

**In the
Supreme Court of the United States**

BEAU JOHN GREENE,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

—
*On Petition for Writ of Certiorari
to the Arizona Supreme Court*
—

**BRIEF IN OPPOSITION
(CAPITAL CASE)**

KRISTIN K. MAYES
*Attorney General
of Arizona*

DANIEL C. BARR
*Chief Deputy
Attorney General*

JOSHUA D. BENDOR
Solicitor General

ALEXANDER W. SAMUELS
*Principal Deputy
Solicitor General*

JASON D. LEWIS
*Deputy Solicitor General/
Section Chief of Capital
Litigation*

LAURA P. CHIASSON*
ANDREW B. DYSART
*Assistant Attorney General
Counsel of Record

OFFICE OF THE ARIZONA
ATTORNEY GENERAL
400 W. Congress, S-215
Tucson, Arizona 85701
Telephone (520) 628-6520
Laura.Chiasson@azag.gov
CLDocket@azag.gov

Counsel for Respondent

**CAPITAL CASE
QUESTION PRESENTED FOR REVIEW**

In 1995, Petitioner Beau Greene was convicted for murdering University of Arizona professor Roy Johnson. The trial court found that Greene committed the murder for pecuniary gain, a statutory aggravating circumstance at the time. In 2019, the Arizona legislature modified this aggravating circumstance so that it no longer applied to murders like the one Greene committed. This amendment was made in part at the request of then Maricopa County Attorney William Montgomery. Neither Montgomery nor his office had any prior involvement with Greene's case, which was prosecuted in another county. Montgomery was then appointed as a Justice to the Arizona Supreme Court and ultimately authored an opinion holding that the 2019 statutory modification did not apply retroactively to Greene's case.

The Question Presented is:

Is a judge precluded from hearing a case in which he previously proposed the legislation being construed?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE CASE.....	6
I. Greene’s Murder of Roy Johnson.....	6
II. State post-conviction proceedings.....	8
REASONS FOR DENYING THE WRIT.....	11
A. Greene fails to show that Justice Montgomery was constitutionally required to recuse from his case.....	12
B. Greene’s request for this Court to create a legislative conflict flies in the face of this country’s long history of public service.	15
CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Am. Power & Light Co. v. Securities and Exch. Comm'n</i> , 329 U.S. 90 (1946).....	19
<i>Caperton v. A.T. Massey Coal Co., Inc.</i> , 556 U.S. 868 (2009).....	12, 14
<i>Elec. Bond & Share Co. v. Securities and Exch. Comm'n</i> , 303 U.S. 419 (1938).....	19
<i>FTC v. Cement Institute</i> , 333 U.S. 683 (1948)	14
<i>Johnson v. Mississippi</i> , 403 U.S. 212 (1971)	14,15
<i>Marbury v. Madison</i> , 1 Cranch 137 (1803)	16
<i>N. Am. Co. v. Securities and Exch. Comm'n</i> , 327 U.S. 686 (1946).....	19
<i>Tumey v. Ohio</i> , 273 U.S. 510 (1927).....	12, 14
<i>United States v. Ninety-Five Barrels Alleged Apple Cider Vinegar</i> , 265 U.S. 438 (1924)	18
<i>Williams v. Pennsylvania</i> , 579 U.S. 1 (2016).....	12, 13
<i>Withrow v. Larkin</i> , 421 U.S. 35 (1975)	13

Constitutional Provisions

Ariz. Const. art. VI, §5(5)	19
-----------------------------------	----

Statutes

28 U.S. Code § 2072	19
A.R.S. § 13–703(F)(5)	7
A.R.S. § 13–703(F)(6)	7
A.R.S. § 13–751(F)(3)	9

Rules

Sup. Ct. R. 10	11
Sup. Ct. R. 10(c)	11

Other Authorities

Adam C. Pritchard & Robert B. Thompson, <i>Securities Law and the New Deal Justices</i> , 95 VA. L. REV. 841, 842–43 (2009).....	19
C. Connally, <i>William Howard Taft and his Overlooked Contributions to the American Legal System</i> , CLEVELAND METROPOLITAN BAR ASSOC. (Nov. 15, 2022), https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=	

84449 (last visited Dec. 5, 2023)	18
DAVID L. PULLIAM, THE CONSTITUTIONAL CONVENTIONS OF VIRGINIA FROM THE FOUNDATION OF THE COMMONWEALTH TO THE PRESENT TIME 36–28, 53 (1901)	16
<i>Founders Online: Letter to George Washington from Bushrod Washington, 19 October 1798</i> , NATIONAL ARCHIVES, https://founders.archives.gov/ documents/Washington/06-03-02-0078 (last visited Dec. 5, 2023)	17
<i>House Members Who Became U.S. Supreme Court Justices</i> , UNITED STATES HOUSE OF REPRESENTATIVES, https://history.house.gov/People/Other- Office/Supreme-Court/ (last visited Dec. 5, 2023)	17
<i>Marbury v. Madison</i> , OYEZ, https://www.oyez.org/cases/1789-1850/5us137 (last visited Dec. 5, 2023)	16
Nancy J. Taniguchi, <i>George Sutherland</i> , UTAH HISTORY ENCYCLOPEDIA (June 2, 2020), https://historytogo.utah.gov/george-sutherland-2/ (last visited Dec. 5, 2023)	18
<i>Senators Who Served on the U.S. Supreme Court</i> , UNITED STATES SENATE, https://www.senate.gov/senators/Supreme_Court.htm (last visited Dec. 5, 2023)	18
<i>Signers of the Declaration of Independence</i> , NATIONAL ARCHIVES, https://www.archives.gov/founding-docs/signers-factsheet (last visited Dec. 5, 2023)	16
<i>Signers of the Declaration: Samuel Chase</i> , NATIONAL PARK SERVICE, https://www.nps.gov/parkhistory/online_books/declaration/ bio6.htm (last visited Dec. 5, 2023)	17
<i>The Founding Fathers William Patterson, New Jersey</i> , NATIONAL ARCHIVES, https://www.archives.gov/founding-docs/founding-fathers- new-jersey#paterson (last visited Dec. 5, 2023).....	16

STATEMENT OF THE CASE

I. Greene's Murder of Roy Johnson.

Roy Johnson was last seen alive about 9:30 p.m. on February 28, 1995, leaving the Green Valley Presbyterian Church following an organ concert he had performed. Pet. App. at A058. Expected home by 10:00 p.m., the normally punctual Johnson never arrived. *Id.* Four days later, authorities discovered his body lying face down in a wash. *Id.* The investigation led police to Greene.

Greene testified at trial that Johnson approached him in a park with an offer to pay him for oral sex, which Greene accepted. *Id.* at A058. Greene claimed that the two then drove to a secluded parking lot in Johnson's car, but Greene changed his mind and told Johnson he would not follow through. *Id.* According to Greene, Johnson smiled and touched Greene's leg; Greene "freaked out" and struck Johnson several times in the head with his fist. *Id.* Greene testified that he moved Johnson's motionless body to the back seat, drove to a wash, and dumped the body. *Id.* Greene claims that he next walked back to the car and drove away, only to realize that he needed money. *Id.* He then returned to the wash, walked down to the body, and stole Johnson's wallet. *Id.* Greene then went on a spending spree with Johnson's credit cards, purchasing (among other things) clothes, food, camping gear, an air rifle and scope, and a VCR (which he later traded for methamphetamine). *Id.* at A059.

The evidence contradicted Greene's version of the killing. *Id.* at A058–59. Medical testimony revealed that Johnson's skull was damaged by a heavy flat

object, not a human fist. *Id.* Also, there was only one set of tire tracks and footprints to and from the wash, suggesting that Greene did not return for Johnson's wallet but instead had it with him when he left after dumping the body. *Id.* at A059. Additionally, Greene confessed to a friend that he had beaten someone to death with a club and dumped the body west of Tucson. *Id.* Greene also asked his friend for clean shoes and a small rug to cover the bloody car seats. *Id.*

The jury convicted Greene of first-degree murder (both premeditated and felony murder), robbery, kidnapping,¹ theft, and six counts of forgery. *Id.* at A058. Following an aggravation/mitigation hearing, the trial court found the existence of two aggravating circumstances: that the murder was committed for pecuniary gain (A.R.S. § 13-703(F)(5))² and that the murder was committed in an especially heinous, cruel or depraved manner (A.R.S. § 13-703(F)(6)). *Id.* at A008, A061. Conducting its own independent review of the aggravating circumstances, the Arizona Supreme Court affirmed the trial court's finding that the offense was committed for pecuniary gain. *Id.* at A062. However, the court found that the evidence did not support the trial court's finding that the murder was cruel, heinous, or depraved, and it struck that aggravator. *Id.* at A062-64.

¹ The Arizona Supreme Court reversed the kidnapping conviction. Pet. App. at A060.

² Citations are to the aggravating circumstances in effective at the time of Greene's trial.

The Arizona Supreme Court also independently reviewed Greene's proffered mitigating evidence and found that Greene failed to establish the A.R.S. § 13-703(G)(1) mitigating circumstance that Greene's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired. *Id.* at 064. The court also gave no mitigating weight to Greene's drug use and withdrawal, dysfunctional family history, ability to provide for himself and his family, good marriage and productive life, and his positive influence on his step-brother. The court gave some weight to Greene's lack of a felony criminal record, educational achievement, and the effect that the execution would have on his children:

Although we have rejected the (F)(6) finding, leaving pecuniary gain as the sole aggravator, upon independent reweighing we conclude that the mitigation, considered individually and collectively, is not sufficiently substantial to warrant leniency. *We have a very strong (F)(5) here*, with relatively trivial nonstatutory mitigation.

Pet. App at A064-66 (emphasis added). The court found that the mitigation was not substantial enough to warrant a life sentence and affirmed Greene's death sentence. *Id.* at A067.

II. State post-conviction proceedings.

Following his unsuccessful direct appeal, Greene filed his initial petition for post-conviction relief in Pima County Superior Court, raising several claims. Pet. App. at A009. Following an evidentiary hearing, the trial court denied all claims and dismissed the petition. *Id.* The Arizona Supreme Court denied review and

issued a warrant of execution, which was subsequently stayed pending federal habeas review. *Id.*

In 2019, the Arizona Legislature amended former A.R.S. § 13–751(F)(5), which had provided a death-qualifying aggravating circumstance where a defendant, like Greene, “committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.”³ Pet. App at A009, A041. The new iteration of the aggravator is now limited to ‘murder for hire’ circumstances and thus would not apply to Greene’s murder of Johnson if that murder had been committed after the legislative change.⁴ On May 26, 2020, Greene filed a successive post-conviction petition seeking reversal of his death sentence based on the amendment to the former (F)(5) death-qualifying aggravating circumstance. Pet. App. at A009. The post-conviction court granted Greene relief, finding that the amendment to the pecuniary gain aggravator retroactively applied to Greene’s case. *Id.* at A047–48, A050. Because Greene’s murder of Johnson did not satisfy the new aggravator, the post-conviction court reversed his death sentence. Pet. App. at A050.

³ The legislature also repealed other aggravating factors not at issue here.

⁴ The new version (A.R.S. § 13–751(F)(3)) provides an aggravating factor where:

The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, or the defendant committed the offense as a result of payment, or a promise of payment, of anything of pecuniary value.

The Arizona Supreme Court reversed the post-conviction court's grant of relief and affirmed Greene's death sentence. Pet. App. at A023. The supreme court held that the legislative changes to A.R.S. § 13-751(F)(5) were prospective only and did not provide any grounds for relief from Greene's 1996 murder conviction and capital sentence. *Id.* at A008. Greene then filed this Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

This Court grants certiorari “only for compelling reasons,” and Greene has presented no such reason. Sup. Ct. R. 10. In particular, Greene has not established that the Arizona Supreme Court has “decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). Rather, Greene merely asserts that one of the five supreme court justices⁵ reviewing his case was required to recuse himself because in his former role as Maricopa County Attorney he proposed the legislation to amend the pecuniary gain aggravator, which the Arizona Legislature ultimately adopted. Greene fails to cite any case supporting his newly created theory of a legislative conflict, and cites no case finding a conflict where the deciding judge had prior involvement in the modification of the law at issue.

Greene asserts that Arizona Supreme Court Justice William Montgomery was constitutionally required to recuse from his case because Justice Montgomery previously—as the Maricopa County Attorney—supported the change to the pecuniary gain aggravator, which was the basis for Greene’s petition for post-conviction relief. But neither Justice Montgomery, nor the office he supervised as the Maricopa County Attorney, ever had contact with Greene’s Pima County case.

⁵ Justices Beene and Lopez both recused themselves from Greene’s appeal, as they both previously worked for the agency that represented the State in Greene’s various appeals.

Greene nevertheless asks this Court to find a due process violation whenever a judge decides a case based on a law he proposed prior to taking the bench. Not only is Greene's request counter to this Court's jurisprudence, it is also directly contrary to our country's long history of public servants crafting laws, as both executives and legislators, prior to joining the judiciary. Because Greene fails to state a compelling reason for certiorari, this Court should deny the petition.

A. Greene fails to show that Justice Montgomery was constitutionally required to recuse from his case.

As Greene notes, judges have a duty to recuse themselves from a case when they have a "direct, personal, substantial pecuniary interest in reaching a conclusion against" the defendant in a case. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). Judges also have a duty to recuse themselves where they may have previously been required to act in an adversarial nature against a party, such as in contempt or grand jury proceedings. *See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 880 (2009). Likewise, judges are required to recuse themselves when they have previously worked directly on a defendant's case prior to becoming a judge. *See Williams v. Pennsylvania*, 579 U.S. 1, 9 (2016). Justice Montgomery does not fall into any of these categories. Prior to his appointment to the Arizona Supreme Court, Justice Montgomery was the County Attorney for Maricopa County, Arizona. *See Pet.* at 25–26. Greene's crimes took place in Pima County, Arizona. *See Pet.* at 9–14; *Pet. App.* at A058–59. Justice Montgomery and his former office did not prosecute Greene's case, a fact that Greene does not contest. Accordingly, Justice Montgomery was not conflicted and was not required to recuse himself.

Greene relies mainly on *Caperton* and *Williams* to support his claims of a due process violation resulting from Justice Montgomery's failure to recuse himself. Pet. at 20–25. In *Williams*, Pennsylvania Supreme Court Chief Justice Castille was previously the District Attorney responsible for prosecuting Williams' case and approved seeking the death penalty against Williams. 579 U.S. at 11–12. Chief Justice Castille refused to recuse himself while reviewing a subsequent petition for post-conviction relief filed by Williams. *Id.* This Court held that

Chief Justice Castille's significant, personal involvement in a critical decision in Williams's case gave rise to an unacceptable risk of actual bias. This risk so endangered the appearance of neutrality that his participation in the case "must be forbidden if the guarantee of due process is to be adequately implemented."

Id. at 14 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Having found a due process violation resulting from Castille serving both as head prosecutor responsible for Williams' case and then as a justice reviewing that conviction, this Court reversed the Pennsylvania Supreme Court's ruling affirming Williams' conviction. *Id.* at 16–17.

Greene's case is easily distinguished from *Williams*. Maricopa County was not responsible for prosecuting Greene's case, and Justice Montgomery had no role in Greene's prosecution. While Greene is correct 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," he does not suggest that Justice Montgomery had any direct prior involvement in Greene's case. Pet. at 25 (quoting *Williams*, 579 U.S. at 8).

Instead, Greene invites this Court to review this case and extend *Williams* to a vastly different context—an invitation this Court should decline.

Caperton is also easily distinguished. There, a West Virginia jury awarded damages of \$50 million against a coal company. *Caperton*, 556 U.S. at 872. The chairman of the company then donated approximately \$3 million to elect Brent Benjamin to the Supreme Court of Appeals of West Virginia. *Id.* at 873. Benjamin won his election and ultimately joined an opinion reversing the \$50 million judgment against the coal company. *Id.* at 873–74. This Court held that “[o]n these extreme facts the probability of actual bias rises to an unconstitutional level.” *Id.* at 886–87. This Court further noted that it “was careful to distinguish the extreme facts of the cases before it from those interests that would not rise to a constitutional level.” *Id.* at 887. The Court took care to highlight that “most matters relating to judicial disqualification [do] not rise to a constitutional level,” *id.* at 876 (quoting *FTC v. Cement Institute*, 333 U.S. 683, 702 (1948)), further noting that in *Tumey* it recognized that “‘matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion.’” *Caperton*, 556 U.S. at 876 (quoting *Tumey*, 273 U.S. at 523). Here, Greene does not allege that Justice Montgomery had a prior financial entanglement that would bias him against Greene.

Greene also alleges that *Johnson v. Mississippi*, 403 U.S. 212 (1971), is illustrative. *Pet.* at 22. In *Johnson*, the defendant was summarily convicted of contempt by Judge Perry. *Id.* at 213–14. During the two-year period between the

incident giving rise to the contempt and the subsequent conviction, Johnson had sued Judge Perry in federal court to stop the judge from discriminating “by reason of race, color, or sex in jury selections.” *Id.* at 214. Two days after a federal judge granted Johnson’s temporary injunction against Judge Perry, Judge Perry found Johnson in contempt for the two-year-old incident. *Id.* This Court held that Judge Perry should have recused himself because he was “so enmeshed in matters involving [Johnson] as to make it most appropriate for another judge to sit.” *Id.* at 216. *Johnson* is not instructive here because Justice Montgomery was not involved in Greene’s case, or any matter related to Greene, prior to Greene’s case reaching the Arizona Supreme Court on appeal. Justice Montgomery was not enmeshed in any matters involving Greene, and therefore was not required to recuse himself from Greene’s case.

Greene has failed to establish that Justice Montgomery was constitutionally required to recuse himself from Greene’s case. Justice Montgomery had no prior involvement in Greene’s case, and his support for modifications to Arizona’s capital aggravating circumstances did not create any conflict.

B. Greene’s request for this Court to create a legislative conflict flies in the face of this country’s long history of public service.

As explained above, Justice Montgomery merely supported the legislative amendments at issue here. He did not enact the legislation and was not otherwise involved in implementing it. But even had Justice Montgomery been involved in enacting the legislation, this would not have created a conflict requiring his recusal

from this case construing it. This country has a long tradition of legislators who later become judges construing laws they crafted.

In *Marbury v. Madison*, 1 Cranch 137 (1803), this Court first recognized the doctrine of judicial review by declaring the Judiciary Act of 1789 to be unconstitutional. *Id.* at 2, 26–27. The opinion in *Marbury* was written by Chief Justice John Marshall and joined by Justices William Paterson, Samuel Chase, and Bushrod Washington.⁶ These four Justices were directly involved in drafting or ratifying of the Constitution. John Marshall was a delegate to the Virginia Ratifying Convention and voted for ratification of the Constitution.⁷ William Paterson was a Delegate to the Constitutional Convention from New Jersey, and a signer of the Constitution.⁸ Additionally, Patterson was in the United States Senate in 1789 and “played a pivotal role in drafting the Judiciary Act of 1789.”⁹ Samuel Chase was a signer of the Declaration of Independence,¹⁰ as well as a Delegate to

⁶ *Marbury v. Madison*, OYEZ, <https://www.oyez.org/cases/1789-1850/5us137> (last visited Dec. 5, 2023).

⁷ DAVID L. PULLIAM, *THE CONSTITUTIONAL CONVENTIONS OF VIRGINIA FROM THE FOUNDATION OF THE COMMONWEALTH TO THE PRESENT TIME* 36–38, 53 (1901).

⁸ *The Founding Fathers: William Patterson, New Jersey*, NATIONAL ARCHIVES, <https://www.archives.gov/founding-docs/founding-fathers-new-jersey#paterson> (last visited Dec. 5, 2023).

⁹ *Supra* note 8.

¹⁰ *Signers of the Declaration of Independence*, NATIONAL ARCHIVES, <https://www.archives.gov/founding-docs/signers-factsheet> (last visited Dec. 5, 2023).

the Maryland Ratifying Convention, where he voted against ratification of the Constitution.¹¹ Bushrod Washington, the nephew of George Washington,¹² was also a delegate to the Virginia Ratifying Convention and voted for ratification of the Constitution.¹³ Despite these Justices' direct involvement in the creation of the Constitution, none saw the need for recusal when deciding the question of constitutional judicial review. Furthermore, Justice Paterson did not see the need for recusal even though he signed the Constitution as a delegate to the Constitutional Convention and passed the Judiciary Act of 1789 while in the Senate, only to find the Act unconstitutional a decade later once he was on this Court.

¹¹ *Signers of the Declaration: Samuel Chase*, NATIONAL PARK SERVICE, https://www.nps.gov/parkhistory/online_books/declaration/bio6.htm (last visited Dec. 5, 2023).

¹² *Founders Online: Letter To George Washington from Bushrod Washington, 19 October 1798*, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Washington/06-03-02-0078> (last visited Dec. 5, 2023).

¹³ *Supra* note 7, at 36–38, 58.

Since *Marbury*, a total of 28 Justices have been former members of Congress.¹⁴ William Taft served as President of the United States before becoming Chief Justice. As Chief Justice, Taft “encouraged the passage of the Judiciary Act of 1925 which gave the Court discretion in hearing cases and allowed it to determine constitutional issues.”¹⁵ Interestingly, Taft was nominated to this Court by President Harding, who also nominated former Senator George Sutherland. As a Senator, George Sutherland supported the Pure Food and Drug Act of 1906, then later as a Justice interpreted the same legislation as it related to the labeling of vinegar products in *United States v. Ninety-Five Barrels Alleged Apple Cider Vinegar*, 265 U.S. 438 (1924).¹⁶

Hugo Black was both a Senator and a Justice on this Court. During his time in the Senate, he supported the Wheeler-Rayburn Act (passed as the Public Utility

¹⁴ Seventeen justices were members of the House and 15 were members of the Senate, with 4 justices being members of both chambers (James Brynes, George Southerland, Lucius Lamar, John McKinley). *Senators Who Served on the U.S. Supreme Court*, UNITED STATES SENATE, https://www.senate.gov/senators/Supreme_Court.htm (last visited Dec. 5, 2023); *House Members Who Became U.S. Supreme Court Justices*, UNITED STATES HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Other-Office/Supreme-Court/> (last visited Dec. 5, 2023).

¹⁵ C. Connally, *William Howard Taft and his Overlooked Contributions to the American Legal System*, CLEVELAND METROPOLITAN BAR ASSOC. (Nov. 15, 2022), <https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=84449> (last visited Dec. 5, 2023).

¹⁶ Nancy J. Taniguchi, *George Southerland*, UTAH HISTORY ENCYCLOPEDIA (June 2, 2020), <https://historytogo.utah.gov/george-sutherland-2/> (last visited Dec. 5, 2023).

Holding Company Act of 1935 (PUHCA) and signed by President Franklin Delano Roosevelt (FDR)), imposing the first regulations of public utility companies.¹⁷ Shortly after the Act passed, its constitutionality was challenged. While that lawsuit was making its way through the federal courts, Black was appointed to this Court.¹⁸ Once on the Court, Justice Black joined the majority opinion in *Elec. Bond & Share Co., v. Securities and Exch. Comm'n*, 303 U.S. 419 (1938), which held the PUHCA to be constitutional. *Id.* at 441–43.¹⁹ Justice Black later voted to uphold the constitutionality of other portions of the PUHCA in two other decisions: *N. Am. Co. v. Securities and Exch. Comm'n*, 327 U.S. 686, 710 (1946), and *Am. Power & Light Co. v. Securities and Exch. Comm'n*, 329 U.S. 90, 96 (1946).

Greene inflates Justice Montgomery's involvement in supporting these legislative changes in his attempt to establish a conflict. *See* Pet. at 25–35. Here, Justice Montgomery was not a legislator but merely led the office that proposed the relevant legislative changes. As outlined above however, even if Montgomery had enacted rather than supported the statutory changes in question, his actions would

¹⁷ Adam C. Pritchard & Robert B. Thompson, *Securities Law and the New Deal Justices*, 95 VA. L. REV. 841, 842–43 (2009).

¹⁸ *Supra* note 17, at 881–83, n.192.

¹⁹ *Supra* note 17, at 881–83, n.192.

not have created a due process violation requiring his recusal.²⁰ Greene has failed to establish that Justice Montgomery violated his due process rights by construing a statute relevant to his case.

CONCLUSION

This Court should deny Greene's petition for a writ of certiorari.

Respectfully submitted this 13th day of October, 2023,

KRISTIN K. MAYES
Attorney General

JASON D. LEWIS
Deputy Solicitor General/
Chief of Capital Litigation

Laura P. Chiasson
Assistant Attorney General
(Counsel of Record)

Attorneys for Respondents

²⁰ Furthermore, courts routinely promulgate procedural rules that they are later called upon to interpret. *See* 28 U.S. Code § 2072; Ariz. Const. art. VI, § 5(5).