

**APPLICATION FOR NOMINATION TO JUDICIAL OFFICE**

This original application, 16 double-sided copies and one (1) single-sided copy must be filed with the Human Resources Department, Administrative Office of the Courts, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, not later than 3:00 p.m. on Thursday, June 30, 2016. Read the application instructions thoroughly before completing this application form. The fact that you have applied is not confidential, responses to Section I of this application are made available to the public, and the information provided may be verified by Commission members. The names of applicants, interviewees and nominees are made public, and Commission files pertaining to nominees are provided to the Governor for review. This entire application, including the confidential portion (Section II), is forwarded to the Governor upon nomination by the Commission.

**SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)**

**PERSONAL INFORMATION**

1. Full Name: **Jennifer Michelle Perkins**
2. Have you ever used or been known by any other legal name? **Yes**. If so, state name: **Jennifer Michelle Barnett**
3. Office Address: **1275 W. Washington St., Phoenix, Arizona, 85007**
4. Have you been a resident of Arizona for the past five years? **Yes**.
5. Have you been a resident of Maricopa County for the past three years? **Yes**
6. Age: **38**  
(The Arizona Constitution, Article VI, §§22 and 37, require that judicial nominees be 30 years of age or older before taking office and younger than age 65 at the time the nomination is sent to the Governor.)
7. List your present and former political party registrations and approximate dates of each: **Republican 1995 - present**

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

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8. Gender: **Female** Race/Ethnicity:  White  
 Hispanic or Latino (of any race)  
 Black or African American  
 American Indian or Alaska Native  
 Asian  
 Native Hawaiian/Pacific Islander  
 Other: \_\_\_\_\_

(The Arizona Constitution, Article VI, §§36 and 41, require that the Commission consider the diversity of the state's or county's population in making its nominations. However, the primary consideration shall be merit.)

<b>EDUCATIONAL BACKGROUND</b>
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9. List names and locations of schools attended (college, advanced degrees and law), dates attended and degrees.

**The George Washington University**

1995-1999 Bachelor of Arts in International Affairs

**SMU Dedman School of Law**

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: InterVarsity Christian Fellowship as a participant and in leadership; politics through internships with U.S. Sen. Pete V. Domenici (R-NM), and with Elizabeth Dole's office during her husband's 1996 campaign for President; German Club (serving eventually as President) and the German Honor Society.

**Law school at SMU:**

Extracurricular: Extensive participation in advocacy programs through competition as well as administration and leadership of the student-led Board of Advocates; relaunching the student chapter of the Federalist Society for Law and Public Policy Studies; and the Christian Legal Society.

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 the bulk of my tuition. To cover additional expenses, I worked throughout college at a trademark research firm, assisting in the organization and administration of the Washington D.C. office of the California-based firm. I also 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 earned a place as a finalist for the Hatton W. Sumners Foundation scholarship, and received the J. Cleo Thompson Endowment Scholarship. My first year Torts professor, Ellen Pryor, selected me to provide research assistance for updates to her course textbook. 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)

<b>PROFESSIONAL BACKGROUND AND EXPERIENCE</b>
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12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for administrative bodies, which 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)

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 take a bar examination more than once in order to be admitted to the bar of any state? **No.** If so, explain.
14. Indicate your employment history since completing your formal education. List your current position first. If you have not been employed continuously since completing your formal education, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Arizona Attorney General's Office, Solicitor General's Office	Jan. 2015 - present	Phoenix, AZ
Mandel Young PLC	Sep. 2014 - Jan. 2015	Phoenix, AZ
Arizona Commission on Judicial Conduct	Sep. 2009 - Sep. 2014	Phoenix, AZ
Institute for Justice, Arizona Chapter	Sep. 2004 - Sep. 2009	Tempe, AZ
Hon. James O. Browning, DNM	Aug. 2003 - Sep. 2004	Albuquerque, NM
Browning & Peifer, P.A. [Now Peifer, Hanson & Mullins, P.A.]	Aug. 2002 - Aug. 2003	Albuquerque, NM

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

Mark Brnovich, Attorney General  
Michael Bailey, Chief Deputy

*Colleagues Within Solicitor General's Office*

John Lopez, Solicitor General  
Dominic Draye, Deputy Solicitor General  
Paula Bickett, Civil Appeals Chief  
David Weinzweig, Senior Litigation Counsel

*Assistant Attorneys General:*

Rusty Crandall  
James Driscoll-MacEachron  
Brock Heathcotte  
Mike Hrnicek  
Kara Karlson  
Keith Miller  
Kathleen Sweeney  
Toni Valadez

*All Attorneys Employed by the Attorney General listed in Attachment 1*

16. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

**My current practice is broad ranging and exciting, but not easily classified. Indeed, if any overall theme could be said to capture my practice, it is that of quasi-judicial service. In three primary areas, I provide advice akin to judicial opinions by evaluating a broad range of matters as Arizona law impacts them.**

My role in drafting, editing, and managing AG Opinions (30%) is directly analogous to the position of an appellate judge. This work requires 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.

My work as Ethics Counsel to the Office of the Attorney General (30%) is similarly analogous. On a daily basis I confront professional responsibility questions that require me to advise attorneys on the ethical implications of their conduct (or to the conduct of an opposing counsel or other individual). As with opinions, this process requires 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 must familiarize myself with the substantive areas of law such as public records requests; juvenile dependency matters; administrative law; criminal procedure and law; and more. This part of my practice often also requires me to advise additional steps or changes to legal strategy that are not universally popular, but which I believe are legally or ethically mandated. Such work can be daunting, but has reinforced for me the primacy of The Law over situational preferences.

I also assist generally in appellate and primary litigation on behalf of the state (30%). This work includes assisting with briefing (including work on friend of the court amicus briefs); assisting in the evaluation of appropriate legal strategies; and assisting in the preparation for oral arguments. I have been especially honored to assist our newly established Federalism Unit in advocating in support of proper separation of powers between the State of Arizona and our Federal government. I have also had the opportunity to appear before the Arizona Supreme Court in oral argument on behalf of the State in a criminal matter.

Finally, a small portion of my work has been serving as a primary 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\***

\*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. Indicate any specialties for which you have applied for certification by the State Bar of Arizona and the results of that or of those applications.

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None

19. Describe your typical clients.

**My practice has been broad-ranging and so my “typical” client has varied substantially. The bulk of my career has been given to public service or public interest law, and thus largely my focus has been on service to the state and country through legal work.**

Immediately out of law school, during my first private practice experience, I primarily represented business interests in complex litigation matters such as in defending a wage and hours related class action lawsuit, or in counseling a plaintiffs’ class of insurance businesses in a modal premiums class action lawsuit. I also had the opportunity to represent individual plaintiffs in employment discrimination matters.

While at the Institute for Justice, I participated on litigation teams in all four areas of that organization’s public interest work: property rights, First Amendment, economic liberties, and school choice. I primarily focused on the economic liberties and First Amendment cases, however, and so my primary clients were individual entrepreneurs fighting punitive licensing schemes and speech restrictions.

Serving with Arizona’s Commission on Judicial Conduct meant that, essentially, I worked on behalf of the people of Arizona seeking to maintain integrity within our state’s judiciary. While complainants in this context were not parties to the matters – and thus not clients in a traditional sense of that term – I did seek to vindicate their interests as individuals aggrieved by a perceived shortcoming in our judicial system or by a particular judicial officer.

My brief private appellate career was a return to representation in primarily complex matters and so my clients ranged from individuals to business interests. I also provided primary representation to an attorney who experienced ethical misconduct by a state court judge.

Finally, my return to service for the state has reintroduced the people of this state as my primary “client.”

20. Have you served regularly in a fiduciary capacity other than as a lawyer representing clients? **No.** If so, give details. **Not Applicable**

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

**Of primary relevance, I have held three positions requiring me to draft or aid the drafting of opinions akin to judicial opinions.** In my clerkship with Judge Browning I assisted in the drafting of actual judicial opinions, specifically more than 50 opinions on motions, many of substantial length.

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.

Finally, in my current position, I have had the opportunity to draft myself or assist in reviewing and editing the drafts of all Attorney General Opinions issued during this administration.

Outside of opinion writing, I also have assisted in or provided primary authorship in whole or in part 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 Commission on Judicial Conduct, and again at the Attorney General's Office, I have had substantial responsibility for reviewing and preparing proposed changes for various rules. I have authored rule change petitions or memoranda in support of such petitions. I have also provided internal evaluation and analysis of proposed and adopted rule changes. In both roles I have had responsibility for creating or updating internal manuals based on the rules.

22. 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

23. 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

24. List not more than three contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

**Case One: In re Theodore Abrams**

(1) January 2011

(2) Mark Harrison and Mark Hummels (deceased)

Counsel for Respondent Theodore Abrams

Osborn Maledon

2929 North Central Ave., Suite 2100

Phoenix, AZ 85012

602-640-9324

[mharrison@omlaw.com](mailto:mharrison@omlaw.com)

(3) Theodore Abrams, a municipal judge in Tucson, received complaints of sexual harassment against 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.

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- (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) Mel McDonald

Attorney for Respondent Patricia Nolan  
Jones Skelton & Hochuli P.L.C.  
40 North Central Ave., Suite 2700  
Phoenix, Arizona 85004  
602-263-1700  
[mmcdonald@jshfirm.com](mailto:mmcdonald@jshfirm.com)

- (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 included delays in issuing warrants or default judgments in numerous cases, some involving multi-year delays. 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  
1275 W. Washington Street  
Phoenix, Arizona 85007  
602-321-7217

[Lisa.Miles@cox.net](mailto:Lisa.Miles@cox.net)

*\*Ms. Miles no longer works for the Attorney General, but provided her personal contact information in the form of email and phone number.*

(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 Institute for Justice Arizona Chapter, they challenged the requirements as punitively onerous and un-related to public health and safety. The lawsuit resulted in a legislative effort to fix a problem that all sides recognized. Working primarily with stakeholders and lawmakers, I assisted in drafting amendments to the law permitting 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 overreaching 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).

25. Have you represented clients in litigation in Federal or Arizona trial courts?  
Yes. If so, state:

The approximate number of cases in which you appeared before:

Federal Courts:	10
State Courts of Record:	25
Municipal/Justice Courts:	0

The approximate percentage of those cases which have been:

Civil:	99%
Criminal:	1%

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The approximate number of those cases in which you were:

Sole Counsel:	15
Chief Counsel:	5
Associate Counsel:	15

The approximate percentage of those cases in which:

You conducted extensive discovery <sup>1</sup> :	5%
You wrote and filed a motion for summary judgment:	20%
You wrote and filed a motion to dismiss:	0%
You argued a wholly or partially dispositive pre-trial, trial or post-trial motion (e.g., motion for summary judgment, motion for a directed verdict, motion for judgment notwithstanding the verdict):	20%
You made a contested court appearance (other than as set forth in above response)	20%
You negotiated a settlement:	75%
The court rendered judgment after trial:	10%
A jury rendered verdict:	0%
Disposition occurred prior to any verdict:	0%
The approximate number of cases you have taken to trial:	

Court: 0\*

Jury: 0

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

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

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<sup>1</sup>Extensive discovery is defined as discovery beyond standard interrogatories and depositions of the opposing party.

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

The approximate number of your appeals which have been:

Civil: 20

Criminal: 1

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ 15

U.S. 0

Personally in oral argument: AZ 2

U.S. 0

27. Have you served as a judicial law clerk or staff attorney to a court? **Yes**. If so, state the name of the court and dates of service, and describe your experience.

**Judicial Law Clerk to the Honorable James O. Browning, federal district court judge in the District of New Mexico, August 2003 – September 2004.**

Judge Browning was appointed to the bench during my tenure as an associate lawyer with Browning and Peifer, his law firm, and 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 opinions 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 we typically assisted him to be prepared to issue initial rulings from the bench followed quickly by written opinions. Further, as a chambers we sought to avoid carrying over any fully submitted matters beyond 60 days. In practice, we generally met that goal.

28. List not more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts. 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 presiding judge or officer before whom the case was heard; (3) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

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

(1) 2006-2008

(2) Hon. William J. O'Neil, Pinal County Superior Court\*

*\*Judge O'Neil now serves as Arizona's Presiding Disciplinary Judge*

(3) Tim Keller

Institute for Justice, Arizona Chapter

398 S. Mill Ave.

Tempe, Arizona 85281

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*Co-counsel for Dale Bell*

Seymour Gruber, Deputy County Attorney

Pinal County Attorney's Office

31 N. Pinal, Bldg. D

Florence, Arizona 85132

520-866-6271

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*Counsel for Pinal County Board of Supervisors*

- (4) My client, Dale Bell, is an entrepreneur who opened a popular western-themed restaurant on county land named San Tan Flat. 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, wherein Dale sued the Board of Supervisors for \$1 arguing that 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.
- (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. It's rare that a visual aid is appropriate at an oral argument, but in that case I had the wording of the ordinance at issue reproduced on a large demonstrative aid. I believe I won primarily by pointing the judge back to the text and purpose of the county's own ordinance—an

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experience that reinforced my own passion for getting the law right and the primacy of a textualist approach.

**Case Two: Rinehart, et al v. Weatherly, et al**

(1) 2008-2009

(2) Hon. Vicki Miles-LaGrange, U.S. Dist. Court, Western District of Oklahoma

(3) Clark M. Neily

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Andy Lester (local counsel)\*

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*\*Jami Fenner, who is no longer with the firm, appeared on the pleadings. Mr. Lester was her supervising partner*

*Co-counsel for Plaintiffs Kelly Rinehart, Maria Gore, and Jeffrey Evans*

Stephen J. Krise

Oklahoma Department of Public Safety\*  
P.O. Box 11415  
Oklahoma City, Oklahoma 73136  
405-425-2148  
[Skrise@dps.state.ok.us](mailto:Skrise@dps.state.ok.us)

*Counsel for Defendants, Board members of the Oklahoma Board of Architects, Landscape Architects, and Interior Designers*

*\*At the time of the case, Mr. Krise worked in the Office of the Oklahoma Attorney General; I have provided his current contact information*

- (4) In this case, we challenged Oklahoma’s licensing law relating to interior designers. At the time, the state allowed any individual to provide the services of an interior designer. But in order to accurately describe oneself as an “interior designer” in advertising or business documents, the state required an interior designer to obtain a license. The speech-licensing requirements were quite onerous, involving a college degree from a school accredited by the board; two years of prior experience deemed “appropriate” by the board; and passage of an expensive and lengthy national examination. Our claims were brought pursuant to the First Amendment to the United States Constitution.
- (5) This is one of several interior design licensing cases I worked on during my time at the Institute for Justice. It is notable because I handled the matter as chief

counsel from initially interviewing and identifying plaintiffs, through filing, court appearances, and the conclusion of the matter. Ultimately, opposing counsel agreed to an injunction order while the Oklahoma legislature worked to address the constitutional defect. The Governor signed new legislation in mid-2009 and we dismissed the matter. The course of the case developed a closeness with my clients and the resolution allowing them to get back to work in their dream jobs without fear of government censure was gratifying to me on a deeper level as a result of that closeness.

### **Case Three: In re Woolbright**

(1) 2011-2012

(2) Commission on Judicial Conduct; Arizona Supreme Court

(3) Larry Cohen

PO Box 10056

Phoenix, Arizona 85064

602-266-3080

[ljc@ljcohen.com](mailto:ljc@ljcohen.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 numerous 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 which 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 simply difficult in terms of the unusual volume of motion practice for a judicial disciplinary matter, some of which involved novel legal issues. Substantively, it presented me with the challenge of 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.

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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 pursuing one's duty under the law need not equal a lack of empathy or humanity, but may be dictated by a higher fidelity to the law. I also learned that being engaged in important work can mean carrying that load through a time of personal difficulty, and that coming out the other side of both the work and the difficulties makes a person that much stronger.

**Case Four: 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 & Taylor Young  
Mandel Young, PLC  
2390 E. Camelback Rd., Suite 318  
Phoenix, Arizona 85016  
602-374-4591  
[rob@mandelyoung.com](mailto:rob@mandelyoung.com)  
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*Co-Counsel for Plaintiff / Appellee*  
  
Mary Hone  
Law Offices of Mary T. Hone  
10505 N. 69<sup>th</sup> Street, Suite 1400  
Paradise Valley, Arizona 85253  
480-336-2557  
[mary@honelegal.com](mailto:mary@honelegal.com)  
*Counsel for Defendants / Appellants*
- (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,

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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 warranting 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 in 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 Five: State of Arizona v. Pedroza-Perez**

(1) 2016

(2) Arizona Supreme Court

(3) Joseph Maziarz                      Amy Pignatella Cain  
Office of the Arizona Attorney General  
1275 W. Washington St.      400 West Congress, Bldg. S-315  
Phoenix, Arizona 85007      Tucson, Arizona 520-628-6520  
602-542-8584                      520-628-6520  
[Joseph.Maziarz@azag.gov](mailto:Joseph.Maziarz@azag.gov)      [Amy.Cain@azag.gov](mailto:Amy.Cain@azag.gov)  
*Co-Counsel for State of Arizona*

Rebecca A. McLean  
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*Counsel for Petitioner*

- (4) Pima County and Border Control officials apprehended Defendant Pedroza-Perez near Ajo, Arizona, 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 testified to establish evidence to support the defense. 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 after all briefing before the Supreme Court concluded for the purpose of presenting argument. While I am 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. The criminal nature of the case certainly served to heighten my attention to detail, and to the implications for the rights of criminal defendants. 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 was prejudicial.

The entire experience was a positive one—I learned a great deal about the criminal trial and appeal process, and enjoyed the opportunity to appear before the distinguished members of our Supreme Court, doing my best to answer all of their questions.

29. 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.).

**Not Applicable**

30. List not 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, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

**Not Applicable**

31. 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 in addition to working for a state legislature and the United States Senate. 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 for the purpose of promulgating legislation to expand individual liberties and property rights.

While in college, I served on staff for a term of 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 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.

All of 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

32. 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. **Not Applicable**
33. Are you now an officer, director or majority stockholder, 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. **Not Applicable**
- Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? If not, give reasons. **Not Applicable**
34. Have you filed your state or federal income tax returns for all years you were legally required to file them? **Yes.** If not, explain. **Not Applicable**
35. Have you paid all state, federal and local taxes when due? **Yes.** If not, explain.
36. Are there currently any judgments or tax liens outstanding against you? **No.** If so, explain. **Not Applicable**

37. Have you ever violated a court order including but not limited to an order for payment of child or spousal support? **No.** If so, explain. **Not Applicable**
38. Have you ever been a party to a lawsuit, excluding divorce? **No.** If so, indicate nature of lawsuit, whether you were a plaintiff or defendant, disposition of case and location of lawsuit. **Not Applicable**
39. Do you have any financial interests, investments or retainers that might conflict with the performance of your judicial duties? **No.** If so, explain. **Not Applicable**

<b>CONDUCT AND ETHICS</b>
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40. Have you ever been expelled, terminated, or suspended from employment, or any school or course of learning on account of plagiarism, cheating or any other “cause” that might reflect in any way on your integrity? **No.** If so, give details. **Not Applicable**
41. Are you currently charged with or have you ever been arrested for or convicted of any felony, misdemeanor (including minor traffic offenses in the last five years), or violation of the Uniform Code of Military Justice? **No.** If so, give details. **Not Applicable**
42. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not Applicable**
43. List and describe any litigation (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) concerning your practice of law. **Not Applicable**
44. List and describe any litigation involving an allegation of fraud in which you were or are a defendant. **Not Applicable**
45. List and describe any sanctions imposed upon you by any court for violation of any rule or procedure, or for any other professional impropriety. **Not Applicable**
46. To your knowledge, has any formal charge of professional misconduct ever been filed against you by the State Bar or any other official attorney disciplinary body in any jurisdiction? **No.** If so, when? How was it resolved? **Not Applicable**
47. Have you received a notice of formal charges, cautionary letter, private admonition or other conditional sanction from the Commission on Judicial Conduct or any other official judicial disciplinary body in any jurisdiction? **No.** If so, in each case, state in detail the circumstances and the outcome. **Not Applicable**

48. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal and State laws? **No.** If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.) **Not Applicable**
49. In the past year, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? **No.** If so, state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action. **Not Applicable**
50. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended or terminated by an employer? **No.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the back ground and resolution of such action. **Not Applicable**
51. Have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a complaint or accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? **No.** If so, state the date(s) of such accusation(s), the specific accusation(s) made, and the background and resolution of such action(s). **Not Applicable**
52. 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 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. **Not Applicable**
53. Within the last five years, have you failed to meet any deadline imposed by a court order or received notice that you have not complied with the substantive requirements of any business or contractual arrangement? **No.** If so, explain in full. **Not Applicable**
54. 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 in full. **Not Applicable**

**PROFESSIONAL AND PUBLIC  
SERVICE**

55. Have you published 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)

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

57. 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.

I have provided three CLE presentations relating to ethics issues in 2015 and 2016, one internally at the Office of the Attorney General, and two additional presentations for attendees at a small annual ethics program.

During my time at the Commission on Judicial Conduct, I provided numerous formal and informal training sessions on judicial ethics during judicial orientation programs. I also provided 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 2104, where I participated on a panel reviewing major ethics cases from the preceding year.

While I was at the Institute for Justice, I spoke on a number of occasions and in a variety of formats about public interest law generally and our work specifically.

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

**Federalist Society for Law and Public Policy Studies** – student President (2001-2002), Phoenix Lawyers Chapter President (2006-2009, 2014-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. 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.

**A substantial portion of my career has been dedicated to pro bono service, public service, or both.** In addition, I have provided 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.

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

**I have served as a church deacon for more than five years now, which encompasses a wide range of duties and responsibilities in a volunteer capacity.** A significant amount of my service has been to my church and its immediately surrounding community from periodic church or area clean up projects, to assisting in food collection for various entities (including our own in-house food pantry).

I have generally been responsible for staffing and running the nursery and young children's programs as well as the sound booth. This includes editing and distributing the sermons electronically, and assisting with preparation of a new website.

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

I have also, in the past, served as a volunteer judge for state high school mock trial programs and have informally mentored law students who have interned or clerked for me.

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

**AGO Leadership in Action Award 2015**

61. List any elected or appointed offices you have held and/or for which you have been a candidate, and the dates. **Not Applicable**

Have you been registered to vote for the last 10 years? **Yes.**

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

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

**My primary interests outside practicing law fall in three areas: faith, family, and the Federalist Society.**

As a Deacon at my church, I have a number of specific responsibilities, but also a general mandate to aid in the physical needs of the church community. My time spent on this mandate ranges from numerous "work days" spent cleaning up inside and outside the church property, to editing and preparing digital versions of sermons, to assisting with plans for major church events, and to simply caring for church members in whatever way is needed.

As a full-time working mom with a precocious toddler at home I also have a significant focus on working alongside my husband to teach and raise our youngest daughter. Our two older girls currently attend college in New Mexico so we also prioritize our opportunities to spend time with them.

I have been an active and engaged Federalist Society member for more than 15 years now. The Society is committed to the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. We seek to promote awareness of these principles and to further their application through our activities, which primarily consist of hosting speaker events on topics of significant public interest. We always seek to present these topics through discussion and debate that affords a fair exposure to differing views.

## HEALTH

63. Are you physically and mentally able to perform the essential duties of a judge in the court for which you are applying? **Yes.**

## ADDITIONAL INFORMATION

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

**I am a wife, mother, and "bonus" mother to my husband's two daughters.** I am not only a woman (which I suppose checks a particular box in the world of two-dimensional diversity concerns), but I believe my experiences as a wife and mother substantially impact the kind of attorney I am and judge I would be. 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 is not the correct one, is not the one with fidelity to the purpose of the law and our system of justice. Doing justice, taking care with the law itself, may not always be popular. As a mother, in particular, I'm equipped to make the unpopular but right decision.

I'm not an Arizona native, and in the twelve years I've lived here I have not lived outside of Maricopa County. But my story is much broader geographically, and 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, staying for a brief time with a family in Acomita and attending some classes at the local school. During high school, my family also hosted exchange students from Belgium, France, Germany, and Sweden.

After high school graduation, I sold my car and took my paper route money to spend two months in Australia camping through the Outback. My trip included a stay 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 I 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 much in appreciating 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.

65. Provide any additional information relative to your application or qualifications you would like to bring to the Commission's attention at this time.

**One area of my experience that may not be otherwise expressly clear from my application is my relative 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 initiate changes to the website 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 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 become relevant in legal disputes.

Several years ago, entities in various states (some courts, some commissions) charged with providing advisory opinions on ethics issues to judges began issuing

opinions addressing whether and when judges could ethically participate in social media. Can a judge be on Facebook? If so, what limits should the judge observe? These and others are important questions, and I believe properly addressing them requires a sufficient understanding of the underlying technology. How can one properly opine about the appropriate use of "friending" or "following" or "liking" when one has no personal experience with or comprehension of the context and implications of these functions within social media?

There are also many new technological tools for improving efficiency of workflow as a general matter. We found at the CJC that decreasing our reliance on paper not only decreased our costs, but also improved the efficiency of the work generally. When the courts consider 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

My personal experience and expertise in technology is, I believe, a unique asset and qualification that will benefit the Court of Appeals.

66. If you were selected by this Commission and appointed by the Governor to serve, are you aware of any reason why you would be unable or unwilling to serve a full term? **No.** If so, explain. **Not Applicable**

67. If selected for this position, do you intend to serve fully, including acceptance of rotation to areas outside your areas of practice or interest? **Yes.** If not, explain. **Not Applicable**

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

69. Attach three professional writing samples, which you personally drafted (e.g., brief or motion). The samples should be no more than a few pages in length.

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.

**Sample One: Attorney General Opinion I16-004 (R16-001) [Attachment 3]**  
Attorney General Opinions are subject to several layers of review before issuance, and often reflect the collaborative effort of several attorneys—similar to the manner in which appellate opinions generally reflect the input of the relevant panel. I have

chosen this particular opinion as one that primarily and substantially reflects my own authorship and analysis.

This opinion analyzed the question whether Arizona law authorizes the Department of Child Safety to interview certain children absent their parents' consent. I believe this opinion demonstrates my writing style as well as the interpretation principles I would adhere to as a judge.

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

As with my first sample, I have chosen this opinion as another reflecting primarily my own authorship and analysis. In this instance, the opinion reviewed state law in the wake of a U.S. Supreme Court decision under the First Amendment to the U.S. Constitution. Again, I believe this is a fair representation of my writing and analytical style.

**Sample Three: Ninth Circuit *Amicus Curiae* Brief Excerpt from**

***International Franchise Association, Inc. v. City of Seattle* [Attachment 5]**

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

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

71. 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 two performance reviews.  
**Not Applicable**

**-- INSERT PAGE BREAK HERE TO START SECTION II (CONFIDENTIAL INFORMATION) ON NEW PAGE --**

# Attachment 1

ABAIE, IAN A.  
ACOSTA, JOE  
ADAMS, AMANDA L.  
AGUILAR, ZARINA N.  
AHLER, PAUL W.  
ALEXANDER, RANDI  
ALLEE, MITCHELL W.  
ALLEMAN, PAULA B.  
ANDERSON, JON G.  
ANDERSON, KIM S.  
ANEMONE, ALEXANDRIA  
ANGER, NANCY V.  
ARREDONDO, KARA M.  
ASCHENBACH, RON J.  
BAILEY, MICHAEL G.  
BALDNER, VICTORIA A.  
BANAN, ROGER L.  
BARREDA, JOSHUA A.  
BARRICK, JENNIFER E.  
BASKIN, MONA E.  
BEHUN, BARBARA M.  
BELJAN, JOTHI  
BENJAMIN, DENA R.  
BICKETT, PAULA S.  
BLACKWELL, STEPHANIE  
BLAKE, SCOTT W.  
BONNELL, NANCY M.  
BOWEN, JAMES B.  
BOYD, TERRY B.  
BOYLE, PATRICK J.  
BRACCIO, MYLES A.  
BRACHTL, MARK C.  
BRENNAN, CARRIE J.  
BRNOVICH, MARK  
BRONNENKANT, ANNA C.  
BROSH, LAURA C.  
BUNKERS, JENNIFER A.  
BURTON, MICHELLE  
CAMPBELL, ELIZABETH A.  
CANTRELL, JEFFREY D.  
CAPUTO, LOUIS F.  
CARBONE, JOHN A.  
CASEY, DENTON A.  
CEOLA, JASON  
CHAPMAN, AMY S.  
CHAPMAN-HUSHEK, NICHOLAS  
CHENAL, THOMAS K.  
CHRISTENSEN, SCOTT A.  
CHYNOWETH, SUZANNE M.

CIAFULLO, MARK A.  
CONNOLLY, MAUREEN M.  
CONTI, DAVID M.  
COOPER, LESLIE K.  
CORCORAN, AUBREY JOY  
CORLEY, JASON D.  
COTITTA, PAULA J.  
COULSON, LESLIE A.  
COUSINEAU, ASHLEY S.  
COX, CURTIS A.  
CRAIG, THERESA M.  
CRANDELL, RUSTY D.  
CRANE, ALISON P.  
CRIST III, TERRY M.  
CROWLEY, JASON T.  
CYGAN, KIMBERLY J.  
DAHL, CANDY  
DAHLQUIST, ANNA C.  
DAILEY JR, JAMES M.  
DANIELS, EVAN G.  
DAULT, RICHARD D.  
DAVIS, SUSAN E.  
DAY, DIANA  
DEROSE, CHRISTOPHER M.  
DICK, ADAM J.  
DLOTT, DAVID M.  
DONALD, SCOTT B.  
DONE, JULIE A.  
DRAYE, DOMINIC E.  
DRISCOLL-MACEACHRON, JAMES  
DU MEE, MATTHEW B.  
DUPLISSIS, STEVEN J.  
DYLLA, CHRISTOPHER J.  
DYLO, JOSEPH E.  
EARP, JAMES K.  
EASTERDAY, JASON B.  
ELLEL, JORDAN T.  
ELLIOTT, STEPHANIE  
ENRIQUEZ, LAURA I.  
ESPINOSA, GIOCONDA A.  
EVANS, LYNETTE J.  
FALGOUT, JOANN  
FALLER, ELIZABETH A.  
FARRAR, ROSEMARY E.  
FERNANDEZ, JENNIFER A.  
FERRIS JR, CHARLES W.  
FOSTER, SHANE W.  
FRANCIS, JILLIAN B.  
FRANK, SUSAN B.

FREESTONE, SHYLA R.  
FRIES, JERRY A.  
FROEDGE, ANNE W.  
FRY, JOHN M.  
FULLER, CATHLEEN E.  
GADOW, BLAINE D.  
GALVIN, JEANNE M.  
GARCIA, JENNA O.  
GARNER, DEBORAH L.  
GARNER, YANCEY  
GARRETT, NATALIA A.  
GAUGHAN, MICHAEL G.  
GERINGER-BAILEY, MERI  
GEVERS, ALICIA  
GILLILAN-GIBSON, KELLY E.  
GILTNER, CYNTHIA  
GOLOB, ELCHONON D.  
GOMEZ, MAUDI  
GOODMAN, MICHAEL J.  
GOODWIN, MICHAEL K.  
GORDON, ERIC E.  
GOTTFRIED, MICHAEL E.  
GREEN, JAMES M.  
GRUBE, CHARLES A.  
GUILLE, MISTY D.  
HACHTEL, LAURIE A.  
HAIGHT, RAYMOND E.  
HALE, DARLENE C.  
HALL, DANIEL P.  
HALL, FRANKLIN R.  
HAMILTON, CHRISTINA M.  
HANDY, JO-ANN A.  
HANSEN, ABRIENDA M.  
HARAMES, BRETT J.  
HARAN, MICHAEL M.  
HARGRAVES, SETH T.  
HARRINGTON, BRIDGET F.  
HARRIS, MARC H.  
HARRIS, VERNON L.  
HARRISON, TERRENCE E.  
HARRISS, MARY L.  
HARTMAN-TELLEZ, KAREN J.  
HAWKINSON, ERIN B.  
HAZARD, GREGORY M.  
HEATHCOTTE, BROCK J.  
HEINRICK, TRACEY L.  
HEMANN, LISA  
HENRY, MELISSA W.  
HERLIHY, MATTHEW T.

HERRERA-GONZALES, VIRGINIA  
HEYHOE-GRIFFITHS, JOHN  
HILL, KENNETH J.  
HOBART, ANN  
HOGAN, MICHELLE L.  
HOLYA, ROBERT B.  
HONIG, GREGORY D.  
HOPE, ASHLEIGH E.  
HOSTALLERO, PAMELA A.  
HOTCHKISS, HERVEY A.  
HOWE, CHERIE L.  
HRNICEK, MICHAEL J.  
HUBBARD, TARA M.  
HUCKABY, LINDSAY B.  
HUFF, DANIEL R.  
HUFF, LAURA J.  
HUGHES, KENNETH R.  
HUGHES, LINDSAY M.  
HUNTER, JENNIFER R.  
HURTADO, ANGELA M.  
HUTCHESON, JONATHAN W.  
HYNES, GREGORY M.  
INGLE, MARK  
JAMESON JR, WILLIAM S.  
JARVIS, GINGER  
JOHNSON, ELIZA B.  
JOHNSON, JANNA L.  
JOHNSON, JOHN S.  
JONES, ALICE M.  
JOYCE, KARI F.  
KANE, SANDRA R.  
KARLSON, KARA M.  
KASTURI, SAVITA I.  
KATZ, PAUL A.  
KAUR, JEWANJOT  
KEGLER, JEFFREY W.  
KHAN, SABRINA J.  
KIDO, LIANE C.  
KNAUER, NICHOLAS A.  
KNOBLOCH, ERIC K.  
KRENCH, RYAN M.  
KRISHNA, SUNITA A.  
KRSTYEN, MICHELLE L.  
KUHSE, LAURA L.  
KUNZMAN, MICHELLE L.  
KUPEC, ROBERT F.  
KVESIC, ANDREW M.  
LAMAGNA, PATRICIA C.  
LAMSON, STEPHANIE L.  
LARSON BURGGRAF, JENNIFER M.  
LAU, DOUGLAS E.  
LAWRENCE JR, DONALD J.  
LAWSON, TODD C.  
LENTO, GARY N.  
LESUEUR, LEO J.  
LEVINE, JONATHAN M.  
LEVY, ERIC J.  
LILLIE, STEPHANIE A.  
LINN, CATHLEEN L.  
LINNINS, PAMELA J.  
LOPEZ IV, JOHN  
LOPEZ, ERIN C.  
LOVE, KENNETH J.  
LUTTINGER, ALINE  
MACDONALD-DOYLE, HOLLY G.  
MACMILLAN, SHAWN  
MADDEN, SHEILA A.  
MAHON, AMANDA C.  
MAHONEY, MACAEN F.  
MANGIN, DAVID F.  
MANJENCICH, ZORA  
MANSUR, ERIKA C.  
MARCIANO, VALERIE L.  
MARDEROSIAN, TRAVIS C.  
MARKLEY, JENNIFER H.  
MARTIN, KATHRYN  
MARTIN, THERESE L.  
MARTONCIK, KATHLEEN E.  
MAXIE-MULLINS, LISA  
MAZIARZ, JOSEPH T.  
MCBRIDE, MELANIE G.  
MCCARTHY, ERYN M.  
MCCOY, DIANE S.  
MCCUTCHEON, KYLE W.  
MCGARY, MARY E.  
MCKAY, NEIL T.  
MEDINA, FREDERIC G.  
MEISLIK, ALYSE C.  
MELVIN, LEILA E.  
METELITS, RACHEL  
METZ, KALON W.  
MILLER, KEITH J.  
MINNICK, JULIE R.  
MONRO, CATHERINE V.  
MOORE, PENNY A.  
MORGAN, GAYLENE  
MORLACCI, MARIA A.  
MORRIS, COLBY R.  
MORRISSEY, KELLEY J.  
MOSS, ELIZABETH C.  
MUNLEY, JOSEPH C.  
MUNNS, CHRISTOPHER A.  
NAIK, NIDHI S.  
NARANJO, NANSI D.  
NAVEN, TYNE R.  
NIELSEN, JIMMY D.  
NIMMAGADDA, GEETHA  
NIMMO, MICHELLE R.  
NOEL, CARLOS  
NORRIS, BENJAMIN R.  
NORTHUP, DAWN M.  
NOWLAN, REX C.  
NYE, KIMBERLY D.  
O'DELL, STANLEY R.  
ODENKIRK, JAMES F.  
O'DONNELL-SMITH, COLLEEN  
OELZE, DEBORAH M.  
OLIVER, JAIMEE C.  
OUSOUNOV, DEIAN D.  
OVERHOLT, ELIZABETH M.  
PADILLA, JAMES M.  
PARKMAN, NATALIE A.  
PEARSON, GRANT A.  
PEARSON, KATHIE A.  
PELLEGRINO, HEATHER J.  
PERKINS, JENNIFER M.  
PERRY, BRYAN B.  
PERSHON, AMBER E.  
PIENSOOK, KHANRAT  
PLATTER, BONNIE N.  
POLLOCK, LINDA J.  
PONCE, ADELE  
POOLE, PAMELA R.  
POWELL, MICHAEL  
PULVER, ROBERTO  
QALLIAJ, MARGARET  
QUALLS, AMBER J.  
QUIGLEY, MAURA  
RAINE, MICHAEL D.  
RAINE, THOMAS  
RAND, LUCY M.  
RASSAS, THERESA C.  
RAY, KEVIN D.  
REDPATH, JAMES R.  
REEVES, KRISTINA B.

REGULA, RYAN J.  
REH, DEANIE J.  
REILLY, ANDREW S.  
REINER, BRITTANY M.  
REISSNER, JOEL N.  
REMES, RACHEL M.  
RENNICK, REBECCA C.  
RHODES, JULIE M.  
RICHARDSON, ERIN E.  
RICHTER, LAUREN J.  
RIVERA, MELISSA  
ROTHBLUM, ERIC S.  
ROUN, HEATHER E.  
ROYLE, KARIN T.  
ROYSDEN, BRUNN W.  
RUDD, JOEL  
RUDNICK, BEVERLY J.  
RYAN, HILLARY A.  
RYAN, TARANEH J.  
SACCONE, NICHOLAS J.  
SALTZ, MICHAEL F.  
SALVATI, CAROL A.  
SARGEANT IV, WILLIAM P.  
SCHAACK, DANIEL P.  
SCHLOSSER, JOHN M.  
SCHWARTZ, JONATHAN H.  
SCHWARZ, ERIC T.  
SCHWEGEL, JAMES J.  
SCIARROTTA JR, JOSEPH  
SCOTFORD, REBEKAH K.  
SELL, JANET W.  
SEYMOUR, HELENA S.  
SHEIRBON, JUDY A.  
SHERIDAN, TODD A.  
SHERMAN, NEIL E.  
SHINN-ECKBERG, FRANCES O.  
SHREVES, TERESA E.  
SIEDARE, SABRA A.  
SILVERMAN, MATTHEW A.  
SIMON, WILLIAM S.  
SIMPSON, DAVID A.  
SIMPSON, JAMES E.  
SINGH, NEILENDRA  
SKARDON, JAMES T.  
SKINNER, ORAMEL H.  
SLADE, EDWIN  
SMITH, CARRIE H.  
SMITH, KEVIN R.

SPARKS, JEFFREY L.  
STEINLE III, ROLAND J.  
STEPHENSON, KYLE  
STERLING, DEBRA G.  
STONE, ADAM D.  
SULLIVAN, JOHN F.  
SWEENEY, KATHLEEN P.  
SYREGELAS, ANGELA G.  
TANNER, DEBRA K.  
TEASDALE, SCOT G.  
TELLIER, JOHN R.  
THOMPSON, AARON J.  
TIBBEDEAUX, LISA M.  
TODD, JOHN P.  
TRUMAN, EDWARD B.  
TRYON, GEORGE M.  
TURNER, CAREY S.  
ULLAH, FAISAL H.  
UPDIKE, BENJAMIN H.  
VALADEZ, TONI M.  
VALDEZ, ALEJANDRA  
VALENZUELA, DENISE W.  
VALENZUELA, MICHAEL F.  
VALEROS, JENILEE M.  
VIDRIGHIN, ANNA-MARIA  
VILLARREAL THEIS, APRIL J.  
VILLARREAL-REX, KRISTI L.  
VINCENT, ELAINE C.  
VOGEL, DANA R.  
VOSS, IVY N.  
WALKER, DARYL R.  
WALSH, ROBERT A.  
WAN, HOLLY  
WARD, PATRICIA H.  
WATERS, JOSEPH W.  
WATKINS, PAUL N.  
WATSON, TIMOTHY J.  
WEIMAR, KELLY-ANN  
WEINKAMER, ADRIENNE M.  
WEINZWEIG, DAVID D.  
WILCOX, DANIEL J.  
WILLIAMS, DAWN R.  
WILLIAMS, MARY D.  
WILSON, LINLEY S.  
WOLAK, DAVID E.  
WOMACK, STEPHEN J.  
WONG, EDWARD C.  
WORCESTER, BROOKE A.

YBARRA, ELIZA C.  
YOUNG, ANTHONY E.  
ZAWISLAK, GOSIA M.  
ZEDER, FRED M.  
ZEISE, CARL E.  
ZIMMERMAN, JOSHUA R.  
ZINMAN, JANA M.

# Attachment 2

The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all.

\* \* \*

No society can exist unless the laws are respected to a certain degree. The safest way to make laws respected is to make them respectable. When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law. These two evils are of equal consequence, and it would be difficult for a person to choose between them. The nature of law is to maintain justice. This is so much the case that, in the minds of the people, law and justice are one and the same thing.

--The Law, Frederic Bastiat

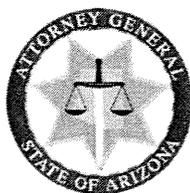
My father is an attorney and also served in the New Mexico State Legislature for a term. My grandfather was a municipal judge in Los Alamos, New Mexico. It is thus not terribly surprising that I have been interested in justice and law for as long as I can remember. Indeed, on occasion growing up I managed to convince my family to hold court so my brother and I could sort out our differences.

From the lighter side—such as periodic participation in the online Fantasy Supreme Court League (<https://fantasyscotus.lexpredict.com/>)—to the more serious work I have done with and through the Federalist Society, I've always been fascinated with and driven by a passion for doing justice and pursuing law. Mr. Bastiat's profound work in The Law presents arguments at the core of my passion: finding that place where the law and justice are one, where the people can properly respect the law and its exercise.

My work in public interest law made this passion more three-dimensional, introducing me to the individuals and communities that are impacted when the law diverges from justice and seeks harmful or immoral ends. When I transitioned to the Commission on Judicial Conduct, I was blessed to encounter so many honorable men and women with noble motives who populate Arizona's bench. I saw those judges who acted contrary to the ethics rules, of course, but I encountered so many more who adhere to ethical principles even in the face of difficult situations.

When Attorney General Brnovich invited me to join his administration in part for the purpose of working with Attorney General Opinions, I jumped at the chance to have this unique role in the law. My work here led me to submit this application as I believe I am both qualified for and would enjoy the position. Appellate judging is not simple work, but it is clearly rewarding. I have a contribution to make, and I ask for the Commission's support in allowing me to do so.

# Attachment 3



STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION  By  MARK BRNOVICH ATTORNEY GENERAL  March 28, 2016	No. I16-004 (R16-001)  Re: DCS Authority to Interview Children
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To: Gregory McKay, Director  
Arizona Department of Child Safety

**Questions Presented**

Under the current statutory scheme, may DCS lawfully interview a child without prior written parental consent when investigating a report of neglect, if the child is the alleged victim, sibling of the alleged victim, or lives in the home with the alleged victim?

**Summary Answer**

Yes. DCS may legally interview the children specified in the exception provisions without parental notice as long as doing so is part of a statutorily authorized DCS investigation.

**Background**

**DCS History, Purpose, and Functions**

The Arizona Legislature created the Department of Child Safety (DCS) in 2014, separating its functions from the Department of Economic Security (DES). At that time the Legislature promulgated a number of the statutes cited in this opinion, and it amended and

re-numbered other provisions already in statute. Arizona's laws regarding the state's role in protecting children date back to 1970.

In other words, while DCS itself is a new entity, the legal backdrop against which this agency works is extensive and complex.

DCS is tasked with the primary purpose of protecting children. Ariz. Rev. Stat. (A.R.S.) § 8-451(B). DCS achieves this purpose through four functions: (1) investigating "reports of abuse and neglect"; (2) assessing, promoting, and supporting child safety through appropriate placements in response to "allegations of abuse or neglect"; (3) cooperating with law enforcement regarding criminal conduct allegations; and (4) coordinating services to "achieve and maintain permanency" for children and families. *Id.*

Investigations pursuant to the Department's authority are conducted in order to "determine the nature, extent and cause of any condition created by the parents, guardian or custodian, or an adult member of the victim's household that would tend to support or refute the allegation that the child is a victim of abuse or neglect and determine the name, age and condition of other children in the home." A.R.S. § 8-456(C)(1).

Reports of child abuse and neglect primarily come to the Department through its statutorily mandated centralized intake hotline (Child Abuse Hotline). *See* A.R.S. § 8-455. Hotline employees must take a report for investigation when various criteria are met, one of which is that the "suspected conduct would constitute abuse or neglect." *Id.* at § 8-455(D)(1). In fact, if a Department employee receives communications regarding suspected abuse or neglect outside the context of the Hotline, the employee must refer the communicator to the Hotline. *Id.* at § 8-455(A).

In summary, there are three current statutes that set forth the purpose and obligations of DCS relating to investigations: Sections 8-451, 8-455, and 8-456. All three exclusively refer to child “abuse and neglect” and do not use the term “abandonment.”

### **Current Statutes at Issue**

There are two Arizona statutes that contain the language primarily at issue in the underlying request. Section 8-471 creates and sets forth the duties of the Office of Child Welfare Investigations (OCWI), and Section 8-802 describes the duties of DCS Child Safety Workers (CSW). Both contain substantially similar language with regard to the interview provisions for these workers. The OCWI statute is implicated by reports of criminal conduct, while the CSW statute relates to all other reports, demonstrating that DCS’ general obligations and authority regarding all investigations remain the same.

The OCWI statute provides:

A child welfare investigator shall:

1. Protect children.
2. Assess, respond to or investigate all criminal conduct allegations, which shall be a priority, but not otherwise exercise the authority of a peace officer.
3. Not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:
  - (a) The child initiates contact with the investigator.
  - (b) The child who is interviewed is the subject of, is the sibling of or is living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 4, subdivision (b) of this subsection.
  - (c) The interview is conducted pursuant to the terms of the protocols established pursuant to § 8-817.

A.R.S. § 8-471(E). The internal reference to “paragraph 4, subdivision (b)” leads to the following language:

4. After the receipt of any report or information pursuant to paragraph 2 of this subsection, immediately do both of the following:
  - (a) Notify the appropriate municipal or county law enforcement agency if they have not already been notified.
  - (b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the report of child abuse or neglect when investigating allegations pursuant to paragraph 2 of this subsection. A criminal conduct allegation shall be investigated with the appropriate municipal or county law enforcement agency according to the protocols established pursuant to § 8-817.

A.R.S. § 8-471(E). The CSW statute provides:

A worker shall not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

1. The child initiates contact with the worker.
2. The child who is interviewed is the subject of or is the sibling of or living with the child who is the subject of an abuse or abandonment investigation pursuant to § 8-456.
3. The interview is conducted pursuant to the terms of the protocols established pursuant to § 8-817.

A.R.S. § 8-802(B). The cross-reference in subsection (2) here to Section 8-456 relates to the training required for and the conduct of investigations into allegations of child abuse and neglect. Section 8-456 refers to the reports received via the Hotline described in Section 8-455. Neither of these two statutes include any reference to “abandonment investigations.” Indeed, neither statute contains the term “abandonment” yet together these constitute primary statutory authority and direction related to DCS’s investigative function. Rather, consistent with the internal

cross-references in the OCWI and CSW statutes, as well as the Hotline statutes, DCS takes only two types of reports for investigation: abuse reports and neglect reports. *See* A.R.S. § 8-455(D).

### **Relevant Statutory History**

Arizona first codified the authority of “protective service workers” to receive reports that a child is maltreated and investigate such reports in 1970. 1970 Ariz. Sess. Laws, ch. 192, § 1 (enacting A.R.S. §§ 8-531 to -536 providing for protective service for children). At that time, these designated state employees had authority to “receive reports of dependent, abused or abandoned children” and generally to “receive . . . information regarding a child who may be in need of protective services.” (*Id.* at A.R.S. §8-532(C)(1) and (C)(2)). Having received such reports or information, workers were required to “make a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child’s best interests[.]” *Id.* at A.R.S. §8-532(C)(3). In the event “reasonable grounds” existed, workers could remove a child temporarily into the State’s custody. *Id.* at A.R.S. § 8-532(C)(4). At the time, these statutes did not discuss interview authority, and the term “neglect” did not appear among the definitions provided.

In 1981, the exemption language at issue in this Opinion first appeared in what was at that time Section 8-546.01. The language adopted in 1981 has remained virtually identical with the language in the current provision (now Section 8-802): “2. A worker shall not interview a child without the prior written consent of the parent, guardian or custodian of the child unless: . . . (b) The child interviewed is the subject of or the sibling of or living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 3, subdivision (b), of this subsection.” 1981 Ariz. Sess. Laws, ch. 293, § 4. The cross referenced paragraph

(paragraph 3, subdivision (b)) previously existed and contained the language codified in 1970 regarding the investigation requirement. *Id.*

The 1981 amendments, in addition to adding the exemption, also amended the language of the investigation requirement to read: “Make a prompt and thorough investigation of the nature, extent, and cause of any condition which would tend to support or refute the allegation that the child should be adjudicated dependent.” 1981 Ariz. Sess. Laws ch. 293, § 4, A.R.S. § 8-546.01(C)(3)(b). As of 1981, “dependent child” was a statutorily defined term that effectively included abused, neglected, and abandoned children--though only the terms “abandoned” and “abuse” were defined at that time. 1981 Ariz. Sess. Laws, ch. 293, § 1 (codified at A.R.S. § 8-201) (“‘Dependent child’ means . . . by reason of abuse, neglect, cruelty, or depravity...”). The statutes did not include a definition of “neglect” until 1994. Laws 1994, Ch. 325 §§ 2-3 (codified at A.R.S. §§ 8-531, 8-546). In 1997, the interview exceptions at Section 8-546.01 became today’s Section 8-802. 1997 Ariz. Sess. Laws, ch. 222 §§ 53, subsec. A, 54.

Two years ago, in May 2014, the Legislature created DCS in its current form during a special session; the resulting Session Laws document is almost 200 pages, indicating the complexity and comprehensiveness of this effort. *See* 2014 Ariz. Sess. Laws, 2nd Spec. Sess., ch. 1, § 56. While this legislation created DCS, and set forth the sections of law relating to the investigation authority, the relevant exemption provisions for OCWI and CSW received no substantive amendments. *See* 2014 Ariz. Sess. Laws, 2nd Spec. Sess., ch. 1, §§ 21, 56. In other words, the DCS statutory scheme adopted these exemptions without treatment at the same time it delineated the obligations to take and investigate reports of “abuse and neglect” without recognizing “abandonment” reports.

## Interpretation Principles

Certain principles of statutory and constitutional interpretation are relevant here, in particular those principles related to the “Fair Reading Method” of interpretation:

The [endorsed] interpretive approach . . . is that of the “fair reading”: determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued. . . . [The endeavor] requires an ability to comprehend the *purpose* of the text, which is a vital part of its context. But the purpose is to be gathered only from the text itself, consistently with the other aspects of its context. This critical word *context* embraces not just textual purpose but also (1) a word’s historical associations acquired from recurrent patterns of past usage, and (2) a word’s immediate syntactic setting—that is, the words that surround it in a specific utterance.

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012) (emphasis in original). Notably,

[a]dhering to the *fair meaning* of the text . . . does not limit one to the hyperliteral meaning of each word in the text. In the words of Learned Hand: “a sterile literalism . . . loses sight of the forest for the trees.” The full body of a text contains implications that can alter the literal meaning of individual words.

*Reading Law* at 356 (quoting *New York Trust Co. v. Commissioner*, 68 F.2d 19, 20 (2d Cir. 1933) (per L. Hand, J.)).

A specific principle or canon of interpretation key to this Opinion is the harmonious reading canon, which tells us that we presume there to be harmony among related provisions because we do not presume that drafters have contradicted themselves. See *Reading Law* at 180; *Cf. State v. Bowsher*, 225 Ariz. 586, 589, ¶ 14 (2010) (en banc) (“When construing two statutes, this Court will read them in such a way as to harmonize and give effect to all of the provisions involved.” (quoting *Pima County ex rel. City of Tucson v. Maya Constr. Co.*, 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988)); *Sw. Gas Corp. v. Indus. Comm’n*, 200 Ariz. 292, 297, ¶ 16 (App. 2001) (Arizona courts construe statutory provisions “to harmonize rather than contradict

one another” and construe one statute “together with other related statutes, as though they constituted one law.”) (internal quotation marks and citations omitted).

### Analysis

In determining the contours of the authority set forth in the relevant statutes, we look first at their plain text. *State ex rel. Dept. of Economic Sec. v. Hayden*, 210 Ariz. 522, 523, ¶ 7 (2005). Interpreting statutory text requires that effect be given to all parts of the text. *Id.* “Statutes that are in *pari materia*—relating to the same matter—are construed together as though they constituted one law.” *Id.*

As noted above, the two statutes that provide an exception allowing DCS to interview children absent notification to their parents employ substantially similar text. A.R.S. §§ 8-471(E)(3)(b) and 8-802(B)(2). The relevant text sets forth two limitations on the exception: (1) based on the target of the investigation (purported victim; sibling of purported victim; or living with purported victim); and (2) based on the existence of a statutorily authorized DCS investigation.

There appears to be no conflict or disagreement regarding the first limitation, the question is as to the second limitation: whether the plain language of the statute renders the exception applicable in some DCS investigations but not in others. In other words, considering the plain language of the text leads to two possible conclusions: either there is a conflict between the “abuse and abandonment” and “abuse and neglect” language, or the two terms may be read together as harmonious.

Both provisions at issue contain an internal cross-reference to clarify when the DCS investigations are statutorily authorized. With regard to the OCWI statute, the exception to parental notification applies to “an abuse and abandonment investigation pursuant to

paragraph 4, subdivision (b) of this subsection." A.R.S. § 8-471(E)(3)(b). The cross-referenced language serves as the directive to OCWI investigators that they must, "immediately" take two steps after receiving a report or information of criminal conduct: (a) notify law enforcement, and (b) "make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the report of child abuse or neglect. . . ." A.R.S. § 8-471(E)(4). The authorized investigation that the interview exception applies "pursuant to" contains no reference to abandonment, but does reference "the report of child abuse or neglect." A.R.S. § 8-471(E)(4)(b).

Similarly, the CSW statute limits the exemption to "an abuse and abandonment investigation pursuant to § 8-456." A.R.S. § 8-802(B)(2). Section 8-456 is the statutory provision that sets out DCS's investigative authority and is tied to the Hotline provision; it references only "abuse and neglect" investigations thus establishing two categories of investigations DCS is explicitly authorized to conduct. A.R.S. § 8-456. As with the previous cross-reference, the term "abandonment" does not appear in Section 8-456.

Taking into account the context of the statutory scheme, and the statutory history of the particular provisions at issue, the plain language interpretation here must result in a recognition that the law permits investigators to interview children without parental notification only when two parameters are met: (1) the child falls into one of the identified categories, and (2) the law authorizes a DCS investigation.

This conclusion is consistent with the long-standing practice of DCS and its predecessors. *See* Request for AG Opinion (R16-001) at 4 (referencing DCS Policy and Procedure Manual, Chapter 2, Section 3, and noting the relevant policy has remained static for at least 20 years). It is also consistent with this Office's previous statements generally relating to DCS interview

authority. *See* Ariz. Att’y Gen. Op. I88-062 (applying the exception language to allow interviews when investigating “reports that a child is dependent or abused” where the definition of “dependent child” included neglected children); Ariz. Att’y Gen. Op. I98-008 (allowing for child interviews absent parental notification on private school grounds “during an investigation to evaluate allegations of abuse, dependency, neglect, or exploitation.”).<sup>1</sup>

This Office recognizes that its conclusion is contrary to that reached by the Arizona Ombudsman-Citizens’ Aide. *See* Report of Investigation (Feb. 16, 2016). That report, however, failed to consider the statutory context or the plain language of the provisions contained in the internal cross-references, which calls into question the hypertechnical textual analysis. Respectfully, this Office explicitly rejects the conclusions reached in the Report of Ombudsman-Citizens’ Aide.

### **Conclusion**

DCS may legally interview the children specified in the exception provisions without parental notice as long as doing so is part of a statutorily authorized DCS investigation. This is consistent with a plain text review of the statute, when taking into account the explicit internal cross-references and the relevant context.

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Mark Brnovich  
Attorney General

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<sup>1</sup> An earlier AG Opinion also recognized interview authority absent parental notification during statutorily authorized investigations. Ariz. Att’y Gen. Op. I75-219. That opinion was issued before the 1981 introduction of the exception language into the statutory scheme. Both of the subsequent opinions in 1988 and 1998 were issued after that introduction, and both cite its text.

# Attachment 4



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
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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.<sup>1</sup>

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

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<sup>1</sup> 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.

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Mark Brnovich  
Attorney General

# Attachment 5

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No. 15-35209

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**In the United States Court of Appeals  
for the Ninth Circuit**

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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.*

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

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**BRIEF OF AMICUS THE STATE OF ARIZONA**

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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

Washington (and Arizona) Privileges or Immunities Clause prevent the same favoritism for a different reason.

June 12, 2015

Respectfully Submitted,

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