

**APPLICATION OF PAUL CAMPBELL WILSON
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE PRICE VACANCY
SUPREME COURT OF MISSOURI**

**RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT IS
NOMINATED FOR THIS VACANCY**

A. PERSONAL INFORMATION

1. Present principal occupation: *Member in the law firm of Van Matre, Harrison, Hollis, Taylor & Bacon, P.C.*

2. Are you at least 30 years of age? Yes () No ()

3. (a) How many years have you been a citizen of the United States?
51 years, 2 months

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?
At least sixteen (16) years

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.
October 9, 1992 – License is in good standing

B. EDUCATIONAL BACKGROUND

5. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

Name	Address	Dates Attended	Degree
Drury College	900 N. Benton Ave., Springfield, MO 65802	August 1979, to May 1982	BA
New York University	721 Broadway, New York, NY 10003	August 1982, to May 1983	Non-degree Candidate

- (b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

Numerous awards for writing, acting and directing throughout undergraduate and post-graduate studies at Drury College and New York University, respectively.

Founding member of Darfstellar Repertory Theatre, New York, NY (1983-1985).

6. (a) State the name and address of all law schools attended together with the dates and degrees received.

Name	Address	Dates Attended	Degree
University of Missouri School of Law	203 Hulston Hall, Columbia, MO 65211	August 1989, to May 1992	JD <i>cum laude</i>

(b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

Class Rank: 1 out of 150 - G.P.A. of 97.08 (highest ever to that time)

Order of the Coif (academic recognition)

Order of the Barrister (trial and appellate advocacy recognition)

Missouri Law Review - Note and Comment Editor

National Moot Court Finals (San Francisco, 1992)

- 3rd place (individual oralist)

Regional Moot Court Finals (Indianapolis, 1992)

- 2nd place (team)

- Top Five Brief

Awards: 1992 Law School Foundation Award - Scholastic Achievement
1991 William E. Kemp Achievement Award
1991 James S. Rollins Scholarship
1991 Bernard T. Hurwitz Award, Taxation
1991 Judge Roy W. Harper Prize, Constitutional Law
1991 Alexander Martin Prize, Evidence
1990 John D. Lawson Prize, Contracts

Individual Course Awards (highest grade in each class):

Administrative Law	Estates & Trusts
Bankruptcy (100)	Evidence (100)
Business Organizations	Federal Taxation
Civil Procedure II	Jurisprudence
Commercial Law	Legal Res. & Writing
Constitutional Law	Torts
Contracts	Torts II (100)
Contracts II	Remedies
Criminal Law II	

7. If you were a student at any school from which you were suspended, placed on probation, or expelled by school authorities, for any reason, describe the circumstances.

N/A

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

8. State, in chronological order (starting with the earliest employment), significant non-law-related employment prior to or since law school. To the extent reasonably available to you, include the name and address of each employer and the dates of employment.

Employer	Address	Dates of Employment
Professional Actor- New York City	Various	1983-1985
Data Processing Coordinator-Hilton Service Corporation (n/k/a Hilton Reservation Worldwide): Coordinated financial data processing for world-wide reservation network, and consolidation of 13 field offices to centralized call center in Carrollton, Texas.	New York, NY & Carrollton, TX	1985-1986
Operations Analyst - Hilton Hotels Corporation	Los Angeles, CA & Chicago, IL	1986-1988
Local Area Network Consultant - Kenwood Associates	Chicago, IL	1988-1989

9. State, in chronological order (starting with the earliest employment), all employment from the beginning of law school to the present. For legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

Employer	Address	Dates of Employment	Position
Armstrong, Teasdale, Schlafly, Davis & Dicus	One Metropolitan Square, St. Louis MO 63102	1990	Summer Associate

Employer	Address	Dates of Employment	Position
Honorable Edward D. Robertson, Jr., Judge, Missouri Supreme Court	Missouri Supreme Court Building, 207 W. High St., Jefferson City, MO 65101	1991-1992	Judicial Internship
Sullivan & Cromwell	125 Broad St., New York NY 10004	1991	Summer Associate
Honorable Pasco M. Bowman, II, Circuit Judge, United States Court of Appeals for the Eighth Circuit	Federal Courthouse, Kansas City, MO	1992	Judicial Internship
Honorable Edward D. Robertson, Jr., Chief Justice, Missouri Supreme Court	Missouri Supreme Court Building, 207 W. High St., Jefferson City, MO 65101	1992-1993	Judicial Clerkship
Honorable Richard F. Suhrheinrich, Circuit Judge, United States Court of Appeals for the Sixth Circuit	Lansing, MI	1993-1994	Judicial Clerkship
Sullivan & Cromwell	125 Broad St., New York NY 10004	1994-1996	Senior Associate – Litigation

Employer	Address	Dates of Employment	Position
Missouri Attorney General's Office	Missouri Supreme Court Building, 207 W. High St., Jefferson City, MO 65101	1996-2008	Assistant Attorney General – Deputy Chief of Staff for Litigation
Office of Administration	Missouri State Capitol Building, Jefferson City, MO	2008-2009	Senior Counsel for Budget and Finance
State of Missouri	Missouri State Capitol Building, Jefferson City, MO	2009-2010	Director – Transform Missouri Project
Circuit Judge – 19 th Judicial Circuit	Cole County Courthouse, 301 East High St., Jefferson City, MO 65101	2010	Circuit Judge – 19 th Judicial Circuit
Van Matre, Harrison, Hollis, Taylor & Bacon, P.C.	1103 East Broadway, Columbia, MO 65201	2011 to present	Member

10. List any other states, courts or agencies in which you are licensed as an attorney.

Bar Admission	Date
Supreme Court of the United States	April 27, 1999
United States District Court - Western Distr. of MO	August 1996

11. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. (*You either may take as much space as you need here or attach your response on separate sheets*). Include in your response:
- a. **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment). To the extent reasonably available to you:
 - i. State the style, date, court and, if published, the citation;
 - ii. Identify the client(s) you represented and opposing counsel; and
 - iii. Give a one-paragraph description of the case and your role in it.

 - b. **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment). To the extent reasonably available to you:
 - i. State the style, date and court;
 - ii. Identify who you represented and opposing counsel;
 - iii. State whether the case was disposed of following a jury trial, bench trial or at what other stage; and
 - iv. Give a one-paragraph description of the case and your role in it.

 - c. **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in another judicial capacity, please describe the nature and extent of your judicial responsibilities:
 - i. Include the dates you have served at each level;
 - ii. Identify the types of dockets you have handled; and
 - iii. State any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

VALUES: I grew up as a son of an Associate Circuit Judge who loved lawyers as much as he loved the law, and who valued public service more than he valued money. He was my first and best law professor and, in many ways, I became a lawyer long before I was ever admitted to the University of Missouri School of Law or the Missouri Bar.

Before I learned to drive a golf ball, let alone a car, I learned from my father the value of thoroughly understanding the points of view of those around me. He taught me the value of reasoning through issues in a disciplined, step-by-step manner. And I learned that, even though there can be great value in questioning the rules (both informal and formal) which constitute our law, a decent respect for that law requires that I must first understand clearly how and why a rule had come

to be before presuming to suggest that be changed. I learned each of these values, and more, around family supper tables and late-night discussions too numerous to count.

SKILLS: Just as a swallow knows he will one day go to Capistrano, I knew I was born to go to law school. However, like any young person, I tried nearly everything else I could think of first. After a series of career changes referred to above but not relevant here, I began attending law school in 1989, and was admitted to the Bar three years later.

Since then, twenty years of clerkships, trial work and appellate practice – and, most recently, my experience as a Circuit Judge – have prepared me to serve on the Missouri Supreme Court. Throughout my career, I have learned to balance zealous advocacy with collegiality; to balance the desire to prevail in a particular case with a respect both for the law itself and for the longer term and greater good; and to balance the desire for individual achievement with the satisfaction that comes from public service.

From my first day at law school through to the present day, I have been blessed with great teachers and mentors who built upon the foundation of respect for the law that my father laid. Dean Tim Heinz and Professors Hunvald and Neely demonstrated the pure joy that is available simply in researching, debating and writing about the law. Then, to spend the summer after my first year of law school learning trial practice from John Shepherd, a literal giant of the American Bar who had learned his craft defending cases against the old St. Louis City Streetcar Company, was like having William Jennings Bryan offer to “give you some pointers” on public speaking.

In three judicial clerkships during and after law school, I learned the key role that collegiality and good humor can – and must play – for members of the judiciary. I had the distinct privilege to learn this lesson from three highly skilled practitioners of those arts: Judges Bowman, Suhrheinrich and Robertson. The first two demonstrated the interpersonal skills that are essential to making a three-judge panel function at its maximum effectiveness. The third, Judge Robertson, demonstrated the different set of skills that is needed to create and maintain an effective working environment on a larger, seven-judge court.

Each of these three Judges taught me a great deal about the art and craft of being an appellate judge, as well as the practical ins and outs of the different types of

courts on which each sat. And each of them believed strongly that the judiciary best serves the public when it serves the trial courts and the Bar, and that appellate judges best serve the trial courts and the Bar by deciding cases in a way that is not only faithful to the legal principles involved but also serves as a meaningful predictor of how similar cases should be – and will be – resolved in the future. Twenty years of practice have taught me that the last words any client ever wants to hear from their attorney are, “Sorry, I have read the cases and I just cannot tell you how the Courts are likely to react.” And, as a trial judge, I quickly learned that appellate decisions which read like law review articles seldom provide any meaningful guidance to resolving actual cases, and that unpredictability can be the most frustrating trait for an appellate court. Accordingly, my clerkships with these three distinguished jurists laid the groundwork for what my later experience has confirmed: that clear rules and predictable outcomes are the essential means by which appellate judges serve the trial courts and the Bar and, through them, the public.

At Sullivan & Cromwell, I learned the commitment to detail that litigation demands, particularly complex litigation with multiple parties, hundreds of thousands of pages of documents, and many months (or years) of trial preparation. As an institution, Sullivan & Cromwell prides itself on its written work product. Thus, I was given an invaluable grounding in the value of editing, re-editing, and re-re-editing, as well as the essential value that a new pair of eyes can bring to work product at each stage of its development. Writing, at its best, can and should be a group enterprise.

As a senior litigation associate at Sullivan & Cromwell (in my 3rd to 5th years of seniority, having arrived with two years' seniority in from my clerkships), I represented large, international clients with an emphasis on cases involving intellectual property and anti-trust law. For one multinational consumer electronics client, I worked closely with staff attorneys at the Department of Justice during their review of the licensing of patents involved in the manufacture of Compact Discs and Compact Disc Players, as well as the then-contemporaneous development of DVD's and DVD Players. I managed the review and production of more than one million pages of documents, which had been created over a ten-year span and had been written on several continents in multiple languages.

I also gained experience in the kind of fast-paced litigation which often arises around proposed mergers and acquisitions of publicly traded clients – cases in which the entire pre-trial, trial, and appellate process can be compressed into only a

week or two. Conversely, one case I worked on had languished in pre-trial discovery so long that, just as Dickens had written of the fabled *Jarndyce v. Jarndyce*, partners who had joined the firm as young associates had risen to senior partnership having never worked on any other matter.

But, perhaps the most important lesson I learned at Sullivan & Cromwell was when and how *not to litigate*. Litigation among industry rivals brings many challenges because the parties often have no choice but to continue to deal with each other in numerous ways notwithstanding the ongoing litigation. Thus, I quickly learned that it was critical for our clients that we find solutions without having to resort to litigation to resolve commercial differences. When litigation was unavoidable, it was even more important to ensure that it did not become unnecessarily divisive – even when the client’s emotions might tend toward “scorched earth.” By keeping a professional tone and tenor, however, we worked to ensure that rancor did not result in missing an opportunity to settle the case, and that the litigation did not create so many hard feelings that it was impossible to restore an effective business relationship.

Thus, early in my career I came to believe that, when a case ends up in trial or on appeal, this is a fairly good indicator that the lawyers for one side or the other (and usually both) failed to serve their clients well. Obviously, there are many types of cases in which this simple adage is inapplicable, *e.g.*, repeat-offender criminal cases, constitutional challenges, and certain family law cases. However, as a guiding principle, it has seldom let me down.

ADVOCACY EXPERIENCE – APPELATE and TRIAL (¶11(a) and (b)):

In nearly 13 years at the Attorney General's office, I argued more than a dozen cases in the Missouri Supreme Court, and handled the same number or more in the Court of Appeals. In nearly every instance, I handled the case in the Circuit Court as well. Because I was privileged to build this body of work, the Courts (and their staffs) before which I practiced soon rewarded me with a presumption of competence and credibility. With this reputation, however, also came responsibility. One poorly prepared argument, one poorly drafted brief, or one poorly reasoned argument could destroy the presumption I had worked so hard to create.

Beside my work in the state courts, my experience in the Attorney General's Office allowed me to practice in the federal district courts, the U.S. Court of Appeals for

the Eighth Circuit and, on one priceless opportunity, the United States Supreme Court. Few things I have done or ever will do in this profession can equal the thrill of standing before the United States Supreme Court and saying, "I represent the State of Missouri."

As Deputy Chief of Staff for Litigation, I handled, oversaw or consulted on virtually every significant piece of litigation in the Attorney General's office for nearly a decade. I handled or participated in many of the cases involving matters of important public policy or that were expected to attract a disproportionate amount of attention. The following is a representative list of these cases, with descriptions of my role in the trial and appellate processes:

Lee v. Kemna, 122 S. Ct. 877 (U.S.S.C. 2002) (brief available at 2001 WL 799294)

I wrote the brief and argued this habeas corpus case before the United States Supreme Court. The case involved, as so many do when a state appears before the Supreme Court, important issues of federalism. Though I garnered only three Justices' votes, I also succeeded in convincing the majority to decide the issue on the ground which intruded the least on the states' sovereignty and control over their own practice and procedures. On an unusual note, I argued the case just weeks after the 9/11 terrorist attacks. The Supreme Court Building (in which I had been studying for nearly a week) was closed the day before my argument (and for days after) due to the presence of anthrax spores in the air circulation system. Under extraordinary security, the Supreme Court sat in the D.C. Court of Appeals building nearby. Thus, I am one of only a handful of attorneys in the modern age who can say that, though I argued *before* the Supreme Court, I did not argue *in* the Supreme Court.

Brooks v. State, 128 S.W.3d 844 (Mo. banc 2004) (lead counsel at trial and on appeal) (principle and reply briefs available at 2003 WL 23976762 and 2004 WL 3094174, respectively).

In 2003, I successfully defended the General Assembly's act permitting individuals to carry concealed weapons in certain circumstances. The case was never about whether the General Assembly's decision to allow concealed weapons was sound public policy. Such questions are not subject to judicial review. Instead, the case focused on a more fundamental

principle, *i.e.*, whether the Constitution plainly and unambiguously prohibited the General Assembly from making the choice it did. The Missouri Supreme Court, on that point, unanimously held that the statute was constitutional. When I talk to high school and middle school classes, I use this case as one of the best examples of how Supreme Court cases are often not about what the media or the public think they are about. Students quickly figure out that the principles which really are at issue in such cases are nonetheless important, and well worth fighting for.

Nixon v. Blunt, 135 S.W.3d 416 (Mo. banc 2004) (expedited writ proceeding in Circuit Court, the Court of Appeals, Western District, and Missouri Supreme Court) (brief is included herewith as one of my writing samples).

This case typifies why I believe respect for and cooperation with opposing counsel is essential to my role as an advocate and a member of the bar. Opposing counsel was, and remains, a good friend. By working cooperatively, we were able to litigate this case in the trial court, the Court of Appeals, and the Supreme Court in near-record time, giving each Court the maximum time to consider and resolve the issue within the time constraints of an impending election. Ultimately, the Supreme Court upheld our position and declared that the Secretary of State had a duty to take all actions necessary to ensure the General Assembly's referendum prohibiting "gay marriage" was set for the August election as the Governor had ordered. As with the *Brooks* case above, this case had nothing whatsoever to do with "gay marriage," but much to do with whether the basic constitutional premise that the Governor's prerogative to set elections for referenda can be subverted by the actions of other statewide elected officials. It cannot.

Cole v. Carnahan, 272 S.W.3d 392 (Mo. App. WD 2008) (lead counsel at trial and on appeal) (brief is included herewith as one of my writing samples).

In the months preceding each general election, an increasing number of cases involving initiative petition cases are brought under Chapter 116 RSMo. These cases raise everything from the validity of signatures, to the constitutionality of law proposal, to the fairness and reasonableness of the ballot title provided by the Secretary of State and the fiscal impact analysis prepared by the State Auditor. Increasingly, some of these cases languish until the time within which the local election authorities can physically change the language of the ballots is nearly exhausted. *Cole* was an extreme

example. The case was not argued in the Western District until 19 days before the election. Knowing that a change to the ballot was no longer possible, Cole argued that the issue should be struck from the ballot and/or the voters' votes ignored. Appellate courts (like trial courts) must be careful only to answer those questions which *must* be answered in order to resolve an actual, ongoing and substantial dispute between truly adverse parties. This requirement that ensures the best advocacy, and it is such advocacy which puts the Court in the best position to reach the right answer while avoiding the potential for an uninformed mistake. I asked the Western District to rely upon the wisdom of this ancient principles in dismissing Cole's appeal, and the Court did.

Blue Cross and Blue Shield of Missouri v. Angoff & Nixon, Case No. SC87112, SC82125 (Mo. Sup. Ct. November and December 1999) (lead attorney for the settlement between the Attorney General and Blue Cross, and lead counsel in the litigation over the settlement which required two separate trips to the Missouri Supreme Court) (my brief to the Supreme Court on settlement issues is included herewith as one of my writing samples).

As noted in the narrative above, there are times when litigation, win or lose, fails to serve the best interests of the parties. After establishing at trial that Blue Cross's attempt to convert from non-profit to for-profit status was illegal, and having that point affirmed on appeal by the Court of Appeals, I negotiated a complex settlement with Blue Cross in which the entire value of the new for-profit company (in the form of common and preferred stock) would be used to endow a new health care foundation, the Missouri Foundation for Health, and dedicated to serving the uninsured and underinsured in Missouri. Shortly after this settlement was announced, however, the Cole County Circuit Court - acting *sua sponte* and without notice - ordered that the settlement be stopped and, instead, installed court-appointed attorneys to "review" the terms and arrange for disposition of the assets. More than a year of litigation against the court-appointed attorneys followed, including two trips to the Missouri Supreme Court. During the first trip to the Supreme Court, we argued the merits of the underlying action (my brief to these points is available at 1999 WL 33964272) and, at the second, we argued that the Attorney General and Blue Cross should be allowed to consummate the settlement that had been delayed so long. Neither argument resulted in a published opinion, but the Supreme Court

ultimately ordered the Circuit Court to allow the settlement to proceed. On January 6, 2000, the Missouri Foundation for Health was created and, after the settlement had been fully implemented and the shares of stock sold, the Foundation had assets of more than \$1.1 billion. This independent Foundation continues to do great work, and it stands as a testament to why litigation is not always (or even usually) the best answer. Had the Blue Cross litigation continued, we would almost certainly have won and, in doing so, likely would have destroyed all of the remaining value in Blue Cross. Hardly a victory worth pursuing.

State ex rel. Liberty School District v. Holden, 121 S.W. 232 (Mo. banc 2003)
(lead counsel at trial and all appeals).

In Fiscal Year 2004, Governor Holden ordered that funds appropriated for public schools be withheld pursuant to Article IV, Section 27 of the Missouri Constitution, which permits the Governor to "reduce the expenditures of the state . . . whenever the actual revenues are less than the revenue estimates on which the appropriations were based[.]" School districts sue to force the payment of the funds, and sought a writ of mandamus in the Cole Circuit Court. Representing the Governor, I prevailed in the Circuit Court and school districts went directly to the Missouri Supreme Court seeking the same relief. As with many of the cases above, the argument was surrounded by intense media interest, cameras in the courtroom, standing room only, and closed-circuit broadcasts to the other courtroom in the Supreme Court building which was being used as overflow. But, as with many of the cases above, what the press and public thought they would see and hear - *i.e.*, a debate about whether the Governor SHOULD withhold school funds- never materialized. Instead, the issue in the case- and the sole focus of the Court's attention- was whether there was an unwritten, implied limitation on the Governor's otherwise plenary authority to reduce expenditures to meet falling revenues anywhere and to any extent the Governor desires. The Court held that, on anything as fundamental to the Chief Executive's primary responsibility as balancing the state's budgets, no such search for implied limitations should be indulged.

Board of Education v. State of Missouri, 229 S.W.3d 157 (Mo. App. ED 2007) (brief available at 2007 WL 1072728); and ***Board of Education v. State of Missouri***, 271 S.W.3d 1 (Mo. banc 2008) (brief available at 2008 WL 4525971).

This case involved claims totaling many hundreds of millions of dollars on behalf of the St. Louis City School District and the voluntary inter-district student busing program (VICC), which alleged that the State of Missouri had violated the 1999 settlement of the federal desegregation lawsuit involving the St. Louis public schools. I was assigned to the case after the Circuit Court granted summary judgment to the Plaintiffs at a very early stage. I was able to convince the Court of Appeals to vacate the summary judgment and remand the case for expedited discovery and trial. We tried the case over the course of 13 days, nearly a dozen witnesses and many dozens of exhibits in the form of correspondence, notes, and drafts of settlements from nearly 10 years before. Because the case would turn on what the lawyers had done and said many years earlier, the situation was ripe for the case to devolve into *ad hominem* attacks from both sides. But that did not happen. Chuck Hatfield was the lead witness for the State, and Ken Brostron and Dirk DeYong were the lead witnesses for the School District. There simply is no group of attorneys I admire more (or from whom I learned more) anywhere in Missouri. Everyone testified to the truth as they saw it. All of the attorneys argued the facts and the law as they believed it to be, the Court did a masterful job assimilating an enormous factual record and numerous disparate legal issues, and the State prevailed on all counts. The Court declared the State had done all that it had promised to do in the desegregation settlement agreement. This judgment was affirmed in the Court of Appeals and, despite a back-breaking amount of work over several years, it was one of the most rewarding experiences as a litigator I ever had.

Board of Education v. State of Missouri, 271 S.W.3d 1 (Mo. banc 2008) (brief available at 2008 WL 4525971).

This case re-united the same cast of characters as the preceding case involving the 1999 St. Louis desegregation settlement. Here, the St. Louis City School Board challenged the General Assembly's determination (made back in 1998) to remove control over the District from the elected School Board if the District ever lost its state accreditation. Again, I was able to prevail but, again, Ken Brostron fought long and hard on behalf of the

District. Thus, another arduous case was made easier by the collegiality and professionalism of all the attorneys involved. However, the entire experience, which culminated when the Supreme Court affirmed our position in 2008, lacked the satisfaction I found in the earlier case. This time, Dirk DeYong – Ken Brostron's partner and always the smartest, and nicest, guy in any room – was not there. Dirk was losing a long battle with cancer, a battle he fought with the same good natured smile as he did everything else. His absence was palpable, and the Bar lost a bright star with his passing.

The following is a list of other significant appeals for which I wrote the briefs and argued the case. In each instance save one, I was also lead counsel in the Circuit Court.

Johnson v. State, 366 S.W.3rd 11 (Mo. banc 2012): I unsuccessfully represented voters claiming that the 2011 redistricting of the Missouri House of Representatives was unconstitutional. The Supreme Court rejected these claims.

Taylor v. State, 247 S.W.3d 546 (Mo. banc 2008): I represented the State in this follow-up litigation to the *Brooks* case, above. Here, the Supreme Court affirmed our position that the Hancock Amendment to the Missouri Constitution did not impair the validity of Missouri's "concealed carry" statute where the local government was willing to implement the law without direct funding.

City of St. Charles v. State, 165 S.W.3d 149 (Mo. banc 2005): I represented the State in this so-called *Hammerschmidt* challenge to the title and subject of a bill imposing new restrictions on tax increment financings (TIF's). The Supreme Court held that the restrictions were sufficiently related to bill's subject of "emergency services" such that the bill was not unconstitutional.

State ex rel. Nixon v. American Tobacco, Inc., 34 S.W.3d 122 (Mo. Banc 2000): In 1998, Missouri joined the national tobacco settlement between the four major cigarette manufacturers and 46 state attorneys general. This led to protracted litigation in the Circuit Court, the Court of Appeals, and the Missouri Supreme Court. Ultimately, the Supreme Court held that the Attorney General had the authority to agree to the Master Settlement

Agreement absent express and unequivocal reservation of that authority in the Missouri Constitution or state statutes.

Ensor v. Director of Revenue, 998 S.W.2d 782 (Mo. banc 1999): I successfully defended the Statewide School Building Revolving Fund, which by statute received the proceeds of certain criminal forfeitures, against constitutional attacks that forfeited funds may only be distributed to the districts where the crime occurred. The Supreme Court held that the General Assembly's use of this Fund did not violate the "fines, penalties and forfeitures" provision of the Missouri Constitution.

Kelly v. Hanson, 959 S.W.2d 107 (Mo. banc 1997): I successfully defeated the State Auditor's efforts to construe the Hancock Amendment of the Missouri Constitution to require refunds of hundreds of millions of dollars of "provider taxes." The Supreme Court held that these funds were not "state revenues" because they were never deposited in the state treasury or made subject to the General Assembly's spending prerogatives.

Teson v. Director of Revenue, 937 S.W.2d 195 (Mo. banc 1996): I successfully defended the revocations of these drivers' licenses following their refusal to take breathalyzer tests. The Supreme Court held that "actual prejudice" must be shown where officer makes minor deviations from the warnings required under Missouri's "informed consent" statute.

St. Charles County v. City of St. Peters, 152 S.W.3d 882 (Mo. App. E.D. 2004): I successfully defended this attack on the constitutionality of the "economic activity taxes" and "payments in lieu of taxes," two oft-used tools for political subdivisions to finance improvements and developments. The appeal was brought in the Court of Appeals due to the Circuit Court's reliance upon statutes of limitations and laches. The case later was transferred to the Supreme Court for consideration of the constitutional questions. However, after further deliberation, the case was re-transferred to – and resolved by – the Court of Appeals in 2005.

State ex rel. Missouri Highway Patrol v. Atwell, 119 S.W.3d 188 (Mo. App. W.D. 2003): I successfully defended the Missouri criminal forfeiture statutes in this action to recover property which had been forfeited and transferred to a federal law enforcement agency. The Court held that, without an express

waiver of sovereign immunity, claims against the State for “money had and received” could not succeed.

Kelly v. Hanson, 984 S.W.2d 540 (Mo. App. WD 1998): In the wake of the *Kelly* decision above, I successfully defeated the State Auditor’s efforts to require refunds of the millions of dollars of admission fees to gaming boats. The Court of Appeals held that these funds were outside the operation of the Hancock Amendment because they had been approved by the voters.

JUDICIAL EXPERIENCE (¶ 11(c)):

On January 16, 2010, I was appointed Circuit Judge of the 19th Judicial Circuit to fill the vacancy created when the Honorable Richard Callahan was appointed by the President to be the U.S. Attorney for the Eastern District of Missouri. Because this Circuit is not covered by the Missouri Non-Partisan Court Plan, I was required to run in a partisan election in November 2010 to retain this office. I lost that election and left the bench at midnight on December 31, 2010. Though I served only one year, it was the most rewarding year of my professional life and it has added immeasurably to preparation to serve on the Missouri Supreme Court.

As Circuit Judge, I handled the following dockets on a regular basis:

Criminal: I handled felony arraignments, pre-trial motions (e.g., motions to suppress, motions to reduce bond, etc.), jury and bench trials, post-trial motions, pleas, sentencings, probation revocations, and post-conviction petitions.

Civil: I handled circuit civil matters involving ordinary claims sounding in tort and contract (e.g., personal injuries, products liability, commercial disputes, employment litigation, etc.) as well as the constitutional and administrative proceedings that are unique to the Circuit Court in Cole County.

Family Law: I handled the full range of initial divorce proceedings, property settlements, and child custody and support orders, all of which can be either contested or uncontested. I also heard motions to enforce these decrees by orders of contempt and/or motions to modify these decrees based upon a change in circumstances.

Adult Abuse / Child Protection: In rotation with the other two Circuit Judges, I heard a bi-weekly “protective order” docket consisting of 75 to 100 mostly pro se petitions for protective orders. By statute, these are expedited and summary matters intended to prevent domestic violence and to provide the victims of prior domestic violence a means of protection in the future.

Probate: During my tenure, I was the only Judge of the Probate Division and, as such, heard all manner of cases involving decedents’ estates, guardians and conservators for juveniles or incompetent persons, and trust administration.

Small Claims: During my tenure, I was the only Judge of the Small Claims Division, hearing a semi-monthly docket of largely cases seeking only money judgments for relatively small amounts of money.

Inmate Litigation: During my tenure, I was the only Judge handling Inmate Litigation, and heard a semi-monthly docket consisting largely of inmate reimbursement cases filed by the Attorney General seeking to recover from Missouri inmates the cost of their incarceration, and habeas corpus or declaratory judgment actions filed by Missouri inmates challenging the conditions or length of their confinement.

Constitutional, Electoral, and Administrative Cases: Because it is located in the seat of state government, the Circuit Court of Cole County hears most of the constitutional, electoral and administrative review cases dealing with state statutes, administrative rules, and the operation of state government. I decided many such cases during my tenure as Circuit Judge, including:

Executive Board of Missouri Baptist Convention v. Carnahan, Case No. 02CV325096-01: In this long-running dispute between the Missouri Baptist Convention and several affiliated organizations, I entered a partial summary judgment for the Convention declaring that the Missouri Baptist Foundation had purposefully violated the Convention’s right to approve all amendments to the Foundation’s organic documents when the Foundation eliminated this right by amending its Articles of Incorporation without the consent of, or any prior notice to, the Convention. This Judgment has been appealed and this appeal is still pending.

Harold Caskey v. Montee, Case No. 09AC-CC00682: After a bench trial, I entered judgment for the Defendant State Auditor on all counts, rejecting the

Plaintiffs' attempt to invalidate the fiscal note and fiscal note summary for an initiative petition to modify the Missouri Non-Partisan Court Plan. Without regard for the merits of the underlying proposal, I held that the costs asserted by the Plaintiffs were not sufficiently certain either in amount or likelihood of occurrence to declare the fiscal note and summary "insufficient and unfair" for failure to reflect them. This Judgment was not appealed.

Vote Yes to Stop Double Taxation v. Carnahan, I entered judgment for the Plaintiffs, declaring that they had submitted a sufficient number of valid signatures to qualify for the ballot and that the statutes relied upon by the Secretary of State in rejecting certain signatures either applied only to her administrative review of the signatures (and thus were not applicable to the Court's review under Section 116.200) or these statutes unconstitutionally invaded the signors' constitutional right to access the ballot through the initiative process. On request of both parties, the Court entered a revised, and much narrower, Judgment which was not appealed.

Finch v. Carnahan, Case No. 10AC-CC00413: I entered Judgment for the Defendant, and thus rejected the Plaintiffs' arguments that the ballot title and fiscal note summary for the General Assembly's referendum relating to the implementation of the federal Patient Protection and Affordable Care Act was unconstitutional and/or "insufficient or unfair." Again, without regard to the substance of the measure, I held that the General Assembly efforts to invoke the constitutional referendum process, as well as the Auditor's and the Secretary of State's efforts to prepare and disseminate the ballot language for this measure, were sufficient to bring the proposition before the voters.

Gurley v. Missouri Board of Private Investigator Examiners, Case No. 10AC-CC00375: I entered Judgment on behalf of the Defendants, rejecting Plaintiff's claims that certain statutes and/or regulations regarding the licensure of private investigator activities were unconstitutional. The Missouri Supreme Court affirmed this Judgment at *Gurley v. Missouri Board of Private Investigator Examiners*, 361 S.W.3d 406 (Mo. banc 2012).

Henry v. Dept. of Mental Health, Case No. 09AC-CC00082: I reversed the decision of the Personnel Advisory Board and held that the termination of a nurse at a state institution was improper. My decision was affirmed by the

Court of Appeals in *Henry v. Dept. of Mental Health*, 351 S.W.3d 707 (Mo. App. W.D. 2011).

Schaeffer v. Koster, Case No. 09AC-CC00265: I entered Judgment for the State, holding that Plaintiffs' constitutional challenges to the DUI statutes involved were not properly brought in a declaratory judgment action and must be brought, instead, in the Plaintiffs' separate criminal cases. The Missouri Supreme Court affirmed this Judgment at *Schaeffer v. Koster*, 342 S.W.3d 299 (Mo. banc 2011).

Evans v. Empire District Electric Company, Case No. 10AC-CC00179: I entered Judgment for the Defendants, rejecting the Plaintiffs' arguments that the General Assembly's enactment of SB1181 (2008) was unconstitutional and/or repealed by implication when the voters approved Proposition C later that same year. Without regard for the merits of Plaintiffs' arguments, the doctrine of primary jurisdiction requires that Plaintiffs present them first to the Public Service Commission. The Court of Appeals affirmed this Judgment at *Evans v. Empire District Electric Company*, 346 S.W.3d 313 (Mo. App. W.D. 2011).

State ex rel. Office of Public Counsel v. Public Service Commission, Case No. 10AC-CC00144: As a case of first impression, I dismissed the OPC's petition for writ of review of a Public Service Commission decision on the ground that it was filed prematurely. The Court of Appeals affirmed this decision at *State ex rel. Office of Public Counsel v. Public Service Commission*, 326 S.W.3d 868 (Mo. App. W.D. 2010).

CONCLUSION: Supreme Court Judges play an important role in educating the public – and members of the General Assembly – about our legal system and the many challenges it faces as it evolves to serve an ever-changing society. These Judges also play an important supervisory role for appellate and trial courts. But, at the risk of overstating the obvious, the principal responsibility for Supreme Court Judges is to decide cases. Then, these Judges must articulate their decisions in such a way as to provide guidance for the lower courts so that they can decide similar cases, and as guidance for the Bar so that they can give meaningful advice to their clients about the legal effects of potential courses of action.

In this narrative, I have tried to convey the essence of my twenty years' experience and how it has readied me to serve as a Supreme Court Judge. I have had extensive experience as an advocate, with a recognized expertise in state constitutional matters and the other categories of cases which regularly come before the Supreme Court. In addition, I have had hands-on experience as a Circuit Judge applying Supreme Court decisions to resolve real-world disputes. Thus, the combination of these two perspectives – advocate and Circuit Judge – has made me uniquely qualified to serve on the Missouri Supreme Court.

12. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

During my service at the Attorney General's Office, I represented and provided legal counsel on a wide variety of issues to numerous departments, divisions, and agencies of the Missouri state government, as well to many cities, counties, and other political subdivisions. Later, I gathered more direct experience with the breadth of state government during my tenure as Director of the Transform Missouri Project and as Senior Counsel for Budget and Finance, where I worked closely with the Office of Budget and Planning in drafting – and later implementing – the FY 2010 state budget.

This experience has given me a practical understanding of how Missouri state government works. This understand has served me well in bringing many constitutional and operational questions before the Missouri Supreme Court, and it will serve me equally well in adjudicating such issues as a member of that Court.

13. List all bar associations and other professional societies of which you are a member, with any offices held and dates.

*Cole County Bar Association
Boone County Bar Association*

14. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

2002 – *Ray Marvin Award*, presented each year by the Executive Committee of the National Association of Attorneys General to the outstanding Assistant in the country who has furthered the goals and purposes of the Association.

1992 – "*Fresh Start*" or "*Head Start*," *Missouri Courts Rethink Tenancies by the Entireties in Bankruptcy*, 56 Mo. Law Review 817 (Guy A. Thompson Award for Best Student Case Note).

1991 – *A Pedigree for Due Process: Burnham v. Superior Court*, 56 Mo. Law Review 353.

D. PUBLIC SERVICE

15. Describe your community activities, including any organizations not listed elsewhere with which you are affiliated.

Legal Services of Mid-Missouri

Member of the Board of Directors (2011 to present)

The Child Center (a Child Advocacy Center)

Counsel to the Board

First Presbyterian Church, Jefferson City MO 65101

Elder and Member of the Session (2009-2011)

Moderator of the Board of Deacons (2009)

Deacon and Member of the Board of Deacons (2007-2009)

16. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

In January 2010, I was appointed by Governor Nixon to fill the vacancy on the Circuit Court of Cole County created when Judge Richard Callahan became United States Attorney for the Eastern District of Missouri. Not part of the Missouri Non-Partisan Court Plan, I was required to run in the partisan elections in November 2010 to retain this office. I was unsuccessful, and left office on January 31, 2010.

I was appointed Director of the Transform Missouri Project by Governor Nixon in Executive Order 09-17, dated March 31, 2009.

My position as an Assistant Attorney General from 1996 to 2009 was an appointed state office.

17. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

N/A

E. PROFESSIONAL CONDUCT AND ETHICS

18. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

No.

19. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

No.

20. If you are or were a member of the judiciary of the State of Missouri, please state:

- a. Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.

No.

- b. Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

No.

21. Have you have ever been held in contempt of court? If yes, provide details.

No.

22. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem or defendant ad litem?

Yes.

If your answer is yes, state the style of the case, where it was filed and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

Griggs v. State of Missouri, et al., Case No. 08-4215-CV-C-NKL (United States District Court for the Western District of Missouri): *pro se* inmate sued claiming a civil rights violation regarding his request for state "tribal recognition" of his non-federally recognized Native American tribe. The motion to dismiss of the defendants (including me) was granted, and no appeal was taken.

23. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (*Note that this question does not require that traffic offenses or other infractions be listed.*)

No.

If your answer is yes, state the style of the case, where it was filed and explain in detail.

N/A

24. Are you delinquent in the payment of any federal, state, county or city taxes? If yes, provide details.

No.

F. MISCELLANEOUS

25. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

Yes.

26. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

The following writing samples are attached:

1. ***Kolb v. DeVille I Properties, LLC***, Case No. 09AC-SC00082-01: This is a Judgment I entered for Plaintiffs following a trial de novo of their Small Claim case. I include this Judgment not because of the gravity of the issues presented, but because I believe it demonstrates my belief that every case is **the** most important case in the world to someone – even a supposedly “small” case. The Court of Appeals affirmed my Judgment at *Kolb v. DeVille I Properties*, 326 S.W.3d 896 (Mo. App. W.D. 2010).
2. ***Witt v. Spears***, Case No. 10AC-CC00401: This is an Order I entered denying the health care providers’ motions to dismiss the Plaintiffs’ claims on statute of limitations grounds. I include it because, even though it deals with Missouri venerable “savings statute” which has been the subject of numerous appellate opinions, the case presented an issue that had never been decided. No immediate effort was made to seek appellate review of this decision, however the case continues.
3. ***Executive Board of Missouri Baptist Convention v. Carnahan***, Case No. 02CV325096-01: As mentioned above, this is a partial Summary Judgment I entered in this long-running dispute between the Missouri Baptist Convention and several affiliated non-profit organizations. Though I apologize for the length of this Judgment, I have included it because I believe it demonstrates my approach to complex matters. Like peeling an onion, resolving a complex is simply a matter of breaking down the issues to their most fundamental constituent pieces, and then resolving each piece in

turn. It can make for a lengthy opinion when necessary, but I believe it aids in the clarity and usefulness of the decision in subsequent circumstances. This Judgment is currently being appealed.

27. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission's decision.

All responsive information has been provided in prior responses.

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the five references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references**, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. As to all references, it is your responsibility to see that they send the requested letters in a timely manner.

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to JudgeVacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

I anticipate that the Commission will receive letters of reference and recommendation from the following:

Edward D. Robertson, Jr.
Partner (and former Judge of the Missouri Supreme Court)
Bartimus Frickleton Robertson & Gorny
715 Swifts Highway
Jefferson City, MO 65109
Phone: (573) 659-4454
chiprob@earthlink.net

The Honorable Patricia S. Joyce
Circuit Judge
Cole County Courthouse
301 East High St.
Jefferson City, MO 65101
Phone: (573) 634-9178
patricia.joyce@courts.mo.gov

Joseph P. Dandurand
Deputy Attorney General (and former Judge of the Court of Appeals)
1222 Pembroke Dr.
Warrensburg, MO 64093
Phone: 573-751-3321
dandurjp@gmail.com

Mr. Charles Hatfield
Partner
Stinson Morrison & Hecker
230 W. McCarty Street
Jefferson City, MO 65101
Phone: (573) 636-6263
chatfield@stinson.com

Mr. Tom Strong
Partner
Strong Garner and Bauer, P.C.
415 E. Chestnut Expressway
Springfield, MO 65802
Phone: (417) 887-4300
ts@stronglaw.com

In addition, due to ethical restrictions as a result of their offices, I request that the Commission extend invitations for letters of recommendation and reference to the following:

**The Honorable Duane Benton,
United States Circuit Judge
Charles Evans Whittaker U.S. Courthouse
400 E 9th St, Room 1020
Kansas City, MO 64106-2605
Phone: (816) 512-5815
Duane [Benton@ca8.uscourts.gov](mailto:Duane_Benton@ca8.uscourts.gov)**

**The Honorable Stephen A. Limbaugh, Jr.
United States District Judge
555 Independence Street
Cape Girardeau, MO 63703
Phone (573) 331-8873
Stephen_Limbaughjr@moed.uscourts.gov**

**The Honorable Richard G. Callahan
United States Attorney for the Eastern District of Missouri
Thomas Eagleton U.S. Courthouse
111 S. 10th Street, 20th Floor
St. Louis, MO 63102
Phone: (314) 539-2200
Richard.Callahan@usdoj.gov**