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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7 PETITION TO AMEND CANON 2.3,
8 RULE 81, ARIZONA RULES OF
9 THE SUPREME COURT

Supreme Court No. R-15-0014

**Reply in Support of
Petition to Amend
Canon 2.3 in Rule 81
of the
Arizona Rules of the Supreme Court**

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12 **I. CANDIDATE’S RECENT JOKE HIGHLIGHTS THE NEED FOR RELIEF.**

13 The following recent and widely-publicized joke made by Presidential
14 Candidate Mike Huckabee about transgender people highlights the need for relief
15 while also helping to refute arguments made by the two opposing respondents:

16 I wish someone had told me when I was in high school that I could
17 have felt like a woman when it came time to take showers
18 in PE class. I’m pretty sure I would have found my feminine side
19 and said, ‘Coach, I think I’d rather shower with the girls today.’

20 See, video footage of Huckabee’s February 2015 statement at:
21 [www.buzzfeed.com/meganapper/huckabee-on-transgender-people-i-wish-i-couldve-](http://www.buzzfeed.com/meganapper/huckabee-on-transgender-people-i-wish-i-couldve-said-i-was-t#.nmlwKwOL4)
22 [said-i-was-t#.nmlwKwOL4](http://www.buzzfeed.com/meganapper/huckabee-on-transgender-people-i-wish-i-couldve-said-i-was-t#.nmlwKwOL4), (exempted from hearsay consideration due to its
23 purpose not being to prove the truth of the matter asserted).ⁱ

24 Candidate Huckabee’s joke underscores in at least the following two ways the
25 fact that relief is needed here: (1) it implies that people who identify as transgender
26 are faking their identity in order to commit sex crimes in restricted spaces; and (2)
the joke reflects the hostile way that a prominent candidate for our nation’s highest

1 office wants to lead Americans (and thus also Arizonans) into treating an entire
2 segment of our society - with distrust, fear and overt disdain.

3 The fact that hostile views like Huckabee's are already pervasive in Arizona
4 can be seen from recent state legislation including the following: (1) SB1045 which
5 in 2013 was a failed effort by the Arizona legislature to restrict use of public
6 restrooms; and (2) SB1062 which in 2014 sought to permit Arizona businesses to
7 withhold services to groups who do not conform to the business' religious beliefs.

8 **II. THE RESPONSES DEMONSTRATE THAT RELIEF IS WARRANTED.**

9 The responses to this petition reflect that numerous individuals and
10 organizations, including the State Bar of Arizona, expressly support this petition.

11 These supporters include not only attorneys but also healthcare professionals
12 and businesses, among others.

13 Of particular import is the fact that there has been no opposition filed by any
14 association of judges or court personnel (nor even any individual judge or court
15 administrator - certainly not in any apparent official capacity).

16 The only opposition has come from the Maricopa County Attorney's Office
17 (hereafter "MCAO") and the Alliance Defending Freedom ("ADF"), which is joined
18 in its response by some individual lawyers who apparently share ADF's views.

19 Neither of the opposing responses disputes that transgender persons suffer
20 discrimination. Nor do the responses dispute that two US government agencies have
21 found a nationwide problem for which administrative directives have been issued to
22 try to end the discrimination.

23 While both opposing responses voice resistance to adding "gender identity" to
24 the protections expressed in Judicial Canon 2.3 ("JC2.3"), neither response offers
25 any truly substantive basis for denying the petition. MCAO's response simply offers
26

1 an ideal, yet unworkable, alternative. ADF’s response seems to serve only as a ruse
2 for the same mean-spirited types of insult recently expressed in the Huckabee joke.

3 A. MCAO OFFERS AN IDEAL, YET INADEQUATE, ALTERNATIVE.

4 MCAO admits in its response that some members of the Transgender
5 Community legitimately identify based on medical diagnoses derived from objective
6 chromosomal analysis.

7 MCAO wisely refrains from attempting to address (or challenge) other
8 circumstances in which the American Medical Association and other healthcare
9 organizations recognize gender conditions that warrant diagnosis and treatment.

10 MCAO’s response essentially tries to communicate one message which is
11 merely the proposal of an idealistic and inadequate alternative to adding “gender
12 identity” to JC2.3.

13 MCAO’s proposal is found in the following statement which recommends
14 replacing all of JC2.3’s protected groups with language that instead simply
15 admonishes judges (and their staffs) to treat all people “with respect”:

16 [T]he proposed language . . . along with current language,
17 should be jettisoned in favor of the simple straightforward
18 declaration that:

19 “All persons shall be treated with respect reflecting the in-
20 herent dignity and value shared and held in common by
21 every human being.”

22 See, MCAO response, page 2, lines 13 - 18.

23 While MCAO admittedly deserves credit for desiring and proposing a new
24 JC2.3 which reads more like “The Golden Rule”, such a proposal is unfortunately
25 too idealistic and inadequate to be of actual use.
26

1 First, such language would make this Court appear to have erased decades of
2 carefully-constructed and explicit laws which all three branches of our nation's
3 government have developed both at the federal and state levels.

4 Second, MCAO's proposed language would leave many people trying to
5 guess when and how such a vague "Golden Rule" standard should apply. This point
6 is underscored by MCAO's own inability to abide by the idealistic standard when
7 recently asked by a same-sex couple for MCAO's no-cost adoption services.ⁱⁱ In that
8 widely-publicized case, MCAO arguably possessed the legal authority to abide by
9 the proposed "respect all persons" standard and provide the requested services.
10 Instead, however, MCAO apparently found its proposed standard too idealistic to
11 follow and consequently refused to provide MCAO services to the couple.

12 As this Court knows, expressed words (and not vague, lofty ideals) are a
13 critical component of the fair and peaceful administration of justice.

14 The Court accordingly should disregard MCAO's response and grant the
15 petition's request to add "gender identity" to JC2.3.

16 **B. ADF OFFERS AN INSULTING RUSE FOR "HUCKABEE HOSTILITY".**

17 The ADF has filed a 10-page opposition that asserts arguments like: (1)
18 adding "gender identity" to JC2.3 will cause confusion; and (2) adding "gender
19 identity" will lead to an unending list of indefinable and undeserving classes.

20 In an era that has yielded controversial people like Gold-Medal Olympian
21 Caitlyn (Bruce) Jenner and Former Navy SEAL Kristen (Christopher) Beck, it is
22 astonishing that ADF would assert that the words "gender identity" cause confusion.
23 For ADF to assert this here smacks of being an insult to the intelligence of Arizona
24 judges and their dedicated staffs.

25 It is equally surprising that ADF has asserted that protecting transgender
26 people will lead to an endless list of indefinable and undeserving protected groups.

1 ADF seems to rudely imply that this Court lacks the ability to properly perform its
2 duties both here and if ever asked to rule upon hypothetical unrelated petitions.

3 ADF's opposition to this petition seems to be little more than an ill-conceived
4 expression of the same arrogant hostility demonstrated by Huckabee in his
5 distasteful recent joke. The Court should disregard the ADF response.

6 **III. CONCLUSION.**

7 The US government has expressed the genuine need and commitment to try to
8 end discrimination against transgender people.

9 This petition, supported by the Arizona State Bar and by multiple individual
10 attorneys, healthcare professionals and businesses, proposes a logical and
11 meaningful way to help prevent transgender discrimination in court proceedings.

12 For the reasons set forth in the petition and in this reply, the Court should
13 grant the petition and add "gender identity" to JC2.3 as proposed.

14 **RESPECTFULLY SUBMITTED** this 30th day of June 2015.

15 /s/ Jeffery S. Slater (State Bar #012889)

16 Electronically filed with the Arizona Supreme Court this 30th day of June 2015.

17 By: /s/ Jeffery S. Slater

18 ⁱ See also a media report of Huckabee's February 2015 joke at the following
19 webpage hosted by Time Magazine: [www.time.com/3905462/mike-huckabee-](http://www.time.com/3905462/mike-huckabee-transgender-joke/)
20 [transgender-joke/](http://www.time.com/3905462/mike-huckabee-transgender-joke/) (exempted from hearsay consideration pursuant to Rule 801(c) of
21 the *Arizona Rules of Evidence* as construed by this Court in, among other opinions,
22 *State v. Forde*, 233 Ariz. 543, 564, 315 P.3d 1200, 1221 (2014)), a copy of the
media report attached as Exhibit A to this Reply.

23 ⁱⁱ See MCAO's recent press release regarding same-sex adoption services at:
24 [www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-04-09-](http://www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-04-09-County-Attorney-Issues-Statement-on-Adoption-Services-for-Same-Sex-Stepparents.html)
25 [County-Attorney-Issues-Statement-on-Adoption-Services-for-Same-Sex-](http://www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-04-09-County-Attorney-Issues-Statement-on-Adoption-Services-for-Same-Sex-Stepparents.html)
26 [Stepparents.html](http://www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-04-09-County-Attorney-Issues-Statement-on-Adoption-Services-for-Same-Sex-Stepparents.html) (exempted from hearsay pursuant to *A.R.E. 801(d)(2)(A)* through
(*D*)), a copy attached as Exhibit B to this Reply.