

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)**

PERSONAL INFORMATION

1. Full Name:

Carrie Pixler Ryerson

2. Have you ever used or been known by any other name? Yes If so, state name:

Carrie Alane Pixler

3. Office Address:

**Shamrock Foods Company
3900 E. Camelback Road, Suite 300
Phoenix, AZ 85018**

4. How long have you lived in Arizona? What is your home zip code?

I have lived in Arizona my entire life except for a three-year period from 2007-2010 when I attended law school in Virginia.

From 1985 through 2003, I lived in Casa Grande. From 2003-2007, I lived in Tucson while in college.

Since 2010, I have lived in Phoenix, and my current zip code is 85013.

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5. Identify the county you reside in and the years of your residency.

I have lived in Maricopa County since graduating from law school in 2010.

6. If nominated, will you be 30 years old before taking office? ☒ **yes** ☐ no

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? ☒ **yes** ☐ no

7. List your present and any former political party registrations and approximate dates of each:

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

I am a Republican. I was previously an Independent, and I do not recall when I changed my registered party affiliation. It was likely in the last 5-10 years.

8. Gender: **Female**

Race/Ethnicity: **Caucasian** _____

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Juris Doctor, William & Mary School of Law, Williamsburg, VA (2010)

Bachelor of Arts, University of Arizona, Tucson, AZ (2007)

10. List major and minor fields of study and extracurricular activities.

William & Mary School of Law

- **William & Mary Honor Council, Associate Justice**
- **William & Mary Bill of Rights Journal**
- **Student Legal Services**
 - **Director and Treasurer**
- **Law School Commencement Committee Co-Chair**

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University of Arizona

- **Major: Political Science (with Honors)**
- **Minor: Classical Civilization**
- **Associated Students of the University of Arizona**
 - **Student Body Treasurer**
 - **Director of Speakers Board**
 - **Associate Director of Field Supervisors for Spring Fling**
 - **Junior Class Council, Philanthropy Chair**
- **Orvieto Institute Study Abroad in Italy**
- **Phi Alpha Delta Pre-Law Fraternity**
- **Five Star Faculty Award Committee**
- **University of Arizona Media Board**
- **University Hearing Board**
- **Dean of Students Senior Awards Selection Committee**
- **Constituent Services Internship with the Arizona Governor's Office**
- **Make a Wish Foundation, event volunteer and wish granter**
- **Project S.H.I.N.E. (literacy volunteer program in elementary classrooms)**
- **Sigma Alpha Lambda (leadership and honors organization)**
 - **President, Secretary and Vice President of Fundraising**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

William & Mary School of Law

- **Top 15%**
- **Graduate Research Fellowship (merit-based research position and partial scholarship)**
- **My note for the Bill of Rights Journal was one of the few student notes selected for publication: *Survey Says: Is the American Community Survey Constitutional?* 18 WM. & MARY BILL RTS. J (2010)**

University of Arizona

- ***Summa cum laude***
- **Political Science (with Honors)**
- **Outstanding Senior, Department of Political Science**
- **Phi Beta Kappa**
- **Highest Academic Distinction, College of Social and Behavioral Sciences**
- **University of Arizona President's Award for Excellence**
- **University of Arizona Provost Scholarship**
- **University of Arizona Honors College, First Level Honors Distinction**
- **State of Arizona Robert Byrd All-Around Scholarship**
- **University of Arizona Alumni Scholarship**

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- Honors Thesis: *Influence of Economic Indicators on the U.S. Supreme Court*
- 2006 Award of Excellence in Public Service (one of only two student government leaders selected by peers as individuals who demonstrated dedication to the student body and the University)
- PSAT/SAT Workshop Instructor for the University of Arizona Office of Early Academic Outreach

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Supreme Court of Arizona, 2010

United States District Court for the District of Arizona, 2010

United States Court of Appeals for the Ninth Circuit, likely 2010

United States Bankruptcy Court, District of Arizona, likely 2010

This list does not include pro hac vice admissions.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Shamrock Foods Company	11/2017-Present	Phoenix, AZ

Vice President of Legal & Risk Management (8/2019-Present)

This was a new position within the company, which management created after my work as Employment Counsel warranted expansion

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of my role. In this function, I am the highest-ranked attorney in the company, reporting directly to chief executive leadership, managing all aspects of the company's legal department as well as providing strategy for Shamrock's risk management and complex insurance program. I supervise two attorneys and two employees who handle compliance and risk.

Employment Counsel, Director of Associate Relations (11/2017-7/2019)

Given the importance of employment compliance and the challenges that a multistate employer faces with thousands of employees operating in a continually evolving legal landscape, this was a newly created position to partner closely with human resources and senior management to maintain positive associate relations.

Fennemore Craig		Phoenix, AZ
Associate	9/2010-11/2017	
Summer Associate	2008 and 2009	
Virginia Court of Appeals	8/2009-11/2009	Newport News, VA
Judicial Extern for The Honorable Robert P. Frank		
William & Mary School of Law	8/2007-5/2010	Williamsburg, VA
Graduate Research Fellowship		

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Shamrock Foods Company: Keeley Smith, David Francis, Karen Williams

Fennemore Craig: See Attachment A.

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

The following summarizes the areas of law in which I regularly practice as an in-house attorney at Shamrock Foods Company, which is a privately held multi-billion-dollar company that has operations and employees in over 20 states:

Employment Counseling (35%): I partner closely with human resources to

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manage the company's complex and high-level personnel matters. My duties include, among other things, the following: advise on all aspects of the employment relationship for approximately 5,000 employees in over 20 states, partnering with outside counsel where needed; counsel human resources regarding, among other things, internal investigations, discipline, employee relations, terminations, hiring, reductions in force, the Family and Medical Leave Act, Fair Labor Standards Act, protected sick time, etc.; manage reasonable accommodations under the Americans with Disabilities Act; draft various personnel policies, restrictive covenants, employment and separation agreements; develop employee training; manage compliance with affirmative action plans and ERISA; manage and develop third-party intervention avoidance plans.

Managing Commercial Litigation and Civil Appeals (30%): Manage outside litigation in multiple states and various areas, including employment, anti-trust, liability claims, tax appeals, etc. This includes hiring, and occasionally firing, outside counsel and supervising their budgets and work quality, as well as their efficient and ethical representation of the company and its brands.

General Business Counseling and Contract Negotiation/Drafting (30%): Responsible for day-to-day compliance matters; consult on strategy related to acquisitions, divestitures, real estate matters and resolution of pre-litigation disputes; negotiate and draft contracts in a variety of contexts; advice regarding cyber and physical security.

Administrative Litigation (5%): Defend company in various administrative forums, including, among others, the Equal Employment Opportunity Commission and the equivalent state agencies, the OFCCP, the Department of Labor, and the NLRB; manage outside immigration counsel in obtaining appropriate work authorization documents; provide advice on complex workers' compensation claims.

Both of my positions at Shamrock were newly created and were roles that I was the first to occupy. As a result, I was charged with creating the function, developing the duties, and establishing the internal and external partnerships to ensure each role's meaningful impact on the organization. Given that I was quickly recognized as someone who should lead Shamrock's legal function and develop a more robust, mature legal department, I believe I was extremely successful in the core function of an in-house attorney: minimizing risk to the company and adding shareholder value through my actions.

The following summarizes the areas of law in which I regularly practiced while at Fennemore Craig:

Employment Counseling (30%): Counseled employers of all sizes on all aspects

of state and federal employment law; advised employers regarding human resources issues such as discipline, hiring and separation decisions and general day-to-day management of employees; drafted employment-related documents including handbooks, personnel policies, restrictive covenants as well as employment and separation agreements.

Commercial Litigation & Civil Appeals (60%): Represented businesses of all sizes in commercial disputes in all phases of litigation, including depositions, discovery disputes, trials, written discovery, oral arguments, motion-practice, evidentiary hearings, and appeals concerning a variety of subject matters at all levels of appellate practice in state and federal court, including emergency appeals. For example, I represented government agencies (including the Governor of Arizona, AHCCCS, the Department of Gaming, and the Department of Transportation) in litigation over significant issues of public policy, including the constitutionality of the expansion of indigent health care and the location of Native American casinos. One of our cases went to the Arizona Supreme Court, twice, and another was fiercely litigated in federal district court before being settled by the Governor's Office and the plaintiff Indian nation.

Administrative Proceedings (10%): Represented employers in administrative proceedings defending charges of discrimination; defended employers before the Arizona Department of Economic Security from unemployment compensation claims; defended employers before the National Labor Relations Board.

17. List other areas of law in which you have practiced.

From August 2009 through November 2009, I served as a Judicial Extern for the Honorable Robert P. Frank, a Virginia Court of Appeals Judge. In that capacity, I researched and wrote bench memoranda related to criminal appeals.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

None

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I have significant experience drafting important legal documents in a variety of contexts.

First, I have experience in appellate briefing in areas of statewide importance: represented state officials in connection with the state's Medicaid restoration; represented a mining company in an appeal from the Arizona Corporation

Commission; represented a guarantor in a guaranty dispute with a national bank; represented a defense contractor defending claims related to corporate governance; represented a utility company in an inverse condemnation action; represented a national company defending a high-value personal injury claim; and represented a beverage company in an unemployment compensation dispute that resulted in the legislature changing the law.

Second, I have experience drafting and negotiating contracts of all types as an in-house attorney. Utilizing my employment background, I have drafted contracts governing employment conditions, including restrictive covenants, separation agreements and releases of claims. I took over the contract management function within Shamrock, developing the contract review guidelines and processes, and supervising the negotiation of over 1,000 contracts annually touching nearly every area of law. Although we rely on outside counsel for drafting, I am intimately involved in negotiation and drafting strategy for high value and significant contracts.

Third, I have experience writing company policies for employers of all sizes that govern a multiple of subject matters, including employment, physical security, anti-trust compliance, etc. As an outside and in-house employment attorney, I have drafted handbooks, equal employment opportunity and anti-harassment policies, sick time and attendance programs, developed conflict of interest and business conduct governance plans and created workplace drug-testing programs. For example, at Shamrock, I drafted from scratch a policy that governs how the company manages the camera system in the semi-truck fleet. It is a significant legal document given how many areas of law it touches in balancing the fairness to the employee with the liability and risk to Shamrock.

Finally, I gained experience drafting jury instructions through my service on the Civil Jury Instructions Committee for the Arizona State Bar. This committee drafts proposed model jury instructions that reflect a thorough understanding of Arizona law, balancing the fairness in the instruction to both sides in a civil case.

20. Have you practiced in adversary proceedings before administrative boards or commissions? Yes If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

**Equal Employment Opportunity Commission, 40-50
Arizona Civil Rights Division of the Arizona Attorney General, 5-10
National Labor Relations Board, 2**

b. The approximate number of these matters in which you appeared as:

Sole Counsel: _____ **8-12** _____

Chief Counsel: _____ **0** _____

Associate Counsel: _____ **40-50** _____

21. Have you handled any matters that have been arbitrated or mediated? Yes
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: _____ **0** _____

Chief Counsel: _____ **0** _____

Associate Counsel: _____ **20** _____

As an in-house attorney, I have effectively served as the client for at least a dozen mediations partnering with outside counsel, which offers a unique and different perspective in relation to the mediation process.

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

Question 22, Case 1: Litigant names are in the confidential section of this application.

- **This litigation occurred in the Arizona Superior Court (Maricopa County) from 2013 through 2014. Plaintiff, a former employee, sued Defendants for wrongful termination. This case involved substantial briefing and discovery, including a motion to dismiss and multiple motions for summary judgment. Before Plaintiff had to respond to the summary judgment motions, the case was resolved through a confidential settlement. I handled nearly every aspect of this case except taking the plaintiff's deposition.**
- **Plaintiff was represented by Bill Hobson. Defendants were represented by me and John Balitis (JBalitis@jsslaw.com, 602-262-5928) of Fennemore Craig.**

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Question 22, Case 2: Litigants names are in the confidential section of this application.

- **This litigation was filed in federal district court for the District of Arizona in 2011 and resolved through a confidential settlement in 2013.**
- **Plaintiff alleged a violation of the Rehabilitation Act and wrongful termination in retaliation for filing a workers' compensation claim.**
- **This matter was notable because it almost went to trial and involved substantial discovery, a motion for judgment on the pleadings, a motion for summary judgment, and pre-trial motions.**
- **Plaintiff was represented by Dan Durrant (ddurrant@gillaw.com, 602-618-1230). Defendants were represented by me and John Balitis (JBalitis@jsslaw.com, 602-262-5928) of Fennemore Craig.**

Question 22, Case 3: Litigant names are in the confidential section of this application.

- **This litigation took place from 2013 to 2014 in federal district court for the District of Arizona. Plaintiff, a former executive of the entity Defendant, filed a lawsuit alleging violation of the Family and Medical Leave Act, breach of fiduciary duty and oppression of a minority shareholder.**
- **Substantial discovery, which I primarily handled, occurred in this matter before the parties reached a confidential resolution.**
- **Plaintiff was represented by Tod Schleier and Brad Schleier (602-277-0157 brad@schleierlaw.com). Defendants were represented by me and John Balitis (JBalitis@jsslaw.com, 602-262-5928) of Fennemore Craig.**

23. Have you represented clients in litigation in Federal or state trial courts?
___**Yes**___ If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: ___**15-20**___

State Courts of Record: ___**40-50**___

Municipal/Justice Courts: ___**10-15**___

The approximate percentage of those cases which have been:

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Civil: 100%

Criminal: 0

The approximate number of those cases in which you were:

Sole Counsel:

Chief Counsel: 10%

Associate Counsel: 90%

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **50%**

You argued a motion described above **10%**

You made a contested court appearance (other than as set forth in the above response) **35%**

You negotiated a settlement: **80%**

The court rendered judgment after trial: **1%**

A jury rendered a verdict: **1%**

The number of cases you have taken to trial:

Limited jurisdiction court 5-8

Superior court 1

Federal district court 1

Jury 1

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

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I have taken three complex cases to trial: a legal malpractice jury trial in federal district court in Tennessee; a bench trial involving a tortious interference claim in Arizona Superior Court; and an arbitration involving breach of contract before the Financial Industry Regulatory Authority (FINRA).

My experience in the FINRA arbitration is notable. I, along with another attorney at the firm, successfully represented a claimant seeking damages for breach of contract before a panel of three arbitrators. This case involved significant discovery issues and a multi-day hearing with at least half a dozen witnesses. I handled the opening statement, closing argument and examined several witnesses during the hearing. Prior to the arbitration, I was principally responsible for complex discovery disputes and handled pre-arbitration briefing.

I have significant experience prosecuting and defending restrictive covenant matters. These cases typically involved temporary restraining order and preliminary injunction hearings, which can be extended evidentiary hearings without the benefit of extensive discovery.

I cannot state with certainty the number of trials in courts of limited jurisdiction because I was the lead attorney for a handful of contested evictions and injunctions against harassment, but I do not recall the specific number for those types of matters, most of which typically took place in Justice Court in Maricopa County or Pinal County.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 15-20

Criminal: 0

Other: 0

The approximate number of matters in which you appeared:

As counsel of record on the brief: **10-15**

Personally in oral argument: **None**

25. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, identify the court, judge, and the dates of service and describe your role.

From August 2009 through November 2009, I served as a Judicial Extern for the Honorable Robert P. Frank, a Virginia Court of Appeals Judge. In that capacity, I researched and wrote bench memoranda related to criminal appeals.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

***Biggs v. Betlach*, 243 Ariz. 256, 404 P.3d 1243 (2017)**

- This case was litigated twice in all forums of the state court system from the Superior Court to the Arizona Supreme Court, resulting in the final Supreme Court decision referenced above. The litigation extended over three years from 2014 to 2017.
- The case involved a challenge to a hospital assessment that the legislature enacted as part of the expansion and restoration of the state Medicaid program. The plaintiffs alleged that the assessment violated the supermajority voting requirement of the Arizona Constitution, suing the State AHCCCS Director, Tom Betlach, to enjoin enforcement of the assessment. We represented Director Betlach. The Superior Court initially dismissed for lack of standing, which the Arizona Supreme Court subsequently vacated. On remand, the trial court upheld the assessment, and we successfully defended that position through the Arizona Supreme Court. An excerpt of the briefing in this case is attached as a writing sample.
- Attorneys of record:
 - Christina Sandefur and Aditya Dyner of the Goldwater Institute represented the Plaintiffs (info@goldwaterinstitute.org, 602-462-5000): Andy Biggs, Andrew Tobin, Nancy Barto, Judy Burges, Chester Crandell, Gail Griffin, Al Melvin, Kelli Ward, Steve Yarbrough, Kimberly Yee, John Allen, Brenda Barton, Sonny Borrelli, Paul Boyer, Karen Fann, Eddie Farnsworth, Thomas Forese, David Gowan, Rick Gray, John Kavanagh, Adam Kwasman, Debbie Lesko, David

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Livingston, Phil Lovas, J. D. Mesnard, Darin Mitchell, Steve Montenegro, Justin Olson, Warren Petersen, Justin Pierce, Carl Seel, Steve Smith, David Stevens, Bob Thorpe, Kelly Townsend, Michelle Ugenti, Jeanette Dubreil, Katie Miller, and Tom Jenney.

- Doug Northup (dnorthup@fennemorelaw.com, 602-916-5362), Tim Berg (tberg@fennemorelaw.com, 602-916-5421), Patrick Irvine (pirvine@fennemorelaw.com, 602-916-5406), and Carrie Pixler Ryerson of Fennemore Craig, P.C. represented Defendant Thomas J. Betlach.
- Timothy M. Hogan, Joy Herr-Cardillo (jherrcar@email.arizona.edu) of Arizona Center for Law in the Public Interest and Ellen Sue Katz (ajinstitu@qwestoffice.net, 602-252-3432) of the William E. Morris Institute for Justice represented Intervenor-Defendants Edmundo Macias, Gary Gorham, Daniel McCormick, and Tim Ferrell.
- Roopali H. Desai (rdesai@cblawyers.com, 602-381-5478) and D. Andrew Gaona (agaona@cblawyers.com, 602-381-5486) of Coppersmith Brockelman PLC, and Ann-Marie Alameddin, Arizona Hospital and Healthcare Association represented Amici Curiae Arizona Hospital and Healthcare Association and American Cancer Society Cancer Action Network.
- James S. Burling (JBurling@pacificlegal.org, 916-419-7111) of the Pacific Legal Foundation represented Amici Curiae Pacific Legal Foundation and Howard Jarvis Taxpayers Association.
- Brett W. Johnson (bwjohnson@swlaw.com, 602-382-6312) and Andrew Sniegowski of Snell and Wilmer LLP represented Amicus Curiae Health System Alliance of Arizona.

CSA 13-101 Loop, LLC v. Loop 101, LLC, 236 Ariz. 410, 341 P.3d 452 (2014)

- In 2014, I successfully represented a guarantor before the Arizona Supreme Court, establishing new law in Arizona that, as a matter of public policy, guarantors cannot contractually waive the statutorily provided fair market value hearing in advance of default. An excerpt of the briefing related to this case is attached as a writing sample.
- Attorneys of record
 - Sean K. McElenney (skmcelenney@bclplaw.com, 602-364-7379), J. Alex Grimsley (jagrimsley@dickinsonwright.com, 602-285-5058), and Gregory B. Iannelli (greogry.iannelli@bclplaw.com, 602-364-7053) of Bryan Cave LLP, for CSA 13–101 Loop, LLC.
 - Timothy Berg (contact information below), Carrie Pixler Ryerson, Kevin M. Green (kgreen@allresco.com, 602-810-1163) of Fennemore Craig, P.C., for Loop 101, LLC; Paul S. Anton and Valerie J. Christie; and Oscar E. Swanky and Helen L. Swanky, et al.

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- Scott B. Cohen (sbc@eblawyers.com, 602-271-9090) and Bradley D. Pack of Engelman Berger, P.C. for Amicus Curiae Arizona Bankers Association.

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- In 2012, I successfully obtained summary judgment and an attorneys' fees award against a plaintiff-employee who sued her former employer in the District of Arizona for disability, age and sex discrimination. I handled nearly every aspect of this case, including expert discovery and wrote the briefing that resulted in summary judgment. This case was memorable because it was the first case as a practicing attorney that I handled from beginning to end. I defended the charge of discrimination before the Equal Employment Opportunity Commission and ultimately won on summary judgment in federal district court several years later.
- Attorneys of record
 - Rebecca Plevel (rmplevel@email.arizona.edu; 520-621-5466) represented Plaintiff.
 - Defendant was represented by me and John Balitis (JBalitis@jsslaw.com, 602-262-5928) of Fennemore Craig.

Question 26, Case 2: Litigant names are in the confidential section of this application.

- In 2017, we obtained a complete defense victory for an employer after a week-long bench trial against a former employee who was claiming tortious interference with business expectancies.
- This case was notable because I replaced another attorney just a few months prior to trial. I quickly immersed myself in the facts of a case that had been litigated for several years, handling pre-trial motion practice, as well as at least half of the trial work, including the opening statement and the examination of several witnesses. This was the last case I litigated prior to moving in-house.
- Attorneys of record
 - Plaintiff was represented by David Larkin (davidlarkinlaw@gmail.com, 480-491-2900)
 - Defendants were represented by me and John Balitis (JBalitis@jsslaw.com, 602-262-5928) of Fennemore Craig

Question 26, Case 3: Litigant names are in the confidential section of this application.

- **In 2014, we represented an employer before the Arizona Court of Appeals in a matter involving an appeal from the denial of unemployment insurance. An employee received substantial severance in exchange for signing a release of claims in connection with a mass layoff. The court considered whether such a payment was properly classified as severance rendering the former employee ineligible for unemployment benefits. The Court of Appeals found that the payment in exchange for a release was not severance and ordered unemployment benefits to be paid to the employee.**
- **This case was significant because in response to the appellate decision, the legislature amended the statute to clarify that severance pay does, in fact, include payment in connection with a release of claims at the time of termination of employment.**
- **Attorneys of record**
 - **David L. Abney of Knapp & Roberts, P.C. represented the former employee appellant.**
 - **John Balitis (JBalitis@jsslaw.com, 602-262-5928) Janice Procter–Murphy (jpmurphy@fennemorelaw.com, 602-916-5331) and Carrie Pixler Ryerson of Fennemore Craig represented the employer/appellee.**

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

In my capacity as a Judge Pro Tempore in the Arizona Superior Court (Maricopa County), I was the court-appointed mediator for a handful of cases before going in-house in 2017.

I have served as a court-appointed arbitrator for compulsory arbitrations as a member of the bar, although all of the cases have resolved before the arbitration hearing occurred.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

In my capacity as a Judge Pro Tempore in the Arizona Superior Court (Maricopa County), I was the court-appointed mediator for a handful of cases before going in-house in 2017. I do not recall the specific parties or cases and was unable to locate them based on my access to the court system at this time.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

I started at Shamrock as the in-house employment attorney. Over time, that role evolved into the head of a legal department that now has three attorneys and two non-lawyers who focus on risk management and compliance. Since stepping into that larger role, I've created a sophisticated legal group that better serves the needs of a \$4 billion dollar company. In the last two years, I have, among other things, formalized outside counsel partnerships with more efficient billing practices, implemented billing guidelines, created and implemented a contract review process, and developed metrics by which to measure our success as a department. In short, once I was given the opportunity to lead the legal department, I created a mature legal organization that is efficient, effective, responsive, and well-regarded within Shamrock.

When I was at Fennemore, I dedicated significant time to serving and helping both the firm and my colleagues. I felt it was important not just to learn to be a good lawyer as a young associate but also to learn to lead and work well with others on non-legal matters. In that regard, I participated extensively in firm leadership through service on the firm's Hiring Committee, Technology Committee, Associate Committee and served as a formal mentor and writing instructor to junior attorneys and summer associates.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? _____ If so, give details, including dates.

No

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? _____ If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

No

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? _____ If not, explain your decision.

Not applicable

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? _____ If not, explain.

Yes.

33. Have you paid all state, federal and local taxes when due? _____ If not, explain.

Yes.

34. Are there currently any judgments or tax liens outstanding against you? _____ If so, explain.

No.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? _____ If so, explain.

Not applicable.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? _____ If so, identify the nature of the case, your role, the court, and the ultimate disposition.

No.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? _____ If so, explain.

No.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? _____ If so, explain.

No.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? _____ If so, provide details.

No.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? _____

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

No.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Not applicable.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

See response to question 44.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

None.

44. List and describe any sanctions imposed upon you by any court.

Fennemore Craig, along with Jackson Lewis, was defending a commercial real

estate broker in connection with a claim for commissions by a former real estate agent. At the time, I was an associate at the firm. The real estate agent ("Plaintiffs") moved for a second time to amend the complaint eight months into the litigation. Believing that we had a good faith basis to oppose Plaintiffs' second request to amend on grounds of futility and timeliness, Defendant's attorneys, including two partners who were senior to me, decided to oppose the second motion to amend. I electronically signed Defendant's response to the second motion to amend. In their reply memorandum, Plaintiffs asked for sanctions under Rule 11 and/or ARS § 12-349 for having to file the second motion to amend. A Maricopa County Superior Court judge granted Plaintiffs' request. The Rule 11 sanction was subsequently vacated pursuant to a joint motion by both Plaintiffs and Defendant, asking the Court to change the basis of the sanction and who the sanction was imposed against. The Court granted the motion, which vacated the Rule 11 sanction and imposed a sanction against Fennemore Craig, rather than the individual attorneys, pursuant to ARS § 12-349(a)(3).

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? _____ If so, in each case, state in detail the circumstances and the outcome.

No.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? _____ If your answer is "Yes," explain in detail.

No.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? _____ If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

No.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? _____ If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you

submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? _____ If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

No.

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles?
__Yes__ If so, list with the citations and dates.

Co-Author, "5 Ways Employers Can Keep Holiday Parties From Being 'Twitpiced'," Inside Tucson Business, December 7, 2012

Co-Author, "Social Media Accounts at Work – Without a Policy It Gets Murky," Inside Tucson Business, August 24, 2012

Co-Author, "How to Use 'Twitterns' to Promote Your Company in Social Media," Inside Tucson Business, May 25, 2012

Co-Author, "Asking Job Applicants For Passwords is Legally Risky," Inside Tucson Business, April 27, 2012

Co-Author, "Social Media's Lessons," Arizona Attorney, April 2012

Author, "Practice Safe Social Media Policies: New Federal Guidance Helps Businesses Navigate Minefield of Social Media Landscape," In Business Magazine, February 2012

Contributing Author, Arizona Employment Law Handbook, 2012

Co-Author, "Is Tonight's Holiday Part Tomorrow's Post?" Colorado Biz, December 14, 2011

Co-Author, "7 Tips So Holiday Party Doesn't Turn Into Social Media Slideshow," Inside Tucson Business, December 9, 2011

Co-Author, "Caution: Social Media and Hiring Ahead," Colorado Biz, October 10, 2011

Author, "Social Media at Work: A Necessity -- or a Slippery Slope?" Colorado Biz Magazine, August 4, 2011

Author, "Social Media Series: Using Social Media Content to Inform Employment Decisions," AZnow.Biz, June 3, 2011

Author, "Social Media Series: Employers Have To Be Diligent About Not Violating Employees' Rights When It Comes To Social Media," AZnow.Biz, May 20, 2011

Author, "Social Media Series: Employers Should Consider Creating Their Own Social Media Policy," AZnow.Biz, May 13, 2011

Author, "Social Media Series: Prohibiting Employees' Use Of Social Media At Work," AZnow.Biz, May 6, 2011

Author, "Social Media Series: Using Social Media As Evidence In Lawsuits," AZnow.Biz, May 3, 2011

Author, "Social Media Series: Companies Need To Set Parameters For Social Media Use At Work," AZnow.Biz, April 15, 2011

Author, "Social Media Series: Using Social Media In Hiring And Firing Employees," AZnow.Biz, April 8, 2011

Author, "Social Media: Ethical Challenges Create Need for Law Firm Policies," Arizona Attorney Magazine, April 2011

Note, *Survey Says: Is the American Community Survey Constitutional?* 18 WM. & MARY BILL RTS. J (2010)

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? _____ If not, explain.

Yes.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? _____
If so, describe.

Speaker, "Exploring the Stigma and Legal Ramifications of Weight Bias," Southwest Arizona Human Resources Association (An Affiliate of the Society of Human Resource Management), October 2016

Speaker, "Exploring the Legal Ramifications of Obesity Bias," Arizona Academy of Nutrition and Dietetics, June 2016

Speaker, "Exploring the Legal Ramifications of Obesity Bias," Arizona State Bar Convention, June 2016

Speaker, "Hiring and Firing from a Contractual Perspective: Hiring and Severance Agreements," Association of Corporate Counsel, New to In-House Committee, July 2013

Speaker, "Social Media: Exploring The Ethical Implications That Arise When Attorneys Use Social Media," Arizona Association of Law Libraries, Presentation, October 14, 2011

Speaker, "Social Media for Lawyers: Ethics in Social Media and Marketing, Arizona," School of Real Estate & Business, Presentation, August 2011

Speaker, "Exploring the Ethical Implications that Arise When Attorneys Use Social Media," Pima County Bar Association, June 2011

Speaker, "Sexual Harassment in the Workplace," National Association of Legal Secretaries, March 2011

53. List memberships and activities in professional organizations, including offices held and dates.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? _____

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

Civil Jury Instructions Committee for the Arizona State Bar, 2016-2019. This committee drafts proposed model jury instructions that reflect a thorough understanding of Arizona law, balancing the fairness in the instruction to both sides in a civil case.

Association of Corporate Counsel, 2017-Present. This group is comprised of a diversified group of in-house attorneys who regularly meet for, among other things, continuing legal education.

In my capacity as a Judge Pro Tempore in the Arizona Superior Court (Maricopa County), I was the court-appointed mediator for a handful of cases before going in-house in 2017.

I successfully represented on a pro bono basis an Eritrean citizen seeking political asylum in the United States through the Florence Project in 2010-2011. I drafted the pre-trial briefing and represented the individual before an immigration law judge in Florence, Arizona.

International Foodservice Distributors Association, Legal Counsel Committee, 2019-Present. In this role, I collaborate with other in-house attorneys at food distributors to discuss topical legal issues and share best practices.

I was a member of the Lorna Lockwood Inn of Court for the first few years of my practice (approximately from 2010-2012). Through this group, I networked with other attorneys and had a forum for continuing legal education programs.

54. Describe the nature and dates of any relevant community or public service you have performed.

I was on the Board of Directors for the Ronald McDonald House Charities of Central and Northern Arizona from 2012 through 2019. The Ronald McDonald House provides housing and meals for families with children being treated at local hospitals. The Central and Northern Arizona chapter is a multi-million dollar operation with three facilities in the Phoenix-metro area with a staff of approximately 30 employees.

Fennemore Craig has a long history of working with the House and I was asked by one of the senior partners if I would join the Board. Although I was one of the youngest Board members, I was quickly tapped for leadership positions and over the years I served in each of the officer roles, including Board President. The Board included over thirty members, who were each recruited based on their standing in the community and devotion to the mission of the House. Members included doctors, lawyers, accountants, business executives, business owners, McDonald's franchise owners, and committed citizens who are true believers in our charitable mission. As President, I led strategic planning for the Board,

recruited new board members, consulted on fundraising (including an annual golf tournament and Gala for approximately 700 guests) and acted as the primary liaison between the Board and House staff. In my post-President year, I was also asked by my successor to play a key role in hiring a new chief executive officer.

I also have participated in countless ad hoc volunteer opportunities such as helping Kiwanis raise money, packing food boxes at food pantries, and participating in walkathons and the American Cancer's Society Relay for Life.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

2014-2017, Employment & Labor Southwest Rising Star by Super Lawyers

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Have you ever been removed or resigned from office before your term expired? ____ If so, explain.

Have you voted in all general elections held during the last 10 years? ____ If not, explain.

I have never served in a public office.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

Since early 2017, I have had two children, served as Board President for the Ronald McDonald House, started a new in-house position and developed two entirely new roles within that company as explained elsewhere in this application. Just in the last year and a half, I have had a second child, created an in-house legal department, managed the closing as the sole in-house attorney of a major acquisition, and spear-headed the company's pandemic response. In short, at this stage in my life, there is little time for interests outside of work and family.

As a mom to a son and daughter under the age of five, my interests outside of work include finding new parks to explore, avoiding errant fly balls at tee-ball games, running behind kids on bikes, pushing swings, reading children's books and otherwise trying to keep up with two small children.

Eventually, once the kids are older, I hope to return to playing golf more frequently, reading a book for fun in a quiet room and traveling. Our family belongs to the First United Methodist Church in Central Phoenix where our 18-month old daughter was just recently baptized.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

I believe I am a diverse candidate in several respects.

First, my upbringing provides me with a unique perspective. I was raised in Casa Grande, a small town in southern rural Arizona with an ethnically and economically diverse population. My father's family had a water-well drilling business, settling in Arizona in the early 1900s. The business did not extend to the third generation, and my father worked for Arizona Public Service for over 40 years while my mother sold real estate in Casa Grande for almost 40 years. Neither of my parents completed 4-year college degrees, and I am the only member of both sides of my family to attend graduate school. My parents demonstrated every day the importance of hard work, staying humble and true to your roots and being committed to family and community. I have had strong female role models in my life. My grandmother on my mother's side was the first female foreman on the Fisher Body automobile production line in the Midwest. My mother was the first female real estate manager at her realty company. I was taught at a young age to be confident, resilient and self-reliant.

Second, although my initial legal training was with the second largest law firm in Arizona, I am currently an in-house attorney for an Arizona-based large company. I manage that company's litigation, insurance and risk programs, provide legal advice on a wide variety of issues, negotiate contracts and am involved in hard to solve day-to-day business and legal problems. My experience as a party to litigation in a number of forums and dealing with, for example, burdensome, unrealistic e-discovery obligations certainly provides me with practical insight from inside a business.

Third, I am a proud product of Arizona's public schools from start to finish, and my classmates have come from every possible background. I attended Ironwood Elementary, Casa Grande Middle School and Casa Grande Union High School. I had a number of teachers in rural Arizona who made a positive and memorable impact on my life and education. I am the person I am today because of those educators who went the extra mile to help me. During college, I chose to attend an in-state public school because I received significant scholarships such that I was able to graduate without any debt. For law school, although I did leave the state, attending a public school was important to me and contributed to my decision to attend William & Mary in Virginia. Currently, my family and I live in the Madison Public School District and my son will attend Simis Elementary for preschool in the fall.

Finally, as a female civil litigator who has a breadth of experience in all forums and across various areas of the law, I offer a perspective of having seen a significant number of issues. As the person within my company who manages the affirmative action plan, I see first-hand how important it is for an organization to value and truly embrace diversity.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

I wanted to share some insight on the qualities that I think make me a good judicial candidate.

When speaking to those who have worked with me at any stage in my career, I am universally recognized as a strategic thought leader who gets results. I am often told that I am wise beyond my years. My diverse work experience has taught me to navigate change, difficult situations and challenges with an assertive approach while fostering a team-based environment. I have built high-performing teams that know how to manage conflict, build consensus and get things done. I always strive to make the system, the case, the process, the people or the organization perform better. While doing so, however, I always stay true to my fundamental rule-follower nature, which keeps me within the existing framework to find that improved path.

I am incredibly hard-working. I often explain that while I may not always be the smartest person in the room, I certainly am always the hardest working person in the room.

I believe it is imperative to be collegial and respectful in all settings.

I am open-minded, self-reflective and able to acknowledge when I am wrong or someone has a better idea or strategy.

I genuinely care about considering all perspectives in resolving an issue. At Shamrock, I consider it a failure if I have provided impractical, inflexible legal advice that does not work for the business. Instead, I try to find the right (and lawful) business solution when solving problems, while understanding and appreciating everyone's perspective.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? _____ If not, explain.

Yes.

62. Attach a brief statement explaining why you are seeking this position.

See Attachment B.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See Attachment C.

The first writing sample is an excerpt of a response to a petition for review in the Arizona Supreme Court. The second writing sample is an excerpt of a supplemental brief in the Arizona Supreme Court.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Not applicable.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not applicable.

Attachment A: Partners and Associates at Fennemore Craig in 2016 and 2017

Directors	Eisenfeld, Rita A.	Pearce, John M.
Lionel, Samuel S.	Heap, David N.	Dahl, Bruce E.
Ehrenreich, Arthur D.	Miner, Don J.	O'Brien Crum, Catherine
Bryan, Richard H.	James, Norman D.	Sullivan, Jean M.
Crockett, C. Webb	Harris, Ray K.	Northup, Douglas C.
Sherk, Kenneth J.	Gallogly, Margaret R.	Lamber, Marc H.
Kurn, Neal	Finical, Scott M.	Good, Stephen A.
Robinson, Robert P.	Federhar, Andrew M.	Dwyer-Federhar, Theresa
Comus, Jr., Louis F.	Morgan, Ann	Ciupak, Susan M.
Gilbert, Donald R.	Richardson, Bradley J.	Kofron, John E.
Burke, Timothy J.	Reaser, Dan R.	Altes, Scott L.
Brown, Joseph W.	Cohen, Douglas M.	Abdo, Amy
Zucker, Jeffrey P.	Arana, Kimberly A. Howard	Craigmile, Christine A.
Hargrove, Roger T.	Arana, Hector G.	Sheehan, Patrick
Nesvig, Mark A.	Hanks, Gregg	Fell, Thomas
Cole, George T.	Kramer, Jay S.	Gelman, David
Caster, Lauren J.	Callahan, Christopher L.	Hart, Leslie Bryan
Berg, Timothy	Vieweg, David E.	Wilt, Allen J.
Hiller, Neil H.	Bauer, Benjamin W.	Wissink, Susan M.
Wadhams, James L.	Strunk, Sarah A.	Holtzman, Barney
Goodheart, Gary R.	Phalen, Michael J.	Bethea, John D.
Sande III, John P.	Davis, Jr., William C.	Bonner, Kevin J.
Shupe, Cynthia L.	Shelley, Gerald L.	Nielson, Karl L.
Fargotstein, Phillip F.	Shelley, J. Barry	Freeman, Scott Day
Mowbray, John	Krauja, George O.	Lo Bianco, Laura A.
Byrd, Christopher	Jefferies, John Randall	Silver, Jr., Cortland J.
Buckley, Michael E.	Balitis, Jr., John J.	Roadhouse, Wilbur
Jost, Richard F.	Anderson, Robert	March, Nancy J.
Reece, Cathy L.	Procter-Murphy, Janice K.	Fulstone, Lynne S.
Hancock, Graeme	Kramer, Robert J.	Black, Patrick J.

Attachment A: Partners and Associates at Fennemore Craig in 2016 and 2017

Gillam, Chad K.	Smith, Stacie K.	Brunger, Kyle
Wassmuth, Laura M.	Albert, Lori	Curtis, Ryan C.
Glogiewicz, Barbara H.	Tribe, Stephanie	Associates
Dolan, Colleen A.	Green, Kevin M.	Adams, Gregory L.
Etem, Craig E.	Wirthlin, Brenoch R.	Austin, Anthony W.
McKean, William J.	Of Counsels	Lockwood, Jared C.
Chandler, A. Joseph	Ridenour, William G.	Garehime, William J.
Lee, T. James	Thomas, Scott	Stazio, Victoria
Meidinger, Dawn	Kaites, John P.	Arana, Daniel
Gooch, J. Christopher	Rosenfield, Susan Stone	Beller, Courtney
De Blasi, Michelle	Pedrini, Bruna	Berry, Josh
Nelson, Allison	Curosh, Karen A.	Kannenbergh, Casey C.
Kartchner, Todd S.	Barrier, Richard G.	Tennert III, John D.
Arpad, Alexander R.	Bancroft, Paul	Hoffman, Katherine
Hood, Sean T.	Schachter, David N.	Lewandowski, David
Stradling, Tyler R.	Goodman, Gail N.	Efird, Samuel
Hawkins, Mark	Glascok, Alexis	Alarid, Michelle Guina
Cain, Aaron	Ames, Scott K.	Francis, David
Ross, C.W.	Sabo, Sean M.	Watson, Maureen
McDonald, Scott	Johnson, Stacey L.	Swiren, Jenna
Goodnow, James	Pfaff, Derek	Schuknecht, Seth
Bond, James R.	Cipoletti, Terry	Rainey, Ian
Post, Jessica L.	Wadhams, Jesse A.	Ward, Emily Ayn
Leung, Jared C.	Pierce, Shannon S.	Broderick, Matthew J.
Rackham, Troy R.	Marra, Marc A.	Johnson, Kevin C
Irvine, Patrick G.	Baggs, Trisha	Gale, Jessica A.
Jager, Michelle	Bridges, Sheryl K.	Callaway, Katie
Billingsley, Rhett A.	Polly, Debra J.	Bacon, Mary
Hejmanowski, Kevin J.	Lee, Kristen M.	Nubel, Daniel P.
Walther, Christopher	O'Mara, Courtney Miller	Hames, A.J.

Attachment A: Partners and Associates at Fennemore Craig in 2016 and 2017

Lundstrom, Kristi

Heiserman, Brian

Blasko, Jennifer L.

DePaul, Justin

Laliberte, Kira

Helmets, Jessica

Gonski, Ron

Gray, Tyre

Leonard, Ben

Brailsford, Philip L.

Atkinson, Blake

Bohan, Michael G.

Major, Madison

Vasta, Mario C.

Ferrigni, Lauren A.

Gardner, Brandon, C.

Practice Group Attorneys

Omerza, Paul

Acken, Julia

Catlett, Jessica

Nickel, Andy

**Attachment B: Statement of Interest
Ryerson Application**

I am seeking this position because I want to serve the State of Arizona, and I believe I am a uniquely qualified candidate for this role.

As a child, my idol was Justice Sandra Day O'Connor. In college and law school, I was lucky enough to have the opportunity to play golf with her a few times. Although our interactions were brief, I was struck by her warmth and dedication to being a public servant. At this stage in my career, it is time for me to start looking for opportunities for public service where I believe I can make meaningful contributions, much like Justice O'Connor did throughout her career.

I am a female attorney who is originally from rural Southern Arizona. Prior to college, I shadowed local attorneys and judges, worked as a peer representative in juvenile court and spent countless hours volunteering in my community. I am proud to have been raised in Casa Grande and value the perspective that background has imparted on my worldview.

My private sector experience, including as an outside attorney at a major Arizona law firm defending businesses and now as an in-house attorney, offers a unique perspective. I know first-hand the challenges Arizona businesses face inside and outside the courtroom. Judges make decisions every day that can be unworkable from a business perspective, and my practical experience in having to address the business consequences of winning and losing cases would serve me well in this role.

My significant litigation and appellate experience have allowed me to appreciate how the Arizona Supreme Court affects the lawyers, judges, businesses and citizens of the State through its court decisions, as well as its

**Attachment B: Statement of Interest
Ryerson Application**

adoption of rules and administrative decisions. As a Justice, I would work in support of Supreme Court action that is cognizant of those impacts.

Attachment C: Writing Samples

INTRODUCTION

Article IX, Section 22 of the Arizona Constitution (“Section 22”) requires a supermajority vote for an “act that provides for a net increase in state revenues[.]” At issue here is the express, plain language exception to Section 22, which states Section 22 does not apply to “[f]ees and assessments that are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency.” Art. IX, § 22(c)(2) (“C2 Exception”).

Rejecting Petitioners’ constitutional challenge, the lower courts correctly determined the Hospital Assessment within H.B. 2010 is authorized by statute and set by a state officer without a formula, limit or amount—it fits squarely within the C2 Exception. Both lower courts reached the same result through comprehensive opinions. The Court should decline jurisdiction.

ISSUE PRESENTED FOR REVIEW

Whether both lower courts correctly determined that the Hospital Assessment in H.B. 2010 falls within the express, plain language exception to Art. IX, Section 22 and, therefore, does not violate the Arizona Constitution.

MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

To satisfy prior voter-passed Medicaid coverage requirements and make available essential federal funding offered under the Patient Protection and Affordable Care Act, the legislature amended the Arizona Health Care Cost Containment System (“AHCCCS”) statutes in fall 2013 through H.B. 2010. IR 56,

¶ 8. That bill added, among other statutes, A.R.S. § 36-2901.08, which authorizes AHCCCS to establish a specific assessment on hospitals (“Hospital Assessment”) to “be used for the benefit of hospitals for the purpose of providing health care for persons eligible for coverage funded by the hospital assessment.” IR 56, ¶ 10.

REASONS THE COURT SHOULD DENY REVIEW

I. The Petition Does Not Meet The Standards For Review.

Petitioners gloss over the central question the petition presents: whether the Court should grant review. Giving short shrift to the issue, Petitioners instead dedicate the vast majority of their petition to the merits. Before considering the merits, however, it is important to assess whether the reasons for granting a petition set forth in ARCAP Rule 23(d)(3) support review here. The issue presented does not meet the standards for review, and the Court should deny the petition.

There is no Supreme Court decision that this Court needs to overrule or qualify, and there is no conflict between divisions of the Court of Appeals that this Court needs to resolve. Both the Superior Court and the Court of Appeals correctly decided the merits below in thorough and well-reasoned decisions, with the Court of Appeals issuing an unanimous published opinion. The lower courts’ comprehensive analysis relies on the Constitution’s plain meaning and the substance, intent and impact of the challenged assessment. Contrary to Petitioners’

hyperbole, the decision below does not permit the legislature to avoid Section 22 simply by labeling a levy an “assessment” rather than a tax. Since this lawsuit was filed, four legislative sessions have convened and adjourned, and none of Petitioners’ exaggerated concerns about the impact on the legislative process have come to pass.

Unlike the legislator standing that this Court previously chose to address, the issue presented here is both fact-specific and unlikely to recur. As the analysis by the lower courts shows, the details of the assessment at issue will determine whether the C2 Exception applies. Any future attempts by the legislature to rely on the C2 Exception will be subject to appropriate challenges, including showing that it is not a tax and that the legislature has not prescribed a formula, amount or limit. Given the narrow and specific criteria of the C2 Exception, its availability will not “have a profound impact on future legislation.” Petition at 3. The Hospital Assessment simply has not unleashed a flood of legislation attempting to avoid Section 22’s requirements.

Indeed, the payers of the Hospital Assessment—hospitals—are not complaining and, in fact, the Arizona Hospital and Healthcare Association filed an amicus brief in the Court of Appeals supporting the result in the trial court. H.B. 2010 has been in effect since January 1, 2014. It has resulted in Arizona hospitals experiencing material reductions in uncompensated care and the federal

government funding the bulk of the cost associated with hundreds of thousands of individuals being added to AHCCCS. *See* Appellee’s Answering Brief at 11-12. The positive financial impact of H.B. 2010 for both hospitals and the State is beyond question.

This Court should deny the petition.

II. The Court Of Appeals Correctly Affirmed The Superior Court And Held The Hospital Assessment Does Not Violate Section 22.

A. The Hospital Assessment is an assessment, not a tax.

Petitioners argue the Hospital Assessment cannot fit within the C2 Exception because it is a tax. Applying the factors in *May v. McNally*, 203 Ariz. 425 (2002), the Court of Appeals rejected that argument, ruling the Hospital Assessment is an assessment, not a tax.

1. The Hospital Assessment is not a tax because Director Betlach—not the legislature—establishes, administers and collects the Hospital Assessment.

The Court of Appeals characterized Petitioners’ argument that the legislature imposed the Hospital Assessment simply because it passed H.B. 2010 as “miss[ing] the mark.” Opinion, ¶ 9. The fact that “[m]ost levies are first authorized by statute . . . does not mean that the levies are imposed by the legislature.” Opinion, ¶ 9. Rather, the key inquiry is evaluating “the entity with regulatory authority over the levy for purposes of categorizing it as a tax or assessment.” Opinion, ¶ 9 (citation omitted). Director Betlach is empowered to

“establish, administer and collect” the Hospital Assessment and, thus, an administrative agency is charged with imposing the assessment. *See Jachimek v. State*, 205 Ariz. 632, 636 ¶ 15 (App. 2003).

The Ninth Circuit addressed essentially the same issue in *Bidart Bros. v. Cal. Apple Comm’n*, 73 F.3d 925 (9th Cir. 1996), which is the case that originated the *May* factors. In *Bidart Bros.*, the legislature created a state commission that had authority to impose an assessment. 73 F.3d at 931. Although the legislature authorized the commission (and necessarily the assessment), the court explained the commission could adjust the assessment without approval and was otherwise independent from the legislature. *Id.* Thus, as is the case here, the first factor weighed in favor of finding that the assessment was not a tax.

The Superior Court recognized the parallels between *Bidart Bros.* and the instant case, noting “the legislature did not impose the assessment directly but, instead, merely authorized the assessment and then stepped away, leaving it to the director to determine what hospitals are assessed and in what amounts.” IR 86 at 7. Additionally, Petitioners’ filings in the Superior Court conceded that Director Betlach was charged with making the key decisions related to the Hospital Assessment. IR 86 at 7; IR 51 at 5; IR 1, ¶¶ 44, 63, 85. This first factor weighs in favor of finding the Hospital Assessment is not a tax because Director Betlach (not the legislature) imposes it. *See Bidart Bros.*, 73 F.3d at 931.

INTRODUCTION

A.R.S. § 33-814 creates a delicate balance between the lender's right to collect a deficiency judgment from borrowers and guarantors, and the borrowers' and guarantors' right to ensure that the deficiency judgment amount is no greater than the difference between the loan amount and the fair market value of the property. The fair market value hearing is the linchpin of that statutory scheme. In this case, a national institutional lender (the "Bank") seeks to undo that vital protection, arguing that the statutory fair market value hearing may be waived at the loan's inception and that the deficiency owed by the borrowers and guarantors is established at the bank's whim with its unilateral decision of what amount to credit bid at the trustee's sale.

The Bank's requested relief encourages lenders to act in an unconscionable and commercially unreasonable manner in the sale of collateral such that lenders may obtain substantial windfalls by collecting not only the difference between the credit bid and the ultimate sale price to a third party, but also a full deficiency judgment based on a bank's artificially low credit bid. This windfall, which ignores a property's fair market value in determining whether a deficiency exists, is precisely what the legislature sought to prevent when it amended A.R.S. § 33-814(A) to expressly protect guarantors.

The long-standing policy of ensuring that fair market value hearings remain

available to *all* guarantors and borrowers, as evidenced both by this Court's precedent and the legislative history of A.R.S. § 33-814(A), requires this Court to hold that neither borrowers nor guarantors may contractually waive that procedure in advance of non-judicial foreclosure proceedings. As the Arizona Bankers' Association's amicus brief makes clear, under the guise of freedom of contract, banks will include the advance waiver of fair market value hearings in all of their boilerplate notes, deeds of trust, and guaranties. This would represent an end-run around protections that the legislature rightly saw fit to extend to distressed borrowers and guarantors alike. Any conclusion that the right to a fair market value hearing *may* be waived before default would sharply reverse course for this Court, permitting lenders to obtain windfalls.

LEGAL ARGUMENT

I. Prohibiting advance contractual waiver of the fair market value hearing in A.R.S. § 33-814(A) is consistent with this Court's precedent.

The statute, public policy, and this Court's precedent bar advance contractual waiver of the fair market value hearing. Such a result is consistent with this Court's precedent in several regards. First, just as the right of redemption is non-waivable in the judicial foreclosure context, the right to a fair market value hearing should be similarly non-waivable. Second, the Restatement (Third) of Property, recently adopted by this Court, prohibits waiver of fair market value hearings. Finally, this Court has long protected debtors against overreaching

creditors by prohibiting contractual waivers of important rights that spring from public policy, providing ample precedent for declining to allow advance contractual waivers of the fair market value hearing.

A. Just as the right of redemption cannot be waived, the right to a fair market value hearing cannot be waived.

The right of redemption available after a judicial foreclosure is the equivalent of the fair market value hearing in the trustee's sale context. A statutory redemption right exists, in part, to "insur[e] the property will bring a fair price at a sheriff's sale" *Matcha v. Wachs*, 132 Ariz. 378, 381, 646 P.2d 263, 266 (1982) (citations omitted). "The purpose of these redemption statutes is to protect judgment debtors from unfairly low bids at foreclosure sales." *Gold v. Helvetica Servicing, Inc.*, 229 Ariz. 328, 331 ¶ 21, 275 P.3d 627, 630 (App. 2012) (citing *Kries v. Allen Carpet, Inc.*, 146 Ariz. 348, 351, 706 P.2d 360, 363 (1985) ("We believe that our legislature's purpose was and is clear: bids not reflecting the true value of the property bid on are to be discouraged.")). As this Court explained:

'The underlying purpose of . . . Arizona statutes is to prevent the injustice that occurs when a debtor's property is sold on foreclosure sale for a price significantly less than its fair market value. . . . The Arizona device is to secure to the debtor redemption rights and thus pose an economic threat to purchasers, *including the creditor*, that an artificially low bid can be defeated by redemption.'

Kries, 146 Ariz. at 350, 706 P.2d at 362 (citation omitted and emphasis in

original). In addition to the redemption period available upon a judicial foreclosure, judgment debtors also have the fair market value determination: “Arizona’s legislature has provided certain judgment debtors with another form of protection from unfair foreclosure sales: the FMV determination.” *Gold*, 229 Ariz. at 331 ¶ 22, 275 P.3d at 630. With either option, the policy remains the same: ensuring the sale price reflects the property’s fair market value.

In the non-judicial foreclosure context, no right of redemption exists. In such cases, a debtor has only the fair market value hearing provided for in A.R.S. § 33-814(A) to protect against unconscionably low bids at a trustee’s sale.

The primary purpose of [A.R.S. § 33-814] is to ‘prohibit a creditor from seeking a windfall by buying property at a trustee’s sale for less than fair market value. . . . Because of the nature of a trustee’s sale, the statute does not contemplate that the purchase price will necessarily reflect the fair market value of the property. . . . For this reason, the statute requires a determination by the court of the fair market value before a deficiency judgment may be awarded.

MidFirst Bank v. Chase, 230 Ariz. 366, 368 ¶ 7, 284 P.3d 877, 879 (App. 2012) (citations omitted); *see also First Interstate Bank of Arizona, N.A. v. Tatum & Bell Ctr. Associates*, 170 Ariz. 99, 103, 821 P.2d 1384, 1388 (App. 1991) (“[A]pplication of the fair market value credit to guarantors serves the primary purpose of the statute, which from the outset has been to prohibit a creditor from seeking a windfall by buying property at a trustee’s sale for less than fair market

value.”) (citations omitted).

This Court explained that deed of trust statutes strip borrowers of protections that exist in the mortgage context, noting that “the primary loss for deed of trust borrowers lies in the absence of the redemptive right because purchasers at a deed of trust sale no longer take title subject to a mortgagor’s six-month right of redemption.” *In re Krohn*, 203 Ariz. 205, 208 ¶ 11, 52 P.3d 774, 777 (2002).

Although the legislature stripped the borrower’s or guarantor’s right of redemption, it provided instead a fair market value hearing following a trustee’s sale.

Providing for a fair market value hearing following a trustee’s sale serves the same purpose as the right of redemption in the judicial foreclosure process—ensuring that the sale price reflects fair market value and that the lender does not receive a windfall—and is just as important as the right of redemption in achieving fairness to the parties in the overall statutory scheme.

Significantly, this Court established long ago that a contractual waiver of the statutory right of redemption was void against public policy. In *Elson Development Co. v. Arizona Savings and Loan Association*, 99 Ariz. 217, 223-24, 407 P.2d 930, 935 (1965), the mortgagor signed an agreement that “was, in effect, a partial waiver which shortened the [statutory] redemption period” The Court explained the practical consequences of such an agreement:

Such agreements would mean that the redemption period would end at a time when the mortgagor might be least

able to make redemption. The mortgagee could thereby secure title to the property by bidding less than the amount of the judgment, and less than the real value of the property, thereby defeating the purpose and intent of the provisions of the statutes providing for redemption periods.

Id. at 224, 407 P.2d at 935. As a result, the Court held, “[t]he intent and purpose of the statute providing for redemption cannot be violated by an agreement.” *Id.*; see also *Forbach v. Steinfield*, 34 Ariz. 519, 526-27, 273 P. 6, 9 (1928) (holding that a statute of limitations could not be contractually waived and noting its similarity to the redemption right). Just as the right of redemption is non-waivable, the fair market value hearing is similarly non-waivable as a matter of public policy given that the purpose underlying the two statutory provisions is nearly identical.

B. The Restatement (Third) of Property (Mortgages), which this Court has adopted, provides for a non-waivable fair market value hearing.

In *In re Krohn*, the bankruptcy court certified a question to this Court: “May a trustee’s sale of real property [under a deed of trust] be set aside solely on the basis that the bid price was grossly inadequate?” 203 Ariz. at 206 ¶ 1, 52 P.3d at 775 (alterations in original). The bankruptcy judge found that the price paid at the trustee’s sale was “grossly inadequate” due to the fact the purchase price was “less than 20% of fair market value” *Id.* at 207 ¶ 5, 52 P.3d at 776. The Court adopted the approach contemplated by the Restatement (Third) of Property