No.

IN THE SUPREME COURT OF THE UNITED STATES

Beau John Greene, Petitioner,

vs.

State of Arizona, Respondent.

****CAPITAL CASE****

ON PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

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****CAPITAL CASE****
QUESTION PRESENTED

Beau Greene is an Arizona death-row prisoner. Due to recent amendments to Arizona's death-penalty statute by the Arizona legislature, the sole aggravating factor in his case was repealed and subsequently his death sentence was vacated by the Pima County Superior Court. The state appealed, and the Arizona Supreme Court vacated the lower-court ruling and reinstated Greene's death sentence.

Before the court ruled, Greene alerted the court that one of the justices had a conflict of interest in this case. Before his appointment to the Arizona Supreme Court, William Montgomery was the elected Maricopa County Attorney. While he was the County Attorney, his office proposed the amendments in question here and supported passage of the legislation. The legislation went into effect while Montgomery was still in office as the county attorney. Despite Greene's notice to the court that this legislation played a key role in the litigation, Montgomery declined to recuse himself and went on to write the opinion reinstating Greene's death sentence.

In *Williams v. Pennsylvania*, 579 U.S. 1 (2016), this Court held that "under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." *Id.* at 8. This case is factually analogous to *Williams*. Did the appellate court violate Greene's due process rights by creating an impermissible risk of actual bias by allowing Justice Montgomery to decide Greene's case?

PARTIES TO THE PROCEEDING

The petitioner (and petitioner-appellee below) is condemned prisoner Beau John Greene. The respondent (and respondent-appellant below) is the State of Arizona.

STATEMENT OF RELATED PROCEEDINGS

State v. Greene, 967 P.2d 106 (Ariz. 1998) (3-2 opinion affirming murder conviction and death sentence).

Greene v. Arizona, 526 U.S. 1120 (1999) (mem.) (order denying petition for writ of certiorari).

Greene v. Ryan, 2010 WL 1335490 (D. Ariz. 2010) (order denying petition for writ of habeas corpus).

Greene v. Shinn, 2021 WL 3602857 (D. Ariz. 2021) (order granting sentencing relief on Greene's *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015) (en banc), claim and denying relief on other remanded claims).

State v. Greene, 527 P.3d 322 (Ariz. 2023) (opinion reversing superior court grant of sentencing relief).

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PETITION FOR WRIT OF CERTIORARI

Beau John Greene, an Arizona death-row prisoner, respectfully petitions this Court for a writ of certiorari to review the judgment of the Arizona Supreme Court reversing the Pima County Superior Court's grant of sentencing relief.

OPINIONS BELOW

The Arizona Supreme Court's opinion reversing the Pima County Superior Court's grant of sentencing relief is reported at *State v. Greene*, 527 P.3d 322 (Ariz. 2023), and included in Petitioner's Appendix ("Pet's App.") at Pet's App. A001. The Pima County Superior Court's underlying order granting sentencing relief in *State v. Greene*, No. CR048730 (Pima County Super. Ct. Feb. 2, 2021), is unreported but included in the appendix as Pet.'s App. A039.

The Arizona Supreme Court opinion affirming Greene's first-degree murder conviction and death sentence is reported at *State v. Greene*, 967 P.2d 106 (Ariz. 1998), and included in the appendix at Pet's App. A053. Greene's petition for certiorari from that opinion is reported at *Greene v. Arizona*, 526 U.S. 1120 (1999) (mem.), and included in the appendix at Pet's App. A052.

STATEMENT OF JURISDICTION

On April 14, 2023, the Arizona Supreme Court issued an opinion in this case reversing the grant of sentencing relief by the Pima County Superior Court. (Pet's App. A001–023.) Greene applied for a 60-day extension of time in which to file this

petition and the application was granted by Justice Kagan. *Greene v. Arizona*, No. 23A14 (U.S. July 7, 2023). Greene now timely files this petition asking the Court to review the judgment of the Arizona Supreme Court reversing the grant of sentencing relief. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and 28 U.S.C. § 2106.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Greene's Background

Greene endured a neglectful, abusive childhood in a home defined by behaviors far outside the norm of the garden-variety dysfunctional family. In combination with his other life experiences, his early exposure to drug and alcohol abuse and his childhood sexual assault served as a painful preamble to the crime. Unfortunately, Greene came from a background where homosexual behavior was aggressively despised, and he suffered a sexual assault by an adult male when he was just fourteen years old. Accordingly, when the reality of his situation hit him on the night of the

crime, Greene became stressed beyond his breaking point. This situation, coupled with the fact that Greene was in a drug-induced psychosis, significantly diminished Greene's ability to control his behavior on the night of February 28, 1995. [1]

Greene was born on April 2, 1966 in Centralia, Washington, to John and Wilma Greene. He has a sister, Robin, who was Wilma's child from a previous marriage. He spent the majority of his childhood in the nearby town of Chehalis, Washington. Greene's mother Wilma belonged to a motorcycle club and worked as a parts clerk at a motorcycle shop in town. Greene's father John was a lawless man who enjoyed motorcycles and collected guns. John was known for wallpapering the walls of the family home with Playboy centerfolds. Among other jobs, John worked as a trapper, and during the first few years of Wilma and John's relationship, John "worked" as a cat burglar. He eventually secured employment as a water operator and was responsible for chlorinating the water supply for the cities of Centralia and Chehalis. This job was ideal for John because he was able to work without a boss and had time to pursue hunting and trapping. The cities provided the Greenes with a house on the property, known as "the Intake," which was twenty-seven miles from town and two miles down a dirt road.

1 This factual history is from Greene's ongoing federal habeas proceedings. *Greene v. Shinn*, No. CV-03-0605-TUC-DCB (D. Ariz. Aug. 17, 2015), ECF No. 116.

Greene was raised with his older sister Robin, but his isolation from other children or family members was acute. Greene spent much of his childhood unsupervised and alone, playing in the woods and with the family pets. His best friends were his pet dog and a pet deer that the family raised after they found it orphaned. He spent a lot of time roaming the hills. Greene idolized and emulated his father, who was especially vocal about his militant opinions. Like most children, Greene held his father in high regard and tried to act "tough" and adhere to John's primal worldview. John's views on homosexuality were freely expressed to Greene when he was small. Greene knew that his father did not approve of homosexuality, and consequently, neither did he.

At school, Greene was frequently picked on because of his small size; he fought frequently. John always encouraged Greene to fight back. Greene saw himself as an outcast. When Greene was in sixth grade, he found Wilma's stash of marijuana in a drawer and took it to school, planning to sell it. However, Greene was quickly caught with the marijuana, and the police were called to question him. They later questioned his sister Robin and she revealed that John sexually assaulted her on three separate occasions, including an instance when Robin was seven years old. Robin was placed in foster care for a month. John was ordered to stay away from Robin and the Greene home, but over time, he slowly made his way back into the house and the family. Around this time, Greene was between the ages of eleven and twelve, and first began

using marijuana and alcohol. His parents threw a big biker party at their home every year, and Greene helped himself to the beer and marijuana lying around the house. During this same time, he drank more alcohol and began using hashish and LSD.

Shortly after Robin's foster placement, John converted an old school bus into living quarters and decided the family should live on the road. John had previously worked as a trapper, and he thought that he might prosper in Arizona. Greene, then in sixth grade, was permanently taken out of school, and the Greene family eventually made their way to Arizona, settling in Amado. John and Wilma saw no reason why Greene should return to school, where they believed Greene was "brain washed." They were convinced that they could better teach him what he needed to know.

John and Wilma separated when Greene was thirteen, and Wilma returned to Washington. Wilma decided that Greene should stay in Arizona with his father and continue to do "normal boy things." Wilma was afraid that if Greene lived with her she would turn him into a "sissy." Wilma returned to Amado for a visit when Greene was fourteen. He and Wilma spent time together shooting pool at a local bar. It was there that Greene met an older man, who told Greene that he worked as a caretaker at a nearby ranch and offered Greene a job helping around the ranch. Wilma allowed Greene to leave the bar with the stranger. The man convinced Greene to go home with him that night and start working the following day.

As soon as they arrived at the ranch, the man repeatedly tried to touch fourteen-year-old Greene and told Greene he wanted to have sex with him. Greene fought off these advances. Greene went to bed but was sleepless and terrified. The man returned and sexually assaulted Greene. The man drove Greene back to town the following day. Greene was scared and humiliated and never reported the incident to his parents or authorities. He tried to forget that the assault ever happened.

Over the next few years, Greene helped his father trap and hunt and occasionally returned to Washington with him to work odd jobs during the summers. When Greene was fifteen, he tried cocaine for the first time. He also decided to stay in Washington permanently, living first with his sister Robin and her boyfriend, and later with a friend in Centralia. By the time Greene turned seventeen, he had started to use methamphetamine and it became his drug of choice.

Greene's history of substance abuse

Greene has an extensive history of drug and alcohol abuse. He was "polysubstance dependent," meaning that he abused and relied upon more than one substance. Between the ages of eighteen and twenty-four, Greene's drug and alcohol use were pervasive. Each day Greene would consume a twelve-pack of beer or a fifth of hard alcohol and use methamphetamine. Greene suffered fifteen to twenty alcohol- or drug-related blackouts. Greene also experienced hallucinations when using

methamphetamine, hashish and large amounts of marijuana. The hallucinations were most vivid when he used methamphetamine and usually began after using the drug for six or seven days with little or no sleep.

While living in Washington, Greene worked for a logging company and began dealing methamphetamine to his fellow crew members. Shortly before his eighteenth birthday, he was arrested for breaking into the Washington Public Power Supply. After spending a week in juvenile detention, he was ordered to live with his mother Wilma and obtain his G.E.D. This court-ordered solution would simply make things worse.

After Wilma's separation from John and her return to Washington as a single woman, she found herself heavily into drugs, drinking, and partying. After he moved back in with her, Greene and Wilma worked together at a local restaurant. Greene's methamphetamine and marijuana usage steadily increased during this time. Wilma and Greene "partied" together and were using methamphetamine and marijuana on a regular basis. Wilma supplied Greene with the methamphetamine and even encouraged him to use it. She felt that because the methamphetamine did not seem to be hurting her, it would not hurt Greene. At the time, Greene and Wilma each snorted large amounts of methamphetamine each week, and they also used a large amount of cocaine every month. Wilma was arrested in 1987 for possession of marijuana with intent to distribute and possession of methamphetamine. Eventually,

John noticed that Greene's drug use was sending him into a downward spiral, and he forced Greene to return to Arizona with him.

Greene's transition to adulthood

When Greene returned to Arizona, he met Linda Karl in Tucson and they married in 1989. Greene and Linda moved to Phoenix where Greene attended the Motorcycle Mechanic's Institute, specializing in Harley Davidson motorcycle repair Linda attended school to study computer-operated accounting. After Greene completed his training, Greene and Linda relocated to Washington. They struggled to make ends meet. Greene was eventually able to find a job repairing motorcycles, but unfortunately the owner of the repair shop was a drug dealer and Greene once again began abusing methamphetamine on a regular basis. His drug use strained their relationship because when Greene was using methamphetamine, he often left their home in the morning and did not return home until very early the next morning. Sometimes Greene was gone for several days and by the time he returned home, Linda was furious at him.

After the owner of the repair shop forced Greene out of a job, Greene and Linda returned to Arizona and moved in with Linda's mother. Subsequently, Greene held a series of jobs, working at a fiberglass company, as a dishwasher and a cook, as a freelance mechanic, and as a furniture builder and cabinet maker. Greene's inability

to secure employment, provide for his family, or control his drug addiction finally cost him his marriage to Linda. She filed for divorce in early 1994.

In March 1994, Greene was treated at Kino Hospital following a one-month period of "passing out." Greene reported feeling a "twinge" starting at the base of his neck and a loss of consciousness for a one- to twenty-minute period. He also reported feeling overwhelming stress due to the separation from Linda and his unemployment. It was noted that Greene's condition was likely due to anxiety, compounded with methamphetamine use. Greene and Linda attempted to reconcile, but Greene eventually left and resumed his reckless lifestyle. Their divorce became final in November 1994.

After his marriage ended, Greene settled in the rural, unincorporated community of Arivaca, and continued to use methamphetamine. At one point he lived out of his car with a friend. Greene met and started dating Christina Dumont. They had a volatile relationship that centered around their mutual methamphetamine addictions.

The crime

By February 1995, Greene was homeless, unemployed, and having serious problems with Dumont. Greene continued to use methamphetamine heavily while dating Christina, and he associated with heavy drug users and drug dealers. During

the weekend of February 24-25, 1995, Greene found himself staying temporarily with friends at their trailer west of the Tucson Mountains. He smoked methamphetamine heavily, had eaten very little, and had last slept on February 22nd.

On Sunday, February 26th, Greene and his friends had run out of drugs and he was beginning to suffer the severe effects of methamphetamine withdrawal. During the period between February 23rd and February 26th, Greene had not slept at all, had continuously smoked large quantities of methamphetamine, and had only eaten a few peanut butter sandwiches and a can of corn. Dumont showed up on the evening of February 26th with more drugs, which they all shared. Greene and Dumont traveled to Green Valley and smoked more meth until early Monday morning. Dumont gave him a ride back to his friends' trailer.

By the time Greene returned to the trailer, he was run down and again feeling the effects of methamphetamine withdrawal. When he arrived, his friend, Bevan, informed Greene that he was no longer welcome in her home. Apparently, a local drug dealer named Parley Nielson threatened to kill Greene over an outstanding debt. Nielson stopped by the residence looking for Greene and threatened to shoot Greene "right between the eyes". The friend was afraid that Greene's presence in her home would ruin her relationship with the dealer. After Greene had further discussion with his friends, they allowed him to stay one more night. During that night Greene smoked more methamphetamine. He still did not sleep.

On the morning of February 28, 1995, Greene left the trailer with another man to attempt another drug deal in the Three Points area. They continued to smoke methamphetamine during this trip. When they returned to the trailer, Greene noticed that Parley Nielson's truck was parked outside. He instructed the man to drive past the residence and drop him off on the side of the road because Greene was fearful that Parley would carry out his threat to shoot him. He waited in the desert area by the side of the road until he saw that Parley's truck was gone, then Greene returned to the residence. His friends told Greene that he had to leave immediately. Greene collected four knapsacks full of his personal belongings, stole a nearby pickup truck, and headed towards Tucson. The truck ran out of gas several blocks from his friend's house in Tucson. Greene walked the rest of the way to his friend's house, but they were both out of drugs and money and they had started to "jones," or have a compulsive craving, for more methamphetamine. By this time, in addition to his craving for methamphetamine, Greene was also exhausted, hungry, and agitated. He knew that he could not stay with his friend, and he traveled by foot trying to locate another friend in the Tucson area.

Along the way to his friend's house, Greene stopped to rest at a city park in the general area of Speedway Boulevard and Stone Avenue. As he sat, he observed a vehicle slowly approach him. Johnson, who had just performed an organ recital at a local church, exited the vehicle and approached Greene. Johnson asked if Greene was

"hustling tonight," then indicated that he wanted to pay to perform oral sex on Greene. Greene was exhausted, starving, and penniless with nowhere to go and no one to turn to for help. He reasoned that nobody he knew would ever find out about what he was about to let Johnson do and resolved to go along with Johnson's proposition. He got into Johnson's car and they drove to the Gates Pass area.

Before they reached Gates Pass, Johnson stopped the car in a church parking lot. Greene exited the vehicle in the church parking lot to relieve himself. When he returned to the vehicle, he told Johnson that he had changed his mind and wanted to return to town. Johnson laughed and put his hand on Greene's knee. Due to a combination of methamphetamine withdrawal, post-traumatic stress disorder, and sleep deprivation, Greene began to experience visual and auditory hallucinations. Greene "freaked out" and hit Johnson three to four times with his gloved fist.[2] Greene panicked when he saw that Johnson was not moving or making any noise. He moved Johnson to the passenger side of the vehicle. When Greene realized that he had nowhere to run he decided to take the vehicle, but also realized that he was not able to drive with Johnson's body in the front seat and moved him into the back seat.

[2] Despite his testimony at trial, Greene was actually wearing a reinforced, or "sap," glove when he hit Johnson. Greene's trial counsel instructed Greene not to be truthful about the glove during his testimony. *See Greene v. Shinn*, No. CV-03-0605-TUC-DCB (D. Ariz. Aug. 17, 2015), ECF No. 116 at 26–41, 97.

Greene continued to drive in the direction of Gates Pass. He was scared and desperate to talk to someone. He decided to head toward his friend's trailer. While en route, Greene stopped to leave Johnson's body in a wash area off Sandario Road As he left the area and proceeded towards the trailer, Greene realized he had no money. He returned to the area where he left Johnson and searched until he found Johnson's wallet. Still panicked, he continued to the trailer where he located his friend and told him what had happened. His friend laughed at him in disbelief. Greene produced Johnson's wallet and showed him the driver's license. Greene still feared Nielson would return to Bevan's home, so he left. He wanted to run away, but after Greene inspected the contents of Johnson's wallet, he realized that there was little cash, but several credit cards.

After the crime

Over the next several hours he drove to various stores in the Tucson and Green Valley areas and used Johnson's credit cards to purchase items such as food, clothing, camping gear, a scope, and an air rifle. Greene was nervous and panicked. He needed to talk to someone and made another effort to locate Dumont without success. He proceeded to K-Mart to purchase electronics equipment that he hoped to sell in exchange for drugs or cash. Eventually he was able to sell a VCR for a gram of methamphetamine. Greene also used the credit cards to buy food at Safeway, which he took to Dumont's trailer so she and her four-year-old son would have food to eat.

After Greene spoke with Dumont and narrowly avoided arrest, he ran through the desert of the San Xavier Indian Reservation. He noticed a helicopter passing over him and he hid in some bushes. He decided to try to make his way towards a friend's house, but he was frightened and still hallucinating He passed out beneath an overpass, and when he awoke it was early morning. Eventually, Greene made his way to another friend's house and fell asleep on her couch. When he awoke, he saw police officers at the door, and they handcuffed him and placed him under arrest.

PROCEDURAL HISTORY

Greene's underlying state-court proceedings were rife with constitutional error and misinformation. His court-appointed counsel provided ineffective assistance of counsel in nearly every aspect of his trial, including both the guilt and penalty phases. (*See Greene v. Shinn*, No. CV-03-0605-TUC, Dist. Ct. ECF Nos. 82, 116. & 126.) His direct appeal counsel failed to raise meritorious constitutional claims, and his state post-conviction counsel repeated many of trial counsel's errors and failed to conduct the necessary extra-record investigation required in post-conviction cases.

A. Trial

Greene stood trial for first-degree murder, kidnapping, robbery, theft, and forgery in the Pima County Superior Court in 1996. A jury found him guilty on all counts. *State v. Greene*, No. CR-48730 (Pima County Super. Ct. Mar. 15, 1996), Doc. No. 56. The state alleged two aggravating circumstances, pecuniary gain under

former Arizona Revised Statutes ("A.R.S.") § 13-703(F)(5), and heinousness and depravity under former A.R.S. § 13-703(F)(6). In its special verdict, the trial judge found that both aggravating circumstances proven beyond a reasonable doubt and imposed a sentence of death. *State v. Greene*, No. CR-48730 (Pima County Super. Ct. Aug. 26, 1996), Doc. No. 79. The judge found that the few factors proposed by Greene's counsel as mitigating circumstances were not sufficiently substantial to call for leniency and he sentenced Greene to death. *Id.*

B. Direct Appeal Proceedings

In Greene's direct appeal opinion, the Arizona Supreme Court struck the trial court's finding of the (F)(6) aggravating circumstance and vacated the kidnapping conviction, but upheld Greene's death sentence after finding that the mitigation presented was not substantially sufficient to overcome the sole remaining aggravating circumstance. *State v. Greene*, 969 P.2d 106, 119 (Ariz. 1998). (Pet's App. A053–073.)[3] Two of the five Arizona Supreme Court justices dissented from the portion of the opinion upholding Greene's death sentence on independent review. *Id.* at 119 (Zlaket, C.J., dissenting) (stating that the Eighth Amendment prohibits a death sentence in this case). (Pet's App. A067.) This Court denied Greene's

[3] In doing so, the majority applied an unconstitutional causal-nexus test to Greene's mitigation evidence. *Greene*, 969 P.2d at 117–19 (Pet.'s App. at A061–067); *see also Greene v. Shinn*, 2021 WL 3602857, at *26-28 (D. Ariz. 2021) (order granting sentencing relief on Greene's *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015) (en banc), claim and denying relief on other remanded claims).

subsequent petition for writ of certiorari. *Greene v. Arizona*, 526 U.S. 1120 (1999) (mem.). (Pet's App. A052.)

C. Post-Conviction Relief ("PCR") Proceedings

In 2000, the Arizona Supreme Court appointed state post-conviction counsel for Greene and issued the Notice of PCR, formally beginning the state PCR proceedings. (PCR Doc. No. 1.) Following briefing from Greene and the state, the state post-conviction court issued an order granting an evidentiary hearing on the limited issue of "whether the advice of trial counsel that [Greene] should testify at trial or the advice regarding the content of that testimony constitutes ineffective assistance of counsel." (PCR Doc. No. 30.) A one-day hearing was held on September 9, 2002 (PCR Doc. No 37), and shortly after, the court denied Greene's PCR petition (PCR Doc. No. 41). Counsel filed a timely petition for review in the Arizona Supreme Court. (AZSCT PFR Doc. No. 1.) That court summarily denied the petition. (AZSCT PFR Doc. No. 11.)

D. Federal Habeas Proceedings

Greene's federal habeas proceedings were initiated in 2003, and his petition for writ of habeas corpus was filed in 2004. (*Greene v. Shinn*, No. CV-03-00605-TUC (D. Ariz.), ECF Nos. 1, 33 (hereinafter referred to as "Dist. Ct. ECF").) In 2010, the federal district court denied the remainder of Greene's claims on the merits and dismissed his federal habeas petition. (Dist. Ct. ECF Nos. 93, 94.) Greene filed a

timely notice of appeal. (Dist. Ct. ECF No. 95.). The United States Court of Appeals for the Ninth Circuit issued a briefing schedule (*Greene v. Ryan*, No. 10-99008 (9th Cir.), ECF No. 2 (hereinafter referred to as "9th Cir. ECF").). Greene's counsel moved for a stay of the appellate proceedings to allow counsel to file a renewed motion to unseal the state court record (9th Cir. ECF No. 7), and later moved to stay the appellate proceedings pending the outcome of this Court's grant of certiorari in *Martinez v. Ryan*, 566 U.S. 1 (2012). (9th Cir. ECF No. 25.) The stay was granted (9th Cir. ECF No. 28), and following the Court's opinion in *Martinez*, Greene filed a motion to remand his case to the district court for reconsideration of its previous procedural default rulings and consideration of the merits of his then-defaulted claims (9th Cir. ECF No. 29). The remand motion was granted (9th Cir. ECF No. 41), and the parties filed supplemental briefing in the district court (Dist. Ct. ECF Nos. 116., 121, 126, 132, 135, & 137).

E. Successive State-Court Proceedings

In 2019, during the pendency of Greene's district court proceedings on remand, the Arizona Legislature repealed three aggravating factors and combined two others, narrowing their impact on death-penalty cases. 2019 Ariz. Sess. Laws (1st Reg. Sess.), Ch. 63, § 1; Ex. 1 (SB 1314). Significantly, for purposes of this case, the Legislature repealed the pecuniary gain factor found in former A.R.S. § 13-751(F)(5) and partially incorporated it into the former A.R.S. § 13-751(F)(4), to make clear that the

aggravating factor applies only to murder-for-hire situations and not the more expansive pecuniary value interpretation previously adopted by the Arizona Supreme Court. *See Poland v. Stewart*, 117 F.3d 1094,1099 (9th Cir. 1997) (recounting history of interpretation of prior pecuniary gain aggravating factor) and the discussion below. This legislation was proposed, drafted, and publicly supported by the Maricopa County Attorney's Office. The statutory amendment became effective on August 27, 2019, while William G. Montgomery was the elected Maricopa County Attorney. The Arizona Legislature therefore repealed the only aggravating factor applicable to Greene's case, at the urging of the Maricopa County Attorney's Office.

As a result, Greene filed a successive petition for post-conviction relief in the Pima County Superior Court in 2020, arguing that he was entitled to sentencing relief because the Eighth Amendment prohibited his execution when the sole aggravating factor in his case had been repealed. Following briefing by the parties, the superior court held an evidentiary hearing in December 2020. On February 2, 2021, the superior court granted relief to Greene, finding that the only aggravating factor in Greene's case had been repealed by the state legislature, that the repeal was retroactive, and that Greene could not be executed under the circumstances. (*State v. Greene*, No. CR048730 (Pima County Super. Ct. Feb. 2, 2021).) (Pet.'s App. A039.)[4]

[4] After the superior court granted relief to Greene but before the Arizona Supreme Court granted review of the State's petition for review, the federal district court granted Greene's petition for writ of habeas corpus as to his claim that the Arizona

The State filed a petition for review of this decision in the Arizona Supreme Court, and that court granted review. (*State v. Greene*, No. CR-21-0082-PC (Ariz.), Dkt. Nos. 1, 16.) During the briefing process, Greene filed a Notice of Conflict of Interest, noting that Arizona Supreme Court Justice William Montgomery had been the elected Maricopa County Attorney at the time his office conceived of, drafted, and supported the legislation in question here. (*State v. Greene*, No. CR-21-0082-PC (Ariz. Jan. 25, 2022), Dkt. No. 23; Pet.'s App. A034.) On the Arizona Supreme Court's order, the State responded to the Notice. (*State v. Greene*, No. CR-21-0082-PC (Ariz. Feb, 10, 2022), Dkt. No. 30; Pet.'s App. A025.) Subsequently, Justice Montgomery issued an order stating that he did not find recusal to be required and declining to recuse himself from the case. (*State v. Greene*, No. CR-21-0082-PC (Ariz. Feb, 28, 2022), Dkt. No. 30; Pet.'s App. A024.)

The court held oral argument in March 2022 and issued its opinion in April 2023, reversing the Pima County Superior Court's decision and reinstating Mr.

Supreme Court had applied an unconstitutional causal-nexus test while evaluating his mitigation evidence on direct appeal. (Dist. Ct. ECF No. 140.) Respondents appealed this grant of relief, while Greene appealed the denial of his other claims on remand. (Dist. Ct. ECF Nos. 143, 145.) The parties then filed a joint motion to stay the appellate proceedings due to Greene's ongoing state-court litigation. (9th Cir. ECF No. 51.) The United States Court of Appeals for the Ninth Circuit granted that motion (9th Cir. ECF No. 53), and Greene's federal habeas proceedings are currently stayed as a result.

Greene's death sentence. (Pet.'s App. A001.) The opinion was written by Justice Montgomery.

This petition for writ of certiorari follows.

REASONS FOR GRANTING CERTIORARI

Certiorari is appropriate when "a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Here, Justice Montgomery's refusal to recuse himself from Greene's case was in direct conflict with numerous decisions of this Court and rises to the level of a federal constitutional violation. In particular, the Court's opinion in *Williams v. Pennsylvania*, 579 U.S. 1 (2016), demonstrates the constitutional error Greene suffered when he was denied a decision by an impartial tribunal.

A. Greene was entitled to a fair trial by a fair tribunal.

A fair trial before a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009). This basic right is violated when a defendant is tried before a judge who is possessed of "actual bias" against the defendant. *See Caperton*, 556 U.S. at 883 (stating that "actual bias, if disclosed, no doubt would be grounds for appropriate relief"). However, this Court has long held that some circumstances present a "probability of actual bias" such that due process requires a judge's recusal. *See Withrow v. Larkin*, 421 U.S. 35, 47 (1975). In *Tumey v. Ohio*, 273 U.S. 510, 523,

(1927), the Court held that the common law rule requiring recusal when a judge has a "direct, personal, substantial, pecuniary interest" in a case is incorporated into the Due Process Clause. As the Court explained in *Caperton*, the rationale for this rule was the presumption that a judge could not be impartial under these circumstances. 556 U.S. at 876–77.

Although the Court in *Tumey* was confronted with circumstances suggesting the likelihood of bias due to financial interests, it was also concerned with the general concept of adjudicators who might be tempted to disregard neutrality. *See Caperton*, 556 U.S. at 878. As a result, the *Tumey* Court articulated a general principle to address judicial bias:

> Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.

273 U.S. at 532; *see also Caperton*, 556 U.S. at 878.

The Court has extended this rule to other circumstances which "as an objective matter, require recusal." *Caperton*, 556 U.S. at 877. In *Winthrow*, the Court described these circumstances as those in which the "probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow*, 421 U. S. at 47. In *In re Murchison*, the Supreme Court reversed criminal convictions due

to the presiding judge's participation in a separate proceeding involving the defendants. 349 U.S. at 139. In the first proceeding, the trial judge examined witnesses to determine whether charges should be brought. After the judge charged one witness with perjury, the second refused to testify without an attorney present. The judge then charged him with contempt. *Id*. at 134–35. Later, the same judge tried and convicted the defendants. *Id.*

The Court reversed the state convictions, rejecting the notion that only actually biased judges are constitutionally required to recuse themselves. *Id*. at 136 (stating that due process "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties."). Instead, the Court expressed its concern that "no man is permitted to try cases where he has an interest in the outcome." *Id.* While the judge had no apparent financial interest in the case, the Court indicated that other "circumstances and relationships must be considered." *Id.* The Court noted that the judge was privy to information obtained at the secret "grand jury" proceeding. But, in particular, the Court pointed out that the judge played mutually incompatible roles—that of a single-judge grand jury, which was part of the accusatory process, and that of a neutral, impartial judge. *Id*. at 137.

The Court's opinion in *Johnson v. Mississippi*, 403 U.S. 212, 215 (1971), is also illustrative. There, the Supreme Court addressed a claim of judicial bias involving

both personal animosity and conflicting roles on the part of the judge. In *Johnson*, the presiding judge was named a defendant in a civil rights lawsuit involving discrimination in his courtroom practices. *Id.* at 213-14. After losing the lawsuit, he tried and convicted one of the plaintiffs of criminal contempt. The Supreme Court held that due process demanded the recusal of the judge because he had become "enmeshed" in matters involving the defendant. *Id.* at 215. The Court examined the objective factors involved, both the prior litigation and evidence of the judge's intemperate remarks about civil rights litigants. Based on these objective circumstances, the Supreme Court concluded that recusal was a constitutional necessity. *See id.*

In 2009, the Court addressed its judicial bias due process principles in *Caperton*, 556 U.S 868. In that case, the Supreme Court reviewed and affirmed the principles it relied on in *Tumey*, *Withrow*, *Mayberry* and *Murchison* to conclude that the Due Process Clause required the recusal of a Virginia supreme court justice due to an unacceptably high probability of bias. "The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias." *Id.* at 881. Also, the Court stated that this inquiry requires consideration of whether "under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or

prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Id.* at 883-84 (quoting *Withrow*, 421 U.S. at 47).

Most recently, the Court considered a claim of judicial bias in *Williams v. Pennsylvania*, 579 U.S. 1 (2016). Applying the rule from *Caperton*, the Court found that the risk of bias was unconstitutionally intolerable when an appellate panel included a judge who, in his prior role as a district attorney, had approved seeking a death warrant in the prisoner's case. 579 U.S. at 16. The Court explained that the right to due process "would have little substance if it did not disqualify a former prosecutor from sitting in judgment of a prosecution in which he or she had made a critical decision." *Id.* at 8.

While the state in Williams's case argued that the prosecutor in question was "the head of a large district attorney's office in a city that saw many capital murder trials," and thus had performed only an administrative act, the Court refused to assume that the prosecutor treated the decision "as a perfunctory task requiring little time, judgment, or reflection on his part." *Id.* at 12. The Court also noted that the ruling from the court below discussing multiple *Brady* violations on the part of the deputy district attorneys could be viewed as "criticism of [the judge in question's] former office and, to some extent, of his own leadership and supervision as district attorney." *Id*. at 13.

While many jurisdictions, including the one at issue in *Williams*, already have rules in place to handle these decisions, some situations rise to the level where due process is implicated.[5] *Id.* at 13–14. Accordingly, the Court held that "under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." *Id.* at 8. Further, even when the judge in question is a one member of a multi-member court and that judge's vote was not decisive, the presence of the biased judge on the panel constitutes structural error. *Id.* at 14-15; *see also id.* at 15 ("A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part.").

1. Justice William Montgomery, one of the justices who decided Greene's appeal and authored the court's opinion reversing the lower court's grant of relief, had significant involvement in the legislation at issue in Greene's case, including that he was the head of the office that conceived of, drafted, proposed, and publicly supported the legislation.

Arizona Supreme Court Justice William G. Montgomery was previously employed as a deputy Maricopa County attorney from 2008 to 2010 and was then elected as the Maricopa County Attorney in 2010. Arizona Supreme Court, *Meet the*

[5] Arizona is one such jurisdiction—the Arizona Code of Judicial Administration cautions judges against both impropriety and the appearance of impropriety. Ariz. Code of Jud. Admin Canon 1.

Justices: William G. Montgomery, https://www.azcourts.gov/meetthejustices/Justice-William-G-Montgomery (Sept. 6, 2023). He served as the head of that office until his elevation to the Arizona Supreme Court in 2019. *Id*.

During Justice Montgomery's tenure as the Maricopa County Attorney, his employees, under his authority, conceived of and drafted the statutory amendment and repeal bill at issue in this case, 2019 Ariz. Sess. Laws (1st Reg. Sess.), Ch. 63, § 1; Senate Bill 1314, and then supported the repeal of the pecuniary gain aggravating circumstance, among others, in hearings before the Arizona State Legislature. Hearing on S.B. 1314 before the H. Comm. on the Judiciary, 54th Leg., 1st Reg. Sess. (Ariz. 2019), *available at* https://www.azleg.gov/videoplayer/?eventID =2019031400&startStreamAt=12102 (hereinafter "House Hearing"); *see also* Dillon Rosenblatt, *GOP bill scales back death penalty eligibility*, Ariz. Capitol Times, Feb. 22, 2019 ("The bill's sponsor, Sen. Eddie Farnsworth, R-Gilbert, said the Maricopa County Attorney's Office is behind the proposal to get rid of some of the 'aggravating factors,' or circumstances that make a murder more heinous, listed in Arizona's death penalty law.").

The role of the Maricopa County Attorney's Office in the legislation was clear, with the office's legislative liaison testifying in two hearings about the bill, the impetus for the bill, and the likely effect passage of the bill would have on existing death sentences that relied on a now-repealed aggravating circumstance. The office's

role in proposing the bill and supporting its passage was also directly mentioned in numerous media stories about the legislation. *See* Lauren Castle, *It just got a little bit tougher to get the death penalty in Arizona*, Ariz. Republic, Apr. 10, 2019 (discussing testimony by the Maricopa County Attorney's Office legislative liaison in support of the bill); Associated Press, *Lawmakers move to tighten death penalty law*, Today's News Herald, Mar. 3, 2019, at 8A (noting the Maricopa County Attorney's Office support for the bill and quoting statements by the office's legislative liaison); Lauren Castle, *Arizona may tighten death-penalty rules*, Ariz. Republic, Feb. 28, 2019, at A10 (citing previous statements by then-County Attorney Montgomery and quoting both the Maricopa County Attorney's Office public information officer and its legislative liaison); Dillon Rosenblatt, *GOP bill scales back death penalty eligibility*, Ariz. Capitol Times, Feb. 22, 2019 (discussing the Maricopa County Attorney's Office's role in proposing the bill and the testimony by the office's legislative liaison).

The actions of the Maricopa County Attorney's Office played a significant role in the litigation of this case, with both parties arguing about the legal ramifications of the office's involvement in proposing and supporting the bill. In addition, the superior court order granting sentencing relief to Greene relied on those actions and made specific findings regarding the arguments raised by the parties as to the ramifications.

Greene argued in his briefing in both the superior court and the Arizona Supreme Court that the positions and testimony of the Maricopa County Attorney's Office during Justice Montgomery's tenure there weighed in favor of a finding that carrying out capital punishment on an individual responsible for a pecuniary-gain motivated murder ran contrary to contemporary standards of decency. As Greene stated in his opposition to the state's petition for review:

> The Maricopa County Attorney's Office, in consultation with capital prosecutors, conceived, drafted, and publicly supported the aggravating factor repeal in hearings before the Arizona Legislature. Hrg. Ex. E(2)(hearing on S.B. 1314 before the H. Comm. On the Judiciary, at 1:18–1:50 (hereinafter "House Hearing"). Most of the discussion on this bill occurred in the Arizona House Judiciary Committee. During the House Hearing, Rebecca Baker, Legislative Liaison for the Maricopa County Attorney's Office, stated that the reason her office supported the repeal was that the relevant factors "simply historically have not been the most persuasive with juries in capital cases." *Id.* at 1:35–1:45. She reiterated this point several times. *Id.* at 1:35–1:45, 2:23–2:30, 2:58–3:06, 5:02–5:22.

State v. Greene, No. CR-21-0082-PC (Ariz. Sup. Ct. May 11, 2021), Dkt. No. 8 at 5. Greene also discussed the testimony of the legislative liaison regarding retroactivity, *id.* at 5-6, and argued that the Maricopa County Prosecutor's actions in conceiving, drafting, proposing, and publicly supporting the bill constituted an additional ground for finding objective indicia of changing societal values, *id.* at 12.

In his supplemental briefing after the Arizona Supreme Court granted review in this case, Greene again noted that "[t]he legislature acted at the urging of the Maricopa County Attorney, who in turn cited its experience that jurors disfavored the

death penalty for these groups of offenders." *State v. Greene*, No. CR-21-0082-PC (Ariz. Sup. Ct. May 11, 2021), Dkt. No. 22 at 1. Greene also relied on the actions of the Maricopa County Attorney's Office in arguing that the repealed factor involved conduct that prosecutors had judged to "not display the extreme culpability necessary to justify the penalty of death," *id.* at 6 & 9, and relied on information from that office in discussing the viewpoint of capital juries as to this repealed aggravating factor, *id.* at 8.

The State also discussed the role of the Maricopa County Attorney's Office in the legislative action and urged its own reading of the facts. In its petition for review, it cited the legislative liaison's testimony as support for the proposition that the changes had no retroactive effect. *State v. Greene*, No. CR-21-0082-PC (Ariz. Sup. Ct. May 11, 2021), Dkt. No. 1 at 12. In the State's subsequent supplemental brief, it stated that "in 2019, Maricopa County approached the Arizona Legislature with suggestions of capital aggravators to eliminate and/or alter" due to constitutional challenges regarding arbitrariness raised in a number of Arizona capital cases. (*State v. Greene*, No. CR-21-0082-PC (Ariz. Sup. Ct. May 11, 2021), Dkt. No. 21 at 1.) Most notably, the State was clear that the Maricopa County Attorney's Office, then headed up by County Attorney Montgomery, was making "a good-faith effort . . . to reduce such constitutional challenges by capital defendants by further narrowing Arizona's capital aggravators." (*Id*. at 2; *see also id.* at 3 (noting "Maricopa County's attempt to

streamline the statutory scheme"); *id.* at 4 (noting that the legislative action was "prompted by Maricopa County's suggestions in the wake of ongoing challenges to Arizona's capital scheme").) Thus, even the state itself acknowledged the partisan reasons behind the Maricopa County Attorney's push for this legislation—the office was attempting to inhibit future litigation regarding the constitutionality of Arizona's capital aggravating factors.

The superior court ruling under review by the Arizona Supreme Court likewise addressed the action of the Maricopa County Attorney's Office in its ruling granting relief. It agreed with the parties that this legislation was conceived of by that office, explaining that:

> On January 31, 2019, Arizona State Senator, Eddie Farnsworth, introduced Senate Bill 1314 initiated by the Maricopa County Attorney's Office (MCAO) during the Fifty-fourth Legislature, First Regular Session. Senate Bill 1314 eliminated the (F)(5) factor from the list of aggravating circumstances necessary for the imposition of the death penalty, thus narrowing its scope of applicability. This Bill was assigned to the Senate Judiciary Committee and was heard on February 7, 2019, receiving a "Do Pass" recommendation on a vote of 7-0. The Bill passed unanimously out of the Senate on the consent calendar and was sent to the Arizona House of Representatives where the Bill was assigned to the House Judiciary Committee. On March 13, 2019, the Judiciary Committee held a hearing on the Bill.
>
> During this hearing, statements were given by Rebecca Baker, Legislative Liaison for the Maricopa County Attorney's Office to the committee regarding the purpose and retroactivity of the Bill. Ms. Baker stated that the Capital Bureau of the MCAO's purpose for sponsoring of the bill was to narrow the application of the death penalty because juries do not find the proposed factors for repeal therein persuasive. She further stated that she had no information about the number of

> defendants currently subject to the repeal of the aggravating factors, and that the reason for the bill not being retroactive is because they normally are not made retroactive. Consequently, House of Representatives members, Kristen Engel, Diego Rodriguez, and Chairperson John Allen affirmed that the Bill's purpose was to narrow the application of the death penalty and the issue of retroactivity was explicitly the province of the courts to apply in individual cases. The Bill then unanimously passed the House Judiciary Committee. The full House of Representatives took up the bill, passing it by a vote of 46-14. The bill was signed into law by Governor Ducey, on April 10, 2019, going into effect on August 27, 2019.

(*State v. Greene*, No. CR-48730 (Pima County Super. Ct. Feb. 2, 2021), Ruling at 3; Pet.'s App. A041.)

The superior court also quoted the testimony from the County Attorney's legislative liaison regarding the office's intent to remove aggravating factors that had not been persuasive to juries, (*id.* at 8, Pet.'s App. A046), found that both the state legislature and the Maricopa County Attorney "clearly intended to narrow the applicability of the (F)(5) aggravating factor as evidenced by their statements," (*id.*; Pet.'s App. A046), and disagreed with the State's reliance on statements by the County Attorney's legislative liaison as being dispositive of the retroactivity question, (*id.* at 9; Pet.'s App. at A047).

The court went on to find that the legislature's overwhelming support for this legislation showed "a contemporary community standard and consensus against executing defendants convicted of murder solely for pecuniary gain, except in cases of murder-for-hire," and that the legislature reached this outcome "because the

State's largest county and trier of death penalty cases sponsored the repealing legislation on the grounds that juries, a significant and reliable objective index of contemporary values because of their direct involvement, did not find it persuasive for the imposition of the death penalty in those circumstances." (*Id.* at 10; Pet.'s App. A048.) "What is known is that the State's largest prosecuting office, in significant consultation with capital bureau attorneys, based on the information listed above, found it necessary to sponsor now enacted legislation for the repeal of the (F)(5) aggravating factor due to unpersuasiveness to juries." (*Id*. at 10-11; Pet.'s App. A048–049.)

These sources make clear both the active role the Maricopa County Attorney's Office, headed by then-County Attorney Montgomery, had in proposing, drafting, and supporting this legislation, but also the fact that the legislation itself and the intent of the legislature in passing it were key factual and legal issues hotly in dispute throughout the litigation.

2. Because the legislation in question was both the impetus for and a key issue in dispute in this litigation, Justice Montgomery should have recused himself. His failure to do so deprived Greene of due process.

Justice Montgomery authored the opinion reversing the lower court's grant of relief and reinstating Greene's death sentence. He opened the opinion by stating, "We consider in this case whether legislative amendments to A.R.S. § 13-751(F)(5), enacted in 2019, provide a basis for post-conviction relief ("PCR") under Arizona Rule

of Criminal Procedure 32.1(a), (c), (g), and (h) for a sentence of death imposed in 1996." *Greene*, 527 P.3d at 328. (Pet.'s App. A008.) He failed to mention that he was the elected head of the office that decided such legislation was necessary, drafted it, proposed it, and then publicly supported it in both the media and legislative hearings. He went on to state that "[b]ecause each party's arguments and the analysis of the superior court are premised on the legislature's amendment of the former (F)(5) aggravating circumstance, we begin by reviewing the role of aggravating circumstances in capital cases and the specific amendments in question." *Id.* at 330. (Pet.'s App. A010.)

Justice Montgomery continued to discuss the amendments at issue and to interpret the amendments against Greene, including making specific factual findings as to the legislative intent behind the amendments. *See, e.g., id.* at 331–32. (Pet.'s App. A011.) When discussing retroactivity, the opinion omits the testimony from the legislative liaison employed by his office at the time and focuses only on discussion between two legislators. *Id.* at 331. (Pet.'s App. A011.) He discussed prior drafts of the legislation without noting that he was the head of the office that drafted the initial version. *Id.* at 331–32. (Pet.'s App. A011.) He acknowledged that "Greene's argument requires us to carefully evaluate what the legislature did and did not do in amending § 13-751(F) as a whole," *id.* at 332 (Pet.'s App. A012), again without any indication of the role his office played in the legislation. Unsurprisingly, the opinion goes on to find

that the lower court was wrong to find that the amendments were retroactive, *id.* at 332 (Pet.'s App. A012), and that Greene was wrong in arguing that the sole aggravating factor in his case had been repealed, *id.* at 333 (Pet.'s App. A013).

Under these circumstances, it is impossible to separate Justice Montgomery from the legislation created and supported by his own office, or to find that Greene had the requisite fair trial before a fair tribunal. *In re Murchison*, 349 U.S. at 136. Like the judge in *Williams*, it would be an incredible assumption to argue that Montgomery had so little involvement with his own legislative liaison and the state legislature that he had no knowledge of his office's proposed amendments or its actions in proposing or supporting major legislative changes. *See Williams*, 579 U.S. at 12 (dismissing argument that the head prosecutor treated crucial decisions as "perfunctory task[s] requiring little time, judgment, or reflection on his part" such that recusal would not be required). Montgomery, by virtue of his office and the actions of his employees, was "enmeshed" in this litigation in a way that cannot withstand scrutiny. *Johnson*, 403 U.S. at 215. Justice Montgomery's actions here demonstrate an obvious potential for bias that undermines Greene's right to due process.

In addition, the State has already acknowledged that the Maricopa County Attorney's Office had a partisan objective in conceiving of and proposing this litigation—the office was attempting to reduce the ability of capital defendants to

mount constitutional challenges to Arizona's death-penalty statute. Here, Greene was not only mounting such a challenge to his own sentence but had won below on an argument that might result in other vacated death sentences. Montgomery was well known to be a zealous supporter of the death penalty in his role as the Maricopa County Attorney. *See, e.g.*, Dennis Wagner, *Bill Montgomery: The son of a smuggler becomes Maricopa County's controversial prosecutor*, Ariz. Republic, Nov. 25, 2018, https://www.azcentral.com/story/news/local/phoenix/2018/11/25/bill-montgomery-smugglers-son-maricopa-countys-top-prosecutor/665486002/ ("[Montgomery] defends executions in public debates and has pursued the death penalty so often that last year the county ran short of specialized attorneys to represent defendants facing lethal injection."). Despite what were likely Justice Montgomery's best intentions of treating this case impartially, this Court has already made clear that circumstances like these still violate Greene's due process rights. *Tumey*, 273 U.S. at 532 ("Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."); *Caperton*, 556 U.S. at 878. Just as the Court held in *Williams*, 579 U.S. at 8, these circumstances give rise to an impermissible risk of actual bias.

Further, as this Court has made clear in *Williams*, 579 U.S. at 14-15, the fact that Justice Montgomery's vote here was non-dispositive is of no moment. This error

was structural and Greene should have an opportunity to relitigate his case before an unbiased tribunal.

CONCLUSION

Greene respectfully requests that this Court grant his petition for writ of certiorari and reverse the order and judgment of the Arizona Supreme Court.

Respectfully submitted: September 11, 2023.

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