

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

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

PERSONAL INFORMATION

1. Full Name: **David Daniel Weinzweig**
2. Have you ever used or been known by any other name? **Yes.** If so, state name: **David Daniel Clemen. My natural father, Harvey Clemen, died in 1977. My mother married Dr. Sol Weinzweig in 1978. Dr. Weinzweig adopted me in 1987.**
3. Office Address: **Ellman Weinzweig LLC
330 E. Thomas Road
Phoenix, Arizona 85012**
4. How long have you lived in Arizona? **45 years and 10 months.** What is your home zip code? **85018.**
5. Identify the county you reside in and the years of your residency. **I have resided in Maricopa County for 45 years and 10 months.**
6. If nominated, will you be 30 years old before taking office? **Yes.**

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes.**
7. List your present and any former political party registrations and approximate dates of each: **I have been a registered Independent since 2014. Before that, I was a registered Republican from 1989 to 2004 and a registered Democrat from 2004 to 2014.**

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

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received. **I was educated in Arizona with brief interludes in Washington, D.C. and Israel.**

**University of Arizona
Tucson, Arizona
Attended: 1989-1992 (graduated in 3 1/2 years)
Bachelor of Arts**

**Hebrew University
Jerusalem, Israel
Attended: 1992**

**Arizona State University
Tempe, Arizona
Sandra Day O'Connor College of Law
Attended: 1994-1997
Juris Doctorate**

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

Fields of Study

- **University of Arizona
Political Science—Major
Near East Studies—Minor**
- **Hebrew University
Emphasis in international relations and the genesis of terrorism in the Middle East**
- **Arizona State University College of Law
Law with emphasis in commercial litigation, professional responsibility, and health care**

Extracurricular Activities

- **American Israel Public Affairs Committee
Intern
Washington, D.C.**

1990-1991

- **United States Senate Judiciary Committee
Intern
Subcommittee on Monopolies, Antitrust, and Consumer Rights
Washington, D.C. (Capitol Hill)
1991**
- **United States Holocaust Museum
Research Volunteer
Washington, D.C.
1990-1991**
- **United States Senator John McCain
Intern
Phoenix, Arizona
1991**
- **Backpacked through Greece, Turkey, and Egypt
1992**
- **Student Liaison
University of Arizona
American Israel Public Affairs Committee
1989-1990**
- **Student Liaison
University of Arizona
Zionist Organization of America
1989-1990**
- **Arizona State University College of Law
President, Jewish Law Students Association
Organized several lectures by prominent local attorneys and full-day
field trips to the Arizona Supreme Court and elsewhere
1995-1996**
- **Moot court competitions**
- **Intramural basketball and flag football**

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

Hebrew University. I received an academic scholarship.

Law School: In my first semester, I received Honors in Legal Method and Writing, awarded to the top 10 percent of students in the course. In my second semester, I received Honors in Legal Research and Writing, awarded to the top 10 percent of students in the course. My professor for both classes was former Chief Justice Rebecca Berch.

I later taught Legal Method and Writing to first-year law students as a Student Instructor. I became a William H. Pedrick Scholar and received a scholarship to defer tuition in my final year.

In June of 1996, I returned to live in my childhood home to care for my mother after she barely survived a car crash that took my adopted father's life. The accident prevented me from working in the summer between my second and third year.

PROFESSIONAL BACKGROUND AND EXPERIENCE

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

**Supreme Court of Arizona
October 18, 1997**

**U.S. Court of Appeals for the Ninth Circuit
2009**

**U.S. Court of Appeals for the Tenth Circuit
2012**

**U.S. District Court for the District of Arizona
December 4, 1997**

**U.S. District Court for the Western District of Oklahoma (pro hac vice)
March 22, 2004**

**U.S. District Court for the Northern District of Texas (pro hac vice)
September 15, 2005**

**U.S. District Court for the District of Nevada (pro hac vice)
August 14, 2007**

**U.S. District Court for the District of Nevada (pro hac vice)
February 3, 2010**

**U.S. District Court for the District of Nevada (pro hac vice)
July 25, 2011**

**U.S. District Court for the District of Utah (pro hac vice)
June 18, 2012**

**Third Judicial District Court, State of Utah (pro hac vice)
July 9, 2012**

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.**
- b. Have you ever had to retake a bar examination in order to be admitted to

the bar of any state? **No.**

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

| EMPLOYER | DATES | LOCATION |
|--|-----------------------|-------------------|
| ELLMAN WEINZWEIG LLC Partner | 2017 — Present | Phoenix |
| ARIZONA ATTORNEY GENERAL'S OFFICE Senior Litigation Counsel | 2012 — 2017 | Phoenix |
| LEWIS AND ROCA LLC Equity Partner Income Partner Associate | 2002 — 2012 | Phoenix |
| ARIZONA ATTORNEY GENERAL'S OFFICE | 2000 — 2002 | Phoenix |
| BONNETT FAIRBOURN FRIEDMAN & BALINT | 1998 — 2000 | Phoenix |
| PESKIND HYMSON & GOLDSTEIN | 1997 — 1998 | Scottsdale |

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

Robert L. Ellman

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

| | |
|---|------------|
| Constitutional Litigation and Appeals | 60% |
| Class Action Litigation and Appeals | 30% |
| Advice, AG Opinion Committee, and Training | 10% |

I reentered private practice in February 2017. I largely represent government agencies and officials in constitutional litigation.

From 2012 to February 2017, I defended the State of Arizona in high-profile complex and constitutional litigation and appeals, including class actions. Most frequently, I defended state statutes against constitutional challenges in state and federal court. I defended constitutional challenges to state criminal laws and capital punishment methods, election and campaign finance laws, education laws, free speech laws, tax laws, abortion laws, government spending laws, and more.

Recent cases include:

Appeals. *NAACP, et al. v. Horne, et al.*, 626 Fed.Appx. 200 (9th Cir. 2016) (argued) (defending gender-selection abortion law); *Torres, et al. v. Goddard, et al.*, 793 F.3d 1046 (9th Cir. 2015) (argued) (defending law enforcement operations to stem human smuggling and narcotics trafficking); *Levinson v. PBS, et al.*, 495 Fed.Appx. 815 (9th Cir. 2012) (argued) (defending equal airtime claims of presidential candidate); *Gallardo, et al. v. State*, 336 P.3d 717 (Ariz. 2014) (defending election-related law as special legislation); *Arizona Citizens Clean Elections Com'n v. Brain*, 322 P.3d 139 (Ariz. 2014) (defending campaign finance laws); *City of Scottsdale v. State*, 352 P.3d 936 (Ariz. Ct. App. 2015) (argued) (defending commercial speech and advertising law); *Torres, et al. v. Goddard, et al.*, 16-16315 (9th Cir. 2016) (defending application of qualified immunity in search and seizure context).

Lower courts. *First Amendment Coalition v. Ryan*, CV-14-01447-NVW (D. Ariz.) (defending Arizona's method of execution under Eighth Amendment); *Antigone Books LLC, et al. v. Horne, et al.*, CV-14-02100-SRB (D. Ariz.) (defending "revenge porn" statute); *NAACP, et al. v. Horne, et al.* CV-13-01079-DGC (D. Ariz.); *Tinsley, et al. v. McKay, et al.*, CV-15-00185-ROS (D. Ariz.) (defending substantive due process claims against state child welfare agency); *Arizona Citizens Clean Elections Com'n, et al. v. Bennett*, CV2013-010338 (Maricopa Super. Ct.) (defending campaign finance laws); *City of Scottsdale v. State*, CV2014-003467 (Maricopa Super. Ct.) (defending commercial speech and advertising law); *Gallardo, et al. v. State, et al.*, CV2013-017137 (Maricopa Super. Ct.) (defending election-related law as special legislation); *NFP Org. of Phoenix, Inc., et al. v. Brewer, et al.*, CV-13-01869-GMS (D. Ariz.) (retail tobacco); *Town of Colorado City, et al. v. State, et al.*, CV-11-08037-DGC (D. Ariz.) (government corruption and trust seizure); *United Food and Commercial Workers, Local 99, et al. v. State*, CV2016-092409 (Maricopa Super. Ct.) (defending Arizona statute re minimum employment benefits); *Kuby, et al. v. State*, CV2015-011434 (Maricopa Super. Ct.) (defending plastic bags statute); *City of Phoenix v. State*, CV2016-014855 (Maricopa Super. Ct.) (defending Arizona statute involving municipal improvement districts).

I have also counseled government attorneys in the executive and legislative branches on various issues, including litigation and potential conflicts of interest.

For several years, I served on the Attorney General Opinion Committee, which authors published legal opinions in response to formal requests from state and county officials. I sat on dozens of internal moot court panels to prepare Assistant Attorneys General for arguments before the Ninth Circuit Court of Appeals, Arizona Supreme Court, and Arizona Court of Appeals.

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

I spent ten years with the Lewis and Roca law firm, principally representing corporate and government clients in complex and routine litigation, including general commercial, antitrust, consumer fraud, securities fraud, common law fraud, bankruptcy, real estate, election, contract, fiduciary duty, product liability, patent, trademark, franchise, unfair trade practices, racketeering, construction and design defect, fraudulent transfer, life and disability insurance defense, tortious interference, defamation, corporate governance, tax, unfair competition, trade secret, employment, immigration, and bad faith matters.

Select matters include: *Pardae v. Holder*, 454 Fed. Appx. 547 (9th Cir. 2011) (argued) (challenging removal under Convention Against Torture); *In re Coyotes Hockey, LLC, et al.*, CV2009-BK-09488 (Bankr. D. Ariz. 2009) (representing former CEO of Research in Motion, Jim Balsillie, in an adversary proceeding to acquire National Hockey League franchise); *VEGAS.com, LLC, et al. v. Tix Corporation, et al.*, CV2009-7746 (C.D. Cal. 2009) and CV2009-2362 (D. Nev. 2009) (representing VEGAS.COM in complex commercial litigation regarding ticket distribution practices on the Las Vegas Strip); *Lens.com, Inc. v. 1-800 Contacts, Inc.*, CV2011-0918 (D. Nev. 2011) (representing Lens.com in complex intellectual property litigation against top contact lens retailer).

Antitrust law. I have substantial experience in antitrust law, both in private practice and the public sector. From 2000 to 2002, I served as the principal Assistant Attorney General in the Antitrust Section of the Arizona Attorney General's office, where I investigated and prosecuted violations of state antitrust law. I was Arizona's lead counsel in several national antitrust investigations and lawsuits involving the pharmaceutical and healthcare industries.

I co-chaired the Antitrust and Trade Regulation Practice at Lewis and Roca. I defended and pursued all forms of antitrust litigation, including claims of monopoly maintenance, attempted monopoly, refusals to deal, price fixing, market division, exclusive dealing, resale price maintenance, group boycott, and price discrimination. I provided guidance to institutional clients on antitrust issues. I trained our clients on antitrust law and compliance.

Transactional. I have also helped clients in a broad range of transactional matters, including guidance on general commercial and contract laws, corporate governance, employment benefits, pension plan laws and requirements, licensing, election laws, criminal laws, foreign corrupt practices, and immigration laws.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. **None.**
19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

In private and public practice, I have drafted scores of appellate briefs and hundreds of motions, responses, and replies, along with discovery requests, discovery answers, legal opinions, compliance manuals, trial briefs, and more.

Statutes: As Senior Litigation Counsel, I helped legislative counsel recraft and revise Arizona statutes when successfully challenged on constitutional grounds. For instance, I helped recraft the “Revenge Porn” statute that passed in 2016 and the panhandling statute that passed in 2013.

Rules: I served on the District of Arizona Local Rules of Practice Advisory Committee and Local Rules Civil Practice Subcommittee from 2012 to 2017. This Committee makes reports and recommendations to the Court regarding “[t]he consistency of the Rules of Practice with the United States Constitution, Acts of Congress, the Federal Rules and General Orders of the Court.”

Since 2016, I have served on the Civil Justice Reform Committee, which the Arizona Supreme Court established “to promote access to justice and to improve court processes to better serve the public. Civil justice reform efforts seek to ensure that courts are forums for the fair and efficient resolution of disputes without undue expense or delay.” This Committee has crafted and recommended various amendments to the Arizona Rules of Civil Procedure.

Jury instructions: In 2011 and 2012, I served on the State Bar of Arizona, Civil Jury Instructions Committee, which drafts and vets civil jury instructions for use in state courts.

Negotiations: I have negotiated a wide range of litigation settlements in constitutional and commercial disputes.

Compliance manuals: While in private practice, I drafted corporate compliance manuals in the areas of antitrust law and the foreign corrupt practices act.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.**
- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

I have represented the Arizona State Board of Nursing as counsel in two matters before the Office of Administrative Hearings. I have represented the Arizona School Facilities Board before the Office of Administrative Hearings in at least four matters involving several different construction projects.

I presently co-represent the Sun City Home Owners Association in a wastewater-related dispute before the Arizona Corporation Commission.

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

Sole Counsel: **2**

Associate Counsel: **5**

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

Sole Counsel: **10**

Chief Counsel: **5**

Associate Counsel: **25**

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

Antigone Books L.L.C., et al. v. Brnovich,
CV14-02100-SRB, United States District Court, District of Arizona

(1) September 2014 to August 2015

(2) Counsel for Plaintiffs Antigone Books L.L.C., Intergalactic, Inc., D/B/A, Bookmans, Changing Hands Bookstore Inc., Copper News Book Store, Mostly Books, Voice Media Group, Inc., American Booksellers Foundation for Free Expression, Association of American Publishers, Freedom to Read Foundation, and National Press Photographers Association:

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Richard M. Zuckerman
Dentons US LLP
1221 Avenue of the Americas
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Counsel for Defendant Arizona Attorney General Mark Brnovich:

David Weinzweig
Senior Litigation Counsel
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007

Counsel for Defendants Apache County Attorney Michael B. Whiting, Cochise County Attorney Edward G. Rheinheimer, Coconino County Attorney David W. Rozema, Gila County Attorney Bradley D. Beauchamp, Graham County Attorney Kenny Angle, Greenlee County Attorney Derek D. Rapiere, La Paz County Attorney Tony Rogers, Maricopa County Attorney Bill Montgomery, Mohave County Attorney Matthew J. Smith, Navajo County Attorney Brad Carlyon, Pima County Attorney Barbara Lawall, Pinal County Attorney Lando Voyles, Santa Cruz County Attorney George Silva, Yavapai County Attorney Sheila Polk, and Yuma County Attorney Jon R. Smith: See Attachment D.

- (3) **Summary:** Ten publishers, bookstores, and media organizations sued the State of Arizona and all 15 county attorneys for injunctive and declaratory relief to enjoin enforcement of an Arizona statute that criminalized the unjust and invasive evil known as “revenge porn.” A.R.S. § 13-1425. Plaintiffs claimed that the statute was unconstitutional under the First Amendment because it infringed on protected speech and freedom of the press. Plaintiffs further claimed that the statute violated the Commerce Clause. The eventual settlement required the assent of many stakeholders and resulted in amended legislation that passed in 2016. H.B.2001, Fifty-Second Legislature, Second Regular Session.
- (4) **Significance:** This settlement was essential to stem the growing scourge of revenge porn. Revenge porn generally refers to the malicious practice

of jilted ex-lovers who seek revenge against former mates by posting their sexually graphic images on the Internet without consent, often with their contact information. Before the settlement, this disturbing practice had fallen through the statutory cracks, causing irremediable damage to innocent victims.

SDMS, P.C. v. Siemens Medical Solutions USA, Inc.,
CV2005-051908, Maricopa County Superior Court

(1) August 2005 to March 2009

(2) Counsel for Plaintiff:

James Craft
General Counsel
Apogee Physicians
2525 East Camelback Road, Suite 1100
Phoenix, Arizona 85016-4282
james.craft@apogeephysicians.com
(602) 778-3613

Counsel for Defendant:

David Weinzweig and Jon Weiss
Lewis and Roca LLC (now Lewis Roca Rothgerber Christie)
201 East Washington Street
Suite 1200
Phoenix, Arizona 85004
(602) 262-5382
jweiss@lrrc.com

(3) Summary: This case involved complex antitrust claims against an international medical equipment manufacturer. Lewis and Roca represented the defendant manufacturer.

(4) Significance: This case was significant because it involved national and international practices of the manufacturer. The negotiated settlement was significant because it capped nearly four years of contentious, hard-fought litigation in expert and fact-intensive antitrust litigation against a publicly-traded, international conglomerate.

State of Arizona v. Stericycle, Inc.,
CV2002-018153, Maricopa County Superior Court

(1) February 2001 to September 2002 (investigation and consent decree)

(2) Counsel for Defendant:

Charles A. Blanchard
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
(202) 942-5805
Charles.Blanchard@aporter.com

Counsel for Plaintiff:

David Weinzweig
Office of the Arizona Attorney General
Antitrust Unit
1275 West Washington
Phoenix, Arizona 85007

(3) Summary: After an exhaustive investigation, the Arizona Attorney General filed civil antitrust charges against Stericycle, Inc., the dominant national medical waste disposal provider. The antitrust claims stemmed from a 1997 market division agreement between Stericycle and Browning-Ferris Industries under which Stericycle acquired all customers in Arizona while Browning-Ferris acquired all customers in Colorado and Utah. Under the settlement, Stericycle was required to pay civil penalties and attorneys' fees to the State in quarterly installments over a three-year period. To spark additional competition, Stericycle also agreed to provide up to 50,000 pounds of incineration treatment services per month to third-party haulers in Arizona.

(4) Significance: This investigation, negotiation, and settlement resulted in a consent decree that modified business practices and fostered competition in the billion-dollar medical waste removal market. In addition, the Arizona settlement caused other state governments and private plaintiffs to pursue antitrust claims against the corporate defendant.

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

The approximate number of cases in which you appeared before:

Federal Courts: **60**

State Courts of Record: **40**

The approximate percentage of those cases which have been:

Civil: **98%**

Criminal: 2%

The approximate number of those cases in which you were:

Sole Counsel: 25

Chief Counsel: 25

Associate Counsel: 50

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case or wrote a response to such a motion: 50%

You argued a motion described above: 25%

You made a contested court appearance (other than as set forth in the above response): 25%

You negotiated a settlement: 20%

The court rendered judgment after trial: 2%

A jury rendered a verdict: 2%

The number of cases you have taken to trial:

Superior Court 1

Federal District Court 1

Jury 2

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

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

The approximate number of your appeals which have been:

Civil: 17

Criminal: 1*

The approximate number of matters in which you appeared:

As counsel of record on the brief: 17

Personally in oral argument: 6

*** From 2012 to 2017, I defended constitutional challenges to criminal statutes and criminal investigations. These cases often turn on criminal law issues such as probable cause.**

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

NAACP, et al. v. Horne, et al.,
District of Arizona, United States District Court, 13-cv-01079,
Ninth Circuit Court of Appeals, No. 13-17247, 626 Fed.Appx. 200

(1) September 2012 to December 2015

(2) Ninth Circuit Court of Appeals

**Circuit Judge Richard Clifton
Circuit Judge John Owens
Chief District Judge William Smith (Rhode Island)**

District of Arizona, United States District Court

District Judge David Campbell

(3) Counsel for Plaintiffs-Appellants National Association for the Advancement of Colored People and National Asian Pacific American Women's Forum:

**Alexa Kolbi-Molinas (argued)
Jennifer Lee
Susan Talcott Camp
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004**

Daniel Pochoda

Filing Date: June 30, 2017
David D. Weinzweig
Page 15

**American Civil Liberties Union Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, Arizona 850**

**Counsel for Defendants-Appellees Arizona Attorney General, Arizona
Medical Board, and Lisa Wynn:**

**David Weinzweig (argued)
Senior Litigation Counsel
Solicitor General's Office
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-7989**

- (4) Summary: This case involved an equal protection challenge against an Arizona statute that prohibits health care providers from offering abortion services to patients who seek abortions to ensure the gender or race of their children. A.R.S. § 13-3603.02 and § 36-2157. Plaintiffs NAACP and NAPAWF (represented by the ACLU) claimed that the Arizona statute stigmatized their pregnant female members.**

The State prevailed in the District of Arizona and the Ninth Circuit Court of Appeals based on the argument that stigmatic harm is too abstract and generalized to meet constitutional standing requirements in equal protection litigation. The Ninth Circuit issued its decision only seven days after oral argument in San Francisco.

- (5) Significance: The lawsuit and appeal received national attention because it represented the first constitutional challenge to this sort of statute, which has been passed in several states. While premised on standing, my colleagues tell me that this was the first Arizona abortion statute to emerge intact from the Ninth Circuit.**

Torres, et al. v. Goddard, et al.,
District of Arizona, United States District Court, 06-cv-02482,
Ninth Circuit Court of Appeals, No. 12-17096, 793 F.3d 1046
Ninth Circuit Court of Appeals, No. 16-16315

(1) September 2012 to Present

(2) Ninth Circuit Court of Appeals

Circuit Judge Alex Kozinski
Circuit Judge Stephen Reinhardt
Circuit Judge Jay Bybee

District of Arizona, United States District Court

District Judge Stephen McNamee

(3) Counsel for Representative Plaintiffs-Appellants Javier Torres and Lia Rivadeneyra:

Christopher J. Wilmes (argued)
Matthew J. Piers
Joshua Karsh
Hughes Socol Piers Resnick & Dym, Ltd.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
(312) 604-2636
cwilmes@hspllegal.com

Counsel for Defendants-Appellees State of Arizona, Former Arizona Attorney General Terry Goddard, and Former Assistant Attorney General Cameron Holmes:

David Weinzweig (argued)
Senior Litigation Counsel
Solicitor General's Office
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-7989

(4) Summary: This class action lawsuit concerned joint law enforcement efforts to seize illicit proceeds derived from human smuggling and narcotics trafficking across Arizona's southern border. Plaintiffs asserted a Fourth Amendment challenge to civil forfeiture operations of the Arizona Attorney General's Office, the Arizona Department of Public Safety, the Phoenix Police Department, the Arizona Department of Financial

Institutions, and the federal Bureau of Immigration and Customs Enforcement. The dispute implicated and required argument on civil and criminal laws, state action immunity, and class action issues. The State prevailed in the District of Arizona and Ninth Circuit Court of Appeals.

- (5) **Significance:** The appeal raised issues of national importance to state and federal prosecutors and civil forfeiture law. The published decision holds that prosecutors are entitled to absolute immunity for alleged misconduct in civil forfeiture proceedings.

City of Scottsdale v. State of Arizona,
Maricopa County Superior Court, CV2014-003467,
Arizona Court of Appeals, 1 CA-CV 14-0798, 237 Ariz. 467, 352 P.3d 936

- (1) December 2014 to August 2015

- (2) Arizona Court of Appeals

Judge Kent Cattani
Judge Patricia Norris
Judge Patricia Orozco

Maricopa County Superior Court

Judge Robert Oberbillig

- (3) Counsel for Plaintiff-Appellant City of Scottsdale:

Scottsdale City Attorney Bruce Washburn (argued)
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
(480) 312-2405
bwashburn@scottsdaleaz.gov

Counsel for Defendant-Appellee State of Arizona:

David Weinzweig (argued)
Robert L. Ellman (then Solicitor General)
General Counsel
Arizona House of Representatives
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Counsel for Intervenors James Torgeson and Sign King, LLC:

Filing Date: June 30, 2017
David D. Weinzweig
Page 18

Justice Clint Bolick (argued) (then at Goldwater Institute)
Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007
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cbolick@courts.az.gov

- (4) **Summary:** This litigation and appeal had substantial ramifications for the balance of power between municipalities and the State of Arizona. The City of Scottsdale banned all sign-spinners (aka sign-walkers) from operating on public lands in direct conflict with an Arizona statute that prohibited such municipal ordinances. The City sued the State, alleging the statute violated the Arizona Constitution and in particular the rights of charter cities.
- (5) **Significance:** The published decision from the Arizona Court of Appeals addressed an issue of statewide importance. It clarified the scope of charter city rights outside the election context and confirmed that Arizona municipalities cannot criminalize what the State expressly permits.

Pardae v. Holder,
Ninth Circuit Court of Appeals, Nos. 09-70925, 09-72825, 454 Fed. Appx. 547

(1) March 2009 to October 2011

(2) Ninth Circuit Court of Appeals

Circuit Judge Stephen Reinhardt
Circuit Judge Betty Fletcher
Circuit Judge Wallace Tashima

(3) Counsel for Appellee United States Attorney General Eric Holder:

David Nicholas Harling
Ronald E. Lefevre
U.S. Department of Justice
Civil Division, Office of Immigration Litigation
Washington, D.C. 20044
(202) 305-7184

Counsel for Appellant Adeque Pardae:

David Weinzweig (argued)
Lawrence Kasten
Lewis and Roca LLP (now Lewis Roca Rothgerber Christie)

Filing Date: June 30, 2017
David D. Weinzweig
Page 19

201 East Washington Street, Suite 1200
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lkasten@lrrc.com

- (4) **Summary and significance:** This Ninth Circuit appeal involved revolting facts and substantial consequences. Our pro bono client was a Liberian national who had witnessed and experienced ghastly horrors and atrocities in his homeland, including the beheading of his father. A federal judge ordered that he be deported to Liberia, but he feared torture upon his return. We prevailed in moving the Ninth Circuit for a deferral of his removal to Liberia under the Convention Against Torture.

Colorado City v. United Effort Plan Trust, et al.,
District of Arizona, United States District Court, 11-CV-08037

- (1) March 2011 to May 2015

- (2) District of Arizona, United States District Court

District Court Judge David Campbell

Salt Lake County Court, Third Judicial District, Case No. 053900848
In the Matter of the United Effort Plan Trust

Judge Denise Lindberg

- (3) Counsel for Plaintiff Town of Colorado City:

Jeffrey Matura
Graif Barrett & Matura PC
1850 North Central Avenue, Suite 500
Phoenix, Arizona 85004
(602) 462-9999

Counsel for Plaintiff City of Hildale:

Blake Hamilton
Durham Jones & Pinegar, P.C.
111 East Broadway, Suite 900, P.O. Box 4050,
Salt Lake City, Utah 84111

Counsel for Intervenor State of Arizona:

David Weinzweig
Senior Litigation Counsel
Solicitor General's Office

1275 West Washington Street
Phoenix, Arizona 85007

Counsel for Intervenor State of Utah:

Joni Jones
Office of the Utah Attorney General
P.O. 140856
Salt Lake City, Utah 84114-0856
(801) 366-0100

Counsel for Defendant Special Fiduciary Bruce Wisan:

Jeffrey L. Shields
Mark L. Callister
Callister Nebeker & McCullough
Zions Bank Building, Suite 900
10 East South Temple
Salt Lake City, Utah 84133
(801) 530-7300

(4) Summary: This lawsuit involved the Town of Colorado City, Warren Jeffs, and the United Effort Plan Trust. The UEP Trust was established as a charitable and religious trust in 1942 to be controlled by the Fundamentalist Church of Jesus Christ of Latter-Day Saints. The Trust owned 95 percent of land in Colorado City and Hildale. After the arrest of FLDS leader Warren Jeffs, the Attorneys General of Utah and later Arizona seized and reformed the UEP Trust to protect its beneficiaries after the Trust had failed to defend two lawsuits alleging child abuse on behalf of former FLDS members. Colorado City sought a declaration that this seizure and reformation violated its First Amendment right to exercise its religion. The State prevailed in the District of Arizona.

(5) Significance: This was good government. The Attorneys General of Utah and Arizona stepped in to protect the powerless residents of Colorado City from a tyrannical dictator who engaged in unspeakable misconduct under the banner of religious freedom. It served as a reminder that no government or leader can oppress and manipulate its citizens or disregard their bedrock constitutional rights and civil liberties.

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

handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Arizona Attorney General Opinion Committee (2012-2017): I served on the Attorney General Opinion Committee from 2012 to 2017. The Committee fields legal questions from government officials who seek clarity on issues of statutory interpretation, constitutional firmness, preemption, and more. The formal opinions are internally drafted and debated prior to issuance. In this capacity, I reviewed Arizona law, discussed and debated issues within the Committee, and authored/edited published and unpublished decisions.

For instance, I authored Ariz. A.G. Op. No. I13-004, 2013 WL 5422806 (July 23, 2013), which held: “H.B. 2178 is an unconstitutional special law and thus invalid because it arbitrarily confers tax benefits on a handful of landowners while depriving similar benefits to past, present and future landowners thrust into identical circumstances.” See Attachment C.

Internal Moot Courts for Government Counsel (2012-2017): I have served on dozens of moot court panels since 2012—assisting and preparing Assistant Attorneys General for arguments before the Ninth Circuit Court of Appeals, Arizona Supreme Court, and Arizona Court of Appeals. In each instance, I reviewed all briefs and argument, assessed the relative merits, formulated potential questions, posed questions during a live moot court, and provided feedback to participants.

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

Maricopa County Superior Court, Arbitrator: I have served as a court-appointed arbitrator in various low-dollar tort and contract disputes since at least 2002, but could not locate much case information except for:

State Farm Mutual Automobile Ins. Co. v. Winberg, CV2016-006316
Auto accident, hearing on June 28, 2017

Sjerven v. Davison, CV2007-021418
Auto accident, hearing on September 10, 2008

Tyra v. Philips & Associates, P.C.
Fee arbitration, hearing in January 2005

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

My diverse professional experience has allowed me to develop expertise in many areas—from private practice to public service; from carrying the mantle for indigent plaintiffs to defending institutional clients in complex litigation; from spending ten years with a large, multi-state law firm to spending six years representing the interests of my home state; from sitting on state and federal rules committees to helping build a prestigious award program that honors Arizona lawyers for public service, community service and excellence. This kaleidoscope of experience and expertise would serve me well on the bench.

I have assumed the lead in many cases that required quick mastery of unfamiliar and complicated subject matter and have thus become skilled at acquiring knowledge quickly. I consistently immerse myself in these cases until I understand them, soup to nuts, whether they present an issue of constitutional dimension, the Convention Against Torture, the Foreign Corrupt Practices Act, corporate legal department practices and benchmarks, pension rights, employment benefits, or municipal sign regulations. I would do the same on the Arizona Court of Appeals.

I have made meaningful contributions on important rules and practice committees charged with shaping and reshaping the landscape of state and federal litigation, including the Arizona Supreme Court’s Civil Justice Reform Committee and the Local Rules of Practice Advisory Committee of the U.S. District Court for the District of Arizona.

I have organized and hosted exceptional legal programs for Arizona attorneys, including the Judge Learned Hand Awards Program and a popular lecture by Judge Richard A. Posner of the Seventh Circuit Court of Appeals, who spoke at length about the importance of judicial independence, touting the achievements of Arizona’s merit selection system.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **Yes.**

National Football League Players Association

Contract Advisor, FY 1999

Contract Advisor, FY 2000

Contract Advisor, FY 2001

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **Yes.** 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.

Ellman Weinzweig LLC

Partner/Member

February 2017-Present

This is a private law practice that I co-manage.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Yes.**

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.**
33. Have you paid all state, federal and local taxes when due? **Yes.**
34. Are there currently any judgments or tax liens outstanding against you? **No.**
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No.**
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No.**
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.**
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.**

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No.**
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **None.**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. **None.**
43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **None.**
44. List and describe any sanctions imposed upon you by any court. **None.**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No.** If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.**
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.**
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.**
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.**

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **Yes.**

I have authored and co-authored chapters in seminal treatises on corporate in-house legal practices, antitrust law, and consumer protection.

Co-Author, *Arizona Law*, CONSUMER PROTECTION LAW AND DEVELOPMENTS, American Bar Association (2017 Annual Review)

Co-Author, *Arizona Law*, CONSUMER PROTECTION LAW AND DEVELOPMENTS, American Bar Association (2016)

Co-Editor, *Arizona Law*, STATE ANTITRUST PRACTICE AND STATUTES, American Bar Association (3rd ed. 2004)

Co-Author, Chapter 30, *Benchmarking*, SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL, Thomson Reuters and Association of Corporate Counsel (2017) (with G. Sonny Cave, On Semiconductor Corporation, Senior Vice-President and General Counsel)

Co-Author, Chapter 30, *Benchmarking*, SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL, Thomson Reuters and Association of Corporate Counsel (2011) (with G. Sonny Cave, On Semiconductor Corporation, Senior Vice-President and General Counsel)

Author, *Paradigm Shift: The Meaning of Value for Institutional Clients in a Recession* (Summer 2011)

Co-Author, *Litigation Holds*, THE SHIELD, Blue Cross/Blue Shield (2007)

Author, *Ask the Legal Professionals: Antitrust*, THE BUSINESS JOURNAL (Sep. 24, 2004)

Co-Author, *Antitrust Revived: Plaintiff Numbers May Be On Upswing*, ARIZONA ATTORNEY (Dec. 2003)

Co-Author, *The Brick Wall Comes Crumbling Down* (2003)

Co-Author, Chapter 10, *Private Suits*, Antitrust Law Developments, American Bar Association (2003 Annual Review)

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.**
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.**

From 2012 to 2017, I served on the Continuing Legal Education Committee of the Arizona Attorney General's Office, which organizes an array of legal education programs for Assistant Attorneys General and state employees.

I teach a popular course on persuasive legal writing to Arizona attorneys. Here's a description: *"With help from Stephen King, Chief Justice John Roberts, Paul Clement, Mark Twain and other luminaries, this seminar reveals the secrets of persuasive legal writing. Persuasive advocates understand the singular importance of their audience—state and federal judges—and aspire to craft and present an argument and narrative that resonates with the tribunal. David Weinzweig teaches this entertaining three-hour seminar designed to improve the legal writing and persuasive skills of attorneys in all forms of litigation, from trial court to appeal. He explores the critical tools that great legal writers use to persuade judges."*

The program is designed to improve the persuasive skills of attorneys in all areas, whether litigation or administrative practice, including legal writing, theory, legal research, fact research, and oral argument.

I also taught trial and deposition practice for state government attorneys across the United States in conjunction with the National Association of Attorneys General.

Negotiations, National Attorneys General Training & Research Institute, Austin, Texas (November 16-17, 2016)

Expert Witness Training, National Attorneys General Training & Research Institute, Lansing, Michigan (September 8-9, 2016)

Legal Writing, Summer Interns, Office of the Arizona Attorney General

Persuasion 101: Legal Writing, Department of Economic Security and Child Support Services Section (June 24, 2016)

Persuasion 101: Legal Writing, Office of the Arizona Attorney General (May 9, 2016)

Arizona Attorney General: Overview, The Wiseguise Group, Scottsdale, Arizona (April 29, 2016)

Persuasion 101: Legal Writing, Office of the Arizona Attorney General (January 2015)

Advanced Trial Advocacy Faculty, National Attorneys General Training & Research Institute (February 10-14, 2014)

Deposition Training, National Attorneys General Training & Research Institute, New Orleans, Louisiana (November 2012)

Benchmarking: Metrics and Methodologies, State Bar of Arizona (March 23, 2012)

Benchmarking Public Law Practice: Performance Metrics, Annual Civil Division Leadership Program, Office of the Arizona Attorney General (2012)

Benchmarking for Corporate Law Departments, Arizona Corporate Counsel Forum (July 2011)

Mergers and Acquisitions, Arizona State Bar Annual Convention (June 17, 2011)

Alternative Fee Arrangements for Litigation Matters, Lewis and Roca (May 5, 2010)

Anatomy of a Lawsuit: Drafting and Responding to Written Discovery, Lewis and Roca (November 18, 2009)

A Titanic Shift in Antitrust Enforcement, Antitrust Developments, Arizona State Bar Annual Convention (June 29, 2009)

Current Issues in Antitrust, Arizona State Bar Annual Convention, Tucson, Arizona (June 20, 2008)

Drafting and Responding to Written Discovery, Motions to Compel and Confidentiality Orders, Lewis and Roca (November 2, 2007)

Antitrust Basics: A Primer, Arizona State Bar Annual Convention (June 29, 2007)

Supreme Court Update, Arizona State Bar, Antitrust Section (2006)

Antitrust and Intellectual Property in the Supreme Court's 2005-2006 Term, Intellectual Property and Antitrust Sections, State Bar of Arizona, Arizona Club (December 2005)

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

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

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.

**Arizona Supreme Court
Committee on Civil Justice Reform, Member
February 2016-Present**

**U.S. District Court for the District of Arizona
Local Rules of Practice Advisory Committee, Member
2012-2017**

**Arizona Attorney Magazine
Editorial Board of Directors, 2007
Editorial Board of Directors, 2008
Editorial Board of Directors, 2009**

**Host, Richard A. Posner lecture, Judicial Independence (2006)
Arizona State University College of Law**

**State Bar of Arizona
Civil Jury Instructions Committee, Member
2011-2012**

**State Bar of Arizona
Antitrust Law Section
Chair, 2004-2005
Chair, 2009-2010
Vice-Chair, 2003-2004
Vice-Chair, 2008-2009
Executive Council, 2003-2009**

**Seminar Chair, Antitrust State Bar Convention Program, June 2007
Seminar Chair, Antitrust State Bar Convention Program, June 2008
Seminar Chair, Antitrust State Bar Convention Program, June 2009**

**Arizona State University College of Law, Alumni Association
Director, 1999-2003**

Judge Learned Hand Awards Program
Chair, November 13, 2007
Chair, November 18, 2008
Chair, March 17, 2009
Co-Chair, March 16, 2010

Pro bono legal services:

I have represented various indigent and vulnerable clients in private practice who could not afford to hire their own attorney. For instance, I represented an indigent immigrant from Liberia before the Ninth Circuit who feared torture if returned to his homeland. See *question no. 26, fourth case*. While at Lewis and Roca, I twice received the John P. Frank Pro Bono Honor (2004, 2011).

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

Much of my life and career has been devoted to public and community service. I was honored to serve three Arizona Attorneys General over seven years of public practice, including the last five years (from 2012 to 2017) defending the State of Arizona in its highest profile, most sensitive matters. I frequently defended the State when its statutes or practices were challenged as unconstitutional in state and federal courts. A decade before that, I served as the principal Assistant Attorney General in the Antitrust Unit, where I investigated and prosecuted violations of state antitrust law.

As a community volunteer, I built and chaired the Judge Learned Hand Awards Program, which became the “gold standard” to honor Arizona attorneys for community and public service. During my tenure, I expanded the independent Selection Committee to reflect Arizona’s diverse bar, assembling the finest collection of justices, judges, public officials, law professors, corporate executives, and private practitioners in Arizona. As former Chief Justice Ruth McGregor said in March 2009:

One of the most impressive things about the [Judge Learned Hand] Awards is the independent Selection Committee that nominates, vets and selects the honorees. The Committee is comprised of leaders—distinguished in their own right—some of the finest our legal community has to offer. Justices and judges. The Mayor. Attorney General. Law school deans. Current and former State Bar presidents. Past and present U.S. Attorneys. Corporate executives. Law professors. Public and private lawyers.

Before law school, I interned in Washington, D.C. with the United States Senate Judiciary Committee, the American Israel Public Affairs Committee, and the yet-unbuilt United States Holocaust Museum. Also before law school, I interned for three United States Senators: John McCain, Howard Metzenbaum, and Dennis DeConcini. In high school, I volunteered for former Senator Jon Kyl's second congressional campaign in 1988.

I have been involved with the Jewish community my entire life, but only began assuming leadership positions in college as a reaction to campus anti-semitism and Holocaust denials that seemed to go unchecked. Since then, I have devoted substantial time, effort, and emotion to assist Jewish non-profit organizations, including the American Jewish Committee and the American Israel Public Affairs Committee, assuming positions ranging from volunteer to vice-president. I have attended AJC and AIPAC retreats and conferences throughout the United States over the past 30 years.

In 2006, I was awarded the Comay Fellowship from the American Jewish Committee, which is annually awarded to less than 10 persons identified as emerging leaders across the United States. As a fellow, I traveled the world with Jewish leaders to meet the Israeli Prime Minister, the Emir of Qatar, and the leaders of Jordan and Morocco.

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

- **Best Lawyers in America ® (2012)
Antitrust Litigation**
- **Martindale-Hubbell AV Rating ®
Preeminent and Outstanding Attorney**
- **National Leadership Fellow (2005)
American Jewish Committee**
- **John P. Frank Pro Bono Honor (2004, 2011)
Lewis and Roca, LLP**

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

Have you ever been removed or resigned from office before your term expired?
None.

Have you voted in all general elections held during the last 10 years? **Yes.**

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

I am passionate about my family. I have a wonderful wife and three beautiful children—Simon (age 15), Hailey (age 12), and Maya (age 9)—who supply me with unlimited amounts of happiness and a healthy dose of life perspective. My wife, Lauren Weinzweig, is a partner with the Nelson Law Group, where she specializes in health care law.

As a parent, my job description includes creating and facilitating brilliant, enduring memories for my children. In that regard, Lauren and I recently purchased a cabin in Munds Park, Arizona, where we spend much of our free time—hiking in the woods, fishing at Lake Odell, and generally spending quality time together.

I have played tennis on and off for 37 years. While in high school, I participated in tournaments across the southwest and achieved a top 25 ranking in the southwest region of the United States Tennis Association.

I am an avid reader. I love judicial biographies. Most recently, I finished *Henry Friendly, Greatest Judge of His Era* by David Dorsen and *Richard Posner* by William Domnarski. I am drawn to books about Abraham Lincoln, the Holocaust, true crime, and Middle East history.

I have great enthusiasm for my hometown and its sports teams. I have been a diehard Cardinals fan since the team arrived in 1987. My brother and I had season tickets for their first season in Sun Devil Stadium, where we nearly melted in the Arizona sun.

That passion led me to become a licensed National Football League player agent from 1999 to 2001. To gain my license, I passed a bar-like exam on the NFL collective bargaining agreement in Washington, D.C., given and graded by the NFL Players Association.

My first love, however, was the Phoenix Suns. I was hired as a Suns ball boy before I could drive. At that time, the Suns still played at Veteran's Memorial Coliseum—the "Madhouse on McDowell." While unpaid, the position represents my all-time favorite job—meeting, watching, and retrieving errant basketballs for the likes of Michael Jordan, Larry Bird, Larry Nance, Walter Davis, Charles Barkley, Magic Johnson, and Kareem Abdul-Jabbar.

HEALTH

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

ADDITIONAL INFORMATION

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

My background is unique, consequential, and locally-sourced. I am a second-generation Holocaust survivor, the son of Marion Weinzweig, a child Holocaust survivor and author of *Lonely Chameleon: An Autobiography of a Child Holocaust Survivor* (Vesuvius Press 2016).

My mom's story is one of courage, resilience, and survival. Born during the Holocaust, she lived with her parents in a Polish ghetto until the Nazis intensified their campaign to exterminate all Jews—storming Jewish homes with increased frequency and herding “racially inferior” Jewish men, women and children into concentration camps, all designed for efficient mass murder. At the last minute, her helpless parents arranged for her clandestine removal from the Polish ghetto, but she was eventually discarded in a ditch outside a Polish convent where she was taken in and hidden from the Nazis under deplorable conditions— orphaned, malnourished, lice-ridden, and alone.

By war's end only her father (my grandfather) survived. He was alone and barely alive, but determined to find his daughter, which he did. Growing up in Phoenix, my grandfather would occasionally visit and I would ask about the serial number tattooed to his forearm. While he never answered, I would learn that he had survived Auschwitz, where those few not immediately herded into the gas chambers had serial numbers tattooed on their left arms.

Although my mom lost her innocence, her childhood, and much of her family to the gas chambers of Treblinka and Auschwitz, she managed to escape the fate of six million Jews and ultimately settled in the Grand Canyon State. That unique background has imbued me with an unbending dedication to the rule of law and the principles of a constitutional democracy.

I am a local product, too. Born, raised, and educated in Arizona—Madison

No. 1 Middle School, Camelback High School, the University of Arizona, and then Arizona State University for law school, now called the Sandra Day O'Connor College of Law. I am forever indebted to the State of Arizona, inspired by its pioneers, invested in its success, and dedicated to its future.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention. **See Personal Statement attached hereto as Attachment A.**
61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes.**
62. Attach a brief statement explaining why you are seeking this position. **See Personal Statement attached hereto as Attachment A.**
63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. **See Attachment B.**
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

As a member of the Arizona Attorney General Opinion Committee, I have drafted formal and informal opinions on behalf of the Arizona Attorney General. For instance, I authored Ariz. A.G. Op. No. I13-004, 2013 WL 5422806 (July 23, 2013), which held: "H.B. 2178 is an unconstitutional special law and thus invalid because it arbitrarily confers tax benefits on a handful of landowners while depriving similar benefits to past, present and future landowners thrust into identical circumstances." The opinion is attached hereto as Attachment C.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **Not applicable.**

ATTACHMENT A

Personal Statement of David Weinzweig

PERSONAL STATEMENT OF DAVID WEINZWEIG

This position is a unique opportunity for me to pursue dual passions—public service and the law. I understand that democracy is not a spectator sport, but rather a collective enterprise that requires public service and individual sacrifice to function and flourish. An identical spirit is required of those professionals who hear, consider, and decide the sharpest and most sensitive controversies. I possess that spirit, along with a firm moral compass and robust work ethic. I recognize and place singular importance in the rule of law above all else, including my personal beliefs and opinions.

With my diverse professional experience and expertise, I can make an immediate and sustainable contribution to the Arizona Court of Appeals. Years of public service and private practice have informed and broadened my perspective. I tossed economic self-interest aside in 2012, leaving a lucrative large firm partnership to rejoin the Attorney General's Office, where I remained until 2017, proudly representing and defending the State of Arizona, tackling its thorniest, highest-profile cases. I represented Arizona in dozens of state and federal lawsuits and appeals of constitutional dimension, including an Equal Protection challenge to its gender-selection abortion ban; an Eighth Amendment and First Amendment challenge to its capital punishment methods; a Fourth Amendment challenge to its efforts at combating human smuggling and narcotics trafficking on our southern border; a Voter Protection Act challenge to its campaign finance laws; assorted First Amendment challenges to its criminal laws, its panhandling restrictions, and its efforts to protect the residents of Colorado City; a Due Process challenge to its child protective services; a special law challenge to its election laws; a confrontation clause challenge to its prosecutorial function; and a home-rule challenge to its foundational authority.

I have searched for and embraced such consequential disputes, convinced that one grows as a human being and professional only if tested and retested. I want to bring that enthusiasm and experience to the bench.

A decade in private practice with Lewis and Roca prepared me for those challenges, working for and eventually alongside some of Arizona's finest legal practitioners. There, I represented large and small businesses in a wide spectrum of commercial litigation, defending their rights, economic interests, and contractual expectations. I also represented defrauded individuals in commercial matters and an indigent plaintiff facing torture if returned to his homeland. I became an expert in antitrust law, achieved recognition in Best Lawyers in America, and was awarded the highest possible rating from Martindale Hubbell in my first year of eligibility. Before that, I had extensive exposure to class action litigation and another stint with the Arizona Attorney General.

I am passionate about legal writing and the art of persuasion. I constantly read brilliant opinions authored by iconic judges and exemplary briefs authored by persuasive practitioners, all to improve my craft. I understand how informed, sharp advocacy shapes enduring decisions based on reason and fairness. This passion would translate well to the bench.

As a community activist, I built and chaired a prominent awards program that

recognizes Arizona attorneys for exceptional contributions in public and community service. Under my stewardship, the Judge Learned Hand Program drew huge crowds and notable speakers. I take great pride in our communal success and will continue to advance that cause. A position on the Court of Appeals will enhance my ability to do so.

My family background has uniquely prepared me for this position. My mother is a Holocaust survivor and the single greatest influence in shaping my character. Her influence has imbued me with an unbending dedication to life, liberty, and the pursuit of happiness. I understand the importance of law and order and cherish the ideals of our constitutional democracy. Judges breathe life into those principles with their rulings and decisions.

A position on the Arizona Court of Appeals would represent the greatest honor of my professional life, a rare chance to serve the people of Arizona and make a tangible difference. That is my primary aspiration in life, not a hollow promise. Thanks for your consideration and public service.

ATTACHMENT B

Writing Samples:

- Answering Brief, *City of Scottsdale v. State of Arizona*, CA-CV-14-0798 (Ct. App.) (excerpt)
- Response to Motion for Preliminary Injunction, *Arizona Citizens Clean Elections Commission, et al. v. Bennett*, CV2013-010338 (Maricopa Cty. Super. Ct.) (excerpt)

ARIZONA COURT OF APPEALS

DIVISION ONE

CITY OF SCOTTSDALE, an Arizona
municipal corporation,

Plaintiff-Appellant,

v.

STATE OF ARIZONA

Defendant-Appellee.

JIM TORGESON and SIGN KING LLC,

Intervenors.

No. 1 CA-CV-14-0798 A

Maricopa County Superior Court
No. CV 2014-003467

Hon. Robert Oberbillig

APPELLEE'S ANSWERING BRIEF

Mark Brnovich
Attorney General
(Firm No. 14000)

David D. Weinzweig (No. 018687)
Senior Litigation Counsel
Robert L. Ellman (No. 014410)
Senior Litigation Counsel
1275 West Washington
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Attorneys for the State of Arizona

INTRODUCTION

This case is about a direct conflict between Arizona Revised Statute § 9-499.13, which defines the parameters of municipal regulation for human sign-walkers to access and operate in traditional public fora, and Scottsdale City Code § 16-353, which bans human sign-walkers from all public fora in the City of Scottsdale.

At issue is a common advertising practice where individuals, known as “sign-walkers,” hold business signs on the roadside that advertise goods and services. This practice is common throughout Arizona and not unique to any particular town or community.

Plaintiff City of Scottsdale forbids the practice as criminal under Scottsdale City Code § 16-353 (the “Local Ordinance”), prohibiting people from holding business signs on public streets and sidewalks within Scottsdale’s borders. The State of Arizona expressly allows and protects the practice under Arizona Revised Statute § 9-499.13 (the “State Law”), which directs that Arizona municipalities must treat sign-walkers no differently than other pedestrians.

Plaintiff sued the State here, assailing the State Law as an infringement on its charter city authority. Plaintiff urges an unprecedented expansion of charter authority under the Arizona Constitution that would imbue all charter cities and towns with broad, unilateral discretion to regulate any issues arising on their streets

and in their communities—whether or not the issue is common to other Arizona cities and without regard to general state laws.

Plaintiff misconstrues a municipal charter as the local equivalent of a Declaration of Independence. Plaintiff offers no Arizona decision so interpreting the Constitution and fails to account for or distinguish the bevy of adverse Arizona decisions that gut its arguments, including several decisions against the City of Scottsdale itself.

At bottom, a local ordinance or charter is invalid under Arizona law if and when it conflicts with state law on general laws and issues of statewide reach and concern, even if the concern is shared at state and local levels.

To be sure, charter cities are interested in the health, safety, and aesthetics of their communities, and often regulate in the areas under power delegated from the Arizona legislature. But the issue in this case is not whether health, safety, and aesthetics are proper areas for municipal regulation; not whether charter cities generally have power to regulate their streets; and not whether and to what extent local governments can regulate commercial speech under the First Amendment. Instead, the sole issue is whether charter cities are permitted to forbid and criminalize a common, statewide practice that Arizona law expressly permits. The answer is “no.”

That decision is reviewed under a *de novo* standard. *City of Tempe v. Outdoor Systems, Inc.*, 201 Ariz. 106, 109, ¶ 7 (App. 2001). This Court “may affirm a summary judgment even if the trial court reached the right result for the wrong reason.” *Guo v. Maricopa County Med. Ctr.*, 196 Ariz. 11, 15, ¶ 16 (App. 1999).

B. A city charter is not the local equivalent of the Declaration of Independence.

Plaintiff argues that the Arizona Constitution erects a legal fortress around charter cities within which they can craft local ordinances to rid their streets and sidewalks of sign-wielding people who offend their aesthetic sensibilities, ostensibly protecting their inhabitants from distracted drivers—regardless of contrary state statutes and immune from state legislative control. Plaintiff’s argument hinges on Article 13, Section 2 of the Constitution, which provides that cities or towns of at least 3,501 residents may “frame a charter for [their] own government consistent with, and subject to the laws of the state.” Invoking this provision, Plaintiff asserts a constitutional right to prohibit and even criminalize a common, statewide advertising practice that Arizona law expressly permits.

It doesn’t work. Plaintiff’s argument fails to distinguish fact from fiction when it comes to charter autonomy under the Arizona Constitution and the relationship between the State and its 19 charter towns and cities. The Constitution does not confer unilateral license on all charter towns and cities to prohibit and criminalize unpopular conduct if, when, or because it happens on their streets and

in their communities, whether or not the conduct is unique or common to other Arizona cities, and whether or not the State has contrary laws. *See, e.g., Strobe v. Sullivan*, 72 Ariz. 360, 368 (1951) (“This provision conferring upon a qualified city power to frame a charter for its own government is not an enabling act conferring carte blanche authority or plenary power to adopt any legislation that it might desire.”).

The Arizona Constitution, instead, confers authority on all towns and cities of at least 3,501 residents to create charters and regulate matters of strictly local concern without State interference or oversight. Ariz. Const. art. 13, § 2; *City of Scottsdale v. Scottsdale Assoc. Merch., Inc.*, 120 Ariz. 4, 5 (1978) (“*City of Scottsdale III*”).² Arizona courts have recognized two narrow and discrete areas where charter cities have some measure of plenary power:

- Elections. Charter communities can structure the method and process by which they elect their local representatives without state interference. *See, e.g., Strobe*, 72 Ariz. at 368 (“We therefore specifically hold that the method and manner of conducting elections in the city of Phoenix is peculiarly the subject of local interest and is not a matter of statewide concern.”).
- Proprietary dealings. Charter communities can decide how to sell or lease their own real or personal property, products, or services. *See, e.g., City of Tucson v. Sigma Alpha Epsilon*, 67 Ariz. 330, 336 (1948) (“We therefore hold that the sale or disposition of property by charter cities is not a matter of general or public concern.”).

² Of 91 incorporated Arizona cities, at least 70 meet the population requirement of 3,501 residents to become charter cities under the Constitution. U.S. Census Bureau, 2013 Population Estimates, available at <http://factfinder.census.gov> (last visited Feb. 26, 2015).

But on issues of statewide scope or relevance, the Arizona legislature retains plenary power and charter cities must yield. *City of Scottsdale III*, 120 Ariz. at 5 (“Charter cities have certain rights and privileges in local matters to legislate free from interference by the legislature. When the subject of legislation is a matter of statewide concern the Legislature has the power to bind all throughout the state including charter cities.”). Moreover, where, as here, charter cities hope to wield powers delegated to them by the state legislature, the cities must exercise such powers as directed by the legislature or not at all. *City of Scottsdale III*, 120 Ariz. at 5.

Local charters and ordinances are invalid to the extent they conflict with state law on subjects that generally affect all Arizonans—whether or not the interest is shared at state and local levels. *Levitz v. State*, 126 Ariz. 203, 204-205 (1980) (rejecting argument that the regulation of advertising signs “is purely a local matter” for charter cities to regulate or “that advertising sign regulation is somehow exempt from the requirements of the state regulation”); *City of Casa Grande v. Arizona Water Co.*, 199 Ariz. 547, 551, ¶ 12 (App. 2001) (holding that local ordinance could not conflict with state statute on “a matter of both local and statewide concern”). As the seminal municipal law treatise explains:

Needless to say, a municipality by adopting a charter form of government does not become an independent sovereignty. The state remains supreme in all matters not

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17 **SUPERIOR COURT OF ARIZONA**
18 **MARICOPA COUNTY**

19 ARIZONA CITIZENS CLEAN
20 ELECTIONS COMMISSION; et al.

21 Plaintiffs,

22 v.

23 KEN BENNETT, Arizona Secretary of
24 State,

25 Defendant,

26 and

ANDY BIGGS, President of the Arizona
State Senate; and ANDREW M. TOBIN,
Speaker of the Arizona House of
Representatives,

Defendant-Intervenors.

No. CV2013-010338

**DEFENDANT'S AMENDED
RESPONSE TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

(Assigned to the Honorable Mark Brain)

Oral Argument: September 10, 2013
at 1:30 p.m.

Secretary of State Bennett asks the Court to deny the motion for preliminary injunction because Plaintiffs are not likely to prevail on the merits of their claim.

¹ Attorney General Thomas C. Horne has recused himself from this matter and has delegated Richard Rice, Division Chief Counsel, Civil Division, to serve as the Acting Attorney General in this case.

1 Although Secretary Bennett had hoped to remain a nominal party to this matter, his
2 regulatory role precluded the option.

3 **PRELIMINARY STATEMENT**

4 This case concerns the Voter Protection Act, a unique and impactful limitation on
5 representative democracy in the Arizona Constitution, which places heightened
6 restrictions on the legislature to amend “initiative measures” and prevents the legislature
7 from repealing such measures.

8 At issue is House Bill 2593, which amends various campaign-finance limitations in
9 ARIZ. REV. STAT. § 16-905. Plaintiffs claim that HB 2593 is unconstitutional and invalid
10 because Section 16-905 qualified for VPA protection and the legislature ignored its
11 requirements.

12 Plaintiffs are mistaken. The VPA is potent medicine for a serious condition—not
13 to be lightly prescribed as Plaintiffs deem retroactively necessary, but rather to be
14 thoughtfully conferred when so directed by the people—both expressly and knowingly.

15 By its plain terms, the VPA extends only to initiative measures passed in 1998 and
16 later. Section 16-905, although an initiative measure, was passed in 1986—12 years short
17 of VPA protection.

18 Nor did the contribution limits in Section 16-905 acquire VPA protection based on
19 their connection to or cross-reference in the Clean Elections initiative measure of 1998.
20 VPA protection extends to initiative measures alone. Arizona courts have defined
21 “measure” in the Constitution as a finite act or resolution, not to include all general
22 principles advanced or laws cross-referenced therein.

23 What is more, the 8,995-word Clean Elections initiative never informed Arizona
24 voters what those (Section 16-905) contribution limits were. And it can hardly be
25 assumed that voters raced to their local law library based on one cross-reference to
26 Section 16-905 and familiarized themselves with its comprehensive contents. Voters

1 could not have imagined their votes would freeze in place, forever, an unknown and
2 undisclosed universe of precise dollar limits.

3 It is ironic that Plaintiffs insist the legislature “may not do indirectly what it is
4 prohibited from doing directly.” Mot. at 13. Plaintiffs protest too much. If anyone seeks
5 to accomplish something indirectly here, it is Plaintiffs, who hope to infuse a discrete and
6 finite 1998 initiative with impactful limitations on constitutional rights that were not
7 included in the universe of regulations submitted to and passed by the people.

8 And even if Section 16-905 once qualified for VPA protection, it no longer would.
9 Plaintiffs assert the legislature amended Section 16-905 in 2007 in accordance with VPA
10 requirements. Once amended by legislators, Section 16-905 would have lost its character
11 and form as the initiative passed by the people and instead morphed into standard
12 legislation, untethered from VPA requirements.

13 **BACKGROUND**

14 A brief summary of the relevant initiatives and statutes is necessary before turning
15 to the merits.

- 16 • **The Campaign Finance Reform Initiative—November 1986**

17 On November 4, 1986, Arizona voters passed The Campaign Finance Reform Act
18 (Proposition 200), which set precise financial limits on campaign contributions from
19 individuals and political committees to state and local candidates. *See* 1986 General
20 Election, Arizona Publicity Pamphlet at 32-39 (Nov. 4, 1986). With more than 30
21 sections and subsections, the Reform Act provided a comprehensive and definitive source
22 for contribution limits, set forth guidelines and procedures for contributions, and specified
23 penalties and remedies for breaking the law. *Id.* It was codified at A.R.S. § 16-905, and
24 became effective on December 16, 1986.

25 The Reform Act provided a mechanism for the Secretary of State to adjust limits
26 on a regular biannual schedule to account for economic realities. *Id.* The Act provided:

1 **ARGUMENT**

2 Plaintiffs face a tall burden. The legislature has broad authority to enact laws
3 except as proscribed or limited in the Arizona Constitution. *State ex rel. Montgomery v.*
4 *Mathis*, 231 Ariz. 103, 290 P.3d 1226, 1236 (App. 2012). To prevail then, Plaintiffs must
5 demonstrate that the legislature was “clearly prohibited” from enacting HB 2593 under the
6 Arizona Constitution. *Earhart v. Frohmler*, 65 Ariz. 221, 225, 178 P.2d 436, 438 (1947)
7 (“Our standard for judgment here is clear. We must find that the Act is clearly prohibited
8 by either the Federal Constitution or the Constitution of Arizona in order to hold it
9 invalid.”). Plaintiffs do not and cannot meet their burden.

10 **I. THE VPA’S PLAIN TERMS DO NOT PROTECT SECTION 16-905.**

11 The VPA’s plain and unambiguous terms afford no protection to initiative
12 measures passed before the general election of November 1998. *See* 1998 General
13 Election Pamphlet at 47, text of Proposition 105. Section 16-905 was passed twelve years
14 before, in 1986, under the Campaign Finance Reform Initiative. Thus, under its express
15 terms, the VPA offers no shelter. *Prince & Princess Enters., LLC v. State ex rel. Ariz.*
16 *Dep’t of Health Servs.*, 221 Ariz. 5, 7, ¶5, 209 P.3d 141, 143 (App. 2008) (“Our primary
17 purpose is to effectuate the intent of those who framed the provision and, in the case of an
18 [initiative], the intent of the electorate that adopted it. With only a few exceptions, if the
19 language is clear and unambiguous, we apply it without using other means of statutory
20 construction.”) (internal quotation marks and citation omitted).

21 It is crucial to note that Arizona voters affirmatively rejected a VPA alternative in
22 the 1998 election that would have covered the 1986 Campaign Finance Reform Act as
23 codified at Section 16-905. *Compare* Proposition 105, § 2 (“The measure] shall apply
24 retroactively to all initiative and referendum measures decided by the voters at and after
25 the November 1998 general election.”); *with* Proposition 104, § 2 (“This measure applies
26 prospectively to actions of the Legislature relating to measures that are initiated or

1 referred by the people, whether initiated or referred before or after the effective date of
2 this measure.”).

3 Voters were cautioned—leading to the 1998 general election—that the VPA
4 (Proposition 105) would not protect the Campaign Finance Reform Act. This screenshot
5 from the general election pamphlet leaves nothing to the imagination:

6 ARGUMENT “AGAINST” PROPOSITION 105

7 **Vote “NO” on Proposition 105**

8 Proposition 105 is one of two propositions available to voters in this election
9 intended to protect the laws we as citizens create through initiative and referendum
10 from being undermined by subsequent actions of the State Legislature. Though prob-
11 ably well intentioned, **Proposition 105 is inferior to Proposition 104 in the follow-**
12 **ing ways.**

13 Proposition 105:

- 14 • **Fails to protect existing initiated or referred law --it applies only to measures**
15 **decided “at and after the 1998 General Election”. Therefore, it offers no protec-**
16 **tion to The Heritage Fund, The Campaign Finance Reform Initiative, The**
17 **Healthy Arizona Initiative, The State Lottery, The Tobacco Tax, or any of the**
18 **other voter approved initiatives passed since statehood.**

14 *Id.* at 49 (emphasis added).

15 At bottom, the voters had the chance to accomplish what Plaintiffs seek here—
16 namely, to extend protection to contribution limits in Section 16-905. They refused.

17 **II. SECTION 16-905 WAS NOT IMBUED WITH VPA PROTECTION BASED**
18 **ON ITS CONNECTION TO OR CROSS-REFERENCE IN THE CLEAN**
19 **ELECTIONS INITIATIVE.**

20 The Clean Elections Act and Campaign Finance Reform Initiative were separate
21 and distinct initiatives—presented to voters 12 years apart. Undeterred, Plaintiffs argue
22 that VPA protection extends through osmosis from Clean Elections to Section 16-905.

23 When the underbrush is cleared away, Plaintiffs’ argument turns on one cross-
24 reference to Section 16-905 in the 8,995-word Clean Elections initiative measure. Based
25 on this tenuous connection, Plaintiffs argue that Arizona voters embraced the finite
26 contribution limits set forth in Section 16-905 on Election Day 1998; and that the limits in

1 place (at that moment) were imbued with VPA protection from the Clean Elections
2 initiative. This argument fails for several independent and equally dispositive reasons.

3 **A. The Clean Elections initiative did not and does not say what Plaintiffs**
4 **insist it says.**

5 Sprinting past the plain language approved by Arizona voters and codified in the
6 Clean Election Act, Plaintiffs variously insist that voters “passed the Citizens Clean
7 Elections Act, which set campaign contribution limits at eighty percent of their **then-**
8 **current values**” (Mot. at 1) (emphasis supplied); “set[] the aggregate limits in A.R.S. §
9 16-905(C) and (E) at eighty percent of the **then-current values**” (Mot. at 14) (emphasis
10 supplied); “set campaign contribution limits for statewide and legislative candidates who
11 opted to finance their campaigns privately at eighty percent of the **then-current levels**”
12 (Mot. at 15) (emphasis supplied); “change[d] the campaign contribution limits previously
13 set by the voters at eighty percent of their **1998 values**” (Mot. at 6) (emphasis supplied);
14 “set firm campaign contribution limits at eighty percent of the **1998 limits**” (Mot. at 15)
15 (emphasis supplied); and “set campaign contribution limits at eighty percent of their **1998**
16 **levels**” (Mot. at 16) (emphasis supplied).

17 While unintended, Plaintiffs’ unceasing insistence merely shines a spotlight on the
18 words that **did not** appear in the Clean Elections ballot measure and **do not** appear in the
19 final act. The one and only reference to Section 16-905 in the Clean Elections measure
20 was and is:

21 Notwithstanding any law to the contrary, a nonparticipating
22 candidate shall not accept contributions in excess of an
23 amount that is twenty percent less than the limits specified in §
24 16-905, subsections A through E, as adjusted by the secretary
25 of state pursuant to § 16-905, subsection H. Any violation of
this subsection shall be subject to the civil penalties and
procedures set forth in § 16-905, subsections J through M and
§ 16-924.

26 A.R.S. § 16-941(B).

ATTACHMENT C

Ariz. A.G. Op. No. I13-004, 2013 WL 5422806 (July 23, 2013)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

| | |
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| <p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>July 23, 2013</p> | <p>No. I13-004 (R13-008)</p> <p>Re: House Bill 2178 and gift clauses of the Arizona Constitution</p> |
|--|--|

To: The Honorable Kelli Ward
Arizona State Senator

Question Presented and Summary Answers

Does House Bill 2178 ("H.B. 2178") violate the special law and/or gift clauses of the Arizona Constitution?

H.B. 2178 is an unconstitutional special law and thus invalid because it improperly confers tax benefits on a handful of landowners while depriving similar benefits to past, present and future landowners thrust into identical circumstances.

We decline to address whether H.B. 2178 violates the gift clause because the question rests, in part, on issues of fact.

Background

Your question concerns H.B. 2178, 2012 Ariz. Sess. Laws, ch. 200, § 1, which "[f]orgives outstanding property taxes and penalties for qualified property owners in tax years 1987 through 2009, and directs the county treasurer to grant a refund for taxes paid in that time."

See Ariz. State Senate Staff, 50th Leg., 2d Reg. Sess., Fact Sheet for H.B. 2178 (Mar. 16, 2012).

H.B. 2178 was signed into law on April 5, 2012.

A. The Disputed Triangle.

H.B. 2178 impacts a discrete group of private landowners who own real property in a triangular-shaped area of land (the “Disputed Triangle”) located east of the Colorado River in Mohave County (the “County”), on or near the Fort Mojave Indian Reservation. The landowners acquired their property interests as successors to a 1905 conveyance (or land patent) from the federal government to the State of California. It is unclear whether the landowners reside in Arizona.

In or around 1987, the United States and the Fort Mojave Indian Tribe (the “Tribe”) asserted an ownership interest in the Disputed Triangle and 47 additional parcels (the “disputed parcels”) along the Colorado River. The United States argued that the Disputed Triangle attached to sections of land held by the United States in trust for the Tribe through the process of accretion, which is “the gradual, imperceptible addition to land forming the banks of a stream by the deposit of waterborne solids or by the gradual recession of water which exposes previously submerged terrain.” *State v. Jacobs*, 93 Ariz. 336, 339, 380 P.2d 998, 1000 (1963).

On August 9, 1994, the United States sued the private landowners for quiet title, ejectment, and trespass damages under the accretion theory. The landowners ultimately prevailed in 2009.

B. Property Tax Assessments.

Mohave County assessed property taxes on the disputed parcels during the litigation period from 1994 to 2009, and an unknown number of private landowners continued to voluntarily pay them. Given the ownership issues, however, the County apparently deferred

collection of the taxes until the litigation concluded. Thus, an unknown number of landowners paid no taxes.

When the landowners ultimately prevailed in the lawsuit in 2009, Mohave County requested back taxes from 1994 through 2009. Some landowners expressed surprise to Mohave County officials because the County never indicated the landowners would be responsible for back taxes if they prevailed. The private landowners also raised fairness objections based on their inability to use, improve, or sell the land while embroiled in litigation.

C. H.B. 2178.

Unable to persuade Mohave County officials, the private landowners approached the Arizona Legislature for tax relief, which resulted in H.B. 2178. Signed into law on April 5, 2012, H.B. 2178 provides that:

Property taxes and any accrued penalties due from but not paid by any qualified property owner for tax years 1987 through 2009 are forgiven and no longer due and payable. The county board of supervisors shall direct the county treasurer to strike off any forgiven taxes from the tax roll.

The county board of supervisors shall direct the county treasurer to grant a refund to a qualified property owner if [t]he qualified property owner paid property taxes on qualified property during any tax year 1987 through 2009 [and t]he property taxes paid have not already been refunded.

2012 Ariz. Sess. Laws, ch. 200, § 1(A), (D). The defined terms are:

“Qualified property” means the property that is owned by a qualified property owner and that was subject to a federal lawsuit brought by the United States of

America for the benefit of the Fort Mojave Indian Tribe against the qualified property owner.

“Qualified property owner” means a property owner who was a defendant in a federal lawsuit brought by the United States of America for the benefit of the Fort Mojave Indian Tribe in which the property owner owns land that is included in approximately one hundred thirty acres of land within a triangular shaped area that is east of the Colorado River and that is near the Fort Mojave Indian Tribe reservation.

Id. at § 1(E).

The legislation set a December 31, 2012 deadline for qualified owners to submit refund claims and directed “the county treasurer [to] pay the claim after it is submitted.” *Id.* at § 1(B). In turn, the Mohave County treasurer is entitled to a credit with the State of Arizona “for the refunds given to qualified property owners.” *Id.* at § 1(C).

According to the Senate Fact Sheet, “[t]he fiscal impact of [H.B. 2178] is not known at this time.” *See* Ariz. State Senate Staff, 50th Leg., 2d Reg. Sess., Fact Sheet for H.B. 2178 (Mar. 16, 2012).

D. H.B. 2177.

Of particular import here, H.B. 2178 was first introduced in tandem with a second far broader bill—H.B. 2177—that would have authorized all taxpayers to petition state and local agencies to waive any property taxes that become due on land which “is the subject of an action *in rem* filed by any jurisdiction of federal, state, local or tribal government, if the action continues for at least twelve months and if the action includes a determination of the ownership status of the property.” H.B. 2177, 50th Leg., 2d Reg. Sess. (Ariz. 2012).

Representative Jeff Dial introduced and sponsored both H.B. 2177 and H.B. 2178. He explained the difference between the bills as follows: “I always felt that if someone doesn’t have use of the property because [a] government entity comes along and ties you up in court for 24 years or a significant period of time, then I really think then we shouldn’t really be asking people to pay property taxes on a property they’re not getting the use of so that’s what these bills go towards. So one bill goes specifically towards resolving [the Disputed Triangle] case and another one as I was asked in this body for other people this happens to versus us going out and dealing with each case-by-case basis. This is trying to create an umbrella to deal with this issue.” *See Minutes of Comm. On House Ways and Means* (Feb. 6, 2012) (statement of Rep. Jeff Dial). H.B. 2177 was ultimately abandoned and never submitted to a vote.

Analysis

All legislative enactments are presumed constitutional, *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 204, ¶ 9, 972 P.2d 179, 188 (1999) (“We assume, as always, that legislative enactments are constitutional. We do not lightly conclude to the contrary.”), and construed, when possible, to have a reasonable and constitutional meaning, *State v. Arnett*, 119 Ariz. 38, 48, 579 P.2d 542, 552 (1978). Moreover, because the Attorney General is duty-bound to uphold and defend state laws, he “will not opine that a statute is unconstitutional unless it is patently so.” Ariz. Att’y Gen. Op. I83-069; *cf. State v. Ramos*, 133 Ariz. 4, 6, 648 P.2d 119, 121 (1982) (“An act of the legislature is presumed constitutional, and where there is a reasonable, even though debatable, basis for enactment of the statute, the act will be upheld unless it is clearly unconstitutional.”).

1. Special Law Prohibition

The Arizona Constitution directs that “[n]o local or special law shall be enacted in any of

the following situations: (9) assessment and collection of taxes, (13) granting to any corporation, association, or individual, any special or exclusive privileges, immunities or franchises, and (18) relinquishing any indebtedness, liability, or obligation to this state.” ARIZ. CONST. art. IV, § 19. This prohibition is designed “to prevent the legislature from providing benefits or favors to certain groups or localities.” *State Compensation Fund v. Symington*, 174 Ariz. 188, 192, 848 P.2d 273, 277 (1993). It applies to tax exemption laws. *State v. Levy’s*, 119 Ariz. 191, 192, 580 P.2d 329, 330 (1978).

A statute is an unconstitutional special law if it fails to meet any of three independent requirements: (1) the classification of beneficiaries in the statute must have a rational relationship to a legitimate legislative objective; (2) the classification must encompass all members of the relevant class; and (3) the class must be elastic, allowing members to come and go as circumstances warrant. *Republic Inv. Fund I v. Town of Surprise*, 166 Ariz. 143, 149, 800 P.2d 1251, 1257 (1990) (deannexation statute was invalid as special law for lack of generality and elasticity where the legislature restricted statute to a closed class of twelve cities).

a. Rational Relationship to Legitimate Goal

We first examine whether the classification scheme in H.B. 2178 bears a rational relationship to a legitimate governmental objective. *Arizona Downs v. Arizona Horsemen’s Found.*, 130 Ariz. 550, 555, 637 P.2d 1053, 1058 (1981) (statute that gave preference for horse racing permit to past holders was rationally related to encouraging investment into horse racing business by assuring continuity and predictability of events). The legislature has broad discretion to create property tax classifications and Arizona courts defer to legislative judgment on the reasonableness of such classifications unless palpably arbitrary. *Tucson Elec. Power Co. v. Apache County*, 185 Ariz. 5, 13, 912 P.2d 9, 17 (App. 1995) (“The judgment of the legislature

that a statutory classification is reasonable controls the courts unless palpably arbitrary.”); *see also generally America West Airlines v. Department of Revenue*, 179 Ariz. 528, 535, 880 P.2d 1074, 1081 (1994) (affirming legislature’s broad discretion in property tax classifications).

H.B. 2178 conceivably advances three legitimate governmental objectives. First, its sponsors intended to correct inequities that arise when private landowners are required to pay taxes on land they cannot use or enjoy due to pending government litigation to secure title in the same land. *See Minutes of Comm. On House Ways and Means* (Feb. 6, 2012) (statement of Rep. Jeff Dial). It thus seeks to promote fairness in the realm of property tax burdens and obligations. *Apache County v. Atchison, Topeka & Santa Fe Ry. Co.*, 106 Ariz. 356, 363, 476 P.2d 657, 664 (1970) (“One purpose of a property tax classification scheme is to raise those revenues necessarily borne by property taxes. It has been recognized that those groups specially benefiting from or specially burdening society may be required to pay additional taxes.”). Secondly, while less clear, the legislature might have passed H.B. 2178 to incent and foster economic development in the affected areas. *Cutter Aviation, Inc. v. Arizona Dept. of Revenue*, 191 Ariz. 485, 958 P.2d 1 (App. 1997) (recognizing rational basis for tax relief legislation intended to foster economic development). And last, the legislature may have sought to ensure future tax revenues from landowners about to lose their land for nonpayment of taxes. *Cf. Maricopa County v. State (Sherwood)*, 187 Ariz. 275, 280, 928 P.2d 699, 704 (App. 1996) (raising prospective tax revenues as public purpose in gift clause context).

Even so, we discern no rational relationship between such legitimate objectives and the defined class of beneficiaries in H.B. 2178 who actually obtain tax relief. The law forgives unpaid taxes and promises tax refunds only to “qualified property owners,” which the legislature defined narrowly to include a handful of taxpayers who both own land in the Disputed Triangle

and were named as defendants in *United States v. Aria, et. al.*, No. 94-cv-01624 (D. Ariz.). But if the Legislature intended H.B. 2178 as relief for landowners who are expected to pay taxes on land rendered worthless by overreaching government litigation, then the tax relief in H.B. 2178 should be available to all private landowners thrust into an identical predicament. *Republic*, 166 Ariz. at 149, 800 P.2d at 1257 (“The legislature may classify, but it cannot make a classification based on a decision that a law should apply to a particular individual or group. Rather, the legislature must enact laws that apply to all individuals who may benefit from its attempt to remedy a particular evil.”). It is “palpably arbitrary” to bestow special tax treatment on a discrete group of landowners in the Disputed Triangle while continuing to impose standard taxes on similarly situated landowners. *Tucson Elec. Power*, 185 Ariz. at 15, 912 P.2d at 19 (finding special treatment of particular taxpayers palpably arbitrary).

b. All-Encompassing Class and Elasticity

For analogous reasons, H.B. 2178 fails to meet the second and third constitutional requirements; it neither encompasses all members of the relevant class, nor is pliable enough to accommodate additional members. *Levy's*, 119 Ariz. at 192-93, 580 P.2d at 330-31 (tax exemption that sought to mitigate adverse economic impact upon retailer who faced border competition was invalid as a special law because it failed to treat all similarly situated retailers in the same fashion and instead defined a class upon arbitrary geographic lines).

H.B. 2178 improperly affords special tax treatment to a handful of landowners while ignoring all other landowners thrust into identical circumstances. *Republic*, 166 Ariz. at 151, 800 P.2d at 1259 (“The statute was enacted in response to the abuse of the municipalities’ power to strip annex. On that basis, the class affected by the statute should include all cities where annexation abuses may have occurred. Because the statute applies to only 12 cities within

Maricopa County, it does not apply uniformly to all members of the class. Instead, the statute confers a benefit only on part of the class while immunizing larger cities in Maricopa County and all other similarly situated cities in other counties.”). Indeed, apparently recognizing this deficiency, Representative Dial first introduced H.B. 2178 in tandem with H.B. 2177. In remarks to a House Committee, he described H.B. 2177 as the “umbrella” to protect all landowners from identical misfortune while explaining that H.B. 2178 “goes specifically towards resolving this [Disputed Triangle] case.” *See* Minutes of Comm. On House Ways and Means (Feb. 6, 2012) (statement of Rep. Jeff Dial).

Next, H.B. 2178 is not sufficiently elastic to pass constitutional muster. *Id.* at 150, 800 P.2d at 1258 (“A statute is special or local if it is worded such that its scope is limited to a particular case and it ‘looks to no broader application in the future.’”) (quoting *Arizona Downs*, 130 Ariz. at 558, 637 P.2d at 1061). H.B. 2178 is not worded to reach landowners who confront identical circumstances in the future; rather, it provides relief to a finite group of landowners over a discrete period of twenty-two years. *Id.* at 151, 800 P.2d at 1259 (“Moreover, the statute’s focus, limited to a particular census for only 13 months, prevents any municipality from either coming within or exiting from its operation in the future. Because a general law would have provided a remedy to individuals in all areas annexed by large or small cities within the state, as indicated by the original bill, the statute’s limited application violates the special law prohibition.”).

H.B. 2178 is an unconstitutional special law and thus invalid because it arbitrarily confers tax benefits on a clique of landowners while excluding past, present and future landowners thrust into the same predicament.

2. Gift Clause

The Arizona Constitution prohibits the expenditure or use of public monies for private purposes under the gift clause, ARIZ. CONST. art. IX, § 7, which is designed to eliminate government favoritism and prevent governments from depleting public resources in favor of special interests. See *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349, 687 P.2d 354, 357 (1984) (“The constitutional prohibition was intended to prevent government entities from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises.”); John D. Leshy, *The Making of the Arizona Constitution*, 20 ARIZ. ST. L. J. 1, 96 (1988). The clause provides, in relevant part, that “[n]either the state, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation.” ARIZ. CONST. art. IX, § 7. It has been applied to tax forgiveness and tax rebate legislation. *Sherwood*, 187 Ariz. at 280, 928 P.2d at 704.

A government expenditure violates the gift clause unless it meets two independent requirements: (1) it must have a public purpose, and (2) the government must, in return for the expenditure, receive consideration that “is not so inequitable and unreasonable that it amounts to an abuse of discretion, thus providing a subsidy to the private entity.” *Wistuber*, 141 Ariz. at 349, 687 P.2d at 357 (internal quotations and citations omitted).

In conducting the analysis, Arizona courts examine all relevant facts to determine the “reality of the transaction both in terms of purpose and consideration.” *Id.* at 348-349, 687 P.2d at 356-357. And, similar to the special law inquiry, the Court has directed that substantial deference be given to the judgment of elected officials. *Turken v. Gordon*, 223 Ariz. 342, 349, 224 P.3d 158, 165 (2010) (“In taking a broad view of permissible public purposes under the Gift Clause, we have repeatedly emphasized that the primary determination of whether a specific

purpose constitutes a 'public purpose' is assigned to the political branches of government, which are directly accountable to the public. We find a public purpose absent only in those rare cases in which the governmental body's discretion has been 'unquestionably abused.'" (internal citations omitted). Notwithstanding such deference, Arizona courts "must be independently satisfied that the two elements of a valid dispensation have been shown," *Ariz. Ctr. for Law in the Pub. Interest v. Hassell*, 172 Ariz. 356, 367, 837 P.2d 158, 169 (App. 1991), rather than "merely rubber-stamp[ing] the legislature's decision." *Id.* at 369, 837 P.2d at 171.

The public expenditure must serve a public purpose. *Sherwood*, 187 Ariz. at 280, 928 P.2d at 704. The Court has recognized that "public purpose" is incapable of exact definition and changes in meaning to meet new developments and conditions. *Id.* A public purpose has been found where benefits are conferred on particular persons or organizations. *See, e.g., Humphrey v. City of Phoenix*, 55 Ariz. 374, 387, 102 P.2d 82, 87 (1940) (slum clearance program found to serve interest of general public even though effect is felt by a given class more than the community at large).

Turning to the instant expenditure, H.B. 2178 affords tax relief to a discrete group over a finite period. The group is comprised of landowners sued by the federal government in 1994 for quiet title and related claims. The finite period spans from the point at which the federal government first contested their ownership in 1987 until the landowners prevailed in 2009. Among the public purposes that either have been or might be offered for the expenditure are: (1) moral justification, (2) estoppel, and (3) economic justification.

The landowners have largely cited fairness considerations as the public purpose for H.B. 2178; that is, tax relief was appropriate because the landowners had no use or enjoyment of the land while embroiled in the title dispute. We are unable to find support for the argument. While

the Arizona Supreme Court recognized a moral consideration theory in *Udall v. State Loan Board*, 35 Ariz. 1, 11, 273 P. 721, 724 (1929), that decision is inapplicable here. There, the Court examined and upheld legislation under the gift clause that forgave certain debts to the state because those debts had been unreasonably expanded through the incompetence of state engineers. *Id.* Here, the landowners blame the federal government for impairing their property rights through litigation rather than state government. Moral consideration might support federal legislation under this theory, but not state legislation.

Although undefined and unclear, the landowners have also mentioned an estoppel theory based on alleged promises from Mohave County that the landowners would not be required to pay property taxes while the ownership dispute remained unresolved. With the limited information provided, this argument is not persuasive. Even accepting the alleged statements as fact, Mohave County never promised that back taxes would not be collected after the ownership dispute had been resolved.

An economic public purpose is also conceivable; that H.B. 2178 prevented an unknown number of landowners from losing their land, which, in turn, protected the employment and commodities derived from the land while ensuring a future tax revenue stream. *Pimalco, Inc. v. Maricopa County*, 937 P.2d 1198, 1201, 188 Ariz. 550, 553 (App. 1997) (“These attempts reflect a desire to prevent the possessory interest tax from deterring non-Indian commercial development on Indian lands and a desire to further the public benefit of an expanded employment base available to all Arizonans.”). Without particularized information about such public benefits, however, we cannot assess their existence or adequacy. *Hassell*, 172 Ariz. at 369-70, 837 P.2d at 171-72 (rejecting assorted theories of public benefit because the court “cannot judge their adequacy for a reason that brings us to a central defect of H.B. 2017. [T]he

legislature acted without particularized information, and established no mechanism to provide particularized information, to support even an estimate of the value of those claims.”).

Even assuming a public benefit, H.B. 2178 must still meet the consideration requirement, which is a question of fact, *Sherwood*, 187 Ariz. at 281, 928 P.2d at 705 (“The second prong, whether the exchange of tax money for the public benefit is disproportionate, is as a question of fact.”), and thus outside the Attorney General’s statutory authorization to offer opinions. ARIZ. REV. STAT. § 41-193(A)(7); Ariz. Op. Atty. Gen. No. I80-231; *see also* 1988 Ariz. Op. Atty. Gen. 97 (“Since the existence of the requisite intent to establish district residency is primarily a factual determination, we express no opinion with respect to this matter.”).

Conclusion

H.B. 2178 is an unconstitutional special law and thus invalid because it arbitrarily confers tax benefits on a handful of landowners while depriving similar benefits to past, present and future landowners thrust into identical circumstances. Although H.B. 2178 raises additional concerns under the gift clause, we cannot provide an opinion on that issue because it rests, in part, on questions of fact.

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ATTACHMENT D

Primary defense counsel in *Antigone Books L.L.C., et al. v. Brnovich*, CV14-02100-SRB (D. Ariz.)

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