SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: **Jennifer Michelle Perkins**
2. Have you ever used or been known by any other name? **Yes** If so, state name:

   Jennifer Michelle Barnett
3. Office Address: **1501 W. Washington St., Phoenix, AZ 85007**
4. How long have you lived in Arizona? **Since 2004, 17 years**

   What is your home zip code? **85021**
5. Identify the county you reside in and the years of your residency.

   Maricopa County, 17 years.
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: **Republican since 1995.**

   (The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)
8. Gender: **Female** Race/Ethnicity: **White**

EDUCATIONAL BACKGROUND

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

George Washington University, Washington, D.C., 1995-99 Bachelor of Arts in International Affairs

Rutgers University / Universität Konstanz, Konstanz, Germany, 1997-98 Study abroad program, focus in German history and politics

SMU Dedman School of Law, Dallas, Texas, 1999-2002 Juris Doctor

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

College at GWU
Major in International Affairs, concentration in Politics; Minor in German.

Extracurricular: I joined and ultimately served in the leadership of both InterVarsity Christian Fellowship and German Club. Off-campus, I engaged in unpaid internships in the press office of Senator Pete V. Domenici (R-NM) (1996-97) and in Elizabeth Dole's campaign office (1996).

Law School at SMU
Extracurricular: I primarily participated in school-sponsored advocacy programs and became a leader on the Board of Advocates. I competed on two appellate advocacy teams and two trial teams and received eight different awards for these teams. My participation resulted in nomination to the Order of Barristers. I also re-launched a chapter of the Federalist Society for Law and Public Policy Studies at the school, through which we brought a series of national speakers to discuss issues related to the rule of law and the proper role of the courts.

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

College at GWU: As a National Merit Scholar, I received a Presidential Scholarship for my tuition. I worked part time throughout college at a trademark research firm and I earned a paid staff position on Capitol Hill during my final year.

I was inducted into the German Honor Society, selected for a leadership position with InterVarsity Christian Fellowship, and elected as a New Mexico Delegate to the 1996 Republican National Convention.

Law school at SMU: I was a finalist for the Hatton W. Sumners Foundation scholarship and received the J. Cleo Thompson Endowment Scholarship. My Torts professor, Ellen Pryor, chose me as a research assistant for course textbook updates. I also earned the following advocacy-related awards:

American Bar Association National Appellate Advocacy Competition (Spring 2002): Regional Champions, Second Best Brief, Tenth Best Individual Advocate nationally

American Trial Lawyers Association Mock Trial Competition (Spring 2001): National Semi-Finalists & Regional Champions

Hispanic National Bar Association Moot Court Competition (Spring 2001): Best Brief and Quarterfinalist

Texas Fall Invitational Mock Trial Competition (Fall 2000): Third Place

SMU Board of Advocates Excellence in Advocacy (2001, 2002);

SMU Board of Advocates Outstanding Officer Award (2002)

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.

New Mexico Supreme Court (2002)
Federal District Court, District of New Mexico (2002)
Arizona Supreme Court (2004)
Federal District Court, District of Arizona (2004)
Ninth Circuit Court of Appeals (2005)
Fifth Circuit Court of Appeals (2008)
Seventh Circuit Court of Appeals (2017)

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	POSITION	DATES	LOCATION
Arizona Court of Appeals	Judge	2017—present	Phoenix, AZ
AZ Attorney General's Office, Solicitor General's Office	Assistant Solicitor General	2015—2017	Phoenix, AZ
Mandel Young PLC	Of Counsel	2014—2015	Phoenix, AZ
Arizona Commission on Judicial Conduct	Disciplinary Counsel	2009—2014	Phoenix, AZ
Institute for Justice, Arizona Chapter	Staff Attorney	2004—2009	Tempe, AZ
Hon. James O. Browning, DNM	Law Clerk	2003—2004	Albuquerque, NM
Browning & Peifer, P.A. [Now Peifer, Hanson & Mullins, P.A.]	Associate	2002—2003	Albuquerque, NM

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.

Colleagues who have served on the Arizona Court of Appeals (2017-2021)

Division One:
Peter B. Swann, Chief Judge
Kent E. Cattani, Vice Chief Judge
Cynthia J. Bailey
James P. Beene *(now Justice Beene)*
Michael J. Brown
Jennifer B. Campbell
Maria Elena Cruz
Brian Y. Furuya
David B. Gass
Randall M. Howe
Diane M. Johnsen *(retired)*
Kenton D. Jones *(retired)*
Paul J. McMurdie
James B. Morse
Jon W. Thompson *(deceased)*
Samuel A. Thumma
David D. Weinzweig
D. Steven Williams
Lawrence F. Winthrop

Division Two:
Peter J. Eckerstrom, Chief Judge
Garye L. Vasquez, Vice Chief Judge
Sean E. Brearcliffe
Karl C. Eppich
Philip G. Espinosa
Christopher P. Staring

Attorney colleagues (2015-2017)—positions reflect status at my departure
Mark Brnovich, Attorney General
Michael Bailey, Chief Deputy

Colleagues Within Solicitor General's Office
Dominic Draye, Solicitor General
Dave Cole, Deputy Solicitor General
Paula Bickett, Civil Appeals Chief
*John Lopez, fmr Solicitor General
Now Justice Lopez

Assistant Attorneys General:
Rusty Crandall
Kara Karlson
Joseph LaRue
Keith Miller
Kathleen Sweeney
Toni Valadez

All Attorneys employed by AGO as of June 2017 are listed in Attachment 1; it does not include attorneys working in other divisions during my tenure who left AGO by June 2017 and this does not include changes to the office in composition or structure since my departure.

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.

My practice immediately preceding my judicial appointment was broad ranging and exciting, but not easily classified. My role in drafting, editing, and managing AG Opinions (30%) required analysis of legal questions on which our state courts have yet to speak. The issues are ones of public importance that require delving into subject matters such as education law, property rights, state government authority, and constitutional rights while applying proper interpretation principles.

I also served as Ethics Counsel to the Office of the Attorney General (30%). On a daily basis I advised attorneys on the ethical implications of their conduct (or the conduct of an opposing counsel or other individual). This process required me to confront a variety of areas of the law in order to properly evaluate situations: in addition to relevant case law, statutes, and rules, I familiarized myself with the substantive areas of law at issue such as public records requests; juvenile dependency matters; administrative law; criminal procedure and law; and more. This part of my practice often also required me to advise additional steps or changes to legal strategy that were not popular, but which I believed were legally or ethically mandated. That was often daunting but reinforced for me the primacy of The Law over situational preferences.

I also participated generally in appellate and primary litigation on behalf of the state (30%), such as assisting with: briefing (including work on amicus briefs); the evaluation of appropriate legal strategies; and preparation for oral arguments. I was especially honored to work with what was then the Federalism Unit advocating in support of proper separation of powers between the State of Arizona and our Federal government. While at the AG's Office, I also had the opportunity to participate in the occasional criminal appeals case.

Finally, a small portion of my work involved serving as a primary legal advisor to state agencies (10%), either in the context of providing independent advice during formal proceedings or serving as the attorney to the agencies (specifically to the Governor's Regulatory Review Council and the State Department of Land Board of Appeals).

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

Constitutional Law

Administrative Law

Appellate work in civil matters such as contracts, defamation, and torts

Judicial Ethics*

*As noted above, my work at the Arizona Commission on Judicial Conduct touched on virtually every area of Arizona law because hundreds of the complaints required a review of procedural and substantive law to ensure alleged errors did not constitute ethical misconduct pursuant to Rules 1.1 and 2.2 of the Code of Judicial Conduct.

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.

As an appellate judge, most of my writing is the result of negotiation and consensus building. I have provided greater detail about the nature of the writing involved below in answer to Question 27.

At the AG's Office, I personally drafted or assisted drafting by reviewing and editing the drafts of all Attorney General Opinions during my tenure.

While at the Commission on Judicial Conduct, I had primary authority for drafting the orders in informal matters not summarily dismissed, which required factual and legal findings and conclusions. With regard to formal matters, I prepared proposed findings and conclusions in all matters in addition to the advocacy briefing, for which I was solely responsible.

I also have assisted in or provided primary authorship for numerous amicus and appellate briefs, as well as trial court litigation documents such as complaints, answers, motions to dismiss, motions for summary judgment, and settlement or consent decree documents.

During my time at the CJC, and again at the AGO, I was responsible for reviewing and preparing proposed rule changes. This included providing internal evaluation and analysis of proposed and adopted rule changes, and creating or updating internal manuals based on the rules.

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.

Arizona Commission on Judicial Conduct: 2 formal hearings, 3 reconsideration hearings, and approximately 50 adversarial matters

Pinal County Board of Supervisors: 1 administrative appeal

Arizona Structural Pest Control Commission: 1 administrative proceeding

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

Sole Counsel:	**55**
Chief Counsel:	**2**
Associate Counsel:	**0**

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:	**3**
Chief Counsel:	**0**
Associate Counsel:	**0**

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.

Case One: In re Theodore Abrams

(1) January—May 2011

(2) Mark Harrison (deceased) and Mark Hummels (deceased)
Osborn Maledon, P.A. 602-640-9000
Counsel for Respondent Theodore Abrams

(3) Theodore Abrams, a municipal judge in Tucson, received complaints that he sexually harassed attorneys who appeared in his courtroom. The complaints included both consensual, but inappropriate, sexual conduct and non-consensual, harassing conduct.

We ultimately reached an agreement for the judge to accept a censure recommendation by the Arizona Commission on Judicial Conduct ("CJC"). The Supreme Court censured the judge, enjoining him from any further service as an Arizona judge, and suspended his license to practice law for two years.

(4) This matter was particularly difficult because it involved three separate bodies with overlapping jurisdiction: the Tucson City Council, the CJC, and the State Bar of Arizona. Given the nature of the allegations, time was of the essence, and a high degree of sensitivity required. Judge Abrams opted to resign his position, divesting the City of Tucson of jurisdiction for further action, and leaving me with the decisions whether to pursue something further on behalf of the State through the CJC and how, if at all, to address potential sanctions against the judge's license to practice as an attorney.

Case Two: In re Patty Nolan

(1) June 2010

(2) A. Melvin McDonald, Jones Skelton & Hochuli P.L.C.
602-263-1700
mmcdonald@jshfirm.com
Counsel for Respondent Patricia Nolan

(3) Between 2004-2009, various entities including the Administrative Office of the Courts ("AOC") and the Gila County Attorney, identified significant processing delays within the Globe Regional Justice Court. This ultimately led to two separate matters before the Arizona Commission on Judicial Conduct ("CJC") in 2009. After filing formal charges and engaging in brief discovery, mediation occurred between Judge Nolan's counsel and myself, with then-CJC member and Yavapai County Attorney Sheila Polk serving as mediator. This process eventually resulted in a stipulation by which the judge resigned from her position, accepted a written censure, and agreed not to run for or accept an appointment to the position of a judge or judicial officer in the future.

(4) Both CJC matters relating to Judge Nolan were pending at the time I began work as Disciplinary Counsel. The allegations required investigation involving interviews of court staff, many of whom were reluctant to speak with an outsider. This case also required a great deal of sensitivity regarding the best way to vindicate the duties and obligations of the office without improperly seeking punitive outcomes.

Case Three: Rissmiller and Park v. AZ Structural Pest Control Commission

(1) September 2006

(2) M. Elizabeth Miles, Arizona Attorney General's Office*
**Ms. Miles no longer works for the Attorney General, but I have provided personal contact information that I believe to be current on page 29.*

(3) Gary Rissmiller and Larry Park provided landscape maintenance services in Tucson and Marana, respectively. Both were prevented from using over-the-counter weed control products (such as Round-Up) due to prohibitive and layered licensing requirements through the Arizona Structural Pest Control Commission. Partnering with the Arizona Chapter of the Institute for Justice , they challenged the requirements as punitively onerous and unrelated to public health and safety. The lawsuit resulted in legislative effort to fix a problem that all sides recognized. Working primarily with stakeholders and lawmakers, I assisted in drafting amendments to the law that permitted my clients to provide their services within the bounds of public health and safety concerns.

(4) This case has an interesting post-script: this was the Institute for Justice's second effort against the state's Structural Pest Control Commission. As a direct result of the two cases, and in particular my efforts on behalf of Mr. Rissmiller and Mr. Park, the "Sunset Review" process that occurred shortly thereafter led

to the dismantling of that commission (its core responsibilities related to public health and safety concerns are now maintained through the State Department of Agriculture).

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:	**12**
State Courts of Record:	**30**
Municipal/Justice Courts:	**0**

The approximate percentage of those cases which have been:

Civil:	**98%**
Criminal:	**2%**

The approximate number of those cases in which you were:

Sole Counsel:	**15**
Chief Counsel:	**7**
Associate Counsel:	**20**

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	**5%**
You made a contested court appearance (other than as set forth in the above response)	**15%**
You negotiated a settlement:	**50%**
The court rendered judgment after trial:	**15%**
A jury rendered a verdict:	**0%**

The number of cases you have taken to trial:

Limited jurisdiction court	**0**
Superior court	**0**
Federal district court	**2**
Jury	**0**

***** *I also tried two formal hearings before the Commission on Judicial Conduct that approximated a bench trial experience.*

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

Civil:	**22**
Criminal:	**2**
Other [Amicus]:	**7**

The approximate number of matters in which you appeared:

As counsel of record on the brief:	**16**
Personally in oral argument:	**3**

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.

Judicial Law Clerk to the Honorable James O. Browning, District of New Mexico, August 2003—September 2004.

President Bush appointed Judge Browning during my tenure as an associate lawyer with Browning and Peifer; he hired me as his first law clerk. In addition to traditional clerk duties related to cases, I also assisted the judge in setting chambers policies and practices, and in acclimating to judicial ethics rules regarding his transition from private practice.

Judge Browning issued more than 100 substantive decisions during my year with him, and averaged at least one trial per month (primarily, though not exclusively, jury trials). He offered attorneys a hearing on every filed motion and preferred to issue a ruling from the bench followed by a written opinion explaining the decision. As law clerks, we prepared him for making that ruling in addition to our work on the written decision.

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.

Case One: In re Woolbright

(1) 2011-2012

(2) Commission on Judicial Conduct; Arizona Supreme Court

(3) Larry Cohen, Cronus Law, PLLC
480-787-0235
lcohen@cronuslaw.com
Counsel for Judge Woolbright

(4) Shortly after he took the bench, then-Justice of the Peace Phillip Woolbright

intentionally evaded service of process by directing a member of his staff to move his vehicle away from the waiting process server and into the secured judicial parking area. He continued to evade service for several days before finally accepting service of the order of protection issued against him at his then-wife's request. Mr. Woolbright thereby embarked upon a series of poor decisions, many of which individually constituted ethical misconduct and altogether demonstrated he was unfit to serve as a judge.

There is no question that Mr. Woolbright was under substantial emotional and mental stress during this time due to an acrimonious divorce process. Nonetheless, his continued obfuscations and changing stories combined with his general refusal to acknowledge culpability for his misconduct led to the filing of formal charges, a two-day formal hearing before a panel of the Commission on Judicial Conduct, and ultimately his removal from the bench by the Arizona Supreme Court.

(5) This case was significant for me both on a professional and a personal level. Professionally, the case was challenging in terms of the unusual volume of motion practice for a judicial disciplinary matter, some of which involved novel legal issues. Substantively, it required balancing the duty to protect the public and enforce the ethical rules while taking into consideration the mitigating factors presented by the judge's personal circumstances and relative inexperience.

Personally, this case occurred during a time in which I faced a series of traumatic private events. Our initial attempt at a settlement mediation occurred the day after I experienced a miscarriage of my first pregnancy in November 2011. Not long thereafter, just during the time frame for pursuing formal charges, I learned I was pregnant again. Within weeks, I fell on the steps of the Arizona Courts Building shattering my left ankle. After surgery, I was bed-ridden for a brief time and encumbered for a much longer time. I managed my general case load in addition to the Woolbright matter as the CJC's sole attorney throughout this time. The formal hearing, requests for reconsideration, and submission to the Arizona Supreme Court for review carried me through to my eighth month of pregnancy.

I learned a great deal from this experience. I learned that higher fidelity to the law need not lead one to pursue a lawyer’s duty under the law without empathy or humanity. I also learned that being engaged in important work can mean carrying that load through a time of personal difficulty, and that coming through such trials by fire makes a person that much stronger.

Case Two: Dale Bell v. Pinal County Board of Supervisors

(1) 2006-2008

(2) Hon. William J. O'Neil, Pinal County Superior Court*
**Judge O'Neil recently retired from his position as Arizona's Presiding Disciplinary Judge but can still be reached at* pdj@courts.az.gov

(3) Tim Keller, *formerly Institute for Justice-Arizona*
602-710-1135
tim@genjustice.org
Co-counsel for Dale Bell

Seymour Gruber, Deputy Pinal County Attorney
520-562-3163
Seymour.gruber.op@gric.nsn.us
Counsel for Pinal County Board of Supervisors

(4) My client, Dale Bell, was an entrepreneur who opened a popular western-themed restaurant named San Tan Flat on county land. County leadership targeted Dale's business over the course of several years with a variety of regulatory hurdles. The disputes came to a head when the county dusted off a 1940s era ordinance requiring that dancehalls be fully enclosed. Because Dale's restaurant offered live music and dancing under the stars, the county took the position that the restaurant transformed into an illegal dancehall in the evenings—and imposed a $700 per day fine. I led the ensuing litigation, in which Dale sued the Board of Supervisors for $1. We argued their actions impermissibly infringed on his constitutional rights and amounted to a tortured and absurd reading of an inapplicable county ordinance. At the conclusion of oral argument, Judge O'Neil ruled against the county. And, yes, this was (as Drew Carey deemed it) the real life version of "Footloose in Arizona."

(5) This case highlighted for me the power and responsibility that come with government authority. I was honored to provide pro-bono representation to Dale, a man who just wanted to run a successful restaurant without unreasonable interference from the authorities. But I was also taken aback at how aggressive the county officials were in their efforts to twist the words and meaning of the law in pursuing my client. I believe I won primarily by pointing the judge back to the text and purpose of the county's own ordinance—an experience that reinforced my own passion for getting the law right.

Case Three: Mill Alley Partners v. Wallace

(1) 2014

(2) Hon. Diane Johnsen, Hon. John Gemmill, Hon. Lawrence Winthrop, Arizona Court of Appeals, Division One

(3) Robert Mandel & Zuber Lawler LLP
602-610-1944
rmandel@zuberlawler.com

Taylor Young, *formerly of Mandel Young, PLC*
Burg Simpson Eldredge Hersh & Jardine, PC
602-777-7000
tyoung@burgsimpson.com

Co-Counsel for Mill Alley Partners

Mary Hone, Law Offices of Mary T. Hone
480-336-2557
mary@honelegal.com
Counsel for William Wallace & Club Level, Inc.

(4) A landlord sued the guarantor, who was a previous tenant and who had guaranteed the lease of the subsequent tenant for a period of 36 months, for breach of that guaranty. The jury returned a general verdict for the guarantor, and the trial judge granted landlord's request for a new trial. On appeal, the panel agreed with the trial judge that error occurred but found no evidence of prejudice and so the error was not fundamental such that would warrant a new trial.

(5) After five years of judicial misconduct cases, I moved into private appellate practice and this was my first case. I entered the case after briefing and with a relatively short period of time within which to prepare for oral argument. Although my position did not ultimately prevail, I represented the client well in oral argument and learned a great deal about a new area of the law in the process.

Case Four: State of Arizona v. Pedroza-Perez

(1) 2016

(2) Arizona Supreme Court

(3) Joseph Maziarz (*retired*)
[personal contact information provided on p. 29]
Co-Counsel for State of Arizona

Amy Pignatella Cain
520-628-6520
Amy.Cain@azag.gov

Rebecca A. McLean
520-243-6923
Rebeccal.McLean@pima.gov
Counsel for Pedroza-Perez

(4) Pima County and Border Control officials apprehended Defendant Pedroza-Perez near Ajo with about 134 pounds of marijuana in backpacks nearby. He was indicted for three offenses, and the jury found him guilty on two of the three counts. At trial, he intended to offer a duress defense, the only evidence of which was his own testimony. The judge precluded mention of the duress defense in opening statements, but instructed the jury on duress and allowed it to be argued in closing once the Defendant established evidence to support the defense through testimony. Counsel for the Defendant appealed, arguing that the limitation on opening statements was reversible error. The Court of Appeals affirmed the trial court, and the Arizona Supreme Court accepted review and heard argument on June 28, 2016.

(5) I stepped into this case to present oral argument after briefing before the Supreme Court concluded. While I was acquainted with criminal law in Arizona from my time at the Commission on Judicial Conduct, this case served as my

first opportunity to work in this area of law. An interesting aspect of the case is that the State conceded—in between the time that the Petition for Review was filed and the filing of the parties' supplemental briefing—that the limitation on the opening statement constituted an abuse of discretion. So the argument before the Supreme Court centered on whether that abuse prejudiced the defendant.

Case Five: Arizona Democratic Party and the Democratic National Committee v. Michele Reagan, Arizona Secretary of State

(1) 2016

(2) Hon. Steven P. Logan, District of Arizona; Ninth Circuit Court of Appeals; United States Supreme Court

(3) Kara M. Karlson
Office of the Arizona Attorney General
602-542-4951
Kara.Karlson@azag.gov

Joseph La Rue (formerly at AG Office)
Maricopa County Attorney's Office
602-506-8541
laruej@mcao.maricopa.gov

Co-counsel for Defendant Michele Reagan

Perkins Coie LLP, 602-351-8222
Kevin J. Hamilton
KHamilton@perkinscoie.com
Marc Erik Elias
MElias@perkinscoie.com

Thomas D. Ryerson
tryerson@perkinscoie.com

Sambo Dul (formerly at Perkins Coie)
State Elections Director
602-542-8683

Alexis E. Danneman
adanneman@perkinscoie.com
Counsel for Arizona Democratic Party and the Democratic National Committee

(4) The plaintiffs in this case sued the Arizona Secretary of State seeking an injunction to extend the voter registration deadline because the deadline fell on Columbus Day. The challenge came to the Solicitor General's Office on October 20, and the Court set the injunction hearing for the afternoon of October 21. The attorney who normally would have served as the second member of the team, was away from the office so I stepped in to assist with the case. I took the lead on preparing our Response brief, which was due before the hearing. I also assisted in the preparation of witness and exhibit lists.

The hearing turned out to serve as a merits trial for a permanent injunction—normally something that could involve months of litigation and for which we had 24 hours to prepare. I'm proud of the work product we completed, in particular the brief I literally drafted overnight. I assisted in witness examination during the trial as well, although Kara Karlson was lead counsel for that proceeding.

The matter continued into the following week with a flurry of additional briefing and motions, plus proposed findings of fact and conclusions of law. We

received the court's order denying the injunction just after 5pm on November 3.

(5) This case required me to step into an area of law with which I am familiar, but in which I did not regularly practice. In doing so I had to serve as the primary author of a significant brief that was largely constructed after 4pm and before 10am. I also worked alongside my co-counsel to prepare for a trial on the merits that potentially had substantial consequences for the state's upcoming elections. We were ultimately successful and, even more importantly, I believe we served the client well under difficult constraints.

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.).

AZ Court of Appeals, Division One – full time judge since October 2017

Governor Ducey appointed me to this position as the conclusion of a merit selection process in 2017. The Court of Appeals reviews nearly all types of cases heard by Arizona appellate judges; the most notable exceptions are the judicial and attorney disciplinary matters, election year challenges, and death penalty cases, which go exclusively to the Arizona Supreme Court.

To date, I have participated in the resolution of almost 1250 cases, which break down into the following case types:

Civil:	366
Juvenile:	129
Criminal:	428
Industrial Commission:	38
Special Action*:	205
Family:	79

**Parties file special actions after receiving an adverse ruling that cannot be immediately appealed, but which the party believes requires immediate relief.*

More specifically, I have personally authored 355 substantive decisions and orders; 240 of which were memorandum decisions and published opinions. My authored decisions include 59 civil cases, 41 juvenile, 95 criminal, 11 Industrial Commission, and 28 family matters. I have published seventeen opinions, which includes twelve civil cases, two criminal, one industrial commission, one special action, and one juvenile. I have written separately seven times, including five concurrences and two partial dissents. Both dissents and one concurrence are attached as writing samples and described in Question 64.

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.

Case One: State v. Lantz, 245 Ariz. 451 (App. 2018)

(1) March 2018-September 2018

(2) Arizona Court of Appeals

(3)

Joseph T. Maziarz	Marc J. Victor
2005 N. Central Avenue	3185 South Price Road
Phoenix, Arizona 85004–1508	Chandler, AZ 85248
(602) 542-4686	(480) 755-7110
cadocket@azag.gov	marc@attorneysforfreedom.com
Attorney for State of Arizona	*Attorney for Michael Lantz*

(4) A jury convicted Mr. Lantz of child prostitution of a minor under age fifteen. In sentencing him, the superior court found that this was a Dangerous Crime Against Children ("DCAC"), a finding that leads to a sentencing enhancement. The "child" at issue was an undercover police officer and law enforcement arrested the defendant as part of a human trafficking sting operation.

The DCAC statute is a separate provision from the statute that criminalizes child prostitution; but the child prostitution statute does not provide its own sentencing structure when the minor at issue is under age fifteen (it had a detailed sentencing scheme for minor victims aged fifteen and older). This was important because the child prostitution statute does not allow for a defense on the basis that the "child" was an adult law enforcement officer. In contrast, the DCAC statute only directs an enhanced sentence when there was an actual child involved.

As an issue of first impression, we held that the defendant's crime could not be designated a DCAC because there was no child victim. Nonetheless, the DCAC sentencing scheme applied because the legislature explicitly adopted that scheme into the relevant text of the child prostitution statute.

(5) This case involved the difficult navigation of two complex, related criminal statutes and application of two Arizona Supreme Court opinions that required reconciliation. My chambers and panel worked hard to ensure that the resulting opinion maintained fidelity to the plain text of the laws involved, and I'm proud of the resulting opinion.

Case Two: Layne v. LaBianca, 249 Ariz. 301 (App. 2020)

(1) February 2020-June 2020

(2) Arizona Court of Appeals

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(4) A mother flew with her four-month old child to visit family in Ohio. The father, who stayed behind in Arizona, filed an emergency motion for sole legal-decision making when the mother chose not to return as planned. The superior court granted the motion and issued temporary orders before setting a hearing for later that month, when the temporary orders would expire. At that hearing, the mother and father reached a temporary agreement to equally divide parenting time and legal decision-making. At a later evidentiary hearing, the father claimed mother was mentally unstable and accused her of physically abusing the child. Finding that father made material misrepresentations and failed to present credible evidence, the superior court temporarily granted mother's petition to relocate to Ohio. Although the superior court appeared to have considered the child's best interests in its orders, the court failed to make detailed findings as to each statutory factor in the best interests statute (A.R.S. § 25-403). The court also failed to mention any of the factors set out in the relocation statute (A.R.S. § 25-408(I)).

The relocation statute requires a court to consider specific factors before authorizing a child's relocation to another state. Since the superior court designated mother as the primary residential parent and authorized relocation to Ohio, it should have considered the relocation statute factors. Our panel vacated and remanded the temporary orders, so that the court would issue findings showing that the court had actually considered the relocation factors. But we recognized that at the temporary orders stage—an early and preliminary stage—the court need not make detailed findings.

(5) Before this case, no published opinion required the trial court to confirm that it had actually considered each of the relocation statute factors before allowing one parent to relocate a child at this early, preliminary stage. This opinion involved an important and straightforward construction of a statute based on its plain text, and required discipline in that construction rather than acquiescing to just accept the way things had been done previously.

Case Three: Saba v. Khoury, 481 P.3d 1167 (App. 2021)

(1) August 2020-January 2021

(2) Arizona Court of Appeals

(3)

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(4) Saba filed for divorce from Khoury in 2017 and the superior court divided their assets and liabilities. Both parties disagreed with the court's distribution of assets in the decree. During the marriage the parties purchased two houses to serve as rental properties. They used community funds to make down-payments on both properties, although Khoury also used some of her personal funds to buy one house. Saba signed two disclaimer deeds to facilitate financing, effectively revoking his ownership of the two houses. He argued disclaimer deeds should require heightened scrutiny akin to postnuptial agreements. He also claimed to be entitled to 50% of the appreciation of one house.

Disclaimer deeds complicate property division at divorce when community assets are funneled into a separate property asset. Some years ago, the Court of Appeals established a formula for reimbursing the community (the couple) for financial contributions towards one spouse's separate property. Under this formula, the community receives its original contributions plus a portion of a property's appreciation. A prior panel of my court recently held in a different case that if the entire down-payment and all subsequent mortgage payments are made with community funds, then the community is entitled to 100% of a property's appreciated value. In contrast, my panel held that although the community funded the down-payment and all mortgage payments, the original formula nonetheless applies. My panel also rejected Saba's argument that disclaimer deeds amount to postnuptial agreements.

(5) This case is significant because it expressly rejected a prior panel's recent departure from applying the long-established formula. Under what might be considered more sympathetic facts, the other panel reasoned that it was simply unfair to apply the formula. But in both cases one spouse signed a legally binding document that explicitly disclaimed any ownership in the property at issue. In *Saba*, my panel rejected the temptation to reach a conclusion based on what might appear to be fair or unfair and instead applied the law: we gave full effect to legally binding documents the parties signed willingly, and applied long-standing formulas to properly compensate the marital community given the existence of the disclaimer deed.

This case required a willingness to set aside sympathy and focus on legal reality. It also required the courage to explicitly depart from the path a respected colleague so recently had forged. But this is what a good judge must do—identify the correct legal path, disregard emotion and the potential for friction among colleagues, and follow that correct path.

Case Four: E.H. v. Slayton. 249 Ariz. 248 (App. 2020)

(1) January 2019-March 2019

(2) Arizona Court of Appeals

(3)

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(4) Three defendants pled guilty to endangerment and child abuse. At the superior court's direction, each of the pleas contained a restitution cap. The victim objected, arguing that the restitution caps violated her rights to recover full economic loss under the Victims Bill of Rights ("VBR"). The victim then petitioned for special action review, claiming the court violated her constitutional rights.

The VBR entitles victims to recover restitution in the full amount of their economic loss from any of their convicted aggressors. But under then-binding Arizona case law, the court had to inform a defendant of a specific amount of restitution for which the defendant may be liable to comply with the Fourteenth Amendment of the United States Constitution.

We declined to accept jurisdiction because, without knowing the restitution owed to the victim, we could not find whether the restitution cap prejudiced the victim. Because we held the case was not ripe for our review, we declined to address the victim's constitutional claims.

(5) This case was important because it represents an example of my appropriate use of the opportunity to write separately. I agreed with the panel that the

victim's claims were not ripe for review. But I wrote separately to encourage our supreme court to address whether the Arizona Constitution separately requires that a defendant know the upper limit of a potential restitution award, and whether that requirement overrides a victim's constitutional right to full restitution. The supreme court ultimately granted review of this case and, consistent with what I wrote separately, held that the Fourteenth Amendment does not require a court to cap the restitution that may be ordered in a plea agreement

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

I have a unique appreciation for the legislative process because I have provided legislative expert testimony advice in addition to working for a state legislature and the United States Senate. During my time working with the Arizona Solicitor General, our division often evaluated proposed legislation for constitutional concerns; I routinely assisted in such evaluations. While serving as a public interest attorney with the Institute for Justice, I had the opportunity to provide testimony before the Legislatures in Arizona and New Mexico. Further, in both states, plus the State of Texas, I had the opportunity to coordinate stakeholders' meetings to draft legislation expanding individual liberties and property rights.

While in college, I served on staff at the New Mexico State Legislature evaluating the potential impact of legislation and making recommendations to members regarding the language of bills and proposed amendments. Also during my college years, I served as both an intern and then a paid staff member for Senator Pete V. Domenici. My work in the U.S. Senate primarily involved communications with constituents and members of the press regarding pieces of legislation.

These experiences taught me about the process by which law is made in this country. I consider that knowledge invaluable for a judge who is not called upon to make law, but rather to properly interpret and apply the law.

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? **No.** If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** 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. 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? **N/A** If not, explain your decision.

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

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

34. Are there currently any judgments or tax liens outstanding against you? **No.** If so, explain.

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? **No.** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No.** If so, identify the nature of the case, your role, the court, and the ultimate disposition.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.** If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.** If so, explain.

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? **No.** If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.** If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

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

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. **N/A**

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

44. List and describe any sanctions imposed upon you by any court. **N/A**

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? **No.** If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.** If your answer is "Yes," explain in detail.

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? **No.** 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.

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? **No.** 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.

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? **No.** 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.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.

"Justice Scalia's pet issue was based on the roots of liberty" The Record Reporter, March 21, 2016

"Appellate Patience is a Virtue" Attorney at Law Magazine, December 2014

Jennifer M. Perkins, **Current Developments in Arizona Judicial Ethics**, 4 Phoenix L. Rev. 667 (2011)

"The Supreme Court and 36 Days: Did Bush v. Gore violate principles of comity or federalism?" The Candid Review, October 2001

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

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

In Fall 2021, I will co-teach Professional Responsibility to students at ASU Sandra Day O'Connor College of Law.

While serving as a judge, I have participated in three CLE panel discussions for lawyers, and four panel discussions for law students.

During my time with the AGO, I participated in five CLE presentations relating to ethics issues, three internally and two additional presentations for attendees at a small annual ethics program. I also spoke at four public law school events and one private lunch program for law students.

While at the Commission on Judicial Conduct, I provided approximately 10-12 training sessions on judicial ethics during judicial orientation programs. I also provided annual ethics training for incoming law clerks to the Arizona Supreme Court and Court of Appeals. The Association of Judicial Disciplinary Counsel invited me to present at their annual meeting in July 2014; I participated on a panel reviewing major ethics cases from the preceding year.

In my time at the Institute for Justice, I spoke on multiple occasions and in a variety of formats about public interest law generally and our work specifically. Based on a conservative estimate, I provided at least 20 such presentations in my five years with IJ.

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

James E. Rogers College Of Law, Board of Visitors
Member (2020-present)

Federalist Society for Law and Public Policy Studies
Student President (2001-2002); Phoenix Lawyers Chapter President (2006-2009, 2014-2017); Phoenix Lawyers Chapter Advisory Board (2017-present); Executive Committee Member, Federalism and Separation of Powers Practice Group (2019-present); Executive Committee Member, Professional Responsibility Practice Group (2020-present).

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? **No.**

List offices held in bar associations or on bar committees. **N/A** 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.

Most of my career has been dedicated to public service, including pro bono representation. Outside of work, I have provided pro bono legal advice and assistance to my church and numerous church members in the context of church organization; contract negotiation and legal compliance (including assisting in drafting a church constitution); family; minor civil disputes; and minor criminal matters.

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

Since early 2017, I have served on the Arizona Commission on Access to Justice's Judicial and Attorney Engagement Workgroup as a volunteer member. Among other goals, our work seeks to provide training programs to attorneys on access to justice and pro bono opportunities and make recommendations for better engagement of active and retired attorneys and judges in pro bono work. I am spearheading an effort to provide an online repository of opportunities for volunteer service by active judges, where the Staff Director for the Judicial Ethics Advisory Committee has vetted the opportunities for ethical concerns.

For several years I have promoted and volunteered to support the Congo Initiative, which educates ethical Congolese leaders who have demonstrated integrity in their service. The CI vision is to invest in a sustainable vibrant Congolese society and develop grassroots initiatives for peace, hope, and justice in a country that has seen little of these virtues.

In addition, I have served in a variety of capacities at church, including in periodic church or area clean-up projects; assisting in food collection for various entities; volunteering in the children's ministry; and volunteering in Women's Ministry Bible studies.

Organizations I have supported with group projects include Feed My Starving Children and the Crisis Pregnancy Center.

I have also served as a volunteer judge for the Hispanic National Bar Association Moot Court Competition, multiple moot court competitions at James E. Rogers College of Law, and Arizona state high school mock trial programs. Informally, I participate in several mentorship opportunities with law students.

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

AGO Leadership in Action Award 2015: This award is provided to one attorney and one staff member annually who have each assisted others in assessing and resolving a delicate or sensitive situation; led/facilitated work groups; and provided direction from an organizational perspective.

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

Have you ever been removed or resigned from office before your term expired? **No.** If so, explain.

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

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

My daughter Amalia (Molly) is eight years old and is the light of our lives. She does not attend a traditional school, we are teaching her at home. Our chosen curriculum involves a substantial amount of learning on her own with relatively little guidance. Nonetheless, going through school with my daughter as one of her teachers is a great experience for me in seeing the world through her eyes—the pure logic and the beautiful wonder with all the new concepts she learns.

I also spend a substantial amount of my "free" time studying both law and theology. On any given evening, you might find me watching a 2013 panel discussion on Textualism and Constitutional Interpretation or detailed exegeses by multiple preachers of the portion of Genesis that tells the story and evolution of Abraham, Isaac, and Jacob as the fathers of my faith. As it turns out, both require me to start from the same first principles: what is the plain language of the operative text? What is the context? Who wrote it and under what circumstances or history did it come into existence? The same principles I rely on to interpret or construe statutory and constitutional language should, in my opinion, be the ones I rely on for interpreting biblical texts I study.

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 am a wife, mother, "bonus" mother to my husband's two daughters, and grandma to twin boys. I believe my experiences as a wife and mother substantially impact the kind of attorney I was and judge I am. These roles have

made me more empathetic and protective of the vulnerable and have taught me the paramount importance of good communication skills. But they have also taught me that often the correct decision, the best decision, for my child's or my marriage's future is not the easiest or most popular decision in the moment.

The law is often like that: the popular or easy decision of the moment may not be the correct one and may not be the one with fidelity to the law and our system of justice. Doing justice, taking care with the law itself, may not always be popular. As a mother, I am equipped to make the unpopular but correct decision.

I am not an Arizona native, and in the seventeen years I've lived here I have not lived outside of Maricopa County. But my story is much broader geographically. My varied living experiences have taught me a great deal about appreciating and working with both differences and commonalities across cultures.

I was born in Portales, New Mexico, a small town near the Texas border surrounded primarily by dairy farms and other agricultural interests. We eventually moved to Albuquerque, which is a more urban area generally, but is unique in its ethnic make-up and history. While attending the Albuquerque Academy, I participated in an exchange program with the Acoma Pueblo Tribe, staying for a brief time with a family in Acomita and attending classes at the local school. During high school, my family hosted exchange students from Belgium, France, Germany, and Sweden.

After high school graduation, I sold my Jeep and took my paper route money to spend two months in Australia camping through the Outback. My trip included stays with rural families in both southern Australia and in the Northern Territories. I experienced school-by-radio and cow-herding by helicopter. We also visited extremely impoverished Aboriginal settlements.

I attended college on the east coast and lived in Washington D.C. and Arlington, Virginia. I spent my junior year abroad, during which I lived in southern Germany and traveled extensively throughout Europe. I also managed a brief home-stay with a family in Chiba City, Japan, that same year.

My travels have been fewer since "real life" began, but my experiences around the world have taught me to appreciate the many things we share in common with our fellow travelers here on Earth. I believe these wide-ranging experiences have molded me into a woman who can relate to and represent a variety of perspectives found here in Arizona and with which this Constitutional directive is concerned.

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

My experiences serving as Disciplinary Counsel prosecuting judicial discipline complaints and then Ethics Counsel for the largest law firm in the state have given me a unique qualification for the court that reviews all

disciplinary matters for attorneys and judges in this state. This background will also assist me in evaluating proposals to change the codes of conduct for attorneys, judges, and judicial employees.

I also have some expertise in technology and new media. During my time at the Commission on Judicial Conduct I assisted in transitioning from a primarily paper / hard copy office to one that is substantially digitized. Commission members now primarily receive materials securely and electronically. I further assisted in initiating website changes to bring greater accessibility and transparency for the public.

I've had similar experience in my personal life through my work with the church, the Federalist Society, and a separate group from another state that, for a time, published an anonymous commentary blog site. For all three I've had some level of involvement in designing and maintaining a web presence. This includes work in Wordpress and Joomla, as well as Facebook, Twitter, Instagram, and related social media services.

I believe this is relevant because more and more we will see these online media and platforms become relevant in legal disputes. And when the Supreme Court considers proposals for adopting new technology, members of the court who have a personal understanding of or experience with such technology will be better able to assess such proposals.

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? **Yes.** If not, explain.

62. Attach a brief statement explaining why you are seeking this position. **See Attachment 2**.

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.

Writing Sample One: Ninth Circuit *Amicus Curiae* Brief Excerpt from *International Franchise Association, Inc. v. City of Seattle* [Attachment 3]

Then-Solicitor General Dominic Draye and I collaborated on this brief; the excerpt I've chosen represents my primary authorship and contribution to the brief. In it, I analyze Washington's Privileges or Immunities Clause, which mirrors Arizona's.

Writing Sample Two: Attorney General Opinion I15-011 (R15-013) [Attachment 4]

Attorney General Opinions are subject to several layers of review before issuance,

and often reflect the collaborative effort of several attorneys—similar to the way appellate opinions generally reflect the input of the relevant panel. I have chosen this opinion as one that primarily and substantially reflects my own authorship and analysis. The opinion reviewed state law in the wake of a U.S. Supreme Court decision under the First Amendment to the U.S. Constitution.

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.

Judicial Writing Samples: *James S. v. D.C.S.* **[Attachment 5]**, *Span v. Maricopa County Treasurer* **[Attachment 6]**, and *E.H. v. Slayton* **[Attachment 7]**

I have provided three samples from cases in which I wrote separately. They reflect strictly my own work and are not the product of collaborative panel drafting. I have provided only the excerpt containing my writing for each sample.

In *James S.*, I disagreed with the panel and concluded that the juvenile court had sufficiently met due process requirements before terminating parental rights. I have included this dissent because it required me to consider complex due process, statutory, and procedural issues.

In *Span*, I disagreed with the majority's conclusion on the Appellant's unjust enrichment claim. My conclusion involved my strict adherence to separation of powers principles and demonstrates my willingness to adhere to the law even when the outcome favors an unsympathetic party.

Finally, in E.H., as noted above on pp. 20-22, I wrote separately to bring attention to a conflict between case law and our subsequently adopted Victim's Bill of Rights.

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.

While I am subject to the judicial performance review process, I have only received one set of performance reviews. The commission vote report and related public data reports are in Attachment 8.

Attachment 1 -

AGO Atty List June 2017

LAST	FIRST
ABAIE	IAN
ACOSTA	JOE
ACOSTA-COLLINGS	CLAUDIA
ADAMS	AMANDA
AHLER	PAUL
ALEXANDER	RANDI
ALLEE	MITCHELL
ALLEMAN	PAULA
ALVAREZ	MICHAEL
ANDERSEN	SARAH
ANDERSON	KIM
ANEMONE	ALEXANDRIA
ANTOSZ	JOANNA
ARENA	DEANDRA
ASCHENBACH	RON
BACON	JAMES
BAEK	RICHARD
BAILEY	MICHAEL
BALDNER	VICTORIA
BARREDA	JOSHUA
BARRICK	JENNIFER
BASKIN	MONA
BASS	JONATHAN
BECKLUND	MARJORIE
BEHUN	BARBARA
BELJAN	JOTHI
BENJAMIN	DENA
BERKOWITZ	KEVIN
BICKETT	PAULA
BLACKWELL	STEPHANIE
BLAKE	SCOTT
BOND	MICHELLE
BONNELL	NANCY
BONSALL	MOLLY
BOWEN	JAMES
BOYD	TERRY
BOYLE	PATRICK
BRACCIO	MYLES
BRACHTL	MARK
BRENNAN	CARRIE
BRNOVICH	MARK
BROSH	LAURA
BROWNRIGG	DANIELLE
BURTON	MICHELLE
CAMPBELL	ELIZABETH
CANTRELL	JEFFREY
CAPUTO	LOUIS
CARBONE	JOHN
CARTER	PAUL
CASEY	DENTON
CAWTHON	WILLIAM
CEOLA	JASON
CHAPMAN	AMY
CHAPMAN-HUSHEK	NICHOLAS
CHARTER	STEPHANIE
CHAVEZ	BRITTANY
CHENAL	THOMAS
CHIASSON	LAURA
CHRISTENSEN	SCOTT
CHYNOWETH	SUZANNE
CIAFULLO	MARK
CLARK	DOUGLAS
CLAW	GRACYNTHIA
CLAXTON	NAOMI
COLE	DAVID
CONLEY	JACQUELINE
CONTI	DAVID
COOK	RENEE
COOPER	LESLIE
COORDES	GREGORY
CORCORAN	AUBREY JOY
CORLEY	JASON
CORTINA	DARLENE
COULSON	LESLIE
COUSINEAU	ASHLEY
COX	CURTIS
CRAIG	THERESA
CRANDELL	RUSTY
CRANE	ALISON
CRIST	TERRY
CROWLEY	JASON
CYGAN	KIMBERLY
DAHL	CANDY
DAILEY	JAMES
DAMSTRA	KATHRYN
DANIELS	EVAN
DAULT	RICHARD
DAVIS	CHRISTOPHER
DAVIS	SUSAN
DAY	DIANA
DELAAT WILLIAMS	MARY
DELANEY	JESSE
DICK	ADAM
DLOTT	DAVID
DONALD	SCOTT
DONE	JULIE
DRAYE	DOMINIC
DU MEE	MATTHEW

DUELL	AARON
DUPLISSIS	STEVEN
DWORMAN	HOWARD
DYLLA	CHRISTOPHER
DYLO	JOSEPH
EARP	JAMES
EASTERDAY	JASON
EGGLESTON	REBECCA
ELLIOTT	STEPHANIE
ELLIS LANGFORD	TAREN
EMEDI	STEPHEN
EMERSON	JORDAN
ENRIQUEZ	LAURA
ESPINOSA	GIOCONDA
EVANS	LYNETTE
FALGOUT	JOANN
FALLER	ELIZABETH
FALVEY	KEVIN
FERRIS	CHARLES
FORSCH	ERICA
FOSTER	SHANE
FOX	ARDENE
FRANCIS	JILLIAN
FRANK	SUSAN
FRANKLIN	MADELYNN
FREESTONE	SHYLA
FRIES	JERRY
FROEDGE	ANNE
FRY	JOHN
FULLER	CATHLEEN
FULLER	SHAWN
GADOW	BLAINE
GALVIN	JEANNE
GARBUTT	BART
GARCIA	ELIZABETH
GARNER	DEBORAH
GARRETT	NATALIA
GAUGHAN	MICHAEL
GEVERS	ALICIA
GILLILAN-GIBSON	KELLY
GILTNER	CYNTHIA
GIOVANATTO	DONATO
GOLOB	ELCHONON
GOMEZ	MAUDI
GOODMAN	MICHAEL
GOODWIN	MICHAEL
GORDON	ERIC
GOTTFRIED	MICHAEL
GOULD	CONNIE
GOURLAY	VIRGINIA
GREEN	JAMES
GRUBE	CHARLES
GUILLE	MISTY
HACHTEL	LAURIE
HAIGHT	RAYMOND
HALL	DANIEL
HALL	FRANKLIN
HANDY	JO-ANN
HARAMES	BRETT
HARGRAVES	SETH
HARRINGTON	BRIDGET
HARRIS	MARC
HARRIS	VERNON
HARRISON	TERRENCE
HARRISON	WENDY
HARRISS	MARY
HARTMAN-TELLEZ	KAREN
HAWKINSON	ERIN
HAZARD	GREGORY
HEATHCOTTE	BROCK
HEINRICK	TRACEY
HEMANN	LISA
HENDERSON	ARIEL
HENRY	MELISSA
HERLIHY	MATTHEW
HERRERA-GONZALES	VIRGINIA
HERZHAFT	CHELSEA
HESSINGER	MARK
HEYHOE-GRIFFITHS	JOHN
HICKS	SARAH
HILL	KENNETH
HOBART	ANN
HOFFMANN	ASHLEE
HOLDEN	MICHELE
HOLYA	ROBERT
HOPE	ASHLEIGH
HORN	JEREMY
HOSTALLERO	PAMELA
HOWE	CHERIE
HRNICEK	MICHAEL
HUCKABY	LINDSAY
HUFF	LAURA
HUGHES	KENNETH
HUGHES	LINDSAY
HUNT	DIANE
HUNTER	JENNIFER
HUNTER-PATEL	SHILPA
HURTADO	ANGELA
HUTCHESON	JONATHAN

HYNES	GREGORY
INGLE	MARK
JACOBS	DAVID
JAMESON JR	WILLIAM
JAQUET	LORENA
JARVIS	GINGER
JOHNSON	ELIZA
JOHNSON	JANNA
JOHNSON	JOHN
JONES	ALICE
JONES	BRYSON
KANE	SANDRA
KARLSON	KARA
KASTURI	SAVITA
KATZ	PAUL
KAWAMURA	ANNDREA
KELLY	TANJA
KHAN	SABRINA
KIDO	LIANE
KLEIN	JESSICA
KLINGERMAN	NICHOLAS
KNOBLOCH	ERIC
KNOX	EMET
KREAMER HOPE	JARED
KRENCH	RYAN
KRISHNA	SUNITA
KRSTYEN	MICHELLE
KUNZMAN	MICHELLE
KUPEC	ROBERT
LAMAGNA	PATRICIA
LAMSON	STEPHANIE
LANUM	JACINDA
LARSON BURGGRAF	JENNIFER
LARUE	JOSEPH
LAU	DOUGLAS
LAWRENCE	DONALD
LAWSON	TODD
LEGG	MICHELE
LENTO	GARY
LESUEUR	LEO
LEVINE	JONATHAN
LEVY	ERIC
LEWIS	JASON
LILLIE	STEPHANIE
LINDSEY	MARGARET
LINNINS	PAMELA
LOMBINO	MICHELLE
LOPEZ	ERIN
LOVE	KENNETH
LUTTINGER	ALINE
MACMILLAN	SHAWN
MAHONEY	MACAEN
MALHOTRA	MONICA
MANGIN	DAVID
MANJENCICH	ZORA
MANLEY	JONATHAN
MANSUR	ERIKA
MANTY	ZACHARY
MARCIANO	VALERIE
MARDEROSIAN	TRAVIS
MARKLEY	JENNIFER
MARTIN	DAVID
MARTIN	KATHRYN
MARTONCIK	KATHLEEN
MAY	ROBERT
MAZIARZ	JOSEPH
MCBRIDE	JARRED
MCBRIDE	JENNIFER
MCCARTHY	ERYN
MCCORMACK	CHRISTOPHER
MCCOY	DIANE
MCCRIGHT	ROBERT
MCCUTCHEON	KYLE
MCGARY	MARY
MCKAY	NEIL
MEDIATE	CARMINE
MEDINA	FREDERIC
MEISLIK	ALYSE
MELVIN	LEILA
METELITS	RACHEL
METZ	KALON
MILLER	EOGHAN
MILLER	KEITH
MINNICK	JULIE
MOLINA	KEILA
MONRO	CATHERINE
MONTAVON	JOSHUA
MOODY	KAREN
MOORE	PENNY
MORGAN	GAYLENE
MORLACCI	MARIA
MORRIS	COLBY
MORRISSEY	KELLEY
MORROW	NANETTE
MOSER	JOSHUA
MOSS	ELIZABETH
MUNNS	CHRISTOPHER
MURRAY	JILL
NAIK	NIDHI

NARANJO	NANSI
NAVEN	TYNE
NEWMAN-DAHLQUIST	ANNA
NGUYEN	ANGELINA
NIELSEN	JIMMY
NIMMO	MICHELLE
NOEL	CARLOS
NORRIS	BENJAMIN
NORTHUP	DAWN
NOWLAN	REX
O'DONNELL-SMITH	COLLEEN
O'TOOLE	MICHAEL
ODENKIRK	JAMES
OELZE	DEBORAH
OLIVER	JAIMEE
ORTIZ	KIMBERLY
OUSOUNOV	DEIAN
OVERHOLT	ELIZABETH
OWENS	HEIDI
PACKARD	SAMUEL
PADILLA	JAMES
PARKMAN	NATALIE
PARSONS	CYNTHIA
PEARSON	GRANT
PEARSON	KATHIE
PELLEGRINO	HEATHER
PERKINS	JENNIFER
PERRY	BRYAN
PERSHON	AMBER
PIENSOOK	KHANRAT
PIGNATELLA CAIN	AMY
PINTEL	SUSANA
PLATTER	BONNIE
POLLOCK	BRADLEY
POLLOCK	LINDA
PONCE	ADELE
POOLE	PAMELA
PULVER	ROBERTO
RAIMONDO	JORDYN
RAINE	MICHAEL
RAINE	THOMAS
RAND	LUCY
RANKIN	THOMAS
RASCHER	STEPHANIE
RASSAS	MICHAEL
RASSAS	THERESA
RAY	KEVIN
RAYNES	RACHEL
REEVES	KRISTINA
REGULA	RYAN
REH	DEANIE
REILLY	ANDREW
REINER	BRITTANY
REMES	RACHEL
RENNICK	REBECCA
RHODES	JULIE
RICHARDSON	ERIN
RICHTER	LAUREN
RIVERA	MELISSA
ROBINSON	DAVID
ROSE	DUNCAN
ROSEN	BILLIE
ROTHBLUM	ERIC
ROUN	HEATHER
ROYLE	KARIN
ROYSDEN	BRUNN
RUDD	JOEL
RUIZ	AMANDA
RUIZ	VALERIE
RYAN	TARANEH
SACCONE	NICHOLAS
SALTZ	MICHAEL
SALVATI	CAROL
SAMARDZICH	ANDRIJA
SANDERS	JENNIFER
SARGEANT	WILLIAM
SCHAACK	DANIEL
SCHAUPP	HEATHER
SCHLOFFMAN	JERRY
SCHLOSSER	JOHN
SCHWABE	KAREN
SCHWARTZ	ADAM
SCHWARTZ	JONATHAN
SCHWARZ	ERIC
SCIARROTTA	JOSEPH
SCOTFORD	REBEKAH
SELL	JANET
SEYMOUR	HELENA
SHEIRBON	JUDY
SHERIDAN	TODD
SHERIFF	JENNIFER
SHINN-ECKBERG	FRANCES
SHREVES	TERESA
SIEDARE	SABRA
SILVERMAN	MATTHEW
SIMON	WILLIAM
SIMPSON	DAVID
SIMPSON	JAMES
SINGH	NEILENDRA

SKARDON	JAMES
SKINNER	ORAMEL
SLADE	EDWIN
SMITH	CARRIE
SMITH	KEVIN
SOTTOSANTI	VINCENT
SPARKS	JEFFREY
SPENCE AMBRI	MARIETTE
ST JOHN	LINDSAY
STEELE	JERROD
STEINLE	ROLAND
STEPHENSON	KYLE
STERLING	DEBRA
STONE	ADAM
STOVER GARD	LACEY
STRITTMATTER	MAURA
SULLIVAN	DAVID
SWEENEY	KATHLEEN
SWINFORD	ROBERT
SYREGELAS	ANGELA
TANNER	DEBRA
TAYLOR	ROBERT
TEASDALE	SCOT
TELLIER	JOHN
THORSON	AMY
TIBBEDEAUX	LISA
TODD	JOHN
TOM	TIFFANY
TRUMAN	EDWARD
TRYON	GEORGE
TURNER	CAREY
UPDIKE	BENJAMIN
VALADEZ	TONI
VALDEZ	ALEJANDRA
VALENZUELA	DENISE
VALENZUELA	MICHAEL
VALEROS	JENILEE
VAMPOTIC	MICHAEL
VIDRIGHIN	ANNA-MARIA
VILLARREAL THEIS	APRIL
VILLARREAL-REX	KRISTI
VINCENT	ELAINE
VOGEL	DANA
VOSS	IVY
WALKER	DARYL
WALSH	ROBERT
WAN	HOLLY
WARD	PATRICIA
WATERS	JOSEPH
WATKINS	PAUL
WATSON	TIMOTHY
WEINKAMER	ADRIENNE
WHITAKER	EDYTHE
	SUZANNE
WHITE	CHRISTOPHER
WHITE	TARAH
WILCOX	DANIEL
WILLIAMS	DAWN
WILLIAMS	MATTHEW
WILSON	LINLEY
WINNE	ESTHER
WOLAK	DAVID
WOMACK	STEPHEN
WONG	EDWARD
WOOTEN	PHILIP
WORCESTER	BROOKE
YBARRA	ELIZA
YOUNG	RANSOM
ZAWISLAK	GOSIA
ZEDER	FRED
ZEISE	CARL
ZIMMERMAN	JOSHUA
ZINMAN	JANA
Total Attorneys:	**467**

Attachment 2 -

Personal Statement

I have a wonderful current job as a Judge on the Arizona Court of Appeals, one in which I am both humbled and honored to serve. I am now applying for this position because I believe that I have more to give and that I can more fully serve this State on the Supreme Court.

Despite the inherent political elements of the selection process for many of our courts, and the retention elections involved, serving as a judge is not a political job; it is quite the opposite in two ways relevant to my application. First, as judges we primarily engage in our work behind closed doors and without individual attention or accolades. Our goal is not to grow or appease a constituency, and our primary fidelity is to the Rule of Law rather than personal policy preferences or outcomes. The separation of powers enshrined in Arizona's Constitution requires judges to be ever mindful of the limited and defined role that we serve. Second, we are bound to follow and be self-governed by a strict code of ethical conduct that unquestionably limits some liberties we might otherwise have as private citizens or elected public officials.

As anyone who knows me will confirm, I am an unabashed law nerd. As I indicated in my answer to Question 57, my enjoyment in the law drives my personal time as well as my professional work. A good judge cares about the Rule of Law, about getting each decision right under law, without regard or concern for public attention or support. Justice Thomas once said, "I do law. And it consumes me. And virtually everything I do is in preparation for doing this job." I could apply the same statement to myself.

Justice Joseph Story, the youngest nominee to the U.S. Supreme Court in history at age 32, once noted that, "everything valuable in human acquisition should be the result of toil and labour. But this truth is nowhere more forcibly manifested than in the law." I love the law, and particularly love toiling in the law. I believe this love and toil would serve me well, should I be so fortunate as to be appointed a Justice.

As I noted above, judges are also set apart by the ethical code that we are bound to follow. Notably, the Arizona Supreme Court is the final arbiter of all judicial disciplinary matters as well as the body responsible for maintaining the language of the code and its related rules. The same is true regarding attorney disciplinary matters and governing rules. My experiences in serving as the state's Disciplinary Counsel in all judicial disciplinary cases, and subsequently as Ethics Counsel to the largest law firm in the state, provide me with unique insights. Such insights enable me to serve ethically and to perform the ethics-related responsibilities of a justice.

I have a contribution to make and I ask for the Commission's support in allowing me to do so.

Attachment 3 -

IFA Amicus Excerpt

No. 15-35209

In the United States Court of Appeals for the Ninth Circuit

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *ET AL.*,

Plaintiffs-Appellants,

v.

CITY OF SEATTLE, a Municipal Corporation, and FRED PODESTA, Director of the Department of Finance and Administrative Services,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Washington
Case No. CV14-848

BRIEF OF AMICUS THE STATE OF ARIZONA

John R. Lopez, IV
Solicitor General
Dominic E. Draye
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June 12, 2015

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Arizona that maintain their own minimum wage statutes. *See* Ariz. Rev. Stat. Ann. § 23-364. Like 28 other States, Arizona has a minimum wage above the federal rate and thus above the rate in many other States. *See* Resolution, Indus. Comm'n of Ariz. (Oct. 16, 2014), *available at* http://tinyurl.com/qcl3yyu (setting the 2015 minimum wage at $9.05 per hour). Arizona's law unquestionably has the effect of raising the cost of doing business in Arizona, but it does so on identical terms for every type of business and imposes no special burden on interstate commerce. The Arizona statute illustrates the potential for States to experiment with different policies without encroaching on federal authority over interstate commerce. *See generally W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937).

III. The Privileges or Immunities Clause of Washington's Constitution, Which Mirrors Arizona's, Prohibits the Seattle Ordinance.

The Washington Constitution offers a generalized protection to threats against economic liberties through its Privileges or Immunities Clause. Wash. Const. art. I, § 12. Arizona's Constitution contains similar language, which it "borrowed from the Washington State Constitution, which in turn borrowed it from earlier state

constitutions." John D. Leshy, The Arizona State Constitution, p. 73 (Oxford, 2d ed., 2013). As such, both the Arizona and Washington clauses have "antecedents that predate the adoption in 1868 of the Fourteenth Amendment of the U.S. Constitution." *Id.* It is not surprising then that the Washington Supreme Court has recently confirmed that its language should be interpreted independently from similar language in the federal Constitution. *Ass'n of Washington Spirits & Wine Distributors v. Washington State Liquor Control Bd.*, 340 P.3d 849, 857 (Wash. 2015) ("We interpret our privileges and immunities clause independently of the federal clause."). At the same time, Arizona's courts will often consider Washington courts' interpretation of language found in both States' constitutions. *See Schultz v. City of Phoenix*, 156 P. 75, 77 (Ariz. 1916).

The Washington Supreme Court applies a two-part analysis to identify violations of its Privileges or Immunities Clause: (1) does the law at issue involve a privilege or immunity, and, if so, (2) did the legislature have a "reasonable ground" for granting that privilege or immunity? *Ass'n of Washington Spirits & Wine Distributors*, 340 P.3d at 857-58.

First, "[a] 'privilege' is an exception from a regulatory law that benefits certain businesses at the expense of others." *Id.* at 858. In considering challenges claiming a violation based on a right to carry on a business within the State of Washington, the Washington Supreme Court has sketched a fine line between regulatory activities that implicate a privilege and those that are drawn more narrowly. The Court most recently explained this line by contrasting two of its prior holdings:

> We have held that the "right to carry on business therein" is implicated by a municipal ordinance that attempted to insulate resident photographers from out-of-state competition by imposing prohibitive licensing fees and solicitation restrictions on itinerant photographers. *See Ralph v. City of Wenatchee,* 34 Wash.2d 638, 641, 209 P.2d 270 (1949). We have also rejected attempts to assert the right to carry on business when a narrower, nonfundamental right is truly at issue. *See, e.g., Am. Legion Post No. 149,* 164 Wash.2d at 607–08, 192 P.3d 306 (rejecting an attempt to characterize "[s]moking inside a place of employment" as the fundamental right to "carry on business therein").

Id. Under this framework, Washington courts have correctly focused on whether a challenged statute implicates "a fundamental right" that "come[s] within the prohibition of the constitution," or that was "in [the] mind [of] the framers of that organic law." *Ockletree v. Franciscan Health Sys.*, 317 P.3d 1009, 1015 (2014).

The framers of Washington's Privileges or Immunities clause were "motivated by a desire to prevent governmental favoritism in commercial affairs. . . . Washington's framers wanted to embed protections against governmental favoritism in the constitution itself, rather than simply trusting future legislatures to refrain from engaging in such behavior." Michael Bindas, et. al., *The Washington Supreme Court and the State Constitution: A 2010 Assessment*, 46 Gonz. L. Rev. 1, 24 (2011). The district court improperly failed to consider the framers' motivation, a failure that is fatal to its analysis under the first step of this analysis.

Moreover, Washington courts have consistently recognized the fundamental right to "carry on business." *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 83 P. 3d 419, 429 (2004) (citation omitted). Where the government exempts certain businesses from a regulation to their financial benefit, it has granted a privilege subject to constitutional scrutiny. *Am Legion Post #149 v. Wash. State Dep't of Health*, 192 P.3d 306, 325 (Wash. 2008).

Second, the "reasonable ground" requirement asks "whether the law applies equally to all persons within a designated class, and . . .

whether there is a reasonable ground for distinguishing between those who fall within the class and those who do not." *Okletree*, 317 P. 3d at 1017. The district court erred in improperly defining the "designated class." While the Seattle ordinance distinguishes among small businesses based on whether they are a franchise, the lower court simply defined the class to be coterminous with the ordinance's distinctions—that is, it considered a "class" comprised of franchises alone. ER 40. Adoption of this analytical framework nullifies the protections in the Privileges or Immunities Clause. By narrowing the "designated class" to include only the disfavored group, any discrimination could be made licit.

With its designated class in hand, the district court accurately noted that it must identify "real and substantial differences bearing a natural, reasonable, and just relation to the subject matter" upon which the distinctions at issue rest. *Id.* (quotation omitted). The court's failed analysis in this final instance is the consequence of its layered earlier failures: neglecting the necessary historical framework and drawing an artificially narrow class. Both missteps contribute to the conclusion that, because there may be "certain benefits" to operating as a

franchise, it is reasonable to burden small franchise businesses commensurately with large businesses. *Id.* The court failed to consider whether the "certain benefits" to which it points are sufficient to transform the economics of a 10-employee Subway franchise to match those of truly large corporations with several hundred employees.

In summary, the district court eschewed the Washington Supreme Court's thoughtful guidance on how to apply that State's Privileges or Immunities Clause. Washington's framers, like Arizona's, intended this protection against government favoritism to have meaning in its application. The State of Arizona requests that this Court refuse to enshrine the lower court's various errors in precedent that will be persuasive in state courts and controlling—absent clarification by the States—in federal court.

CONCLUSION

The power to regulate interstate commerce belongs exclusively to the federal Congress. Where a municipal ordinance that imposes burdens on a business-model basis levies a special cost on one such business model, belonging 96.3% to the realm of interstate commerce, it cannot survive the Commerce Clause. Likewise, the protections in the

Attachment 4 -

Attorney General Opinion

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL December 2, 2015	No. I15-011 (R15-013) Re: Whether A.R.S. § 16-1019 requires an amendment

To: Senator John Kavanagh
Arizona State Senate

Question Presented

What legal impact does the recent United States Supreme Court ruling in *Good News Presbyterian Church v. Town of Gilbert* have on Arizona Statutes regulating political campaign signs? In particular, does the Supreme Court ruling require an amendment to Section 16-1019, Arizona Revised Statutes, in order to comply with the Court's mandate?

Summary Answer

The Supreme Court's decision does not directly impact any Arizona statutes regulating political campaign signs. It does not require an amendment to Section 16-1019 because nothing in that statute restricts speech.

Background

In 1962, the Arizona Legislature adopted House Bill 198, which provided misdemeanor penalties for anyone to "remove, alter, deface, or cover any political sign." Laws 1962,

Chapter 124 (HB 198) [codified as A.R.S. § 16-1312(A) (1962)]. At the time, the provision did not apply to "signs placed on private property with or without permission of the owner thereof, or signs placed in violation of state law, or county, city or town ordinance or regulation." *Id.* [§ 16-1312(B)].

Since 1962, the statute has been amended a number of times. Its original function—imposing misdemeanor criminal penalties for tampering with political signs—has remained unchanged. In 2011, the Legislature significantly amended the law by:

1. Clarifying that local governments generally lack the authority to tamper with political signs that support or oppose a candidate or ballot measure and exist in a public right-of-way as long as the sign:
    a. does not present a public hazard, obstruct vision, or interfere with the Americans with Disabilities Act;
    b. meets maximum size limitations; and
    c. contains contact information for the candidate or campaign committee.
2. Allowing a local government to relocate signs deemed to be placed in a manner constituting an emergency, subject to certain requirements.
3. Limiting the liability of a public employee who does not remove or relocate a sign pursuant to the "emergency" provision.
4. As to the provisions in number 1, exempting "commercial tourism, commercial resort and hotel sign free zones as those zones are designated by municipalities" and setting restrictions for such zones.
5. Allowing local governments to prohibit the installation of signs on government structures.
6. Limiting the prohibitions described in number 1 above from 60 days before a primary to 15 days after a general election, in most cases.
7. Clarifying that the section "does not apply to state highways or routes, or overpasses over those state highways or routes."

A.R.S. § 16-1019. Acting under the authority of point four, municipalities have adopted ordinances creating tourism zones. *See, e.g.*, Fountain Hills Resolution No. 2012-31 (adopted

November 15, 2012); Paradise Valley Resolution No. 1241 (adopted October 13, 2011). These ordinances allow municipalities to remove political signs from the designated zones.

In June 2015, the United States Supreme Court decided *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015), clarifying the constitutional standard applicable to laws that restrict or limit speech based on its content. Specifically, the Court more clearly defined which laws are considered content-based and thus subject to strict scrutiny. A law subject to strict scrutiny is unconstitutional unless the government defending it can demonstrate that the law serves a compelling government interest and does so in the least restrictive manner possible.

Analysis

The *Reed* decision explicitly confirmed that *any* content-based government restriction of speech will be subject to the most rigorous level of review. *Id.* at 2227. Such restrictions will therefore most likely be found unconstitutional. *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, (2015) (noting that only in "rare cases" will "a speech restriction withstand[] strict scrutiny"). While the Court has long required content-based restrictions to meet this very high bar, determining when a regulation is or is not content-neutral remained open until *Reed* resolved the question by classifying any differential treatment based on "topic" as content-based:

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

135 S. Ct. at 2227 (internal citations omitted). Under this standard, courts must apply strict scrutiny to special restrictions for political signs. *Reed* did not, however, restrict the permissibility of traditional time, place, and manner restrictions.

There are only three state laws regulating political signs in Arizona. Two of them, A.R.S. §§ 33-1261 and 33-1808, limit the ability of homeowners associations to restrict placement of political signs. A.R.S. §§ 33-1261(E), 1808(H), (I). The third statute, A.R.S. § 16-1019, imposes criminal penalties for interfering with political materials, including signs, and incorporates the exceptions described above, which allow a local government to adopt regulations relating to political signs.

Because this statute explicitly references political signs, one might suppose that it runs afoul of the First Amendment based on *Reed* because it references a particular category of speech identified by its content. To the contrary, *Reed* does not invalidate Section 16-1019. *Reed* clarified the analytical framework applicable to sign regulations that *restrict speech* and thus present "the danger of censorship" at the heart of First Amendment concerns. *Reed*, 135 S. Ct. at 2229. But nothing in Section 16-1019 restricts speech or compels the regulation of signs. Instead, it establishes the limits—under Arizona law—of what local governments may do as *they* limit or regulate signs. For example, subsection (F) recognizes that municipalities may designate certain sign-free zones within which the municipality may remove political signs. While such local laws might fall within the scope of *Reed*'s definition of content-based regulation, Section 16-1019 itself does not constitute content-based regulation.[1]

A municipality desiring to enact rules specifically targeting political signs in violation of *Reed* cannot rely on Section 16-1019(F) to inoculate such rules against a First Amendment

[1] Justice Alito's concurring opinion in *Reed* provides a number of examples of rules that are not content-based. 135 S. Ct. at 2334 (listing, *inter alia*, restrictions on size, illumination, off-premises placement, and number of signs).

challenge. The state law must now be read in light of *Reed*, and should thus be read as permitting municipalities to engage in sign regulation through the designation of tourism zones only to the extent that they do so in a content-neutral manner. In other words, such zones may not solely target political signs, but must employ generally-applicable time, place, and manner restrictions. That reconciliation with *Reed* does not affect the validity of Section 16-1019.

Conclusion

Arizona state statutes referencing political signs do not restrict speech, so *Reed* does not have implications for our state statutes. Because Section 16-1019 does not itself restrict speech, it does not implicate the First Amendment and *Reed* does not, therefore, invalidate this state law. There is no need to amend Section 16-1019 because of the *Reed* decision.

_____

Mark Brnovich
Attorney General

Attachment 5 -

James S. v. D.C.S., et al.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JAMES S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, S.S., S.S., *Appellees*.

No. 1 CA-JV 18-0150
FILED 2-14-2019

Appeal from the Superior Court in Coconino County
No. JD201500008
The Honorable Margaret A. McCullough, Judge *Pro Tempore*

VACATED; REMANDED

COUNSEL

Coconino County Public Defender's Office, Flagstaff
By Sandra L.J. Diehl
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Toni M. Valadez
Counsel for Appellee Department of Child Safety

termination requirements in a bifurcated fashion. In doing so, the juvenile court impermissibly limited Father's ability to testify or otherwise participate at the April hearing.

¶32 In holding that Father's due process rights were violated, we do not address whether DCS in fact presented sufficient evidence to support the termination of Father's parental rights. It may be the case that on remand the juvenile court reaches the same conclusion. Nevertheless, sitting as a court of review, it is our duty to ensure all parents are afforded their constitutional rights in the severance process.

¶33 Therefore, we vacate the juvenile court's order terminating Father's parental rights and remand for a new termination adjudication hearing consistent with this decision.

P E R K I N S, J., concurring in part and dissenting in part:

¶34 I concur in part and respectfully dissent in part. I agree with the majority's analysis in part I that, while not the best practice, it was within the juvenile court's discretion to accelerate the March hearing. With regard to part II, however, two concerns lead me to disagree with the majority's conclusion that the juvenile court failed to afford Father due process. First, the court cured any due process issues when it entertained Father's offer of proof. Second, it was within the juvenile court's discretion to *de facto* bifurcate the proceeding. I therefore respectfully dissent from part II of the majority's analysis.

¶35 Due process demands "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the actions and afford them an opportunity to present their objections." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965); *see also* U.S. Const. amend. V, IX, XIV § 1; Ariz. Const. Art. 2 §§ 4, 33; *Jeff D. v. Dep't of Child Safety*, 239 Ariz. 205, 208, ¶ 10 (App. 2016); *In re Appeal in Maricopa Cty. Juv. Action No. JS-734*, 25 Ariz. App. 333, 339 (1975). In determining whether the juvenile court provided due process, Arizona courts apply the familiar framework from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Kent K.*, 210 Ariz. at 286, ¶ 33; *see also Samiuddin v. Nothwehr*, 243 Ariz. 204, 211, ¶ 20 (2017); *Dep't of Child Safety v. Beene*, 235 Ariz. 300, 304–08, ¶¶ 10–20 (App. 2014). The dispositive question for us under *Eldridge* turns on the extent to which the procedure presents the risk of erroneous deprivation of Father's rights. We

review constitutional issues de novo, *Marianne N. v. Dep't of Child Safety*, 243 Ariz. 53, 55, ¶ 12 (2017), but view the facts "in the light most favorable to upholding the juvenile court's order." *Brenda D.*, 243 Ariz. at 447, ¶ 35 (quoting *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010)).

¶36 In this case and under the facts presented, I cannot say the juvenile court's procedure introduced a constitutionally impermissible risk of erroneous deprivation of Father's parental rights.

¶37 At the March hearing, Father was represented by counsel who cross-examined the State's witnesses, and the juvenile court allowed Father's counsel to present a case. *Brenda D.*, 243 Ariz. at 446, ¶¶ 30–31. Near the end of the hearing, Father's counsel admitted the allegations in the petition:

> THE COURT: . . . the State grounds need to be proved by a clear and convincing. The stepped-up burden is for ICWA testimony. Any comment, [Father's counsel]?
>
> [Father's counsel]: Your Honor, we don't have any ICWA testimony today.
>
> THE COURT: Understood. I'm just saying for the State grounds. Any comment?
>
> [Father's counsel]: I do not. *I think the report establishes those.*

(Emphasis added). The juvenile court then made the following findings: that it had jurisdiction; that the State met its burden in proving the 15 months' time in care ground; that the State met its burden in proving the history of chronic drug or alcohol abuse ground; and that termination of parental rights would be in the children's best interests. After making these findings on the record, the juvenile court set the date for the April hearing to take ICWA testimony. At the conclusion of the March hearing, the juvenile court entered its findings in an unsigned minute entry.

¶38 Father's counsel could have presented argument at the March hearing that Father had a strong bond with the children and, because of that fact, termination of his parental rights may not have been in the children's best interests. On November 20, 2017, the children's attorney wrote to the court:

> As counsel for the minors, I want to emphasize that I cannot support a plan that would cut off the relationship between these minors and their father. Frankly, that position is the same even if I look at my role as being guardian ad litem. *These children are greatly bonded to their father and cutting him completely out of their lives is not what they want and is likewise not in their best interests.*

(Emphasis added). The children's attorney attended the March hearing, and the court explicitly offered Father's counsel the opportunity to present an argument, yet neither offered any evidence or argument to refute DCS's case on the children's best interests. *See* Ariz. R.P. Juv. Ct. 40.1(C); 40.2(E).

¶39 At the April hearing, Father was once again represented by counsel who cross-examined the State's witness. Though it limited Father's testimony to ICWA, the juvenile court allowed Father's counsel to enter the following offer of proof:

> I will let the Court know, in the form of an offer of proof, that father has moved in with a treatment sober community . . .. He has indicated there is a family room available, and he believes that this program will help maintain sobriety and will help him with the children. There are other adults there – obviously they would need background checks by DCS – but there are other adults who would be willing to supervise the children. Two of the other persons are present today.
>
> That would be the substance of his testimony. And it would be our position that it would be in the best interests of the children to try that, before we go to the ultimate, essentially losing the father for these children.

The court then heard argument on whether it should accept the offer of proof, after which the court stated, "I will consider your offer of proof. Was there anything you wanted to add to it?" Father's counsel then added that Father has a strong bond with the children, and that breaking that bond would be detrimental to the children. The court again entered findings of fact in an unsigned minute entry at the conclusion of the hearing.

¶40 In my opinion, the juvenile court met its due process requirements because it gave Father the opportunity to make a substantive offer of proof for his proposed testimony on the statutory grounds. *See, e.g.*, *Eldridge*, 424 U.S. at 333 (due process requires opportunity to be heard at a meaningful time and in a meaningful manner); *Carroll v. Robinson*, 178 Ariz.

453, 461 (App. 1994) ("At a minimum, due process requires notice and a hearing where the individual has a meaningful opportunity to confront the evidence against him.") (quoting *Brady v. Gebbie*, 859 F.2d 1543, 1554 (9th Cir. 1988)). The court accepted and considered Father's substantive offer of proof before it terminated his parental rights. I believe that a substantive offer of proof is a meaningful manner in which to be heard, and that the time prior to the termination of one's parental rights is a meaningful time at which to be heard. *See* A.R.S. § 8-537(A) (court shall hold a hearing in a contested termination proceeding).

¶41 The substance of Father's offer of proof was meaningful because it went towards the state statutory grounds. In February 2016, DCS removed the children from Father and filed a dependency petition on the grounds that Father neglected the children due to substance abuse. In February 2018, DCS moved to terminate Father's parental rights on the grounds of fifteen months' time in care and inability to discharge parental responsibilities due to chronic substance abuse. Father's offer of proof stated that he was living in a sober community, which has more to do with whether his alcoholism "will continue for a prolonged indeterminate period," or whether he can remedy the circumstances that brought the children into dependency, A.R.S. § 8-533(B)(3), (B)(8)(c), than it does with the provision of remedial services or "serious emotional or physical damage to the child[ren]," 25 U.S.C. § 1912(d), (f). Because the court considered the substance of Father's proof at the April hearing, I cannot agree that it violated his due process rights.

¶42 Contrary to the majority's assertion, *supra* ¶ 26, I do not concede that the juvenile court violated Rule 66(F) by making findings of fact when it entered its minute entries. The rule states that "[a]ll findings and orders shall be in the form of a signed order or set forth in a *signed* minute entry." Rule 66(F) (emphasis added). The court did not sign either of the minute entries concerned here, so by its own plain language Rule 66(F) does not control. Instead, I think the findings in the minute entries should be considered preliminary findings, subject to change until the court adopted its final, signed, appealable order. *See* Ariz. R.P. Juv. Ct. 104(A); *cf.* Rule 66(D)(2); *Brenda D.*, 243 Ariz. at 443–44, ¶¶ 19–20, 22; *accord* Ariz. R. Civ. P. 52(b), (c); *Catalina Foothills Unified School Dist. No. 16 v. La Paloma Prop. Owners Ass'n, Inc.*, 229 Ariz. 525, 529–30, ¶¶ 12–14 (App. 2012). The majority does not suggest the juvenile court could not adopt different findings in its final order than it had preliminarily set forth in its unsigned minute entries. If the court could have adopted different findings of fact after considering Father's offer of proof, I do not see the entry of preliminary findings as violative of due process.

¶43 Nor do I assert that Father waived his ability to contest the termination because he arrived late. *See supra* ¶ 27. First, as noted *infra* ¶ 49, I do not suggest the juvenile court engaged in best practices in this case, but merely that it afforded Father the minimum process due to him. Second, I believe the juvenile court complied with the mandate from *Brenda D.* that Father's waiver was "effective only for the portion of the hearing during which [Father] was absent," and that "the waiver end[ed] upon [Father's] appearance." 243 Ariz. at 444, ¶ 24. The juvenile court allowed Father to testify as to the ICWA factors, the only issue for which Father appeared, and entertained Father's offer of proof on the statutory grounds, an issue on which it heard evidence prior to Father's arrival. Further, and consistent with the majority's concerns expressed *supra* ¶ 29, due to the applicability of ICWA, Father received more process in this case than he would have otherwise. Given the facts of this case, the majority does not dispute that the juvenile court would have been within its discretion to terminate Father's parental rights at the end of the March hearing had Father's children not been subject to ICWA. *Compare* A.R.S. § 8-533 *with* 25 U.S.C. § 1912; *Brenda D.,* 243 Ariz. at 444, ¶ 24 (parent deemed to have admitted all allegations in petition only if absent through entire hearing). To put it succinctly, we agree that due process would not require the court to consider Father's offer of proof in a non-ICWA case that was otherwise identical.

¶44 In any event, the presence of the offer of proof allows us "to determine whether any error was harmful." *Horan v. Indus. Comm'n of Ariz.*, 167 Ariz. 322, 325 (1991) (quoting *Molloy*, 158 Ariz. at 68). The substance of Father's offer of proof is legally insufficient to overcome the clear and convincing evidence adduced by DCS because, during the children's out of home placement for over two years, Father had been in and out of treatment and relapse. We are bound to "affirm a severance order unless it is clearly erroneous." *Alma S.*, 245 Ariz. at 151, ¶ 18 (quoting *Demetrius L.*, 239 Ariz. at 3, ¶ 9). "A finding is clearly erroneous if no reasonable evidence supports it." *In re B.S.*, 205 Ariz. 611, 614, ¶ 5 (App. 2003) (citation omitted).

¶45 The juvenile court may terminate a parent's rights if it finds, by clear and convincing evidence, that "the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of . . . alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate time." A.R.S. § 8-533(B)(3). This court has held that the history of substance abuse need not be "constant, which is invariable and uniform," but rather that it be inveterate and long-lasting. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 16 (App. 2010) (citation omitted). Further, in determining whether a parent's chronic

drug or alcohol abuse will continue for a prolonged indeterminate time, the child's interest in permanency takes precedence over a parent's "uncertain battle with drugs." *Id.* at 379, ¶ 29 (quoting *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998)). In other words, when it comes to a parent's substance abuse, "children should not be forced to wait for their parent to grow up." *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 287, ¶ 17 (App. 2016) (quoting *Raymond F.*, 224 Ariz. at 378, ¶ 25).

¶46 Here, reasonable evidence supports the conclusions that Father is unable discharge his parental responsibilities because of his chronic history of alcohol abuse and that Father's alcohol abuse will continue for a prolonged indeterminate period. Father and the majority do not dispute this. *See infra* ¶ 25. Further, the substance of Father's offer of proof does not undercut DCS's evidence in any legally relevant manner. That Father spent two months in a sober living facility may show that his alcohol abuse was not constant, but it does not refute that his alcohol abuse was long-lasting, and it does not show that his alcohol abuse will abate in the foreseeable future.

¶47 DCS first filed a dependency petition in February 2015, alleging that it removed the children from Father's care because police arrested Father for driving while intoxicated with the children in the car. Father then successfully engaged in counseling and drug testing, and DCS returned the children to his care. The juvenile court—through the same judge *pro tempore* who ultimately terminated Father's parental rights—dismissed that dependency in January 2016. In February 2016, DCS petitioned the court for another dependency, this time alleging that it removed the children from Father's care because police arrested Father for disturbing the peace after he drunkenly tried to start a fight outside of a healthcare facility. DCS then provided Father with intensive outpatient classes and urinalysis testing. Despite Father apparently suffering another relapse in August 2016, DCS still remained hopeful that it could return the children to Father because he had entered an inpatient alcohol abuse treatment program. Unfortunately, DCS had to push back the planned reunification, and cancel overnight visitation, after Father disclosed he had had another relapse in February 2017. After this, police again arrested Father for public intoxication and disorderly conduct in April 2017, and he was apparently incarcerated for 60 days thereafter. Father's probation then required him to live in a child-free sober house for at least six months. Furthermore, the CASA stated that Father had 26 alcohol-fueled contacts with police between 2008 and 2014.

¶48 The evidence in the record reasonably supports the juvenile court's conclusions and there is no suggestion that contrary evidence exists. Father's troubles with alcohol began at least by 2008 and continued at least until his arrest in April 2017. Reasonable evidence thus supports that Father has a history of chronic alcohol abuse. DCS removed Father's children for alcohol-related reasons in both 2015 and 2016. DCS once removed the children after Father was arrested for DUI with the children in the car and once after Father failed to pick the children up from school because he was in jail on an alcohol-related charge. These events reasonably support the conclusion that Father cannot adequately discharge his parental responsibilities due to alcohol abuse. And, despite successfully completing several alcohol counseling programs, including inpatient treatment, Father was unable to prevent a relapse over 14 months after DCS removed his children for the second time. This reasonably supports the conclusion that Father's alcohol abuse will continue for a prolonged indeterminate time. Given this record, I believe reasonable evidence supports termination of Father's rights under the ground of chronic substance abuse. *See Raymond F.*, 224 Ariz. at 379, ¶ 29 ("Father's temporary abstinence from drugs and alcohol does not outweigh his significant history of abuse or his consistent inability to abstain during this case."). The record also supports the court's conclusion that the children are adoptable and termination would benefit them by furthering adoption plans. *See* A.R.S. § 8-102(A); *Alma S.*, 245 Ariz. at 150–51, ¶¶ 12–16.

¶49 To be clear, while I think that the juvenile court afforded Father minimally adequate due process, I do not believe the juvenile court engaged best practices in this case. It is within the juvenile court's discretion to find that a parent has waived his or her rights, at least until the parent attends the hearing. *See* A.R.S. § 8-537(C) ("the court . . . may find that the parent has waived the parent's legal rights"); § 8-863(C) ("the court . . . may find that the parent has waived the parent's legal rights"); *Brenda D.*, 243 Ariz. at 443–45, ¶¶ 19–20, 22–25; Rule 64(C) ("may result in a finding that the parent . . . waived legal rights"); 65(C)(6)(c) ("hearing could go forward in the absence of the parent . . . and that failure to appear may constitute a waiver of rights"); 66(D)(2) ("failure to appear may constitute a waiver of rights . . . the court may terminate parental rights based upon the record and evidence presented"). The relevant rules and statutes do not make the "juvenile court's discretionary, front-end finding of waiver irrevocable," and it is an abuse of discretion for the juvenile court to "impose full-waiver sanctions" when the parent appears for some part of the hearing. *Brenda D.*, 243 Ariz. at 444–45, ¶ 25. With the procedural posture in this case, I think it would have been better practice to let Father testify at the April hearing on any matter relevant to the termination. *See Brenda D.*, 243 Ariz. at 448–49, ¶

42 ("In that scenario, testimony and other evidence admitted before the parent's late arrival need not be repeated. But, absent extraordinary circumstances, the court should permit the tardy parent to testify and present other available evidence if the parent so chooses."). As explained above, however, I disagree with the majority that the court's failure to do so violated Father's constitutional rights.

¶50 In sum, I believe the juvenile court avoided violating Father's due process rights when it heard his offer of proof regarding the state statutory termination grounds. Under the *Eldridge* framework, entry of the offer of proof alleviated the risk that the court would erroneously deprive Father of his fundamental right to parent. The offer of proof also allows this court to determine whether Father suffered harm from any potential error; I believe he did not. That said, I do not take waiver of constitutional rights lightly, and suggest that the better practice is to err on the side of hearing more parental testimony, not less. For these reasons, I find it unnecessary to construe Rule 66(F) and therefore respectfully dissent from part II of the majority's analysis.

AMY M. WOOD • Clerk of the Court
FILED: AA

Attachment 6 -

Span v. Maricopa County Treasurer

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

PETE SPAN, *Plaintiff/Appellant*,

v.

MARICOPA COUNTY TREASURER, *Defendant/Appellee*.

No. 1 CA-CV 16-0762
FILED 2-19-2019

Appeal from the Superior Court in Maricopa County
No. CV2008-007180
The Honorable James T. Blomo, Judge, *Retired*

AFFIRMED

COUNSEL

Law Office of Brian K. Stanley, Tempe
By Brian K. Stanley
Counsel for Plaintiff/Appellant

Maricopa County Attorney's Office, Phoenix
By D. Chad McBride, Charles Trullinger
Counsel for Defendant/Appellee

OPINION

Presiding Judge Diane M. Johnsen delivered the opinion of the Court, in which Judge Kent E. Cattani joined. Judge Jennifer M. Perkins concurred in part and dissented in part.

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had no claim to the money; it was entirely disinterested in whether Span chose to make the payment. Likewise, there is no suggestion in the record to support the dissent's assertion that the County's possession of the proceeds was more than "momentary." *Infra* ¶ 32. When Span paid to redeem the lien, the County acted pursuant to its understanding of its legal obligation to forward the payment to the CP holder.

C. Claims Against the Individual Defendants.

¶24 Span also argues on appeal that this court's earlier decision did not resolve his claims against the Treasurer. In the earlier decision, this court ruled that Span waived his challenges to the superior court's resolution of those claims by not raising them in that appeal. *Span*, 1 CA-CV 12-0771, at *1, ¶ 1, n.1. When an appellant fails to challenge part of a final judgment in an appeal, that part of the judgment is affirmed by implication and may not be challenged in a subsequent appeal. *See Bogard v. Cannon & Wendt Elec. Co.*, 221 Ariz. 325, 332, ¶ 24 (App. 2009). As applied here, Span's failure to make any argument in his first appeal about the dismissal of the individual defendants means that dismissal was affirmed in the first appeal.

CONCLUSION

¶25 We affirm the superior court's entry of judgment against Span.

P E R K I N S, Judge, concurring in part, and dissenting in part:

¶26 I agree with the majority's conclusions that *Fridena* is inapplicable and Span waived his claims against the individual defendants (Parts A and C of the decision). I reach a different conclusion, however, on Span's unjust enrichment claim. The majority's holding hinges on two arguments: first, that the County need not repay Span for his redemption payment because the County thought it was necessary at the time; and second, that Span cannot regain his now-unencumbered property without meeting his tax obligation. The County should not benefit from its own legal mistake at Span's expense. The text of the statute contemplates that Span may regain his unencumbered property under these circumstances. The majority disregards this, violating established separation of powers. *See* Ariz. Const. art. 3. I therefore respectfully dissent from the majority's unjust enrichment holding.

¶27 The procedural posture of this case is crucial because the standard of review for a grant of summary judgment colors the analysis

throughout. The majority initially concludes that the record does not contain evidence that the County compelled or coerced Span to make the redemption payment. *Supra* at ¶ 12. But Span alleged he only paid the redemption because the County told him failure to do so would increase the amount due. And as the majority states, the court must view the facts in the light most favorable to the non-moving party and weigh all reasonable inferences in that party's favor. *Supra at* ¶ 9; *Sanders v. Alger*, 242 Ariz. 246, 248, ¶ 2 (2017). In support of his allegations of coercion, Span offered a copy of his redemption payment check, on which he wrote that he made the payment "under protest." At a minimum, this evidence is sufficient to infer coercion and survive summary judgment.

¶28 Span further alleged that the County Treasurer advised him to pay the amount demanded under protest, and then take the matter to court for challenge. This is consistent with the process required for challenging a tax collection as illegal. *Citizens Telecomm. Co. of White Mountains v. Ariz. Dep't. of Revenue*, 206 Ariz. 33, 37, ¶ 12 (App. 2003) (citing A.R.S. § 42-11005(A)) ("Arizona law requires that a taxpayer pay the tax owed prior to bringing an illegal collection claim."). While § 42-11005(A) does not clearly apply here, it provides a context for understanding the Treasurer's direction to Span, which he followed by paying the redemption and subsequently bringing this case challenging the County's actions.

¶29 The majority next concludes that the County has not retained a benefit because it no longer has Span's redemption payment. *Supra* at ¶ 17. But the County was paid twice, and gratuitously divested itself of the second payment. The majority would absolve a defendant from liability for unjust enrichment if the defendant funnels its ill-gotten gain to someone else before the plaintiff comes knocking. That's not fair or logical. Such an inequitable result is particularly odd in the context of a claim seeking an equitable remedy. The majority cites only cases that do not involve a defendant who has divested himself of the purported benefit by passing it along to a third party. *See Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 54 (1985) (holding that restitution was appropriate where the defendant received, and thereby retained, the benefit of the plaintiff's services); *Pyeatte v. Pyeatte*, 135 Ariz. 346, 352, 356-57 (App. 1982) (Restitution was appropriate to wife when husband retained the benefit from her support of the household during his legal education given he "left the marriage with the only valuable asset acquired during the marriage—his legal education and qualification to practice law.").

¶30 The majority disregards these facts. Neither the County nor the majority disputes that the County had no legal obligation to disperse

funds to the CP holder but did so anyway. Section 42-18155(A) instructs the Treasurer to pay "any person **who is entitled to** redemption money." (Emphasis added.) Given the void lien, *Span v. Maricopa County Treasurer*, 1 CA-CV 12-0771, 2014 WL 1233463 *4, ¶ 15 (Mar. 25, 2014) (mem. decision) ("By 2005, the original lien . . . had expired."), the CP holder was not entitled to the money and the County's payment was contrary to law. Thus it was legally gratuitous, even if we may not fairly characterize it as a "gift."

¶31 The County cannot escape the clutches of unjust enrichment merely based on its purported legal mistake—we do not generally recognize a legally valid excuse based on legal mistake. *Jennings v. Woods*, 194 Ariz. 314, 326, ¶ 60 (1999) ("West's ignorance of the law or mistaken interpretation of it does not excuse him from its application."). The County certainly should not be free from accountability under the text of the very statutes that define its authority. Here, the Legislature placed the County on notice of the ten-year limit imposed on property tax liens when it adopted § 42-18208 in 2002. The record indicates the County was aware of the statute's operation as of January 21, 2007, two months before notifying Span of the foreclosure complaint. At that time, the County's Tax Certificate Auction Web Site contained the question "What is the 'life' of a tax certificate?" with the following answer: "Certificates are dated **as of the date the purchase was made**. Ten years later, if the purchaser has taken no additional action to foreclose the tax lien, the lien expires and is voided. **No payments will be made to the purchaser**." Yet, the County paid the CP holder here.

¶32 The majority also rejects Span's claim on the basis that the County merely acted as a "conduit" between Span and the CP holder. *Supra* at ¶ 17. The County's demand for Span's redemption payment was unjust and it engaged in more than a mere "momentary possession" given the statutory restriction to pay only those legally entitled to receive payments. To be sure, the majority's legal authorities—the Restatement (Third) and a 1935 tax case–instruct that there is no unjust enrichment when the plaintiff has made a payment for a debt that "has been rendered unenforceable by the passage of time." *Supra* at ¶ 19-20. But neither authority encompasses the situation at hand.

¶33 Section 62 of the Restatement (Third), comment a, tells us to look to "the larger transactional context within which the benefit has been conferred." The Fourth Circuit did so when considering tax payments made despite the expiration of the statute of limitations. The court found "great significance that the taxpayer was in truth indebted to the United States for

taxes in the amount which it paid." *Clifton Mfg. Co. v. United States*, 76 F.2d 577, 581 (4th Cir. 1935).

¶34 *Clifton* is thus distinguishable. First, both the taxpayer and the government believed the tax payment was owed at the time it was made; neither party recognized that the limitations period had run. So the plaintiff did not pay "under protest" and the defendant did not demand payment despite being alerted to a legal infirmity in its claim to the money. Second, the law at issue in this case rendered the County's claim to Span's redemption payment void—this was not a situation where the debt was still owed but the government simply couldn't collect it because of a statute of limitation. Rather, the CP holder had already paid the tax debt to the County and the only remaining debt was by operation of the tax lien, which § 42-18208(A) declared void. The County had no statutory authority to collect Span's redemption payment and no indebtedness remained.

¶35 The majority rejects restitution for Span because it would result in a windfall—he would "own[] the property free and clear of any tax lien without having paid the taxes or their equivalent." *Supra* at ¶ 21. But, even if true, the legislature has mandated such a windfall and our role is not to question the wisdom of legislative action.

¶36 There is no question that Span, having repeatedly failed to pay his property taxes, is not a particularly sympathetic plaintiff. Similarly, however, the County is not a particularly sympathetic defendant. More importantly, a request for equitable relief does not transform our role into the arbiter of which party is more sympathetic. Equitable relief is a judicial means of ensuring a right result. It is not an invitation for the judiciary to invade the Legislature's province by subverting the legislative will as expressed in the plain text of a statute. The foreclosure action and the County's payment to the CP holder were each contrary to the operative

statute, while the reversion of an unencumbered property ownership to Span falls directly within the statutory text. The equities under such circumstances do not weigh in the County's favor.

¶37 I would reverse the superior court's grant of summary judgment on Span's unjust enrichment claim, and therefore respectfully dissent as to part B.

AMY M. WOOD • Clerk of the Court
FILED: AA

Attachment 7 -

E.H. v. Slayton

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

E.H.,
Petitioner,

v.

THE HONORABLE DAN SLAYTON, Judge
of the SUPERIOR COURT OF THE
STATE OF ARIZONA, in and for the
County of COCONINO,
Respondent Judge,

STATE OF ARIZONA[1]; JASON CONLEE; LENDA
HESTER; KIMMY WILSON,
Real Parties in Interest.

No. 1 CA-SA 19-0004
FILED 3-14-2019

Petition for Special Action from the Superior Court in Coconino County
No. CR2016-00434; CR2016-00435; CR2016-00436
The Honorable Dan R. Slayton, Judge

JURISDICTION DECLINED

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[1] On the court's own motion, it is ordered amending the caption as reflected in this decision. The above referenced caption shall be used on all further documents filed in this special action.

¶7 Finally, in the exercise of our discretion, we also decline to accept jurisdiction over E.H.'s contention that the court violated her rights by refusing to permit her counsel to sit in the well of the courtroom.

P E R K I N S, Judge, specially concurring:

¶8 E.H. asked this court whether her right to receive the full economic value of her loss was waived, over her objection, when the trial court directed the parties to include a restitution cap in the plea agreements at issue. I agree with the panel that, as framed, E.H.'s asserted claim is not ripe for this Court to resolve, for the reasons discussed *supra* at ¶¶ 5-6. I write separately to note the presence of a purely legal question of statewide importance that has apparently lain unresolved for more than a quarter century and which requires our supreme court to reconsider its case law. While our superior courts and criminal practitioners have identified a practical means of addressing that unresolved question, as explained below, this "solution" rests on a troubling constitutional inconsistency. Whether in this or another case, our supreme court should take up this issue.

¶9 The VBR imbues criminal victims with several specific rights of constitutional significance and dimension. One such right is full restitution. The State and defendants argue that a victim's constitutional right to restitution is subordinate to a criminal defendant's right to "knowingly, intelligently, and voluntarily" enter into a plea agreement that places a cap on restitution, even over the victim's objection. To support these contentions, the State and defendants rely on a series of pre-VBR decisions from our supreme court.

¶10 In particular, in *State v. Phillips*, our supreme court held that a defendant cannot "thoroughly understand the consequences of his agreement to make restitution if [the defendant] is unaware of the restitutionary amount that can be imposed." 152 Ariz. 533, 535 (1987). The court explained that a "defendant must be aware of the specific dollar amounts of restitution" the court can order before it can accept the defendant's guilty plea. *Id*. The *Phillips* rule is explicitly based on federal due process rights under the fourteenth amendment to the United States Constitution. *State v. Adams*, 159 Ariz. 168, 170 (1988) (citations omitted).

¶11 Evaluating the VBR's impact, if any, on the *Phillips* rule must involve an examination of the federal and state due process requirements for defendants entering into a plea agreement weighed against victims' state constitutional rights to full restitution.

¶12 As noted above, the court in *Phillips* based its rule explicitly on federal constitutional due process requirements. The U. S. Constitution mandates that criminal defendants be afforded due process of law through the fifth and fourteenth amendments. U.S. Const. amend. V; XIV, § 1. In federal criminal proceedings involving guilty pleas, the court must advise defendants of their rights in a manner similar to our procedures under Arizona Rule of Criminal Procedure 17.2. *Compare* Fed. R. Crim. P. 11 *with* Ariz. R. Crim. P. 17.2. Unlike our rule, which does not explicitly address restitution, Federal Rule of Criminal Procedure 11(b)(1)(K) requires the court to inform the defendant of "the court's authority to order restitution" before accepting a guilty plea. Notably, the comments to the 1985 amendment explain that "[t]he exact amount or upper limit" of restitution need not be stated at the time of the plea. Fed. R. Crim. P. 11(c)(1) 1985 cmt. The federal practice of informing defendants of the possibility of restitution before accepting a guilty plea, without specifying the amount or maximum amount of restitution, has never been held to violate a defendant's due-process rights. *See, e.g., Dolan v. United States*, 560 U.S. 605, 608-09 (2010) (discussing, without noting any constitutional concerns, a plea agreement that left the amount of restitution open until appropriate restitution could be determined); *cf. State v. Zaputil*, 220 Ariz. 425, 428, ¶ 11 (App. 2008) (restitution, though part of the sentencing process, "is not a penalty or a disability").

¶13 Thus, the federal constitution does not require defendants entering a guilty plea to be advised of the specific amount of restitution they will pay or the maximum amount they could be ordered to pay. The only requirement is that the defendant be warned the court may impose restitution.

¶14 The question left open is whether the Arizona Constitution separately requires that a defendant know the upper limit of a potential restitution award, and whether that requirement overrides a victim's state constitutional right to full restitution. As noted in the panel's decision, *supra* at ¶ 5, these legal questions remain unanswered because of a practical work-around solution. That is, courts and parties to criminal proceedings require plea agreements to include a specific restitution cap, relying on the *Phillips* rule. But once entered, the courts, including this one as expressed in this decision, *supra* ¶ 5, presume they may subsequently order restitution exceeding that cap should a victim prove economic loss above the amount of the cap.

¶15 The State should not offer, and the court should not accept, a plea agreement with a purported cap that can later be exceeded. To do so

is, at least arguably, worse in terms of a defendant's right to knowingly, intelligently, and voluntarily accept a plea agreement because the officers of our courts are promoting a practice of allowing defendants to enter into plea agreements with illusory terms. Moreover, because we will not permit a defendant to vacate a plea agreement "[w]here the defendant has received the full benefit of the plea bargain," a defendant who is ordered to pay restitution exceeding the cap in their plea agreement will have limited recourse when restitution is ordered at or near the end of his sentence. *State v. Crowder*, 155 Ariz. 477, 481 (1987) (*citing Brady v. United States*, 397 U.S. 742, 757 (1970)).

¶16 As noted above, the constitutional avoidance doctrine, *supra* ¶ 6, generally directs us to resolve cases on other grounds to avoid making pronouncements of constitutional law unless doing so is necessary. On this basis, the panel opts against taking up the constitutional questions presented. I do not disagree with the application of the doctrine in this instance, by this intermediate appellate court, in the somewhat unusual factual scenario presented by this special action. Nonetheless, I do not believe that the doctrine should continually be applied so as to encourage the development of a work-around "solution" that raises, rather than resolves, constitutional concerns. At some point the duty of a judge is to resolve difficult, even constitutional, questions.

AMY M. WOOD • Clerk of the Court
FILED: AA

Attachment 8 -

Judicial Performance Review Reports

Maricopa County Voters Only

Hon. Jennifer M. Perkins

Court of Appeals Division I
Appointed: 2017

100% of the Commission Voted Judge Perkins MEETS Judicial Performance Standards
33 Commissioners Voted 'Meets'
0 Commissioners Voted 'Does Not Meet'

2020	**Attorney Surveys** Distributed: 334 Returned: 34 **Score** (See Footnote)	**Superior Court Judge Surveys** Distributed: 83 Returned: 38 **Score** (See Footnote)
Legal Ability	88%	87%
Integrity	95%	91%
Communication	100%	n/a
Temperament	97%	n/a
Admin Performance	81%	92%

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "superior", "very good", or "satisfactory" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials or no survey responses were returned). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

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Arizona Commission on Judicial Performance Review

Hon. Jennifer M. Perkins

2020 Attorney Survey Responses

Key: **SU** = Superior **VG** = Very Good **SA** = Satisfactory **PO** = Poor **UN** = Unsatisfactory

	SU		VG		SA		PO		UN		Mean	Total
1. Legal Ability	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.		
1. Legal reasoning ability	13	76%	1	6%	1	6%	2	12%	0	0%	3.47	17
2. Knowledge of law	12	71%	2	12%	1	6%	2	12%	0	0%	3.41	17
3. Decisions based on laws and facts	13	76%	2	12%	0	0%	2	12%	0	0%	3.53	17
4. Clearly written, legally supported decisions	13	76%	1	6%	1	6%	2	12%	0	0%	3.47	17
Category Total	**51**	**75%**	**6**	**9%**	**3**	**4%**	**8**	**12%**	**0**	**0%**	**3.47**	**68**
2. Integrity												
5. Basic fairness and impartiality	9	64%	3	21%	0	0%	2	14%	0	0%	3.36	14
6. Equal treatment regardless of race	8	100%	0	0%	0	0%	0	0%	0	0%	4.00	8
7. Equal treatment regardless of gender	9	100%	0	0%	0	0%	0	0%	0	0%	4.00	9
8. Equal treatment regardless of religion	7	100%	0	0%	0	0%	0	0%	0	0%	4.00	7
9. Equal treatment regardless of national origin	7	100%	0	0%	0	0%	0	0%	0	0%	4.00	7
10. Equal treatment regardless of disability	8	100%	0	0%	0	0%	0	0%	0	0%	4.00	8
11. Equal treatment regardless of age	9	100%	0	0%	0	0%	0	0%	0	0%	4.00	9
12. Equal treatment regardless of sexual orientation	7	100%	0	0%	0	0%	0	0%	0	0%	4.00	7
13. Equal treatment regardless of economic status	9	82%	0	0%	0	0%	2	18%	0	0%	3.45	11
Category Total	**73**	**91%**	**3**	**4%**	**0**	**0%**	**4**	**5%**	**0**	**0%**	**3.81**	**80**
3. Communication												
14. Attentiveness	12	75%	2	13%	2	13%	0	0%	0	0%	3.62	16
15. Deameanor in communications with counsel	12	86%	2	14%	0	0%	0	0%	0	0%	3.86	14
16. Appropriate restrictions on counsel during argument	1	100%	0	0%	0	0%	0	0%	0	0%	4.00	1
17. Relevant questions	11	73%	2	13%	2	13%	0	0%	0	0%	3.60	15
18. Preparation for oral argument	11	92%	0	0%	1	8%	0	0%	0	0%	3.83	12
Category Total	**47**	**81%**	**6**	**10%**	**5**	**9%**	**0**	**0%**	**0**	**0%**	**3.72**	**58**
4. Temperament												
19. Dignified	12	71%	3	18%	2	12%	0	0%	0	0%	3.59	17
21. Courteous	11	69%	3	19%	2	13%	0	0%	0	0%	3.56	16
22. Patient	11	73%	2	13%	2	13%	0	0%	0	0%	3.60	15
23. Conduct that promotes confidence in the court and judge's ability	10	63%	3	19%	1	6%	1	6%	1	6%	3.25	16

Category Total	**44**	**69%**	**11**	**17%**	**7**	**11%**	**1**	**2%**	**1**	**2%**	**3.50**	**64**
5. Admin Performance												
24. Promptness in making rulings and rendering decisions	11	69%	1	6%	1	6%	2	13%	1	6%	3.19	16
Category Total	**11**	**69%**	**1**	**6%**	**1**	**6%**	**2**	**12%**	**1**	**6%**	**3.19**	**16**

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WHO JUDGES THE JUDGES? JPR YOU DO! WE CAN HELP.

Arizona Commission on Judicial Performance Review

Hon. Jennifer M. Perkins **2020 Superior Court Judge Survey Responses**

Key: **SU** = Superior **VG** = Very Good **SA** = Satisfactory **PO** = Poor **UN** = Unsatisfactory

	SU		VG		SA		PO		UN		Mean	Total	No Resp
1. Legal Ability	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal reasoning ability	16	47%	9	26%	5	15%	3	9%	1	3%	3.06	34	0
2. Knowledge of the law	17	50%	9	26%	3	9%	4	12%	1	3%	3.09	34	0
3. Decisions based on law and facts	17	52%	8	24%	4	12%	4	12%	0	0%	3.15	33	0
4. Clearly written, legally supported decisions	16	48%	9	27%	4	12%	4	12%	0	0%	3.12	33	0
Category Total	**66**	**49%**	**35**	**26%**	**16**	**12%**	**15**	**11%**	**2**	**1%**	**3.10**	**134**	
2. Integrity													
5. Basic fairness and impartiality	17	68%	6	24%	0	0%	2	8%	0	0%	3.52	25	0
6. Equal treatment regardless of race	9	56%	6	38%	0	0%	1	6%	0	0%	3.44	16	0
7. Equal treatment regardless of gender	11	58%	6	32%	0	0%	2	11%	0	0%	3.37	19	0
8. Equal treatment regardless of religion	9	53%	6	35%	0	0%	2	12%	0	0%	3.29	17	0
9. Equal treatment regardless of national origin	9	53%	6	35%	0	0%	2	12%	0	0%	3.29	17	0
10. Equal treatment regardless of disability	9	56%	6	38%	0	0%	1	6%	0	0%	3.44	16	0
11. Equal treatment regardless of age	8	53%	6	40%	0	0%	1	7%	0	0%	3.40	15	0
12. Equal treatment regardless of sexual orientation	8	50%	6	38%	0	0%	2	13%	0	0%	3.25	16	0
13. Equal treatment regardless of economic status	10	59%	6	35%	0	0%	1	6%	0	0%	3.47	17	0
Category Total	**90**	**57%**	**54**	**34%**	**0**	**0%**	**14**	**9%**	**0**	**0%**	**3.39**	**158**	
3. Admin Performance													
14. Promptness in making rulings and rendering decisions	12	50%	8	33%	2	8%	2	8%	0	0%	3.25	24	0
Category Total	**12**	**50%**	**8**	**33%**	**2**	**8%**	**2**	**8%**	**0**	**0%**	**3.25**	**24**	

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