

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

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

PERSONAL INFORMATION

1. **Full Name:**
Anni Lori Foster

2. **Have you ever used or been known by any other name? YES**
If so, state name:
Anni L. Foster
Anni Lori Hill Foster
Anni Lori Hill
Anni L. Hill

3. **Office Address:**
1700 WEST WASHINGTON STREET, 8TH FLOOR, PHOENIX, ARIZONA 85007

4. **How long have you lived in Arizona? 18 years**
What is your home zip code? 85012

5. **Identify the county you reside in and the years of your residency.**
Maricopa County, 18 years

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

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

7. **List your present and any former political party registrations and approximate dates of each:**
Republican (1995 – Present)

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

8. **Gender:** Female

Race/Ethnicity: White/Caucasian

EDUCATIONAL BACKGROUND

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

Mary Baldwin University, Staunton, Virginia

- Bachelor of Arts (1999)

Gonzaga University School of Law, Spokane, Washington

- Juris Doctorate (2004)

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

Undergraduate majors: Political Science, Economics

Undergraduate extracurricular:

- NCAA Basketball (1995 – 1999, Captain 1997-1999)
- Student Government - House President (1996-1998)
- Big Sister Program (1996)
- College Republicans (1995-1999, Chair 1997-1999)
- Internship – Staunton Economic Development Office (1999)
- Work-study (1996 – 1999)

Law School extracurricular:

- Public Lawyers Interest Project
- Washington Attorney General's Office – 2-year clerkship awarded to limited number of law students after the first year.
- Phi Alpha Delta Law Fraternity (2003 – 2004)
- Appellate Court Competition (2003)
- Negotiation Competition (2001)

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

Undergraduate:

- Most Dedicated Player – Basketball (1997, 1998)
- Presidential Scholarship (1995 – 1999)

Law School:

- Negotiation Competition Semi-Finalist (2001)
- School of Law Scholarship – Half Tuition (2001-2004)

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.**

Arizona Supreme Court – July, 2005
 U.S. District Court, District of Arizona – January, 2008
 U.S. Circuit Court for the 9TH Circuit – July, 2019

- 13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? NO If so, explain.**
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? YES If so, explain any circumstances that may have hindered your performance.**

I originally took the summer 2004 bar exam. I was newly married, had just moved to a new city and was amid some health issues. I missed passing by 5 points. Following this set back, I settled into my new home, got healthy and studied for the February 2005 bar exam while working full-time. I received a passing score.

- 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
State of Arizona		
<ul style="list-style-type: none"> • AZ Office of the Governor <ul style="list-style-type: none"> ○ General Counsel ○ Deputy General Counsel • AZ Dept. Pub. Safety <ul style="list-style-type: none"> ○ Exec. Officer/Gen Counsel ○ General Counsel • AZ Atty General's Office <ul style="list-style-type: none"> ○ Asst. AG – Transportation/DPS ○ Asst. AG – Child and Family 	<p>6/18 – Present</p> <p>9/17 – 5/18</p> <p>7/15 – 9/17</p> <p>12/12 – 7/15</p> <p>1/08 – 12/12</p> <p>10/05 – 1/08</p>	<p>Phoenix, AZ</p> <p>Phoenix, AZ</p> <p>Phoenix, AZ</p> <p>Phoenix, AZ</p>
Maricopa Co Sheriff's Office		
<ul style="list-style-type: none"> • Policy Supervisor • Policy Analyst 	<p>4/05 – 10/05</p> <p>10/04 – 4/05</p>	<p>Phoenix, AZ</p>
Studying for the Bar Exam/Looking for work/Nanny	<p>5/04 – 10/04</p>	<p>Phoenix, AZ</p>

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WA Attorney General's Office – Law Clerk	5/02 – 4/04	Spokane, WA
Planned Parenthood – Data Entry Temp	8/02 – 4/03	Spokane, WA
Abilities Network/Epilepsy Foundation – Admin Asst.	10/99 – 8/01	Towson, MD
Franciscan Youth Center – Youth Counselor	10/99 – 5/01	Baltimore, MD
Hecht's Dept. Store – Associate	10/99 – 1/00	Towson, MD
Zero & One Engineering, Inc – Admin Asst.	6/99 – 10/99	Gaithersburg, MD

- 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.**

Michael T. Liburdi
 Nicole Ong Colyer
 Jake Agron
 Kyle Smith

- 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.**

Over the past 5 years, my law practice has involved high profile legal issues involving implementation of federal and Arizona constitutional, statutory, regulatory and case law. As general counsel to the Governor, I negotiated and drafted legislation, worked with stakeholders and developed legal strategy for pursuing and defending the Governor's official actions. In defense of some of his actions, I have litigated on his behalf, worked with outside counsel to prepare witnesses, perform depositions, complete discovery, and appear in court. In addition, I supervised the work of the Office of General Counsel, which includes two other attorneys and approximately 30 administrative counsels throughout the executive branch. Areas and cases of note include: Developed statewide training for law enforcement implementation of SB1070; Developed policy for implementation of SB1070 and *U.S. v. Arizona* by law enforcement (as part of the settlement in *Valle del Sol v. Whiting*, a lawsuit challenging the implementation of SB1070, the policy was adopted as the state model policy for law enforcement); Represented Governor Ducey on an amicus brief to the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization* challenging *Roe v. Wade* and seeking to have the issue returned to the states; and supervised the defense of the Governor's authority to appoint the replacement to Senator John McCain following his death in *Tedards v. Ducey* which was appealed all the way to the U.S. Supreme Court. I estimate that my practice over the last 5 years consisted approximately of the following: Constitutional: 30%; Administrative: 30%; Litigation: 10%; Transactional: 10%; Criminal: 5%; Health: 5%; Election: 5%; Employment: 5%

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

As an assistant attorney general in the Child and Family Division of the Attorney General's Office, I litigated a multitude of cases on behalf of the Department of Economic Security to establish paternity and child support judgments. The cases ensured that children were supported, and the state was able to recover the costs paid to support children whose parents had not taken responsibility for them. Additionally, I prosecuted deadbeat parents who refused to support their children even though they had the means to do so. I managed a heavy caseload with weekly court calendars. These cases were emotionally taxing at times due to the high stress of those that were being held accountable and those that were not getting the support they needed. Often the parties were unrepresented, and I was required to mediate a settlement between the parties when possible.

As an assistant attorney general representing the Department of Public Safety, I advised on many niche areas of the law such as tribal jurisdiction, asset forfeiture, sex offender registration and concealed weapons permits. These niche areas required knowledge of Indian law, property law, criminal law, education law and the 2nd Amendment.

As a public lawyer, I have continuously advised on public records, open public meeting, and conflict of interest laws as they apply to public employees. I developed and delivered trainings on these topics to assist public employees in complying with the law, providing transparency and confidence in state government.

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.

Not applicable

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

In addition to legal motions and briefs, throughout my career, I drafted numerous statutes, rules, executive orders, contracts, policies, and other legal documents. Drafting of such documents often involves negotiating and working with stakeholders and other involved parties to obtain a complete and well thought out result. In addition to my general duties involving drafting and negotiating statutes, rules, executive orders, compacts and contracts, a specific example of my experience in this area involves the 2021 Restated and Amended Gaming Compacts. Serving as the lead negotiator for the state on that project, I worked with 22 Native American Tribal governments, their counsel and representatives over the course of several years to negotiate an amendment to the nearly 20-year-

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old compacts. Our work culminated in an amended compact that would bring Arizona's gaming industry into the 21st century. Once we agreed on the specifics of the compact, the negotiations regarding the accompanying legislation began. I was the original drafter of the proposed legislation which served as the basis for negotiations with stakeholders and legislators to develop the final pieces of legislation. Ultimately, 21 Tribes agreed to the amended compact language and the legislature approved the legislation with overwhelming majorities.

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

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

Office of Administrative Hearings:	5
Security Guard and Private Investigator Board:	5

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

Sole Counsel:	<u>3</u>
Chief Counsel:	<u>2</u>
Associate Counsel:	<u>5</u>

21. Have you handled any matters that have been arbitrated or mediated? NO* If so, state the approximate number of these matters in which you were involved as:

Sole Counsel:	<u>N/A</u>
Chief Counsel:	<u>N/A</u>
Associate Counsel:	<u>N/A</u>

*Though I was not listed as counsel for any case that was arbitrated or mediated, I personally mediated at least half of the child support cases that I handled. Additionally, I participated as the agency representative in approximately two mediated cases involving DPS.

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.

A. *Yavapai Prescott Indian Tribe (YPIT) v. Ducey, et al*,
Maricopa County Superior Court, CV2021 – 013497
Judge James Smith

1. Date of proceedings: August 2021 – August 2022

2. Counsel:

Luis Ochoa, Luis.Ochoa@quales.com
Nicole Simmons, simmonsn@ballardspahr.com
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Brett Johnson, bwjohnson@swlaw.com
Colin Ahler, cahler@swlaw.com
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Attorneys for Defendant Governor Ducey

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Attorney for Defendant Ted Vogt and Dept. of Gaming

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480-889-8990

Attorneys for Intervenorors – Tonto Apache Tribe of Arizona and Quechan Tribe of the Ft. Yuma Indian Reservation

3. Summary:

This case involved a challenge to legislation that was enacted to accompany an amendment to Arizona's Gaming Compacts. As the Department of Gaming was implementing the new law, Plaintiffs filed a motion for preliminary injunction, to stop the state from implementing the legislation and granting sports betting licenses to other tribes and commercial vendors stating that the legislation violated Prop 201, the voter protected law that allowed the Governor to enter gaming compacts with the tribes. Following a ruling in favor of defendants on the requested injunction, the parties entered negotiation to add YPIT to the 2021 Restated and Amended Compact. This required getting the 20 tribes that had previously signed the amendment to agree to additional changes to accommodate YPIT. Approval by the U.S. Bureau of Indian Affairs was then required. Following that process which took a great deal of time, the parties agreed to dismiss the case and it was recently dismissed.

4. Significance:

This case was significant because it had the potential to undo the years of work that I had completed to obtain agreement with 20 other tribes. Had I failed to achieve settlement in this case such would have resulted not just the agreements between the tribes and the state but also the revenue stream that funds numerous governmental programs such as education and emergency services.

B. *Speros Enterprises Inc. v. Arizona Dept. of Public Safety*

Maricopa County Superior Court, CV2010-005003
Judge George Foster

1. Date of proceedings: February 2010 – June 2012

2. Counsel:

Daniel Maynard, dmaynard@mmcec.com
Maynard Cronin Erickson Curran & Sparks
3200 North Central Avenue
Suite 1800
Phoenix, AZ 85012- 2443
602-279-8500
Attorney for Plaintiff

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Anni Foster
Attorney General's Office
1275 West Washington Street
Phoenix, AZ 85007
Attorney for Defendant

3. Summary:

This case involved the seizure of property by the Department of Public Safety. Under the law governing seizures at the time, the department and the county attorney were required to follow a specific procedure under a specific timeline to forfeit property classified as "proceeds of a crime" or contraband. In this case, Plaintiff questioned the classification of the property as contraband and whether the process was appropriately followed. Though argument was presented seeking to dismiss the case by defendants, that motion was denied and the parties ultimately settled before the case went any further.

4. Significance:

This case was significant because it demonstrated the importance of process and procedure to a case. The result in this case taught me to plan for what could go wrong and how to mitigate such factors before they become a problem. This case also made an impact on me because of the constitutional implications of government seizing property and the importance of ensuring that persons are provided with access to information about legal processes. The experience was very helpful when many years later legislation was proposed to reform Arizona's asset forfeiture laws.

C. ***Rios v. Halliday***, Maricopa County Superior Court, LC2011-000593
Judge George Foster

1. Date of Proceedings: September 2011 – February 2012

2. Counsel:

Dale Norris, norrislaw@cox.net
Law office of Dale Norris, LLC
517 W Monte Vista Rd
Phoenix, AZ 85003
(602) 708-9610
Attorney for Appellant

Anni Foster
Arizona Attorney General's Office
1275 West Washington
Phoenix, AZ 85007
Attorney for Appellee

3. Summary:

This case involved the application of statute and a disagreement as to what the law meant. At the time of appellant's retirement, the law provided that he was able to purchase his duty weapon for fair market value. He did not purchase it at the time. Following retirement, he continued to work in a reserve or volunteer capacity, and he continued to carry a duty weapon. After a few years, the law changed, and duty weapons could be purchased for \$1. Following the change, Appellant sought to purchase his "new" duty weapon, which had replaced the one he carried for many years on the job, citing the statute. Unfortunately, the plain language of the statute was very clear, and the law precluded the Director from selling him the weapon. Appellant disagreed with the Director's position. Following an in-person meeting with the Director and a clear explanation of the reasoning behind the decision, Appellant decided to abandon his case and the Director stipulated to dismiss it.

4. Significance:

This case was significant because it demonstrated that sometimes a party needs to be heard and understood. It demonstrated that to be effective a decision needs to be clear and present the reasons justifying the decision. In doing so, a party can mitigate the risk of future litigation.

**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: 10
State Courts of Record: 1500+
Municipal/Justice Courts: N/A

The approximate percentage of those cases which have been:

Civil: 99%
Criminal: 1%

The approximate number of those cases in which you were:

Sole Counsel: 1500+
Chief Counsel: 5
Associate Counsel: 10

The approximate percentage of those cases in which:

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You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 1%

You argued a motion described above 1%

You made a contested court appearance (other than as set forth in the above response) 48%

You negotiated a settlement: 50%

The court rendered judgment after trial: <1%

A jury rendered a verdict: N/A

The number of cases you have taken to trial:

Limited jurisdiction court N/A

Superior court 1

Federal district court N/A

Jury N/A

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: 5

Criminal: N/A

Other: 5

The approximate number of matters in which you appeared:

As counsel of record on the brief: 10

Personally in oral argument: N/A

25. Have you served as a judicial law clerk or staff attorney to a court? NO If so, identify the court, judge, and the dates of service and describe your role.
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.

A. *Douglas A. Ducey v. Janet Yellen, Secretary of the Treasury, et al*,
9th Circuit Court of Appeals, No. 22-16101
Federal District Court, District of Arizona 2:22-cv-00112-SPL
Judge Steven Logan

1. Period of Proceedings: January 2022 – Present

2. Counsel:

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Phoenix, AZ 85007

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Colin Ahler, cahler@swlaw.com
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Attorneys for Plaintiff Governor Douglas A. Ducey

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Stephen Ehrlich
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 305-0693
*Attorneys for Defendants Secretary Janet Yellen, Richard K. Delmar and
U.S. Dept. of Treasury*

3. Summary:

This case was filed on behalf of Governor Ducey challenging federal regulations adopted by the U.S. Treasury related to Covid relief dollars. The lawsuit challenged the Treasury's authority to implement regulations based on the the administrative procedures act, the spending clause, and the non-delegation clause. At the trial court, Judge Logan ruled on Defendant's motion to dismiss whereby he found that contrary to the defense's arguments, Governor Ducey had standing and the issue was ripe but that under *Chevron* the agency's interpretation of the statute was valid. An appeal has been filed with the 9th circuit court of appeals and the opening brief has not yet been submitted.

4. Significance:

This case was significant because the federal government implemented regulations that were in clear contradiction to the plain language of the statute enacted by Congress. Without this challenge, the federal government would be trampling on the ability by states to accept and spend funds in the way that Congress intended. This case demonstrates the importance of the courts in protecting the rule of law as written by the legislative body. It also is important because it provides a case for challenging the broad scope that some courts have given following *Chevron* and the danger to the separation of powers if courts continue to have such a broad view of agency deference. This is the reason for the appeal.

- B. ***Javier Aguila, et al v. Doug Ducey, et al***, Arizona Supreme Court, CV-20-0335-PR, Arizona Court of Appeals, 1-CA-CV 20-0598, Maricopa County Superior, CV2020-010282, Judge Pamela Gates

1. Period of Proceedings: July 2020 – March 2021

2. Counsel:

Ilan Wurman, Ilan.Wurman@asu.edu
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MC 9520
111 E Taylor Street
Phoenix, AZ 85004
Attorney for Plaintiffs Javier Aguila and approximately 130 bar owners

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Attorney for Amicus Curie Merita Kraja, Grant Krueger and Morgan Fatali

3. Summary:

This case appealed of a denial of a preliminary injunction request challenging an executive order issued by Governor Ducey during peak Covid-19 infections throughout the state. The executive order required that bars be shut down to help curb the spread of disease. The Plaintiffs/Appellants, 130 bar owners, challenged the order under due process, non-delegation and privileges and immunities grounds. At the trial court, an evidentiary hearing was held on the preliminary injunction resulting in the executive order remaining in place. Following the appeal of the denial of the preliminary injunction, Plaintiffs/Appellants moved to transfer the case directly to the Arizona Supreme Court due to the statewide importance of the case. During the pendency of the litigation, a new executive order was issued that lifted the prior one. Ultimately the Arizona Supreme Court found that the new executive order mooted the appeal and dismissed the case.

4. Significance:

The significance of this case was that it was one of many cases I supervised and participated in that stemmed from executive orders issued during the pandemic. I navigated these weighty and difficult legal issues from start to finish with very little precedent to guide me and as case law across the country was being developed and ever changing. It is also an example of the use of judicial restraint in regard to another branch's authority.

C. *Yavapai Prescott Indian Tribe (YPIT) v. Ducey, et al (Injunction)*, Maricopa County Superior Court, CV2021 – 013497
Judge James Smith/Judge Timothy Ryan

1. Period of Proceedings: August 2021 – August 2022

2. Counsel:

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Attorneys for Intervenors Tonto Apache Tribe of Arizona and Quechan Tribe of the Ft. Yuma Indian Reservation

3. Summary:

This case involved a challenge to legislation that was enacted to accompany an amendment to Arizona's Gaming Compacts. As the Department of Gaming was implementing the new law, Plaintiffs filed a motion for preliminary injunction, to stop the state from implementing the legislation and granting sports betting licenses to other tribes and commercial vendors stating that the legislation violated Prop 201, the voter protected law that allowed the Governor to enter gaming compacts with the tribes. The law was set to go into place in just a week. Judge Smith scheduled an emergency hearing to deal with the preliminary injunction and emergency depositions were held to gather evidence for that hearing. Shortly after the hearing, Judge Smith entered an order denying the motion for injunctive relief and ruling in favor of Defendants.

4. Significance:

This case is significant because the law was set to go into effect and any delay had the potential to harm many non-parties who had spent a great amount of time and money to prepare for the launch of the new industry. There was a great deal of pressure to not have the preliminary injunction entered. Due to the urgency of

the matter and the limited time before the law was to go into effect, Judge Smith held the hearing on Labor Day and the parties quickly conducted depositions just two days before. There was a very expedited pleading schedule leading up to the hearing. I argued the motion in front of Judge Smith and because the hearing was conducted virtually, the proceedings were observed by licensees and their representatives throughout the nation-a benefit to improving technology within the court system.

**D. In the Matter of the “Cause” Determination for Removal of [Board Member], Governor’s Office/Office of Administrative Hearings
Administrative Law Judge Harold J. Merkow**

1. Period of Proceedings: September, 2020 - January 2021

2. Counsel

Self-represented Petitioner [Confidential]
Information may be found in the confidential section

Anni Foster, afoster@az.gov
Office of the Governor
1700 W Washington, 8th Fl
Phoenix, AZ 85007

3. Summary:

This case involved the removal of a board member for cause. The board member contended that his removal was not based on cause. Because there was no official tribunal, my office had to work with the Department of Administration and the Office of Administrative Hearings to set up a hearing process to ensure the Petitioner was provided due process as required under the law.

4. Significance:

The significance of this case is that self-represented litigants often do not understand the process or what the proper procedures are. Even though I had to protect the interests of my client, I also needed to ensure that he had an opportunity to review all the information that supported the cause determination and that he had ample opportunity to be heard. This was a unique case because such removals are rare. I presented witness testimony and cross examined the petitioner to make a clear record for the administrative law judge to make his determination and ensure that if that decision was appealed, the record on appeal was complete.

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

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assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Not applicable

- 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.**

Not applicable

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

While representing the Arizona Department of Public Safety, I drafted final administrative determinations on cases in which the Director or Deputy Director was the final decision maker. I also assisted in the drafting of final determinations on agency procurement actions.

Additionally, though I was not always counsel of record, I have overseen and participated in many mediations, arbitrations, and cases as general counsel to a state agency and the Governor. I oversee lawyers that handle cases for the state through our insurance provider, State Risk Management, including case status, case values, legal strategy, and preparations for court. Through this oversight I provide guidance and have gained experience in class action litigation and issues that arise in jury trials.

Finally, over my career I have had the privilege of mentoring and supervising law students who served as interns in the Governor's Office and at the Attorney General's Office. I enjoy watching students grow into attorneys and advance their careers. I have maintained contact with many of my former interns and look forward to the opportunity to continue mentoring law students, those interested in law school, and encourage those that have not even imagined the possibility of a career in law.

BUSINESS AND FINANCIAL INFORMATION

- 30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? NO If so, give details, including**

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dates.

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.

Arizona Bar Foundation, Board Member

My duties as a board member include supporting the foundation and its programs which include law related education.

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? NO If not, explain your decision.

Under Rule 3.7 of the Arizona Code of Judicial Conduct, judges are able to participate in the management of charitable organizations that are concerned with the law or legal system.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? YES If not, explain.
33. Have you paid all state, federal and local taxes when due? YES If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? NO If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? NO If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? NO If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? NO If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? NO If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? NO If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? NO

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

Not applicable

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

Not applicable

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

Not applicable

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

Not applicable

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

Not applicable

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? NO If so, in each case, state in detail the circumstances and the outcome.

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

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? NO If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? NO If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? NO If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? YES If so, list with the citations and dates.
- Foster, Anni, "Arizona's Judges Are a Model for Nation" Arizona Daily Star, September 19, 2019.
 - Foster, Anni, "Chief's Counsel: The First Amendment in the Workplace" Police Chief Magazine, December, 2016.
 - Foster, Anni, "Chief's Counsel: Diversity in the Workplace" Police Chief Magazine, June, 2015.
 - Foster, Anni, "Chief's Counsel: Do I Really Need a Warrant?" Police Chief Magazine, September, 2014.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? YES If not, explain.

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

Republican National Lawyers Association

- National Election Law Seminar, Arizona Election Law (August 12, 2022)

State of Arizona Leaders Connect Program

- Is the Juice Worth the Squeeze: Risk Management and Mitigation (July 2022)

State Bar of Arizona, Convention June 2022

- Nakamura Diversity Workshop - "Do You Look Good in Black? The Merit Selection Process: Boards, Commissions, and the Governor's Office"¹
- Appellate Practice Section, Judicial Appointments in Arizona
- Indian Law Section, Tribal Gaming in Arizona

Maricopa County Bar Association

- Follow the Yellow Brick Road (June, 2022)

Federalist Society,

- Federalism & Separation of Powers Practice Group, Litigation Update: Ducey v. Treasury (February, 2022)

Flinn Foundation

- Arizona Center for Civic and Leadership, Tribal Gaming in Arizona (August, 2021)

Ohio State University Alumni Association, Arizona Chapter

- Merit Selection of Judges (March, 2021)

Sandra Day O'Connor College of Law

- Indian Legal Program, Trends in Indian Gaming Webinar (March, 2021)

Arizona Supreme Court Retreat

- Delivery of Legal Services Webinar (April, 2020)

Republican National Lawyers Association

- National Policy Conference, Deregulation under Republican Governors (April 5, 2019)

ASU American Constitutional Society

- Paths to the Bench – Panelist (January 2019)

Arizona Law Day – Panelist (2018)

International Association of Chiefs of Police

- Legal Section Spring Conference, Juvenile Law (2014)

Arizona Department of Public Safety

- 4th Amendment Search and Seizure Law (2008-2012)²
- Preventing Racial Profiling (2008-2012)

¹ The following information is included for transparency. I was listed for this program but was not ultimately able to attend.

² I do not have exact dates for these trainings but while I worked with DPS I conducted this training multiple times.

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

Arizona Women Lawyers Association
Member (2018 - Present)
American Enterprise Institute, Leadership Network
Member (2019 – Present)
Federalist Society (2017 – Present)
Maricopa County Bar Association (2008 – 2014)
Intl. Assn. of Chiefs of Police, Legal Officers Section (2008 – 2017)
Arizona Law Enforcement Legal Advisor Association (2008 – 2017)
AZPOST Law and Legal Subject Matter Expert Committee (2011 – 2015)
Horace Rumble Inn of Court (approx. 2013)

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

No, others than those listed above or below.

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.

Maricopa County Bar Association, Public Lawyers Division
President (2012 and 2013)
Vice President (2011)
Secretary (2010)
Treasurer (2009)
William E. Morris Institute for Justice, Volunteer (9/2004-10/2004)
ASU Law Pipeline Program, Mock Trial Judge (2018 & 2019)
Constitution Week, Classroom presenter (2022)

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

ARIZONA COMMISSION ON ACCESS TO JUSTICE
Commissioner (2018-Present)
Member, Intergovernmental Work Group (2018 – Present)
ARIZONA BAR FOUNDATION
Board member (2018 – Present)
Subcommittee member, Law Related Education Subcommittee
BROPHY MOTHERS GUILD
New Parent Welcome Committee (2022 - Present)
Let's Get Together Committee (2022 - Present)

Ladies in Faith Together (2022 – Present)
JUSTICE FOR VICTIMS OF CHILD SEXUAL ABUSE TASK FORCE
Member (2019)
SAINT FRANCIS XAVIER PARISH
Eucharistic minister (2016 – 2019)
Ministry of Mothers Sharing (approx. 2010 – 2013)
• Cradle Sunday, Maggie's Place
BOY SCOUTS OF AMERICA, Pack 127
Committee member, Advancement (2014-2016)
Cubmaster, (2016-2017)

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

Not applicable

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

Maricopa County Attorney, Candidate (2022)
Precinct Committeeman, LD24/LD5 (2020 – 2022)

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

My term as precinct committeeman was due to expire on September 30, 2022. I did not reapply and resigned prior to submitting my application for this position because under the Code of Judicial Conduct I would be prohibited from continuing to serve in that role.

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

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

When I am not working, I enjoy spending time with my family, which is the most important thing in my life after my faith. As a mom I have spent many of the last few years attending school events, camping with the scouts and getting out into the woods whenever I can. Being from a rural community, I enjoy escaping the city and gardening when I can. I love to volunteer my time in community organizations whether it be holding a position on a committee or just helping at a singular event. Recently, I began mentoring newly diagnosed cancer patients and their families.

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 life and professional experience provides a unique background that few if any other attorneys or judges could offer – a view of the importance of separation of powers as outlined specifically in Arizona's constitution. My years of experience providing guidance on the law led me to appreciate the responsibility of government leaders in all three branches of government. That responsibility is founded in Article 2, section 2 of Arizona's constitution, which vests the political authority of our state in its citizens, that is then delegated to our government leaders.

Arizona's constitution is unique in that unlike the United States Constitution, it specifically separates the authority of each branch of our government. Article 3 of Arizona's constitution separates our government into legislative, executive, and judicial branches and states, "such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others." The protection for this provision stems from the citizenry but the only way to challenge governmental action that infringes on it is through the courts. Over the past several years the separation of powers has been tested both in Arizona and throughout our country. As the general counsel to the Governor, part of my job was to ensure that the executive branch did not stray into the lanes of the other branches of our government. I did this by providing oversight and guidance throughout the executive branch in much the same way that an appellate court judge interprets and provides guidance on law in the cases before him or her.

Another part of my job in the Governor's office, and in other roles I have held, was to work to provide transparency to our citizens by speaking to people about our government, the policies that were being pursued and the reasons for them. This is especially important for the courts who are often a mystery to many of our citizens who must interact with the judicial system during the most stressful times of their lives. Though many efforts have been made to provide access to the courts,

more can be done through technology and ensuring that our citizenry understands the role of the courts the way they understand the role of the executive branch and the legislature. I would like to use my experience to demystify the court and help citizens understand its role.

Unlike other traditional candidates, I have analyzed, interpreted, and implemented Arizona's constitution and statutes on a daily basis. My experience has given me expertise in administrative, constitutional, criminal and many other areas of law. I have drafted laws and executive orders which have ultimately been presented to the courts through litigation for interpretation. These experiences have honed my understanding of our constitution, principles of law and the need to protect them.

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

While at the Governor's Office and DPS, I was tasked with serving as an advisor on several large investigations into agency operations, including the prior Child Protective Services, the Department of Economic Security, the Department of Corrections Rehabilitation and Reentry and the Department of Liquor. Each investigation required extensive record reviews and questioning of persons involved regarding their decision making and reasoning. This also required synthesizing large amounts of information into a digestible format for reviewers who were not familiar with each department's area of operations or the laws applicable to the department's operations and mission.

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

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

See Exhibit 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 Exhibit B-1 and B-2

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

Not applicable

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

Not applicable

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

Exhibit A

Question #62: Why are you seeking a judgeship?

I am seeking this position because our state and country is too important not to. Over almost 20 years, I have devoted my career to serving others. From prosecuting deadbeat parents to defending law enforcement officers for doing their job, advising the Governor, and collaborating with the courts and the legislature, I have had the opportunity to learn and work in most areas of Arizona's laws. As I have contemplated the next chapter in my career, I had a challenging time imagining what job could be better than the one I have right now. But as I spoke with attorneys, judges, business owners, friends, and family, one thing became clear - the next chapter would need to build on the unique skill set that I developed working at the highest levels of state government.

Over the several years, I have had the opportunity to see the inner workings of both the legislative branch and the executive branch. Passing laws and implementing them all while staying true to our country's founding principles. The one area of government though that I have not had the opportunity to fully appreciate is the judiciary.

Alexander Hamilton said that the judiciary was intended to be the "least dangerous" of the three branches. It is the branch that our citizens seem to know the least about and struggle to understand. I can relate to that. Growing up, I cannot remember ever meeting a judge, or even understanding the function they provided other than to dole out punishment. In my current role though, I have been given the opportunity to pull back the curtain a bit and see the vital role of judges and the courts to our form of government.

I have learned that good judges do not solely sit on the bench all day or sit in their office and read, they are problem solvers and mentors, guardians and caretakers. Those are the roles that lead me to seek this position. I have worked on some of the most pressing issues facing our state – SB1070, COVID-19, gaming, criminal justice reform and regulatory reform to name a few. All these issues though, have at some point in time have been in front of our courts. Without the judiciary - in the brilliant design that the framers implemented - either the legislature or the executive could trample on the rights that we hold most dear.

With the court of appeals serving as the final arbiter of most of the state's cases, it needs people who understand the importance of the court's role, and its limitations as well. My experience provides a unique perspective on both the importance of the judiciary but also the importance of Article 3 of Arizona's constitution that explicitly provides that "no one of [the other branches of government] shall exercise the powers properly belonging to either of the others."

More still, we need to ensure that our citizens understand that courts are not something to be feared or avoided, but part of our state and country's fabric that holds together the ideals for which so many have fought and died. We need judges who will stick to the text of the law and not outcome driven. Otherwise, the judiciary risks violating Article 3. To do that though, we need judges who are willing to get out into our communities and schools to answer questions and demystify the judiciary. We need to make sure that judicial

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opinions are written to be understood by everyone but are based in the text of the law as the legislature intended. It is only through such connections that confidence in the judiciary can grow so that its full purpose - to be the guardian of our constitution - can be fulfilled. In this next chapter of my career, I would cherish the opportunity to be a caretaker and guardian of our laws and government that being a court of appeals judge affords.

Exhibit B-1

Respondent has not made any claims or provided any evidence that the court's Decree was made by mistake, fraud or was void. Additionally, he has not provided any newly discovered evidence or provided documentation that the judgment was satisfied. The only evidence he has provided is a satisfaction of judgment that he claims he believed included the child support obligation. See Respondent's Exhibits K and L. However, the payment history and satisfaction of judgment clearly shows that it was for case number _____, Respondent's criminal restitution matter. A reasonable person would not expect that a satisfaction of judgment for a criminal restitution matter would include a child support obligation.

Respondent has not even alleged that he had no knowledge of the order. Instead he has admitted that he purposely did not request a modification because he thought the child support obligation would be discharged in his bankruptcy. See Respondent's Motion, paragraph 47. Therefore, Respondent has not alleged a basis for dismissal of the Child Support Order.

Since Respondent has not alleged any basis for dismissal of the order itself, the State makes the assumption that he is requesting that the State's Request to Enforce be denied. On this issue, the question first turns on the application of law governing child support and its statute of limitations. In regards to pursuing the child support arrearages prior to a request for a final judgment, the law does not require that any type of enforcement action be filed until after the child emancipates. A.R.S. §25-503(H) states:

The right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable

as a final judgment by operation of law. Unless it is reduced to a written money judgment, an unpaid child support judgment that became a judgment by operation of law expires three years after the emancipation of the last remaining unemancipated child who was included in the court order....

A.R.S. §25-503(H). The State filed its action on January 9, 2006. The child in question emancipated on January 11, 2003. Thus, the State filed its action within the three year time period required under law. The law makes no requirement for any party to file an action prior to that. Therefore, the State and/or Petitioner have every right under the law to pursue this action.

Respondent claims that the doctrine of laches applies in this case because the State and/or Petitioner have not pursued enforcement of this case prior to the present action. Respondent cites Perez v. Garcia, 187 Ariz. 527, 931 P.2d 427 (1996); Schnepp v. State, 183 Ariz. 24, 899 P.2d 185 (App. 1985); and State v. Dodd, 181 Ariz. 183, 88 P.2d 1370 (1994), as the basis for his claim. These cases do not support Respondent's claim.

Perez involved a very different fact pattern from Respondent's. First, the case involved an establishment case, not enforcement of an established order. Perez, 187 Ariz. at 528. In Perez, the mother applied for public assistance six years after the child was born. Id. When applying for assistance the State requested information on the child's father and mother named Miguel Garcia. Id. It took the State, ten years before it sought to establish a child support order against Mr. Garcia. Id. Thus, the child was sixteen years old before an order was entered. Id. The Court refused to award arrearages, ruling for Mr.

Garcia citing laches and the State's inability to establish an arrearage amount. Perez, 187 Ariz. at 530. Clearly, the facts of Respondent's case are significantly different.

Respondent's use of Perez in pursuing a defense of laches is inappropriate. Perez further explains that "...the defense of laches requires the noncustodial parent to show by clear and compelling evidence that the custodial parent unreasonably delayed bringing the claim for support arrearages and that the noncustodial parent was prejudiced by the delay." Perez, 187 Ariz. 428-429. Here Respondent has not made such a showing. Respondent has only stated that he *thought* the child support had been terminated or was discharged through bankruptcy. He has provided no documentation which states that the order was terminated or that a final order of adoption had been entered. Instead, he has provided documentation that a judgment for a criminal restitution matter was satisfied. A reasonable person would not have assumed that this also satisfied his child support obligation. The opinions in State v. Dodd and Schnepp v. State, were the basis of the decision regarding laches in Perez and likewise provide very different fact scenarios involving establishment cases rather than enforcement cases. Dodd, 181 Ariz. 183; Schnepp, 183 Ariz. 24. These cases do not support Respondent's position.

Another element of the laches defense that must be proven is that the "...custodial parent unreasonably delayed bringing the claim for support arrearages and the noncustodial parent was prejudiced by the delay." Perez, 187 Ariz. at 529. Respondent has provided no evidence that he has been prejudiced. Instead, he provided a tax intercept notice from 1988, which he was not credited for, but for which the State is prepared to credit him for. See Attachment D, Tax Refund Intercept. He claims he was unable to get documentation as to payments made, however it seems that he was able to come up with

this notice from 1988. Additionally, Respondent has not indicated the dates and amounts, if any, of other payments that he claims were not credited. Furthermore, the law does not require any enforcement action to occur prior to a request for a final judgment. Therefore, the Court must deny Respondent's Motion in regards to the State's Request to Enforce.

Respondent also alleges that Petitioner indicated she would not pursue child support. *Schnepp v. Arizona Department of Economic Security*, upheld prior court rulings that an obligor must show by clear and compelling evidence that the obligee voluntarily and intentionally abandoned a known right. *Schnepp*, 183 Ariz. 24, 899 P.2d 185 (App. 1995). The *Schnepp* court held that such a waiver should be in writing or an admission by the obligee that a waiver was intended. *Schnepp*, 183 Ariz. at 28. No such evidence has been presented by Respondent. Additionally, since Petitioner has not waived any of the arrears owed to her, Respondent's allegations questioning the amounts owed to the State are moot. Any amount owed to the State is contained in the total amount of arrears owed. Petitioner has assigned a portion of those arrears to the State for amounts that were paid out for public assistance. At this point there is no reason to determine how much money is owed to the State because it is irrelevant. It is simply a portion of the total arrears owed.

Respondent further alleges that he thought the child support had been discharged in his bankruptcy or through an adoption, however he has provided no documentation that supports his claim. The only documentation he has provided regarding his bankruptcy lists his monthly child support obligation. See Respondent's Exhibit C. In fact Respondent should not have had a reasonable belief that his obligation was fulfilled by the bankruptcy because he received a tax refund intercept notice prior to the discharge of

his bankruptcy. See Attachment D, Tax Refund Intercept. Additionally, his belief that the child was adopted was not reasonable because he never signed a termination of his rights or a Consent to Adopt. This is supported by Schnepp which held that even though mother had father sign an adoption consent form and said she did not expect anything from him, his obligation to pay child support was not terminated. Schnepp, 183 Ariz. at 28.

Even if this Court were to determine that the State had a duty to pursue enforcement of child support prior to its Request of Enforcement action was filed, the State asserts that it had attempted to contact Respondent regarding his child support arrearage during the time he claims there was no contact. Additionally, the State was able to verify his address in 1990, which he had listed with a former employer and where he was receiving mail. The address was . No mail sent to this address by the State has been returned as undeliverable.

In conclusion, although Respondent has provided a great deal of information regarding his inability to pay and the hardships he has endured, he has not provided any documentation showing why this Court should dismiss the Child Support Order or why a final judgment should not be entered. Respondent has provided no documentation showing that he has paid the arrears or requested to modify the order. Respondent has not provided any documentation to support the reasonable belief that the child support obligation had been fulfilled.

As an order cannot be retroactively modified or terminated, it follows that the child support order entered in 1984 continued until the child emancipated. Respondent is asking that not only the Request for Judgment be denied but that the entire Child Support Order be dismissed. Respondent has provided no basis for making this argument. The

Exhibit B - 2

Governor Douglas A. Ducey and the Governor’s Office of Strategic Planning and Budgeting (“OSPB”) (collectively, the “*Amici*”), by and through counsel undersigned, hereby submit this brief as *Amici Curiae*.¹ The purpose of this brief is to support the Petition for Special Action submitted by Plaintiffs/Petitioners in this matter due to extraordinary circumstances.

STATEMENT OF INTEREST

This brief is filed pursuant to Rule 16(b)(1)(B), Arizona Rules of Civil Appellate Procedure, which permits “the State of Arizona or an officer or agency of the State of Arizona,” to submit an *Amicus Curiae* brief to this Court.

Amicus Curiae Douglas A. Ducey is Governor of the State of Arizona. Governor Ducey appears as *amicus curiae* to explain the extraordinary circumstances of this case, the importance of finality to this case for taxpayers and the urgent need for definitive guidance on the constitutionality of the initiative titled “Invest in Education Act” (“Proposition 208”) bearing the initiative serial number I-31-2020 and codified at A.R.S. §§15-1281 through 1285 and 43-1013.

Amicus Curiae OSPB is a division of the Arizona Governor’s Office. One of OSPB’s primary responsibilities is providing the executive’s state budget

¹ This brief is authorized by Ariz. R. Civ. App. P. 16(b)(1)(B). No persons or entities other than the Office of the Governor have provided financial resources for the preparation of this brief.

recommendation to the Arizona Legislature. OSPB's executive budget recommendation is based on financial data provided by state agencies and prior to making its recommendation, OSPB consults with all state agencies and applicable law for a comprehensive view of the budgetary needs of the state. Throughout the fiscal year, OSPB monitors and assesses the financial condition of the state through information from state agencies, the General Fund and other public finance metrics relating to the operation of state government. This continual monitoring and assessment allows for OSPB to provide a thorough recommendation to the executive not just for the initial budget recommendation but also for real-time modifications through the legislative process as necessary. With the need to enact an annual budget by July 1, delay in information and inputs necessary to finalize the annual budget between the Legislature and the Governor creates a great deal of uncertainty for the upcoming fiscal year. Pursuant to law, OSPB issued its budget recommendation for Fiscal Year ("FY") 2023 on January 14, 2022.²

As a public officer duly elected to the executive branch whose duty is to execute the laws of the state, including the implementation of the budget appropriated by the Legislature, Governor Ducey, along with OSPB, respectfully submits this brief to encourage this Court to exercise its discretion to immediately

² See A.R.S. § 35-111.

transfer this matter, expedite briefing and issue a decision on the matter. *Amici* are uniquely positioned to understand and articulate the gamut of complications and uncertainties that a continued delay in this litigation and finality on the questions surrounding Proposition 208 will continue to inject into the current budget process. Further, *Amici* strongly believe that it is not only appropriate, but of imminent necessity for this Court to expeditiously resolve the continuing constitutional questions presented in this case in order to provide not only guidance but finality to Arizona's lawmakers as soon as possible due to upcoming statutory deadlines that are impacted by this case, including the need for a budget by July 1.

SPECIAL ACTION JURISDICTION

Special actions provide an avenue for relief when there are no other remedies provided under law. Ariz. R.P. Spec. Act. 1. Special action jurisdiction has been found to be appropriate when the case presents issues of first impression, the issue is one of statewide importance and is likely to arise again. *Prosise v. Kottke*, 249 Ariz. 75, 77 (App. 2020).

Rule 3 of the Rules of Procedure for Special Actions provides that three questions may be raised in a special action which include:

- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

As outlined in this brief, this case presents issues of first impression, statewide importance and questions that are likely to arise again in relation to the scope of Art. VI, sec. 21 of the Arizona Constitution. There can be no question that the issue of one judge impacting two other equal branches of government and taxpayers provides adequate justification of statewide importance for this Court to act.

STATEMENT OF ISSUES

1. Whether Article VI, sec. 21 of the Arizona Constitution provides discretion for a Judge to unnecessarily and without justification delay proceedings and resolution of a case.
2. Whether statements made by a Judge threatening to schedule an evidentiary hearing prior to the constitutionally mandated 60 day timeline for issuing

resolution to the case violates a duty prescribed by law and is in excess of jurisdiction or legal authority;

STATEMENT OF FACTS

The Court is no stranger to the facts of this case and for those reasons, the *Amici* will not waste the Court’s time restating the facts that resulted in this case being presented to it yet a third time. Proposition 208 was filed two years ago in February, 2020. Prior to its certification, a challenge was filed and decided by this court over the 100-word description and petition circulator concerns. *Molera v. Hobbs*, 250 Ariz. 13, 474 P.3d 667 (2020). In *Molera*, this Court stated, “Whether § 15-1284(E) unconstitutionally curtails legislative authority, as the superior court implies, cannot be decided until after its adoption.” *Id.* at 677.

Following approval by the voters on November 3, 2020, an action was filed in Maricopa County Superior Court, CV2020-015495³ challenging Proposition 208’s constitutionality on the grounds that: (1) it seeks to exempt itself from the expenditure limitations for school districts specified in the Arizona Constitution (Ariz. Const. art. IX, § 21); (2) it violates the Arizona Constitution’s requirement (Ariz. Const. art. IX, § 22) that any new tax to be imposed by statute can only be imposed by the Legislature and through a two-thirds majority; (3) it violates the

³ This case was consolidated with CV2020-015509.