

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
William Emil Moschella
2. Address: List current place of residence and office address(es.)  
Falls Church, Virginia.  
  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn HOB  
Washington, D.C. 20515
3. Date and place of birth.  
April 17, 1968; Knoxville, TN.
4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married; Spouse's Maiden name: Amy Helene Rouleau (Homemaker).
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
University of Virginia (1986 - 1990); B.A. History (Spring, 1990).  
George Mason University School of Law (1992-1995); J.D. (December 1995).
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
4/2001 to Present: House Committee on the Judiciary, Chief Legislative Counsel & Parliamentarian\*\*  
  
10/1999 to 4/2001 House Committee on the Judiciary, Chief Investigative Counsel

- 2/1999 to 9/1999: House Committee on Rules, General Counsel
- 4/1998 to 2/1999: House Committee on the Judiciary, Counsel\*
- 5/1997 to 5/1998: House Committee on Government Reform, Counsel\*
- 9/1990 to 5/1997: Office of Congressman Frank R. Wolf, Served as Senior Legislative Assistant, Legislative Assistant, Staff Assistant, Systems Manager, and Intern.
- 6/1990 to 9/1990: Vienna Trophies and Awards, aka VTA, Inc., Office Manager.

\*\* I assisted the Select Committee on Homeland Security for several days during the 107<sup>th</sup> Congress during which time I drafted amendments for the Select Committee's consideration and assisted at the Committee's markup.

\* In April, 1998, I was a shared employee and worked for both the House Committee on Government Reform and the House Committee on the Judiciary.

When I lived in Arlington, Virginia, I was the Treasurer of the Carlisle Park Homeowners Association for several years. I do not have records of the years I was treasurer, but it was in the early to middle 1990's.

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Not Applicable

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

As an undergraduate, I earned two varsity letters as a middle distance runner on the University of Virginia's Track and Field Team which competes in the Atlantic Coast Conference at the NCAA Division 1A level.

While in night law school, I was a member of the George Mason University Civil Rights Law Journal.

During my employment in the Office of Congressman Frank R. Wolf, I was recognized for my work by the Bureau of Alcohol, Tobacco, and Firearms; the Senior Executive Service; and the National Coalition Against Legalized Gambling.

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

Member, Virginia State Bar; Member, Federalist Society.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not believe I am a member of an organization which actively lobbies before public bodies. Other organizations to which I belong are:

St. James Parish, Falls Church, Va; and  
High Point Pool, Falls Church, Va.

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

All Virginia State Courts (Admitted June 3, 1996).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Coauthor, Cleanup and Reuse of the Avtex-FMC Superfund Site in Front Royal, Virginia State Bar Journal, Volume XXI, Number 4, (Fall 1995) (Copy Attached).

13. Health: What is the present state of your health? List the date of your last physical examination.

The present state of my health is excellent. I have no record of my last complete physical examination.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Not Applicable

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  
  
I have not served as a clerk to a judge.
  2. whether you practiced alone, and if so, the addresses and dates;  
  
I have not been a sole practitioner.
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

4/2001 to Present: Chief Legislative Counsel & Parliamentarian\*\*  
House Committee on the Judiciary  
2138 Rayburn HOB  
Washington, D.C. 20515

10/1999 to 4/2001 Chief Investigative Counsel  
House Committee on the Judiciary  
2138 Rayburn HOB  
Washington, D.C. 20515

2/1999 to 9/1999: General Counsel  
House Committee on Rules  
H-304 The Capitol  
Washington, D.C. 20515

- 4/1998 to 2/1999: Counsel\*  
House Committee on the Judiciary  
2138 Rayburn HOB  
Washington, D.C. 20515
- 5/1997 to 5/1998: Counsel\*  
House Committee on Government Reform  
2147 Rayburn HOB  
Washington, D.C. 20515
- 12/1995 to 5/1997: Senior Legislative Assistant  
Office of Congressman Frank R. Wolf  
241 Cannon HOB  
Washington, D.C. 20515
- 9/1990 to 12/1995: Office of Congressman Frank R. Wolf, Served as Senior  
Legislative Assistant, Legislative Assistant, Staff Assistant,  
Systems Manager, and Intern (I held these positions prior to  
graduating from law school.)

\*\* I served the Select Committee on Homeland Security for several days in which I drafted amendments for the Select Committee's consideration and assisted at the Committee's markup.

\* In April, 1998, I was a shared employee and worked for both the House Committee on Government Reform and the House Committee on the Judiciary.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My entire legal career has been as a legislative attorney on Capitol Hill. As the House Committee on the Judiciary's Chief Legislative Counsel and Parliamentarian, I am responsible for developing and implementing all Committee objectives, strategies, and legislative plans. I provide all parliamentary advice and assistance for all Committee and floor proceedings. I oversee, manage and direct all legislative activities of the Committee, including organizing hearings and markups and drafting legislation, amendments, Committee reports, statements, and speeches.

As the House Committee on the Judiciary's chief investigative counsel, I conducted oversight of matters falling within the jurisdiction of the Committee, including Justice Department and Judicial Branch activities. I coordinated congressional investigations with the General Accounting Office and U.S. Department of Justice Inspector General. I analyzed documents and interviewed witnesses. I drafted briefing memoranda, statements, and questions to prepare the Chairman and other members for congressional hearings.

As the General Counsel for the House Committee on Rules, I advised the Committee and House leadership on legislative floor strategy. I advised the Committee and House leadership on general legal and parliamentary matters. I drafted order of business resolutions governing legislative procedures for the floor of the U.S. House of Representatives along with supporting statements and background memoranda.

As Counsel to the House Committees on the Judiciary and Government Reform and as Senior Legislative Assistant to Congressman Frank R. Wolf, I provided general procedural and legislative advice. My responsibilities included drafting bills, resolutions, and statements and conducting research on a variety of topics.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients consisted of the Committees of the House (including the members of those Committees) and the Member of Congress that I have worked for as outlined in question 15(a)(3).

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a legislative attorney, I have not appeared in court frequently or occasionally.

2. What percentage of these appearances was in:
  - (a) federal court;
  - (b) state courts of record;
  - (c) other courts.

The matters outlined in question 16 were all federal matters.

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

The matters outlined in question 16 were civil in nature.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

None.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

In 1998 and during the course of my employment with the House Committee on the Judiciary, I was one of several attorneys that worked on a matter that was considered by Judge Norma Holloway Johnson of the U.S. District Court for the District of Columbia. See *In re Sealed Case*, Misc. Nos. 98-434 and 98-437 (NHJ). To the best of my knowledge, this matter is still under seal. However, the order arising out of this matter is public. The Court ordered the Department of Justice to disclose certain documents under specified conditions to the House Committee on the Judiciary.

In 1999 and during the course of my employment with the House Committee on the Judiciary, I worked on a complaint filed before the Judicial Council of the D.C. Circuit. See *In the Matter of Judicial Misconduct or Disability*, Judicial Council Complaint Nos. 99-11 and 99-01 (Judicial Council of D.C. Cir., Feb. 1, 2001). In this matter, the Chairman of the House Committee on the Judiciary's Subcommittee on Courts and Intellectual Property filed a formal complaint under 28 U.S.C. § 372 about the conduct of a certain judge.

The following individuals have worked with me on various issues throughout my career on Capitol Hill:

Phil Kiko, House Committee on the Judiciary, 202-225-3951  
 Perry Apfelbaum, House Committee on the Judiciary, 202-225-6504  
 Ted Kalo, House Committee on the Judiciary, 202-225-6504  
 Sampak Garg, House Committee on the Judiciary, 202-225-6504  
 Janet Shaffron, Office of Congressman Frank R. Wolf, 202-225-5136  
 Tom Mooney, House Committee on International Relations, 202-225-5021  
 Carl Thorsen, Office of the House Majority Leader, 202-225-4000  
 Vince Randazzo, Business Roundtable, 202-872-1260  
 Edward Pagano, Senate Committee on the Judiciary, 202-224-7703  
 Jeff Miller, Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, 202-224-9494  
 Robert Raben, The Raben Group, 202-547-6805

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Throughout my 12 plus years on Capitol Hill, I have had the privilege to be involved in the development and passage of numerous bills and resolutions. As the Chief Legislative Counsel and Parliamentarian for the House Committee on the Judiciary, I am largely responsible for shepherding the Committee's legislative priorities through the Congress. Most recently, during the 108<sup>th</sup> Congress, I was involved in the successful passage of S. 151, the PROTECT Act, which was passed by both the House and Senate on April 10, 2003.

During the 107<sup>th</sup> Congress, I was involved in the successful passage of a number of important bills. Of particular significance, I played key role in the development, negotiation, and passage of the USA PATRIOT Act (Pub. L. No 107-56). I also oversaw for the House of Representatives the successful passage of the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act (Pub. L. No. 107-273), including drafting the legislation in the House and amendments thereto and serving as chief House negotiator in the conference with the Senate. I also assisted the Select Committee on Homeland Security with the passage of the Homeland Security Act of 2002, Pub. L. 107-296.

I was also involved with numerous bills that did not become law including legislation relating to bankruptcy reform, broadband deployment, and unsolicited commercial email.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I am vested in the Federal Employee Retirement System's Thrift Savings Plan, which, as of March 31, 2003, totaled \$100,711.95.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest, I will consult with the Department of Justice's ethics official.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

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

See Financial Disclosure Report (Attached).

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See Net Worth Statement (Attached).

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In approximately fall of 1991 through the summer of 1992, I was a Member of the Fairfax County Republican Committee. I have not retained any records indicating the exact dates I served on the Committee.

I have never held a position with, but have volunteered (ex. literature drops) for, the following political campaigns:

- Tom Davis for Chairman of the Fairfax County Board of Supervisors, Volunteer, (1991).
- Jim Lamb for Virginia House of Delegates, Volunteer, (1991).
- Dick Fisher for Virginia House of Delegates, Volunteer, (1991).
- Jane Woods for Virginia State Senate, Volunteer, (1991).
- Friends of Frank R. Wolf, Volunteer, (1990, 1992, 1994, 1996).
- McSarrow for Congress (1994)
- Tom Davis for Congress, Volunteer (1996).
- George Gekas for Congress, Volunteer (2002).
- RNC 72 Hour Task Force Deployment Program, Volunteer (Deployed to Minnesota Senate Race) (2002).

This list represents the best of my recollection. It is possible that I volunteered for, or assisted, other campaigns. It is also possible that while volunteering for one of the above campaigns, I assisted another campaign. For example, while volunteering for Congressman Frank Wolf's campaigns, I distinctly recall handing out literature for Senator John Warner and Sheriff Carl Peed. I was not specifically volunteering for those campaigns, but distributed their literature at joint campaign events.

In addition to the above listed political campaigns, I volunteered on the Bush-Cheney DOJ Transition Team (Dec. 2000-Jan. 2001).

## III. GENERAL (PUBLIC)

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

Almost since the day I graduated from the University of Virginia, I have contributed to the community through my dedication to public service. Whether as an intern in 1990 to my current position with the Committee on the Judiciary, I have demonstrated a strong commitment to government service. My wife and I contribute financially to a number of charitable organizations (including Catholic Charities, various Catholic missions, various educational institutions, and other charities) that assist the disadvantaged in numerous ways. Furthermore, recently I have assisted with the High Point Pool Swim Team and certain events sponsored by the St. James Parent-Teacher Organization.

Given that my experience as an attorney has been confined to serving the legislative branch of the Federal government and have never represented a private person or entity in any fora, I have not undertaken the private representation of a client as called for under Canon 2 of the American Bar Association's Code of Professional Responsibility.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies.

I have never belonged to such an organization.

Chairman HATCH. Well, you have to be very proud of your son and your husband. We are proud of him, as well, and this is a very, very important position. I have heard so many good things about you that I think stands you in good stead with regard to this position.

Let me just take a few questions because I have high respect for all of you. I know you and I don't think we need to take too long, but let me start with you, Mr. Campbell.

Under what circumstances do you believe it appropriate for a Federal court to declare a statute enacted by Congress unconstitutional?

Mr. CAMPBELL. Your Honor—or pardon me, Mr. Chairman, any statute comes to a court with a presumption of constitutionality, and I believe a Federal judge should accord it that kind of respect. Certainly, at the district court level, any judge approaching a question of constitutionality would be obligated to apply the Constitution as it is written and the precedent of the Supreme Court, or in my case the Ninth Circuit. But it should happen rarely and reluctantly, in my opinion.

Chairman HATCH. Mr. Hicks, do you disagree with that?

Mr. HICKS. I don't disagree with that. I have been involved in only one constitutional issue in my years of practice and I can tell you that with respect to that particular issue presented early on in my career, good lawyers with good briefs, good arguments and good information and evidence presented to the judge assist the judge in making those kinds of decisions.

I would agree that there is a measure of restraint and a presumption of constitutionality that apply in considering that. However, it is the exercise of the ultimate power of a sitting Federal judge to uphold or overturn a particular act of Congress, and it should be done so only after extensive briefing and clear and convincing evidence of its unconstitutionality.

Chairman HATCH. Well, thank you.

Mr. Moschella, Lee Rawls, former Assistant Attorney General for Legislative Affairs under the first President Bush, and who we are now fortunate enough to have in the Senate on the staff of our Majority Leader, stated that he had two clear missions: to make sure that Congress and the staff get prompt and relevant information, and to make sure that the Department of Justice speaks with a unified and single voice.

Do you agree with Mr. Rawls' formulation of the role of the Office of Legislative Affairs, and what do you envision as the mission of that office?

Mr. MOSCHELLA. Well, Mr. Chairman, I absolutely agree with Mr. Rawls, and you are fortunate to have him back in the Senate. I was sitting and continue to sit where your staff sits today, and getting information for Members of Congress is absolutely critical. You need it in your oversight function, you need it in your legislative function. You can't make intelligent decisions without information, and so I will make it, if confirmed, a top priority.

And with regard to the other issue that Mr. Rawls testified to, I reviewed that testimony and I wholeheartedly agree with it.

Chairman HATCH. Thank you.

Now, let's go to you, Mr. Hicks. In general, Supreme Court precedents are binding on all lower Federal courts, as you know, and circuit court precedents are binding on the district courts as well certainly within that particular circuit.

Now, are you committed to following the precedents of the higher courts faithfully and giving them full force and effect even if you have personal disagreements with them?

Mr. HICKS. Yes, Mr. Chairman. One of the things in jury trials that a judge instructs, whether it is a 6-person or a 12-person jury, is to put aside personal feelings with respect to a particular law in order to decide the facts of the case.

In bench trials, we follow what the precedents and what the law as given to us are, and that is part of the role of the judge in doing precisely that. Personal opinion versus the rule of law—personal opinion doesn't enter into it. The rule of law in this country is paramount and I would have a sworn duty to uphold that.

Chairman HATCH. Thank you.

Mr. Campbell, what would you do if you believed the Supreme Court had erred, or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply the decision or your own best judgment on the merits?

Mr. CAMPBELL. I would apply the decision, Mr. Chairman.

Chairman HATCH. Regardless of whether you completely disagreed with that decision?

Mr. CAMPBELL. That is correct.

Chairman HATCH. Do you feel the same way, Mr. Hicks?

Mr. HICKS. I do indeed, Mr. Chairman.

Chairman HATCH. Now, if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, what sources would you apply for persuasive authority, Mr. Hicks?

Mr. HICKS. As I understand the task of an Article III sitting Federal judge, I am given two law clerks, a courtroom deputy and a secretary, and my clerks will work very hard at my behest in researching everything that needs to be dug out. I can tell you that even after 25 years of practice, I enjoy doing personal research on particular issues.

In cases of first impression or certain *res nova* issues, it is incumbent on me, as well as my staff, to do detailed research, to require good arguments and thorough briefing by the parties involved, in order for me, sitting as a judge, to make the best judgment call I can make in responding to that new issue or a case of first impression.

Chairman HATCH. Thank you.

Do you have any disagreement with that, Mr. Campbell?

Mr. CAMPBELL. I do not, Mr. Chairman.

Chairman HATCH. Well, you two have come to us very highly recommended. I have no doubt that you will both make terrific judges, and I want to commend you both for the privilege that you are going to have of serving on our Federal bench.

I don't think anything as seriously as the—I take everything seriously, but I don't take anything more seriously than I do the confirmation of judges because, to me, Congress writes unconstitu-

tional legislation all the time. I mean, I have seen it year after year after year. They don't seem to give a darn.

Certainly, I have written some stuff that I thought was constitutional that was found not to be in some respects—the Religious Freedom Restoration Act, the Americans with Disabilities Act, the Violence Against Women Act. Some of those aspects were ruled unconstitutional. I didn't particularly agree with the Court.

But Congress is not the body that has saved this country year after year, nor has the Executive because executives sometimes act extra-judicially and extra-constitutionally. It has been the courts that have really preserved the Constitution and kept us strong. So these positions are extremely important, and that is why, I guess, they are so hotly contested sometimes.

It is important to have various points of view on maybe the hot contests that do occur. On the other hand, I think we ought to be fair. I have seen some gross unfairness with regard to Federal judicial nominations over the last number of years and I am really getting pretty tired of it. But I am proud of both of you. I intend to put you through as quickly as we can, and I can't imagine why anybody would want to vote against you.

In particular, Mr. Campbell, you are a credit to your law school, the University of Utah. I think it is terrific that we are now going to have another University of Utah person on the Federal bench. We have a considerable number of them and some of the best in the country today are University of Utah graduates. We are looking forward to seeing Michael McConnell do a terrific job as one of the leading constitutional experts who was a professor at the University of Utah for years.

Mr. Moschella, let me ask you one more question. You have served for a total of 6 years as counsel to several House committees, including the House Committees on Government Reform and Rules, as well as counsel and chief counsel to the House Committee on the Judiciary.

How has that experience prepared you for leading the Office of Legislative Affairs?

Mr. MOSCHELLA. Well, Mr. Chairman, I hope the 6 years have taught me the importance of Congress' role, and hopefully I can bring that to the Department of Justice. I was and am a zealous advocate for my current client, and will be if confirmed for the Department of Justice.

It seems to me that part of my job in being that advocate will be to explain and convince the folks at the Department about the importance and the role that Congress plays and the need to be responsive and to work with you on the policies that are important to the American people.

Chairman HATCH. Well, thank you. Now, I notice you come from the House side. I hope you realize how important the Senate is as well. I have the feeling you do.

We are grateful to have all of you here today, and we are grateful that you are willing to serve and you are willing to sacrifice, in the case certainly Mr. Campbell and Mr. Hicks, very successful law practices to go on the Federal bench, where you will earn less money than many of the recent law review graduates earn.

If it was remuneration, very few people would want to serve in the Federal courts who are good lawyers. But the reason I am sure both of you want to serve is because it is a terrific opportunity to serve your country and your fellow citizens.

So we are grateful to you for being willing to do that, to make this sacrifice, and I look forward to getting you both through as quickly as possible. And, Mr. Moschella, I look forward to getting you through as well. We are very proud of you and we know your reputation and we know how good it is and we think the Justice Department is going to be well served by you.

So with that, we will recess until further notice.

[Whereupon, at 12:43 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]