complete impartiality, a respect for the parties, and a dedication to the fair administration of justice. If confirmed as an Associate Judge on the Superior Court of the District of Columbia, I am fully committed to continuing this practice.

- 2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: If confirmed as an Associate Judge, I would faithfully apply the law to the particular facts of the case before me. As has been my practice in my nearly six years as a special master and in my three years as a military judge, my personal views would play no role in my ruling.

- 3) Should judges take changing social values into consideration when interpreting the law?

Response: No, judges should not consider changing social values when interpreting the law.

- 4) What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: In interpreting a statute, a judge should first look to the plain meaning of the statute's text as well as the binding legal authority that interprets that text. If I were confirmed to the Superior Court of the District of Columbia, I would look to the binding legal authority of the United States Supreme Court and the District of Columbia Court of Appeals. Only in cases where the text of a statute is ambiguous and there is no binding precedent interpreting the text should a judge look to other accepted methods of statutory interpretation, to include a review of the forms of legislative history endorsed by the United States Supreme Court and District of Columbia Court of Appeals.

- 5) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: It should not. If confirmed as an Associate Judge, I would consider the facts of an individual defendant's case and apply them to the law when adjudging a sentence.

On Criminal Law:

Crime rates in the District of Columbia have become alarming. According to the Metropolitan Police, there have been 186 homicides in the city in 2023. This is an increase of 30% compared to last year. There have been 1,010 instances of assault with a dangerous weapon, a 9% increase. There have been 2,381 instances of robbery, a 67% increase. There have been 4,946 instances of motor vehicle theft, a 113% increase. Overall, violent crime has gone up 39% since last year. There were 16 homicides during the first week of August alone. D.C. has become an increasingly dangerous city to inhabit.

The D.C. Superior Court handles all local trial matters including civil and criminal cases. Therefore, you will play a key role in addressing the surge in violent crime.

- 6) In your view, what is the duty of the Superior Court and its judges when it comes to cases involving violent crime?

Response: As a resident of the District of Columbia, I am very aware of the increase in violent crime. The backlog in cases confronting the court delays resolution of alleged acts of violence. Should I be confirmed as an Associate Judge on the Superior Court of the District of Columbia, my role would be to expeditiously address these cases by coming to court as prepared as possible, ensuring the litigants do the same, and issuing clear rulings that fairly and impartially address the issues raised before me. This will help the District resolve the backlog, while also ensuring the fair administration of justice.

- 7) What roles do deterrence and public safety play in hearing these types of cases?

Response: Deterrence and public safety are important considerations when determining a sentence for an offender convicted of a violent crime. *See* D.C. Code § 24–403.01; *see also* § 23-1322(b)(2). On matters of sentencing, if confirmed as an Associate Judge, I would consider the factors articulated in D.C. Code § 24–403.01; to include, the seriousness of the offense, the criminal history of the offender, deterring the offender and others from criminal conduct, and providing the offender with “needed educational or vocational training, medical care, and other correctional treatment.”

On Religious freedom:

8) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector.

During the pandemic, DC denied churches the ability to meet in person. Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: If confirmed, and should the issue come before me, I would faithfully apply the standard set forth in the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a) to (b) as well as binding legal precedent. In *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp 3d 284 (2020), the U.S. District Court found that Washington D.C.’s prohibition on religious gatherings of more than 100 people was a substantial burden on the organization’s exercise of religion and was in violation of the RFRA. The U.S. District Court cited to *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), where the United States Supreme Court held that the Affordable Care Act’s contraceptive mandate violated the corporation’s right to the free exercise of religion. If confirmed as an Associate Judge on D.C. Superior Court, I would apply this binding precedent.

**Senator Josh Hawley
Post-Hearing Questions for the Record
Submitted to Katherine E. Oler**

**Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and
Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges,
Superior Court of the District of Columbia**

Thursday, September 21, 2023

1. If confirmed to this position, what would be your approach toward sentencing an individual convicted of a child pornography offense?

Response: If confirmed, in every case in which I was called to sentence a criminal defendant, I would consider the facts of the case, to include victim impact evidence, the statutory maximum and minimum, the sentencing guidelines, and the recommendations of the parties, as well as any applicable guidance from the D.C. Court of Appeals. *See* D.C. Code § 22-3102. As required by District of Columbia law, I would ensure that any sentence imposed reflects the seriousness of the offense and the criminal history of the offender and provides just punishment and adequate deterrence to potential criminal conduct of the offender and others. *See, e.g.*, D.C. Code § 24-403.01.

2. Do you believe America is a systemically racist country?

Response: I believe America is a great country in part because of its commitment to the rule of law. If confirmed as a judge, I will treat each individual that comes before me fairly and impartially. Should issues related to discrimination of any kind arise, I will follow the law and apply the law to the facts that are before me.

3. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

- a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Response: No.

- b. The Supreme Court's substantive due process precedents?

Response: No.

- c. Systemic racism?

Response: No.

- d. Critical race theory?

Response: No.

OPENING STATEMENT OF JUDITH EMILY PIPE
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
September 21, 2023

Mr. Chairman and members of the Committee, I am humbled and honored to appear before you today as a nominee to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank each of you for considering my nomination and the committee's staff for their hard work in preparing for this hearing. I thank the D.C. Judicial Nomination Commission and its chair, the Honorable Marie Johns, for recommending me to the White House and President Joseph Biden for nominating me. I wish to recognize and thank Chief Judge Anita Josey-Herring for her leadership and support and former Chief Judge Robert Morin for encouraging me throughout my career and for appointing me to my current position as a Magistrate Judge in Superior Court.

I would like to take a moment to acknowledge my family, whose support has been critical to me reaching this honor of being before you today. First, to my husband Chris Pipe for his patience, support, and encouragement since the first day we met 21 years ago. Together, we have raised two amazing children. They are my greatest pride and joy and I cannot wait to see the amazing adults and community members they will undoubtedly become.

I would like to thank my parents, Dr. Jeffrey Malka and Dr. Susan Gelfand Malka, who have unconditionally supported me throughout my life. They have constantly emphasized and exemplified that a life of service to your community is a life well lived. I would like to thank my sisters Jennifer Rudo and Deborah Friedman who have also led lives of service to their communities—Jennifer is a special education teacher and Deborah is an oncology nurse. A special thank you to my oldest sister Dorothy Malka who has lived her whole life paralyzed and with a significant brain injury. She is the kindest and gentlest person I know and has been a constant inspiration to me.

I have dedicated my legal career to public service in the Superior Court of the District of Columbia. I currently serve as a Magistrate Judge in both the Criminal and Domestic Violence Divisions of Superior Court. Since my appointment to that position in January of 2020, I have served on some of the most high-volume calendars and presided over hundreds of arraignments, preliminary hearings, and domestic violence temporary protection order hearings. In 2022, I was assigned to a misdemeanor traffic calendar where I presided over a dozen bench trials; hundreds of guilty pleas; sentencings; and a variety of other hearings that occur in the life a criminal case. In that role, I cleared a backlog of cases that had accumulated over the pandemic by setting reasonable deadlines and coming to the courtroom prepared on the law and the facts. On every calendar I have presided over, I have consistently and repeatedly demonstrated my commitment to neutrality by objectively applying the law to the facts in every case before me.

Prior to my appointment as a magistrate judge I served first as a staff attorney and then as a supervising attorney at the Public Defender Service for the District of Columbia. In that role, I handled hundreds of cases from their arraignment to their conclusion in Superior Court. As a litigator, I was in court daily and appeared before dozens of current and former judges of

Superior Court. I am thankful to have those Judges support me throughout my career and during this process.

It has been a great honor serve the District of Columbia community in Superior Court. I am humbled by the opportunity, if confirmed, to continue my commitment to public service and the rule of law by becoming an Associate Judge. I thank you for considering my nomination and I look forward to answering any questions you 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).

Judith (Judy) Emily Pipe
Judith (Judy) Emily Malka

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

I am a U.S. citizen.

3. Current office address and telephone number.

Superior Court of the District of Columbia
500 Indiana Avenue, NW
Washington, DC 20001
(202) 879-4795

4. Date and place of birth.

October 27, 1980; Falls Church, VA.

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 Christian Matthew Pipe. He is an Investigator with the Department of Defense, Office of Military Commissions, 1620 Defense Pentagon, Washington DC 20301-1620.

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.

Catholic University of America, Columbus School of Law, 2004-2007, J.D. *magna cum laude*, Awarded May 2007.

American University, 2000 – 2003, B.A. *summa cum laude*, Awarded May 2003.

George Mason University, 1997 – 1999; no degree awarded.

McLean High School, 1994 – 1997, High School Diploma awarded June 1998.

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

Summer 2006
Public Defender Service for the District of Columbia
633 Indiana Avenue NW
Washington, DC
Law Clerk

Summer 2005 & Winter 2006
Law Offices of Jon Norris (Retired)
503 D Street NW
Washington, DC 20001
Law Clerk

2003-2004
SRI International
1100 Wilson Blvd.
Arlington, VA 22209
Conference Coordinator & Receptionist

2003
Northern Virginia Temporaries
7115 Leesburg Pike
Falls Church, VA 22043
Clerical work

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.**

None.

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.**

Superior Court Committee on Judicial Education & Training, 2021 – Present, Member

Superior Court Committee on Public Education & Court Independence, 2023 – Present, Member

Superior Court Committee on Criminal Justice Act Vouchers, 2023 – Present, Member

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

None.

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

District of Columbia, admitted November 2007.

- 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.**

None.

- 16. Legal career.**

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

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

I have 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.**

2020 - Present
Superior Court of the District of Columbia
500 Indiana Avenue NW
Washington, DC 20001
Magistrate Judge

2007 – 2020
Public Defender Service for the District of Columbia
633 Indiana Avenue NW
Washington, DC 20004
Supervising Attorney & Staff Attorney

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

Upon graduation from law school in 2007, I joined the Public Defender Service for the District of Columbia as a staff attorney. In that position, I represented indigent adults and juveniles charged with criminal offenses in the District of Columbia. I represented these clients at all phases of their criminal case from arraignment to trial, plea and sentencing, or dismissal.

From 2014 – 2019, I served as a supervising attorney at the Public Defender Service. In addition to directly representing individuals charged with criminal offenses in Superior Court, I also supervised staff attorneys in the trial division of the Public Defender Service.

In 2020 I was appointed to be a Magistrate Judge by the Chief Judge of Superior Court of the District of Columbia. Since my appointment I have served in the Criminal and Domestic Violence Divisions. While serving in the Domestic Violence Division, I presided over temporary protection order hearings. These are *ex parte* hearings with, primarily, pro se litigants who are seeking a temporary order of protection until the trial. As the judge on this high-volume calendar, I elicit the relevant facts from the petitioners as efficiently and respectfully as possible. I frequently presided over this calendar while it remained open, but fully remote,

throughout the pandemic. Now, this is a hybrid courtroom where I am physically present in the courtroom, but the petitioners have the option to appear remotely or in person.

In the Criminal division I have presided over arraignments, preliminary hearings, and a misdemeanor trial calendar. Throughout 2020 and 2021, I presided over the arraignment and preliminary hearing courtrooms, when not serving in the domestic violence division. The operational logistics for these courtrooms varied from being fully remote, hybrid, to fully in person. I served in all of these courtrooms during all phases of their operations to assist the court in continuing its essential functions.

For all of 2022 I was assigned to a trial calendar for misdemeanor offenses prosecuted by the Office of the Attorney General. This included a variety of offenses including, but not limited to, driving under the influence, indecent exposure, unregistered firearms, and public benefits fraud. While presiding over this calendar for a year, I accepted hundreds of pleas and presided over a dozen bench trials. I also sentenced defendants who either pled guilty or were convicted at trial.

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

While at the Public Defender Service, my clients were indigent adults and juveniles who were charged with criminal offenses in Superior Court. My first year as an attorney, I primarily practiced in the Juvenile Branch in the Superior Court of the District of Columbia. My clients were typically teenagers charged with offenses ranging in seriousness from misdemeanors to homicide.

After my experience representing juveniles, I primarily represented indigent adults charged with felonies in Superior Court. From 2009 to 2011, I represented adults charged with drug offenses, gun possession offenses or unarmed violent felonies. As I gained litigation experience, I began representing adults charged with armed violent felonies.

In the beginning of 2013, I possessed sufficient knowledge and skill to represent adults charged with homicide, attempted homicide, or sexual assault. From 2013 until I left the Public Defender Service, my practice principally focused on representing adults charged with these types of offenses. In January of 2014, I became a supervisor in the Trial Division of the Public Defender Service. As a supervisor, I managed and trained lawyers who represented adults charged in Superior Court with offenses ranging from unarmed felonies to homicides.

As a magistrate judge I preside over arraignments, preliminary hearings, pleas, trials, sentencings, and civil protection order hearings in the Criminal Division and the Domestic Violence Division. The litigants in the Domestic Violence Division protection order hearings, who typically appear pro se, were in a romantic

relationship, are related, or share a residence. The matters in the Criminal Division involve Assistant United States Attorneys, Assistant Attorneys General, defense counsel and defendants charged with misdemeanor or felony offenses.

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.**

Throughout my career I have appeared in court frequently. Generally, I have appeared in court daily.

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

- (a) Federal courts (including Federal courts in D.C.);**

I represented one client in the United States District Court for the District of Columbia for a short period of time in 2019. I was granted permission to appear *pro hac vice* in that matter along with other attorneys from the Public Defender Service.

- (b) State courts of record (excluding D.C. courts);**

0%

- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);**

100%

- (d) other courts and administrative bodies.**

0%

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

- (a) civil;**

As an attorney, 0% of my litigation was civil.

As a judicial officer, 40% of my litigation is civil.

- (b) criminal.**

As an attorney, 100% of my litigation was criminal.

As a judicial officer, 60% of my litigation is criminal.

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.

(4)

As an attorney, I tried 33 cases to verdict. I was sole counsel in 25 cases, lead counsel in 7 cases, and associate counsel in 1 case.

As a Magistrate Judge, I have presided over 12 bench trials.

(5) What percentage of these trials was to

(a) a jury;

As an attorney, 65% of my trials were jury trials.

As a Magistrate Judge, 0% of my trials were jury trials.

(b) the court (include cases decided on motion but tabulate them separately).

As an attorney, 35% of my trials were bench trials.

As a Magistrate Judge, 100% of my trials were bench trials.

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

1. *United States v. Jonathan Dawkins*, 2012 CF1 012634 and 189 A.3d 223 (D.C. 2018)

In 2014, I represented Mr. Dawkins' in a jury trial at Superior Court on the charge of voluntary manslaughter. A central issue in the case was Mr. Dawkins' right to self-defense. The facts of the case were largely uncontested. While Mr. Dawkins was talking to another man on a public street, the decedent exited his vehicle and approached the two men. The decedent, a stranger to the two men, began arguing with Mr. Dawkins and punched Mr. Dawkins. After a brief physical altercation, Mr. Dawkins produced a knife and stabbed the decedent in the neck.

As lead counsel, I argued that Mr. Dawkins was acting in self-defense at the time he produced the knife. At the trial, the parties litigated the proper application of the District's duty to retreat law. I orally argued this issue at the time of trial and submitted written proposed jury instructions. Ultimately, the trial court judge, the Honorable Russell Canan, disagreed with my arguments and denied my requests. The jury convicted Mr. Dawkins.

My arguments at the trial level laid the foundation for a Court of Appeals opinion that had a significant impact on self-defense law in the District. In reversing the conviction, the Court of Appeals agreed with my position and clarified the District's duty to retreat law.

Co-Counsel

Dominique Winters
Deputy Trial Chief
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, DC 20004
(202) 628-1200

Opposing Counsel

Veronica Sanchez
Associate Judge
Superior Court of the District of Columbia
500 Indiana Avenue, NW
Washington, DC 20001
(202) 879-8393

Holly Shick

Chief Ethics and Compliance Officer
United States Olympic & Paralympic Committee
27 S. Tejon Street
Colorado Springs, CO 80903
(719) 632-5551

2. *United States v. Dani Hilliard*, 2016 CF1 005665

In 2016, I represented Dani Hilliard who was charged with second degree murder in the death of her children's father. Ms. Hilliard had a lengthy history of being physically abused by the decedent. At the time of his death, Ms. Hilliard had an active protection order against the decedent. On the evening of the incident, the decedent came to Ms. Hilliard's home high on PCP. After a verbal argument, Ms. Hilliard fled from the decedent and hid in the bathroom with a knife. The decedent, also armed with a knife, followed Ms. Hilliard into the bathroom. Ms. Hilliard sustained two stab wounds and the decedent sustained one fatal stab wound. At the time this occurred, Ms. Hilliard's and the decedent's two young children were in the home.

At the preliminary hearing, in Superior Court, I argued that Ms. Hilliard was acting in self-defense and the incident was a legally justified homicide. I presented court records and medical evidence to corroborate my argument that Ms. Hilliard had an honest and objectively reasonable fear for her life that evening. As sole counsel, I succeeded in persuading the Honorable Robert E. Morin that, despite being charged, Ms. Hilliard was the true victim in this scenario and the homicide was legally justified. As a result, Ms. Hilliard was released from jail and the case was dismissed.

Opposing Counsel

Charles Willoughby, Jr.

Deputy Chief, General Crimes Section

United States Attorney's Office for the District of Columbia

601 D Street NW

Washington, DC 20004

(202) 252-7566

3. *United States v. Alonzo Thomas*, 2012 CF2 17221

In 2015 I represented Mr. Thomas, as sole counsel, in a jury trial at Superior Court on the charge of second-degree sexual assault. The government alleged that Mr. Thomas engaged in sexual activity with the complainant when she was too intoxicated to consent. Pretrial, I filed written pleadings and orally argued that Mr. Thomas' intoxication should be considered by the jury when determining what Mr. Thomas knew or should have known. The government argued that all evidence of Mr. Thomas' intoxication should be excluded because of precedent barring this defense to assault on a police officer, where the intent element is the same. Despite my arguments that precluding this defense created disparate treatment between equally intoxicated individuals, The Honorable Milton Lee precluded my defense theory of intoxication. On the eve of trial, I was precluded from arguing to the jury that Mr. Thomas was too intoxicated to fully appreciate the complainant's level of intoxication. I quickly adjusted and prepared a defense that demonstrated the complainant was sufficiently sober to consent to sexual activity. The jury acquitted Mr. Thomas.

Opposing Counsel

Peter Taylor

Assistant United States Attorney

United States Attorney's Office for the District of Columbia

601 D Street NW

Washington, DC 20004

(202) 252-7566

4. *United States v. Frederick Morton*, 2009 CF1 25046 and 50 A3d 476 (D.C. 2012)

I represented Mr. Morton from 2009 to 2015 on a charge of first-degree murder, relating to a homicide that occurred in 1997. Pretrial, the parties litigated the admissibility of Mr. Morton's heroin use and its relevance to the identity of the murderer. The evidence

suggested that the decedent was killed when she interrupted a daytime burglary. The decedent was found in the entryway of her home with recently purchased groceries scattered around her. The government argued that the partially consumed orange juice, found near the decedent, was evidence that the murderer was a heroin addict experiencing withdrawal. In 2011, I successfully argued to the trial judge that Mr. Morton's heroin addiction was more prejudicial than probative and should be excluded. Following an interlocutory appeal, evidence of Mr. Morton's heroin addiction was admitted at the jury trial in 2015. Nevertheless, I was able to focus the jury's attention on the lack of evidence connecting Mr. Morton to this crime and the evidence suggesting an alternative suspect. The jury acquitted Mr. Morton of all charges.

I argued the pretrial motions as associate counsel before the Honorable Thomas J. Motley. I was sole counsel when the case proceeded to trial before the Honorable Rhonda Reid Winston.

Co-Counsel

Anthony Matthews

Staff Attorney

Public Defender Service for the District of Columbia

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Opposing Counsel

Laura Bach

Deputy Chief, Homicide Section

Assistant United States Attorney

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Richard Dizinno

VP, Strategy, Policy and Government Affairs

National Insurance Crime Bureau

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Des Plaines, IL 60018

(847) 544-7000

5. *United States v. Daron Wint*, 2015 CF1 7047, 285 A.3d 1270 (D.C. 2022)

In 2018 I was chief counsel at the jury trial for Mr. Wint who was charged with four counts of first-degree murder and related offenses. The preparation for this trial, which lasted approximately 8 weeks, involved reviewing the voluminous discovery, litigating complicated and novel legal issues, and gaining expertise in a variety of scientific and technical fields. Timely disclosure of discovery was critical to my effective preparation.

After negotiations between leaders of the Public Defender Service and the United States Attorney's Office failed to result in an agreement on a protective order to facilitate early discovery, I successfully cooperated with opposing counsel and designed a protective order that remained in effect for all homicide cases for a considerable period of time. This order facilitated a fair and timely discovery process between the two agencies which ensured that both sides could more effectively and efficiently prepare for trial.

There was a substantial amount of pretrial litigation in this case, including some that left a lasting impact on general practices in Superior Court. For example, prior to this case, there was a general practice that the defense was ordered to reveal alternative suspect defenses to the government prior to trial. I successfully persuaded the trial judge, the Honorable Juliet McKenna, that this long-standing practice violated binding precedent and the defendant's constitutional rights. In a subsequent and unrelated case, the Court of Appeals affirmed my arguments and clarified that the defense cannot be ordered to disclose their defense theory. *United States v. Moghalu*, 263 A.3d 462 (D.C. 2021).

Co-Counsel

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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).**

One of the most significant legal activities I pursued was helping to transform the Superior Court Drug Intervention Program (Drug Court) into a gold standard for treatment courts around the country. In the Fall of 2011, I volunteered to be the Public Defender Service representative on the Drug Court steering committee. At that time, the program was undergoing a reorganization to comport with national best practices for similar drug courts. A committee consisting of all major stakeholders was created to redesign every aspect of the program. As part of that committee, I assisted in rewriting the program rules, revising the program contract for participants, and redesigning critical staffing structures. One major improvement that I spearheaded was creating a full-time attorney position at the Public Defender Service that is assigned to represent all individuals in Drug Court. In keeping with the research on national best practices, a single Drug Court attorney provided participants with counsel who possessed an expertise in the program and the unique issues impacting that vulnerable population. Having one defense attorney dedicated to Drug Court also increased the judicial efficiency of the program for a variety of logistical and substantive reasons. I worked with all stakeholders to negotiate the role and requirements of this position. Once I created a position description, which was approved by my director, I assisted in selecting and training an individual to fill that role from the Public Defender Service.

The Drug Court program at Superior Court remains tremendously successful in helping its participants to maintain sobriety and abstain from illegal activities. Over the years the program has continued to expand its admission criteria to permit a larger population to benefit from the program. It is currently a model program for many other jurisdictions who are implementing similar drug courts.

- 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 currently serve as a Magistrate Judge in the Superior Court of the District of Columbia. I was appointed by Chief Judge Robert E. Morin and sworn into this position on January 17, 2020. The Superior Court of the District of Columbia is a court of general jurisdiction for the District of Columbia.

As a Magistrate Judge I have not issued any published opinions. I have issued hundreds of written orders, but they are typically short orders or template orders. I have not issued any written orders that were the subject of an appeal to an Associate Judge or the Court of Appeals.

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

None.

- 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 was a judicial candidate for the position of Magistrate Judge in the Superior Court of the District of Columbia from September of 2019 until my appointment. I have also been a judicial candidate for the position of Associate Judge on the Superior Court of the District of Columbia. My first application for this position was in July of 2017. In January of 2018 I was recommended to the President by the Judicial Nomination Commission for the vacancy created by the retirement of the Honorable Frederick H. Weisberg. When that list was withdrawn, I reapplied. In November of 2021 I was recommended to the President by the Judicial Nomination Commission for the vacancy created by the retirement of the Honorable Judith A. Smith. When a nominee was confirmed for that seat, I submitted my current application.

These are all appointed positions. I have never been a candidate for any elective or public office.

21. Political activities and affiliations.

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

None.

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

None.

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

None.

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

In the summer of 1999, I was cited for underage possession of alcohol. This occurred on the campus of George Mason University when campus police were investigating a noise complaint. At that time, all people present in the dorm room were cited for underage possession of alcohol. At my first appearance in court, the charge was dismissed by the Office of the Fairfax Commonwealth's Attorney.

In the summer of 2014, I was in a car accident on interstate 395 in Arlington, VA. A vehicle, changing lanes, struck my vehicle. The impact caused my vehicle to spin out of control and both cars were totaled in the accident. The other driver told the police officer that he did not strike my vehicle. According to that driver, he began to merge into my lane and my car spun out of control without any impact. Despite the physical evidence on my car showing the point of impact, the officer cited me for failure to maintain proper control of my vehicle. I appeared in Arlington General District Court to contest the ticket. At that time, I was informed the officer resigned from the police force and the case was dismissed by the Court.

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.**

A former client filed a *pro se* motion challenging his conviction after trial, pursuant to D.C. Code §23-110. The lead charges in the case were three counts of assault with intent to kill while armed. The former client alleged that I, and predecessor counsel, failed to inform him that the sentences for each of the three lead charges would run consecutive to each other, because they related to three separate individuals. According to the former client, he would have accepted a plea offer had counsel provided accurate information regarding his potential sentence after conviction at trial. The client also alleged that I should have argued for the lead charges to merge. The trial occurred in 2014 and the *pro se* motion was filed on February 7, 2017. On June 20, 2017, I provided the government with an affidavit denying the allegations relating to my advice about sentencing exposure post-trial. Since binding precedent precluded merger of the lead charges, I did not address this allegation in my affidavit. On August 27, 2018, The Honorable John McCabe issued an order finding the former client's allegations not credible and denying the motion. Judge McCabe's opinion was affirmed by the Court of appeals in a *per curiam* unpublished Memorandum Opinion and Judgment dated January 31, 2023. The case is *United States v. Matthew Bullock*, 2013 CF3 000730. The matter proceeded to trial before The Honorable John McCabe and the government was represented at trial by AUSA Kevin Chambers. AUSA Christopher Buente represented the government on the D.C. Code §23-110 motion.

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?**

My current employer is the Superior Court of the District of Columbia. However, when I was appointed to the Superior Court as a Magistrate Judge I severed connections with my prior employer.

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

None.

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

My husband, Christian Pipe, is an investigator. In the past, he worked on criminal cases in Superior Court. Currently, he is working exclusively with the Department of Defense, Office of Military Commissions. In the event he returned to working on cases heard in Superior Court, I would recuse myself from any cases he worked on.

- 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 adhere to the Code of Judicial Conduct in addressing any conflicts that arise. I will consult judicial ethics advisors, relevant advisory opinions of the Advisory Committee on Judicial Conduct of the District of Columbia Courts, and any other relevant laws, rules, and practices to determine whether recusal is the appropriate course of action. As noted above, I will recuse myself from any case in which my husband has involvement.

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

Yes.

III. FINANCIAL DATA

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

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-150.1(b), as amended.

1. Are you a citizen of the United States?

Yes.

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

Yes.

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

Yes. I was admitted on November 5, 2007.

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

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

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

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

D. Upon what grounds is that eligibility based?

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

Yes.

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

Yes. I have lived at [REDACTED] since March 31, 2017. [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 District of Columbia Judicial Nomination Commission questionnaire are attached.

AFFIDAVIT

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

SUBSCRIBED and SWORN TO before me this 14 day of July 2023.

[Signature]
Notary Public



**Post-Hearing Questions for the Record
Submitted to Magistrate Judge Judith Pipe
From Senator Kyrsten Sinema**

**“Nominations of the Thomas Day to be a Commissioner, Postal Regulatory Commission,
and Katherine Oler, Judith Pipe, and Charles Willoughby, Jr. to be Associate Judges,
Superior Court of the District of Columbia”
September 21, 2023**

Question 1

The D.C. Superior Court currently faces a significant case backlog. In criminal matters, speedy trials are not only a constitutional right, but a critical tool for maintaining public safety. In civil cases, long delays can have a devastating impact on harmed consumers and others seeking help through the courts.

Can you discuss the backlog currently facing the Superior Court? In your view, are there ways that the Court could be more efficient?

Answer: As a result of various factors, including an increase in case filings and the COVID-19 pandemic, Superior Court is currently experiencing a significant backlog of cases. Since joining the Superior Court in 2020 to serve as a Magistrate Judge, I have worked tirelessly to help reduce the court’s backlog, including, most notably, in 2022 when I presided over a misdemeanor traffic trial calendar and eliminated a significant backlog that had accumulated due to the pandemic. I come to the courtroom each day familiar with the facts of each case and well versed on the law for any issues that could arise. I set reasonable deadlines for the parties and set clear expectations for the timeline for the case. Finally, I efficiently and expeditiously apply the law to the facts presented by the parties and issue clear and concise rulings. If confirmed, I would continue this practice as an Associate Judge.

Question 2

Increasing access to justice and the courts is a problem facing communities across our country, including the District of Columbia. And even when civil disputes do end up in court, far too many litigants can’t afford a lawyer and end up representing themselves – despite their unfamiliarity with complex evidentiary and procedural rules.

What role do you see for the Court in increasing access to justice? And if confirmed, how would you help ensure pro se litigants – often those who cannot afford counsel – can effectively argue their cases?

Answer: The Court has a responsibility to facilitate fair and equal access to justice; to that end, Superior Court offers a variety of free resources to assist pro se litigants in filing and litigating cases. As a Magistrate Judge, I currently serve as a member of the Public Education & Court Independence Committee. In that capacity, I have organized and participated in a variety of events

to inform the community about the resources available through Superior Court. In addition, when litigants appear before me, it is my responsibility as a Magistrate Judge to inform litigants in clear and plain terms about the resources available to them through the Court when there is a need. If confirmed, I would continue this practice as an Associate Judge.

Question 3

The jurisdiction of the Superior Court is broad and expansive. From criminal cases to landlord-tenants disputes to complex civil litigation, judges on the Court need to be prepared to impartially adjudicate disputes across a wide range of subject matters.

Although your professional background as a public defender and service as a magistrate judge is impressive, no one is an expert on everything. In areas of law where you may be less familiar, how would approach these cases?

Answer: As a Magistrate Judge in the Domestic Violence Division, I preside over temporary civil protection order hearings. This is an area of law I was unfamiliar with prior to my appointment as a Magistrate Judge. In preparing for this assignment, I read through all the relevant statutes, rules, and case law. I observed a variety of judges conducting these hearings and embraced all the training that was available. Very quickly, I became an expert in this area of the law. Over the last three years, the presiding judges of this Division have repeatedly called upon me to train other judges on this topic. If confirmed, I would use this same approach to master any area of law with which I have yet to become familiar.

Senator Lankford

Post-Hearing Questions for the Record

Submitted to Judith E. Pipe

Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges, Superior Court of the District of Columbia.

Thursday, September 21, 2023

On Judicial Philosophy:

- 1) How would you describe your judicial philosophy?

Answer: Since joining the Superior Court of the District of Columbia in 2020 to serve as a Magistrate Judge, my approach has been to treat all parties with respect and to efficiently decide the cases before me by objectively and faithfully applying the law to the facts.

- 2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Answer: As a Magistrate Judge I have consistently applied the law as dictated by the United States Supreme Court and the District of Columbia Court of Appeals to the facts as they are presented without regard to any personal beliefs I may have. If fortunate enough to be confirmed as an Associate Judge, I would continue that practice.

- 3) Should judges take changing social values into consideration when interpreting the law?

Answer: No. The law should be faithfully applied as written and interpreted by the United States Supreme Court and District of Columbia Court of Appeals.

- 4) What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Answer: My approach to statutory interpretation has been to look to the plain language of the statute and follow binding precedent from the United States Supreme Court and the District of Columbia Court of Appeals regarding statutory interpretation. I would follow their guidance on whether extrinsic factors, such as legislative history, should play any role in statutory interpretation in circumstances where the meaning of the text remains ambiguous even after assessment of the plain language.

- 5) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Answer: Each sentence must be founded upon the individual facts of the person and their conduct. My approach to sentencing has been to apply the principles set forth in D.C. Code §24-403.01. It is my goal to fashion a sentence that reflects the seriousness of the conduct, provides just punishment for that conduct, and deters that offender and others from future criminal conduct. D.C. Code §§24-403.01(a)(1)-(3). If confirmed, I would consider only the facts relevant to those goals.

On Criminal Law:

Crime rates in the District of Columbia have become alarming. According to the Metropolitan Police, there have been 186 homicides in the city in 2023. This is an increase of 30% compared to last year. There have been 1,010 instances of assault with a dangerous weapon, a 9% increase. There have been 2,381 instances of robbery, a 67% increase. There have been 4,946 instances of motor vehicle theft, a 113% increase. Overall, violent crime has gone up 39% since last year. There were 16 homicides during the first week of August alone. D.C. has become an increasingly dangerous city to inhabit.

The D.C. Superior Court handles all local trial matters including civil and criminal cases. Therefore, you will play a key role in addressing the surge in violent crime.

- 6) In your view, what is the duty of the Superior Court and its judges when it comes to cases involving violent crime?

Answer: As a resident of the District of Columbia and a Magistrate Judge in the Criminal and Domestic Violence Divisions of the District of Columbia Superior Court, I am acutely aware of the rising crime in the city. On a daily basis, I see the impact on my community and the victims. My role as a Magistrate Judge is to decide all the cases brought before me, without delay, by objectively applying the law to the facts. I also clearly explain my rulings to allow all parties to understand the process and instill confidence in the system. If confirmed as an Associate Judge, I would continue this practice.

- 7) What roles do deterrence and public safety play in hearing these types of cases?

Answer: Deterrence and public safety are factors for a judicial officer to consider in criminal cases. See D.C. Code §§ 24-403.01(a), 23-1322(a)(2), 23-1322(b), 23-1325(a), 23-1329(a)-(b). In my current role as a Magistrate Judge, I have weighed these factors in

making detention decisions and fashioning sentences. If confirmed as an Associate Judge, I would continue to do so.

On Religious freedom:

- 8) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector. During the pandemic, DC denied churches the ability to meet in person. Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Answer: The Religious Freedom Restoration Act of 1993 (RFRA) states that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” 42 U.S.C. § 2000bb-1(a). RFRA further states that if the Government substantially burdens a person’s religious exercise, then the person is entitled to an exemption from the rule unless application of the burden is the least restrictive means of furthering a compelling government interest. *See* 2000bb-1(b). In *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (2020), the U.S. District Court for the District of Columbia granted a motion to preliminarily enjoin the District from restricting in person religious gatherings of more than 100 people during the COVID-19 pandemic. Relying on a number of United States Supreme Court decisions, including, *Burwell v. Hobby Lobby Stores, Inc.*, 573 US 682 (2014), the District Court found that the Capitol Hill Baptist Church was likely to succeed in proving the District’s restrictions on in person gatherings violated RFRA. If I were presented with this issue, I would apply the relevant precedents of the United States Supreme Court and District of Columbia Court of Appeals.

**Senator Josh Hawley
Post-Hearing Questions for the Record
Submitted to Judith E. Pipe**

**Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and
Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges,
Superior Court of the District of Columbia**

Thursday, September 21, 2023

1. If confirmed to this position, what would be your approach toward sentencing an individual convicted of a child pornography offense?

Answer: As a Magistrate Judge, my approach to sentencing has been to apply the principles set out in D.C. Code §24-403.01. In accordance with the statute, I fashion a sentence that reflects the seriousness of the offense and the criminal history of the offender. The sentence should also provide just punishment for the conduct and adequate deterrence for that conduct for the offender and others. *See* D.C. Code §§ 24-403.01(a)(1)-(3). I would consider the D.C. Voluntary Sentencing Guidelines and order any services which may prevent future criminal conduct. *See, e.g., D.C. Voluntary Sentencing Guidelines Manual*. Ultimately, it is my goal to impose a sentence that will protect the victim and the community consistent with the principles set forth in D.C. Code § 24-403.01.

2. Do you believe America is a systemically racist country?

Answer: As a judicial officer, I have repeatedly and consistently demonstrated my commitment to the rule of law by objectively applying the law to the facts and treating all parties equally without regard to race.

3. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

- a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer: No.

- b. The Supreme Court's substantive due process precedents?

Answer: No.

- c. Systemic racism?

Answer: No.

- d. Critical race theory?

Answer: No.

OPENING STATEMENT OF CHARLES J. WILLOUGHBY, JR.
Nominee to be Associate Judge of the District of Columbia Superior Court
September 21, 2023

Good morning, Chairman Peters, Ranking Member Paul and members of the Committee. I am humbled, honored, and grateful to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would also like to extend my sincere appreciation to the District of Columbia Judicial Nomination Commission and its chair, The Honorable Marie C. Johns, for recommending me to the White House and President Joseph Biden for nominating me.

Additionally, I would like to express my utmost gratitude to the current U.S. Attorney for the District of Columbia Matthew Graves, as well as former U.S. Attorneys Ronald Machen, Vincent Cohen, Jessie Liu, and Channing Phillips for their leadership and support. I would also like to thank former U.S. Attorney for the U.S. Virgin Islands Ronald Sharpe for his guidance and mentorship throughout my legal career. I am thankful to my current and former colleagues at the U.S. Attorney's Office, the many law enforcement officials with whom I have had the opportunity to work, and the defense bar of the District of Columbia, who have all in some form or fashion, inspired, encouraged, and challenged me.

There are no words to capture the appreciation and love that I reserve for my family and close friends. It is because of their unwavering and unconditional support, that I sit before you today.

Born as the eldest of two sons of Charles Willoughby, Sr. and Brenda Atkinson-Willoughby, here in Washington, D.C., my parents instilled in me early on the importance of being a public servant. My father, an attorney, worked as a public servant in local and federal agencies for most of his legal career – including in the U.S. Attorney's Office for the District of Columbia. My mother, an educator and administrator, served in various capacities in public schools and in institutions of higher education throughout D.C. While my late father is not with us today, it brings me great joy to have my mother in attendance. She continues to inspire me and reminds me of the importance of serving my community.

As a second-generation Washingtonian, it is a great honor to be considered for a judgeship on a court that I first visited as a young child more than 30 years ago, where my father appeared when he was an Assistant U.S. Attorney. Some of my fondest memories are of watching him in court and it was no surprise to many when I followed in his footsteps and attended the Howard University School of Law, just as he had done.

Also, with me today is my beautiful wife, Cassandra Vincent. We met in St. Thomas, where she was employed as a Detective for the U.S. Virgin Islands Police Department and I was beginning my career as a prosecutor. Her love and dedication are underscored by the fact that she graciously relocated from her beautiful native island to support me when the opportunity arose for me to serve as an Assistant U.S. Attorney in the District of Columbia. Cassandra and I are blessed to have three sons – my two stepsons Amileo and Dante, who could not be with us today – and our son, Chaz.

Shortly after graduating from Howard, I began my legal career as an Assistant Attorney General in St. Thomas in the U.S. Virgin Islands, where I began prosecuting misdemeanor matters and was soon elevated to prosecuting violent crime felonies. In 2014, after five years on the Island, I returned to D.C. to join the U.S. Attorney's Office, where I have served as an Assistant U.S. Attorney for almost a decade. During my tenure at the U.S. Attorney's Office, I have appeared in both D.C. Superior Court and the United States District Court for the District of Columbia prosecuting a wide range of criminal matters, including homicides, and cybercrimes.

Throughout the course of my legal career, I have made it a priority to exercise sound judgment, be respectful to all whose paths I crossed, and above all maintain fidelity to the law. I am grateful for the opportunity to serve the residents and community of the District of Columbia in a new role if I am fortunate enough to be confirmed to be an Associate Judge. Again, I thank you for your consideration of 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).

Charles James Willoughby, Jr. I have also used the nickname, "Chip."

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

I am a U.S. citizen.

3. Current office address and telephone number.

U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20530
(202) 815-8960

4. Date and place of birth.

February 25, 1978; 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 currently married to Cassandra Celia Vincent. She is employed as a Special Security Officer with Paragon Security, Inc. working directly with the U.S. Marshals Service. The business address of Paragon Security, Inc. is: 13900 Lincoln Park Drive, Suite 300, Herndon, VA 20171.

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

I have [REDACTED] and two stepsons (Amileo Paniagua, 27 years old and [REDACTED]). Amileo resides in St. Thomas, U.S. Virgin Islands and is employed as an independent landscaper.

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.

Howard University School of Law; Washington, D.C., August 2004-May 2007; awarded

Juris Doctor degree in 2007.

University of the Western Cape; Cape Town, South Africa, Summer 2005; Study Abroad program; no degree was awarded.

Belmont University; Nashville, TN, August 2000-May 2002; awarded Bachelor of Arts degree in Music Business in 2002.

Morehouse College; Atlanta, GA, August 1997-August 2000; awarded Bachelor of Arts degree in Business Administration (Marketing) in 2000.

Syracuse University; Syracuse, NY, August 1996-May 1997; no degree was awarded as I left to transfer to another institution.

Sidwell Friends School; Washington, D.C., August 1990-May 1996; high school diploma awarded in 1996.

- 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.**

October 2008 to August 2009
Washington Development Industry Council (now defunct)
218 D Street, SE
Washington, D.C. 20003
Program Director

October 2006 to June 2007
Public Defender Service – Community Defender Division
633 Indiana Avenue, NW
Washington, D.C. 20004
Law Clerk

Summer 2006
Southern Center for Human Rights
60 Walton Street, NW
Atlanta, GA 30303
Law Clerk

Spring Semester 2006
D.C. Superior Court
500 Indiana Avenue
Washington, D.C. 20004
Legal Intern

July 2003 to August 2004
The Harry Fox Agency
40 Wall Street #6
New York, NY 10005
Inquiry Agent

June 2002 to August 2004
Houston's Restaurant
153 East 53rd Street
New York, NY 10022
Bartender

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

Special Achievement Award (multiple), U.S. Attorney's Office for the District of Columbia (2015-2022)

Inaugural Patricia J. Smoot Award, AUSA Association of D.C. (2021)

CALI Award (received highest grade in Federal Tax), Howard University School of Law (2006)

Merit Award Scholarship, Howard University School of Law (2004-2006)

Dean's List, Belmont University (2000-2002)

Honor Roll, Belmont University (2000-2002)

Honor Roll, Morehouse College (1998, 2000)

Dean's List, Morehouse College (1998)

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.**

Sixth Presbyterian Church (Washington, D.C.)
Member (2014-Present) and Elder (2016-Present)

Sixth Presbyterian Church (Washington, D.C.)
Session Committee Member - Stewardship and Finance Chair (2018-Present)

Sixth Presbyterian Church (Washington, D.C.)
Session Committee Member - Mission and Justice Chair (2016-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.**

Working Group on Workplace Equality, U.S. Attorney's Office – D.C., Co-chair (2020-2022)

Hiring Committee, U.S. Attorney's Office – D.C., Member (2022-Present)

District of Columbia Bar, Member (2022-Present)

Hate/Bias Crime Coordinator, U.S. Attorney's Office – D.C. (2019-2021)

National Association of Assistant U.S. Attorneys, Member (2014-Present)

AUSA Association of D.C., Member (2014-Present)

Criminal Justice Act Panel (St. Thomas, Virgin Islands), Member (2014)

Virgin Islands Bar Association, Member (2011-Present)

New York State Bar Association, Member (2008-Present)

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

None.

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

New York, admitted September 2008 (inactive since 2012)

U.S. Virgin Islands, admitted November 2009 (special admission)

U.S. District Court of the Virgin Islands, admitted September 2013

District of Columbia, admitted May 2014

I briefly allowed the biannual dues for my New York Bar membership to lapse, mistakenly believing that they were not required under inactive status. Once notified of this error in the Summer of 2022, I promptly paid the back dues and was returned to a status of inactive – good standing. Otherwise, there have been no lapses in my bar memberships.

- 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.**

None.

- 16. Legal career.**

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

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

I have 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 law alone or in any capacity as a solo practitioner.

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

May 2008 to October 2008
Executive Office of the Mayor – Office on Ex-Offender Affairs
1050 30th Street, NW
Washington, D.C. 20007

August 2009 to July 2013
U.S. Virgin Islands Department of Justice
3438 Kronprindsens Gade, GERS Building, 2nd Floor
St. Thomas, VI 00802

July 2013 to May 2014
Quintairos, Prieto, Wood & Boyer
1026 Norre Gade
St. Thomas, VI 00802

May 2014 to present
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20530

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

The majority of my legal practice has been spent prosecuting criminal matters. From 2009-2013 and 2014-present, I prosecuted, investigated or supervised criminal cases ranging from petty crimes to more serious violent crimes. I also prosecuted and investigated cybercrime matters from 2018-2019. From 2013-2014, my practice consisted of both civil litigation and criminal defense.

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

Because the bulk of my career has been spent in criminal prosecution, in representing the Government, I do not have a "typical client". However, having prosecuted a wide variety of matters, I have worked with a range of victims and witnesses, including indigent persons, people with mental health and addiction issues as well as law enforcement personnel, and scientific experts.

While an associate at the law firm in the U.S. Virgin Islands, my clients consisted of a diverse group of people and companies, including national and regional insurers, criminal defendants, wrongfully terminated employees, and other various businesses.

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

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

I have appeared in court frequently throughout the course of my legal career. Both as a line AUSA (from 2014 until 2019) and as an Assistant Attorney General in the Virgin Islands, I was in court multiple days each week for a

wide-range of appearances to include: status hearings, pleas, sentencings, suppression, preliminary and other evidentiary hearings, and bench and jury trials. In my current supervisory role, I still appear in Court frequently (multiple times each month).

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

Approximately 10% of my appearances have been in Federal Courts.

(b) State courts of record (excluding D.C. courts);

Approximately 30% of my appearances have been in State Courts.

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);

Approximately 60% of my appearances have been in D.C Courts.

(d) other courts and administrative bodies.

0% of my appearances have been in other courts and administrative bodies.

(3) What percentage of your litigation has been:

(a) civil.

Approximately 7% of my litigation has been in civil matters.

(b) criminal.

Approximately 93% of my litigation has been in criminal matters.

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

I have tried approximately 100 cases to verdict

(5) What percentage of these trials was to

(a) a jury;

Approximately 45% of these trials were to a jury.

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

Approximately 55% of these trials were to the court.

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

1. ***United States v. Cinquan Cartledge*, 2017-CF1-7979, Superior Court of the District of Columbia.** As an Assistant U.S. Attorney, I represented the Government and was lead counsel from the case's inception in 2017 until its final disposition in 2020. I was responsible for investigating the case, interviewing and presenting witnesses and evidence to the Grand Jury, providing discovery and for ultimately indicting the case, which charged the defendant and his co-defendant with First Degree Murder while Armed and other firearms related charges. Once the matter was set for trial, I and co-counsel were also responsible for drafting and responding to pre-trial motions and prepping civilian witnesses, law enforcement witnesses and expert witnesses for trial.

Following the defendant's acceptance of a plea to Unlawful Possession of a Firearm, he was sentenced on November 23, 2020 by the Honorable Todd Edelman of D.C. Superior Court. During the pendency of the case, the matter was also before the Honorable Judith Bartnoff.

Co-counsel:

Lindsey Merikas
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20530
(240) 278-0130

Opposing Counsel:

Sara Kopecki
3816 Monte Vista Place
Alexandria, VA 22309
(202) 550-5096

Carol Blume (retired)

2. ***United States v. Quincy Green*, 2016-CF1-9354, Superior Court of the District of Columbia.** As an Assistant U.S. Attorney, I represented the Government and was lead counsel from the case's inception in 2016 until its final disposition in 2019. I was responsible for investigating the case, interviewing and presenting witnesses and evidence to the Grand Jury, providing discovery and for ultimately indicting the case, which charged the defendant with First Degree Murder while Armed and other firearms related charges. Once the matter was set for trial, I and co-counsel were responsible for drafting and responding to pre-trial motions and prepping civilian witnesses, law enforcement witnesses and expert witnesses for trial.

Following the defendant's acceptance of a plea to Second Degree Murder while Armed, he was sentenced on November 8, 2019 by the Honorable Craig Iscoe of D.C. Superior Court. During the pendency of the case, the matter was also before the Honorable Hiram Puig-Lugo.

Co-counsel:

Kevin Flynn (retired)
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20530
(703) 862-2457

Opposing Counsel:

Dominique Winters
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004
(202) 824-2387

3. ***United States v. Justice Suh*, 1:18-cr-375-RC, United States District Court for the District of Columbia.** As an Assistant U.S. Attorney, I represented the Government as co-counsel from the case's inception in 2018 until its final disposition in 2019 – the sentencing of the defendant, which I handled. As co-counsel, I assisted with investigating the case, interviewing witnesses, providing discovery and for negotiating the plea terms in this matter, in which the defendant was charged with Computer Fraud.

Following the defendant's acceptance of a plea to one count of Computer Fraud, he was sentenced to 12 months of probation on June 26, 2019, by the Honorable Rudolph Contreras of the United States District Court for the District of Columbia.

Co-counsel:

Kamil Shields (former AUSA)
1700 New York Avenue, NW #700
Washington, D.C. 20006

(917) 783-1857

Opposing Counsel:

Lisa Manning
Schertler, Onorato, Mead & Sears
555 13th Street, NW, Suite 500 West
Washington, D.C. 20004
(202) 628-4199

4. ***United States v. Milkiyas Bayisa, 2015-CF1-11684, Superior Court of the District of Columbia.*** As an Assistant U.S. Attorney, I represented the Government as co-counsel beginning in 2017 until the case's final disposition in 2018. As co-counsel, I was responsible for drafting and responding to pre-trial motions and prepping civilian witnesses, law enforcement witnesses and expert witnesses for trial.

The matter went to trial before the Honorable Judge Judith Bartnoff on May 7, 2018, in which the defendant was charged with Second Degree Murder. On May 16, 2018, the jury returned a verdict convicting the defendant of involuntary manslaughter, for which he was sentenced on September 6, 2018.

Co-counsel:

Nebiyu Feleke
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20530
(202) 815-8671

Opposing Counsel:

Steven Kiersch
5335 Wisconsin Avenue, NW, Suite 440
Washington, D.C. 20015
(202) 347-0200

5. ***United States v. Malcolm Alexander and Marcus Harris, 2015-CF3-10973 and 2015-CF3-12412, Superior Court of the District of Columbia.*** As an Assistant U.S. Attorney, I represented the Government and was lead and sole counsel from the case's inception in 2015 until its final disposition in 2016. I was responsible for investigating the case, interviewing and presenting witnesses and evidence to the Grand Jury, providing discovery, indicting the case, and for ultimately trying the case before a jury, where both defendants were charged with Assault with Significant Bodily Injury. Once the matter was set for trial, I was also responsible for drafting and responding to pre-trial motions and prepping civilian witnesses, law enforcement witnesses and expert witnesses for trial.

The matter was indicted on November 10, 2015 and went to trial before the Honorable

Patricia Broderick on March 22, 2016, resulting in a hung jury on March 30, 2016. The defendants were represented by CJA Panel Attorney Steven Polin (defendant Alexander) and CJA Panel Attorney Corinne Schultz (defendant Harris). After the first trial hung, both defendants subsequently accepted misdemeanor pleas of simple assault and were sentenced on April 13, 2016.

Opposing Counsel:

Steven Polin
3034 Tennyson Street, NW
Washington, D.C. 20015
(202) 331-5848

Corinne Schultz
419 7th Street, NW, Suite 405
Washington, D.C. 20004
(202) 607-5011

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

As an Assistant Attorney General in the U.S. Virgin Islands, I served as a volunteer instructor and taught "Street Law" classes to Charlotte Amalie High School students from 2009-2014. I taught students about Criminal Law and the 4th, 5th and 6th Amendments of the U.S. Constitution and how they applied to their everyday lives.

Additionally, as an Assistant U.S. Attorney, I have served as a volunteer at multiple community events, including Youth Summits and Hate Bias Task Force community meetings. I have also volunteered at numerous outreach events at local colleges and universities, to include Mock Trial competitions.

- 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).

No.

21. Political activities and affiliations.

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

None.

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

None.

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

Biden-Harris 2020 Campaign - \$250

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

No.

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

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 briefly allowed the biannual dues for my New York Bar membership to lapse, mistakenly

under the belief that they were not required under inactive status. I was notified of this error in the Summer of 2022 and immediately paid the back dues and was returned to a status of inactive – good standing. I have not been otherwise disciplined or cited and have been a member in good standing of all other Bar Associations at all other times.

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.**

My wife and I each have 401(k) retirement plans with our current employers.

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.**

Should any conflicts of interest arise, I will abide by the District of Columbia Code of Judicial Conduct and follow all rules, procedures, and ethical canons to avoid any impropriety.

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.

No. I was admitted to the bar of the District of Columbia on June 12, 2022.

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?

No.

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

Yes. I am employed as an Assistant U.S. Attorney at the U.S. Attorney's Office for 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?

Yes.

- D. Upon what grounds is that eligibility based?

I have been an active member in good standing of the bar in another jurisdiction for more than five (5) years (the bar of the U.S. Virgin Islands since 2011) and have been employed as an Assistant U.S. Attorney at the U.S. Attorney's Office for the District of Columbia since 2014.

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

Yes. I have been a bona fide resident of the District of Columbia since 2015.

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

Yes. I currently reside at [REDACTED], where my family has resided since June 2019. We previously resided at [REDACTED] from May 2015 until June 2019.

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 District of Columbia Judicial Nomination Commission questionnaire are attached.

AFFIDAVIT

Charles W. Houghby 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.

Charles W. Houghby

SUBSCRIBED and SWORN TO before me this 14 day of July 2023.

Thomas

Notary Public

THULISILE C. NDLOVU THOMAS
Notary Public - State of Maryland
Prince George's County
My Commission Expires Nov 19, 2023



**Post-Hearing Questions for the Record
Submitted to Charles Willoughby, Jr.
From Senator Kyrsten Sinema**

**“Nominations of the Thomas Day to be a Commissioner, Postal Regulatory Commission,
and Katherine Oler, Judith Pipe, and Charles Willoughby, Jr. to be Associate Judges,
Superior Court of the District of Columbia”
September 21, 2023**

Question 1

The D.C. Superior Court currently faces a significant case backlog. In criminal matters, speedy trials are not only a constitutional right, but a critical tool for maintaining public safety. In civil cases, long delays can have a devastating impact on harmed consumers and others seeking help through the courts.

Can you discuss the backlog currently facing the Superior Court? In your view, are there ways that the Court could be more efficient?

Response: If confirmed as an Associate Judge for the Superior Court of the District of Columbia, I would be prepared each day to address all matters before me and would set clear expectations that all parties appearing before me shall be prepared, shall promptly respond to any case-related issues, and shall file pleadings in a timely manner. Since I began serving as an Assistant United States Attorney in 2014, I have witnessed firsthand how the backlog can render cases stagnant and have a deteriorating effect on their quality. Furthermore, I have observed how the backlog can diminish the victims’ confidence in the court system by delaying justice. By being prepared, a judicial officer sets an important tone and demonstrates to all parties that the courtroom will function efficiently. Additionally, I would fairly and faithfully apply the law to the facts of each case as they are presented to me and would issue clear decisions in a timely manner.

Question 2

Increasing access to justice and the courts is a problem facing communities across our country, including the District of Columbia. And even when civil disputes do end up in court, far too many litigants can’t afford a lawyer and end up representing themselves – despite their unfamiliarity with complex evidentiary and procedural rules.

What role do you see for the Court in increasing access to justice? And if confirmed, how would you help ensure pro se litigants – often those who cannot afford counsel – can effectively argue their cases?

Response: It is vital that all parties appearing in the Superior Court for the District of Columbia are given the opportunity to be heard and have a clear understanding of the court system and related litigation which brings them before the Court. If confirmed, I would take care to ensure that all parties appearing before me were made aware of the Court’s available resources, to better assist them navigate the court system and the related legal proceedings. As an Assistant United States

Attorney, in addition to advocating for the victims of the crimes that I investigated and prosecuted, I regularly had to assist victims, witnesses, and other parties with the processes, procedures and requirements of the court system and I would bring this experience and approach with me to the bench, if confirmed.

Question 3

The jurisdiction of the Superior Court is broad and expansive. From criminal cases to landlord-tenants disputes to complex civil litigation, judges on the Court need to be prepared to impartially adjudicate disputes across a wide range of subject matters.

Although your professional background as a prosecutor is impressive, no one is an expert on everything. In areas of law where you may be less familiar, how would approach these cases?

Response: If confirmed as an Associate Judge for the Superior Court of the District of Columbia, I would prepare for any cases that might come before me by thoroughly reviewing and studying all related statutes, rules of procedure, and caselaw. Additionally, I would thoroughly familiarize myself with the procedural history of the cases and the related pleadings to ensure that I had an adequate understanding of the facts and issues before me. Lastly, I would seek insight and advice from colleagues, where appropriate, mindful that any rulings, decisions or orders would be a result of faithfully applying the law to the facts of each individual case. As an Assistant United States Attorney, I was tasked with prosecuting a wide range of crimes, to include homicides and cybercrimes and had to regularly get up to speed on new statutes, the litigation of novel issues, and current caselaw. I am familiar with operating in a high-volume and fast-paced environment in which unexpected issues regularly arise, requiring prompt and decisive attention and responses and I would bring this same approach to the bench, if confirmed.

Senator Lankford

Post-Hearing Questions for the Record

Submitted to Charles J. Willoughby, Jr.

Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges, Superior Court of the District of Columbia.

Thursday, September 21, 2023

On Judicial Philosophy:

- 1) How would you describe your judicial philosophy?

Response: If confirmed, I would ensure that all parties that appeared before me are treated respectfully and fairly by faithfully and impartially applying the law and precedent of the Supreme Court and the District of Columbia Court of Appeals to the issues before me. I would also ensure that matters are adjudicated in a timely manner.

- 2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: If confirmed, I would consistently and unequivocally apply the law to the facts of the cases as they are presented to me and any personal feelings or opinions that I may have would not be a factor in reaching the result compelled by the law and the facts.

- 3) Should judges take changing social values into consideration when interpreting the law?

Response: No. If confirmed, I would faithfully apply the law to the facts of the cases as they are presented to me and would not consider any changing social values when interpreting the law.

- 4) What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: A judicial officer must apply the law to the facts of the cases as they are presented and if confirmed, I would apply the precedents of the Supreme Court and the District of Columbia Court of Appeals to determine any statutory interpretation analysis. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court reasoned that if judicial officers “could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes

outside the legislative process.” *Id.* at 1738. Should the language of a statute be ambiguous and without binding precedent, I would look to the legislative history, if necessary and appropriate, cognizant of the U.S. Supreme Court’s caveats regarding the limited value of legislative history.

- 5) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: If confirmed, I would adhere to the Code of the District of Columbia and pursuant to D.C. Code 24-403.01, would consult the D.C. Sentencing Guidelines when determining felony sentences; I would not factor in any sentencing disparities based on race or ethnicity and only consider the facts of each case as it comes before me.

On Criminal Law:

Crime rates in the District of Columbia have become alarming. According to the Metropolitan Police, there have been 186 homicides in the city in 2023. This is an increase of 30% compared to last year. There have been 1,010 instances of assault with a dangerous weapon, a 9% increase. There have been 2,381 instances of robbery, a 67% increase. There have been 4,946 instances of motor vehicle theft, a 113% increase. Overall, violent crime has gone up 39% since last year. There were 16 homicides during the first week of August alone. D.C. has become an increasingly dangerous city to inhabit.

The D.C. Superior Court handles all local trial matters including civil and criminal cases. Therefore, you will play a key role in addressing the surge in violent crime.

- 6) In your view, what is the duty of the Superior Court and its judges when it comes to cases involving violent crime?

Response: A judge’s role is to be prepared each day to address all matters and set clear and concise expectations that all parties appearing before the Court shall also be prepared. If confirmed, this would entail promptly responding to and ruling on issues and pleadings in a timely manner. By expeditiously resolving any case-related filings, it ensures that victims and defendants get their day in court, it minimizes the likelihood that cases become backlogged or stagnant, and it maintains the public confidence in the Court.

- 7) What roles do deterrence and public safety play in hearing these types of cases?

Response: The Code of the District of Columbia provides that deterrence and public safety are among the considerations a judge may consider when determining a sentence in criminal

cases. *See* D.C. Code §§ 24-403.01(a)(2), 23-1322(b)(2). If confirmed as an Associate Judge, I would follow the Code of the District of Columbia in making sentencing determinations.

On Religious freedom:

- 8) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector. During the pandemic, DC denied churches the ability to meet in person. Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court held that the government may not treat secular activities more favorably than non-secular ones. Unless the government can demonstrate “that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied” then any law that treats comparable religious activity less favorably than secular activity, fails the strict scrutiny test. 141 S. Ct. at 1297. If confirmed, I would adhere to the U.S. Supreme Court and the D.C. Court of Appeals precedents interpreting the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb-1(b).

**Senator Josh Hawley
Post-Hearing Questions for the Record
Submitted to Charles J. Willoughby, Jr.**

**Nominations of Thomas G. Day to be a Commissioner, Postal Regulatory Commission, and
Katherine E. Oler, Judith E. Pipe, and Charles J. Willoughby, Jr., to be Associate Judges,
Superior Court of the District of Columbia**

Thursday, September 21, 2023

1. If confirmed to this position, what would be your approach toward sentencing an individual convicted of a child pornography offense?

Response: If confirmed as an Associate Judge for the Superior Court of the District of Columbia, I would faithfully follow and adhere to the D.C. Code and would consult the Sentencing Guidelines, pursuant to D.C. Code § 24-403.01 when issuing felony sentences to any defendants who come before me. I would consider each case individually and apply the law to the facts of the specific case before me.

2. Do you believe America is a systemically racist country?

Response: I believe in America's founding ideals of liberty and equality. If confirmed as an Associate Judge for the Superior Court of the District of Columbia, I would treat all individuals or parties appearing before me, respectfully, fairly, and impartially and would seek guidance from the U.S. Supreme Court and the D.C. Court of Appeals in applying binding precedents to any matters before me that involved racial discrimination.

3. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

- a. *Roe v. Wade*, 410 U.S. 113 (1973)?

Response: No.

- b. The Supreme Court's substantive due process precedents?

Response: No.

- c. Systemic racism?

Response: No.

- d. Critical race theory?

Response: No.