

ORIGINAL

25-6934

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FILED
FEB 23 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

TOBY HARRIS
Petitioner

v.

ROBERT PARSONS, ET AL.
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

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QUESTIONS PRESENTED

1. Whether the Due Process Clause is violated when a State Supreme Court Justice with a potential conflict of interest declines to rule on a motion for recusal, creating procedural paralysis, yet proceeds to adjudicate the case and moot the party's pending motions.
2. Whether a Court may rely on a litigant's supposed "understanding" to moot the unresolved substantive issues where the litigant did not waive those issues, and where the court's action foreclosed any review of the underlying constitutional question.
3. Whether a state court violates due process when it allows a litigant that affirmatively claims non-party status and disclaims any request for damages to avoid discovery, yet simultaneously grants that same non-party party-specific procedural protections—including excusable-neglect relief, appellate participation through purported "outside counsel," and a permanent injunction based on alleged harm to that non-party—without ever ruling on the litigant's status.

PARTIES TO THE PROCEEDING

Petitioner is Toby Harris, who was the defendant in the Maricopa County Superior Court and the appellant in the Arizona Court of Appeals. Petitioner was also the petitioner for review in the Arizona Supreme Court.

Respondents are Robert Parsons and Renee Parsons, who were the plaintiffs in the Maricopa County Superior Court, appellees in the Arizona Court of Appeals, and the respondents in the Arizona Supreme Court.

No other Parties appeared in the proceedings below.

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OPINIONS BELOW

The memorandum decision of the Arizona Court of Appeals, Division One, Filed October 10, 2025 is reproduced in Appendix A.

The order of the Arizona Supreme Court denying review, filed January 16, 2026 is reproduced in Appendix B.

The mandate of the Arizona Court of Appeals, issued January 22, 2026 is reproduced in Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the Arizona Supreme Court constitutes a final judgment or decree rendered by the highest Court of the State in which a decision could be had, The state court's disposition left in place the lower court's ruling while declining to exercise further review, thereby rendering the judgment final for purposes of this Courts jurisdiction.

Petitioner timely filed this petition within the 90 day period prescribed by Supreme Court rule 13.1. No petition for rehearing was filed, and the time to do so has expired. The date of the Courts final order was January 16, 2026 making this petition due on April 16, 2026.

This case presents a federal question because the judgment below turns on whether a state court may continue to exercise judicial power after the conditions for jurisdiction have been extinguished, an issue that implicates the Due Process Clause and the constitutional allocation of adjudicatory authority. That question is sharpened here by the trial court's decision to extend procedural relief to PXG—a self-identified non-party that expressly disclaimed any claim for damages—by accepting PXG's negligence-based excuse for missing a subpoena deadline and granting it excusable-neglect relief. The Arizona Court of Appeals had already instructed the trial court to enforce the subpoena on remand, yet the trial court did not follow that mandate; instead, it permitted PXG to delay compliance and to avoid

producing the materials the appellate court deemed necessary for meaningful review. At the same time, the court denied Petitioner access to the discovery required to litigate the First Amendment issues, issued no rulings on PXG's objections, and allowed the subpoenaed materials to be destroyed before Petitioner could obtain them. The state Courts nevertheless enforced a speech-restrictive injunction and treated the preserved constitutional challenge as waived. Whether a state court may impose such relief while refusing to follow an appellate mandate, extending procedural benefits to a non-party, and foreclosing the evidentiary record goes to the core of federal due-process guarantees and the structural limits on state judicial authority.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Following provisions are reproduced in the Appendix:

U. S. Const. amend. XIV, § 1 (Due Process Clause) Ariz.

Ariz. Const. art. VI, § 14

Ariz. Rev. Stat. § 12-12021 Ariz.

Ariz. R. Civ. P. 54 & 58

STATEMENT OF CASE

Petitioner was a defendant in a civil action in the Arizona Superior Court. During the proceedings, Petitioner filed a pleading raising a First Amendment issue governed by the lower evidentiary standard. The trial court did not rule on that pleading. Instead, the court entered a permanent injunction restricting Petitioner's speech and treated the Constitutional issue as waived without addressing the applicable standard or issuing a ruling capable of appellate review. App. A-18.

Petitioner also raised concerns regarding the destruction of documents relevant to the proceedings. The trial court did not issue a ruling on that issue. App. A-18

Petitioner issued a subpoena for documents necessary to challenge the trial Court's judgment. When Defendant sought discovery relevant to the constitutional issues, PXG objected, asserting that Defendant had 'no need' to conduct discovery and that any requests were burdensome or sought confidential information. App. A-39, A-44, A-49. The trial court issued no ruling on these objections. The trial Court quashed the subpoena preventing petitioner from obtaining the evidence required to perfect the record for appeal. App. A-18.

On review the Arizona Court of appeals reversed the order quashing the subpoena and remanded, holding that the subpoena should have been enforced and that the requested materials were relevant to meaningful appellate review. App. A-1. Despite that mandate, the subpoenaed materials were subsequently destroyed by Plaintiff's party before Petitioner could obtain them, leaving the record permanently incomplete. App. B-17.

Petitioner appealed. The Arizona Court of Appeals held that Petitioner had waived the Constitutional issue, even though the issue had been preserved and the trial court did not address whether the trial Courts failure to rule precluded waiver or prevented meaningful review of the First Amendment claim. App. A-1. The Court made no finding regarding the document destruction issue and declined to reach the constitutional questions raised in the appeal.

During the proceedings, Petitioner raised the issue of Parsons status as a public figure. The trial court later noted that no affidavit establishing that status has been submitted. App. A- 18. At the same time, Parsons had destroyed the subpoenaed materials and withheld documents relevant to his public facing roles and financial relationships, leaving the record without the evidentiary materials necessary to support an affidavit. App. B-17. As a result, the absence of an affidavit was a direct consequence of the evidentiary limitations created during discovery, rather than a failure to raise or support the issue.

Petitioner sought review in the Arizona Supreme Court. Petitioner submitted a reply brief explaining the appellate Court's treatment of the preserved issue, its failure to address constitutional questions, and the absence of any ruling on the document destruction issue. The reply was struck by the duty Justice. App. C-2. The Justice who issued the order declining the filing had previously been a partner at a law firm involved in the underlying matter. Petitioner filed a motion for recusal and a motion to reinstate the reply. App. B-8;B- 2 Neither motion received a ruling.

Petitioner subsequently filed a motion requesting rulings on the pending motions and a motion to withdraw the petition. App.B-17. The Arizona Supreme Court granted the withdrawal and dismissed the matter, denying all pending motions as moot. App.A-7. In doing so, the court stated that Petitioner "understood" that the withdrawal would render the unresolved issues moot, even though Petitioner had sought rulings on those issues before withdrawal. No court addressed the trial Court's failure to rule on the constitutional pleading, the appellate Court's finding of waiver despite preservation, the unresolved document destruction issue, or the recusal and reinstatement motions.

On January 22, 2026 the Arizona Court of Appeals issued its formal mandate in No. 1 CA- CV 23-0276 commanding the Maricopa County Superior Court to conduct proceedings consistent with the court's October 10, 2025 memorandum decision. App. A-10. The mandate issued solely on the basis of the Arizona Supreme Court's Jan 16, 2026 denial of review, despite the fact that multiple motions remained pending and unresolved in the Arizona Supreme Court at the time of the denial, including motions for recusal, reinstatement of the reply brief, and rulings on outstanding filings. App. B-2;B-8;B-17. The mandate therefore reflects the appellate system's treatment of the denial of review as a final disposition even though the court never ruled on the motions that determine finality.

Following the Arizona Supreme Court's denial of review, the Court of Appeals issued its mandate on January 22, 2026. App. A-10. The mandate treated the denial of review as a final and procedurally complete disposition, even though the Arizona Supreme Court had not ruled on the pending motions that directly affected the finality of the case. App.B-2;B-8;B-17.

This action cemented the procedural contradiction as the heart of this petition: the state appellate system proceeded as if the case were final while simultaneously declining to resolve the motions necessary to make it final.

REASONS FOR GRANTING THE PETITION

1. The state Court's failed to rule on a preserved First Amendment issue, leaving a permanent injunction in place without constitutional review.

Petitioner raised a First Amendment challenge governed by a higher evidentiary standard than the one applied below. The trial court did not rule on that pleading and instead entered a permanent injunction restricting speech. App. A-18. The Arizona Court of Appeals then held that Petitioner had waived the constitutional issue, despite the absence of a trial-court ruling and despite preservation in the record App. A-1. No court addressed whether waiver may arise from a non-ruling or whether an injunction restricting speech may stand without application of the correct constitutional standard. This Court's review is warranted to clarify the minimum procedural requirements for adjudicating preserved First Amendment claims.

2. The state Court's declined to address multiple unresolved issues necessary for meaningful appellate review, including the document-destruction issue.

Petitioner raised concerns regarding the destruction of documents relevant to the proceedings. The trial court issued no ruling. App. A-18. The Arizona Court of Appeals made no finding on the issue and declined to address it. App. A-1. The absence of rulings on matters affecting the integrity of the record prevented meaningful review and left unresolved questions about the adequacy of the proceedings. This Court's intervention is needed to ensure that state Courts provide rulings necessary to permit appellate review consistent with due process.

3. The state supreme court declined to accept a reply brief identifying these defects and did not rule on motions for recusal or reinstatement.

Petitioner sought review in the Arizona Supreme Court and submitted a reply brief explaining the trial court's non-ruling, the appellate court's waiver finding, and the document-destruction issue. The reply was not accepted for filing App. C-2. The order declining the filing was authored by a justice who had previously been a partner at a law firm involved in the underlying action. Petitioner filed a motion for recusal and a motion to reinstate the reply. App. B-8;B-2. Neither motion received a ruling. The court later dismissed the matter as moot after granting withdrawal, without addressing the pending motions or the unresolved constitutional and procedural issues. App. A-7.

4. The absence of rulings on preserved issues prevents federal review and raises a recurring question about the minimum procedures required for appellate jurisdiction.

When a trial court does not rule on preserved issues, and the appellate court treats those issues as waived without addressing the absence of a ruling, a litigant is left without any avenue for review of constitutional claims. App. A-1; A-18. The state supreme court's refusal to accept a reply identifying these defects, combined with the lack of rulings on recusal and reinstatement, prevented the development of a record suitable for federal review. App. C-2; B-2; B-8. This Court's intervention is warranted to clarify the procedural obligations of state Courts when preserved constitutional issues

remain unresolved and to ensure that litigants are not deprived of federal review through the absence of rulings necessary to invoke this Court's jurisdiction

5. The recusal motion documented a potential business relationship between Parsons and the superior-court judge, yet the state supreme court refused to rule on it.

Petitioner's recusal motion explained that the duty justice had previously been a partner at a law firm involved in the underlying litigation, which included materials indicating a business relationship between Parsons and the superior-court judge in the dismissed employment case. App. B-8. These facts were drawn from the very subpoenaed documents the Court of Appeals had already held were relevant and should have been produced. App. A-1. The justice nevertheless struck Petitioner's reply brief and then declined to rule on the recusal motion, leaving a structural conflict unresolved while continuing to exercise judicial authority in the case. App. c-2;B-8.

This Court has repeatedly emphasized that due process requires a neutral adjudicator, and that even the probability of bias is constitutionally intolerable. A state court's refusal to rule on a recusal motion—while simultaneously exercising judicial power in the same matter—creates a structural defect that no appellate process can cure. The absence of a ruling also prevents meaningful federal review, because the state court's silence leaves no adjudication for this Court to examine.

6. The state supreme court struck Petitioner's reply brief—which detailed the document destruction and the lower Court's abdication—and then refused to rule on the motion to reinstate it, preventing any review of the structural defects.

Petitioner's reply brief to the Arizona Supreme Court directly addressed the core defects in the proceedings: the trial court's failure to rule on a preserved First Amendment issue, the destruction of subpoenaed documents necessary for meaningful appellate review, and the Court of Appeals' mischaracterization of the record. App. C-2. PXG opposed discovery relevant to the constitutional standard, arguing that Defendant had "no need" to conduct discovery and that his requests were burdensome or sought confidential information. App. A-39, A-44, A-49. The trial court never ruled on these objections, leaving the constitutional issue unresolved and unreviewed. App. A-18.

Rather than consider these issues, the duty justice struck the reply brief. App. C-2. Petitioner immediately filed a motion to reinstate the reply and a motion for recusal. App. B-2; B-8. Neither motion received a ruling. The court then dismissed the petition as moot, relying on the struck-brief posture it had itself created. App. A-7. By refusing to rule on the motions necessary to complete the record, the state supreme court prevented any review—state or federal—of the constitutional issues raised in the reply.

7 The Court's failed to reconcile PXG's contradictory party status while granting PXG party-specific procedural relief, even though PXG never appeared and plaintiffs' counsel purported to act as PXG's outside counsel in both the trial court and the Court of Appeals.

PXG repeatedly asserted that it was a non-party and "not seeking damages in this lawsuit." App. A-39. Yet plaintiffs' counsel filed motions on PXG's behalf, including a motion to quash and a reply asserting excusable neglect for missing the subpoena deadline. App. A-39; A-44; A-49. Excusable-neglect relief under Rule 6(b) is available only to parties or persons properly before the court, and a non-party cannot litigate a subpoena deadline through counsel who has never entered an appearance. The trial court nevertheless accepted the excusable-neglect argument without ruling on PXG's contradictory non-party claim or on the propriety of plaintiffs' counsel appearing as "outside counsel" for a non-party. App. A-18. The inconsistency deepened on appeal, where plaintiffs' counsel again purported to act as PXG's outside counsel and advanced PXG's positions. App. A-1. No court addressed whether a litigant may simultaneously claim non-party immunity to avoid discovery while invoking party-specific procedural protections through counsel who had never entered an appearance. This unresolved contradiction prevented adjudication of the preserved constitutional issues and contributed to the structural failure of review. This Court's intervention is warranted to clarify the minimum procedural requirements governing non-party participation and to ensure that state Courts do not grant party-level relief to litigants who deny party status to avoid constitutional scrutiny. This unresolved contradiction prevented adjudication of the preserved constitutional issues and contributed to the structural failure of review. This Court's intervention is warranted to clarify the minimum

procedural requirements governing non-party participation and to ensure that state Courts do not grant party-level relief to litigants who deny party status to avoid constitutional scrutiny.

CONCLUSION

The petition presents unresolved constitutional and procedural questions that no State Court addressed and that prevent meaningful review of a permanent injunction restricting free speech. The trial court did not rule on a preserved first amendment issue, the appellate court treated the issue as waived despite preservation, and the state supreme court declined to accept a reply identifying these defects and issued no rulings on the motions necessary to complete the record. These omissions leave the federal questions unreviewed and raise recurring concerns about the minimum procedures required for adjudicating preserved constitutional claims.

For these reasons, the petition for a writ of certiorai should be granted.

Dated:

2/22/26

Respectfully submitted,



Toby Harris

Petitioner, Pro Se