

No. 26-

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**In The Supreme Court of The United States**

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Nicholas Casavelli,  
Nicolina Castelli,  
*Petitioners,*

v.

*Respondents.*  
Donna J. Johanson,  
Estate of Gary T. Johanson,

On Petition for a Writ of Certiorari to  
the Arizona Supreme Court of Appeals

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**SUPPLEMENTAL BRIEF FOR PETITIONER**

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Pursuant to Supreme Court Rule 15.8, Petitioners submit this supplemental brief to call the Court's attention to a newly discovered matter of fact establishing a fundamental jurisdictional defect in the proceedings below.

## **I. STATEMENT OF NEW MATTER**

Petitioners have obtained **Arizona Supreme Court Pro Tempore Order No. 2024-23**, issued June 11, 2024 (attached as Supplemental Appendix A). This Order, signed under the authority of the Chief Justice, appoints Christine Mulleneaux as a judge pro tempore for a term **"beginning July 1, 2024, and ending December 31, 2024."** This official record confirms during the trial in this matter, which concluded in January 2024, the presiding officer was not a commissioned judge pro tempore. Consequently, her authority was strictly limited to that of a **Court Commissioner** under **Ariz. Const. Art. VI, § 24**.

## **II. ARGUMENT**

**A. The Commissioning Order Establishes a Structural Error.** The United States Supreme Court has held participation of an unauthorized or improperly appointed officer in a judicial proceeding constitutes a "structural error" rendering the resulting judgment void. *Nguyen v. United States*, 539 U.S. 69 (2003). Because the presiding officer lacked a valid commission at the time of trial, the judgment entered against Petitioners is a jurisdictional nullity.

**B. Rebuttal of Potential Counterarguments.** Respondents rely on **Administrative Order No. 2023-20** (Appellees' Appendix, p. 30) to suggest the officer possessed authority via a general list. This argument is legally and factually untenable:

1. **Specificity of Order No. 2024-23:** The existence of a specific Supreme Court Order setting a start date of July 1, 2024, proves no trial authority

existed in January 2024. If the presiding officer were already a commissioned judge pro tempore, the June 11, 2024, Order would be redundant and legally unnecessary. Under **A.R.S. § 12-141**, only the Supreme Court may confer such authority; a "blanket list" from a lower court cannot override this constitutional requirement.

2. **The "Processing" vs. "Adjudication" Distinction:** Order No. 2023-20 authorizes commissioners only to assist with the **"processing of cases."** It does not grant power to adjudicate a contested trial, a distinction supported by the later issuance of Order No. 2024-23, which specifically appointed the officer as a Judge Pro Tempore only *after* the trial concluded.
3. **Persistence of Commissioner Status:** Order No. 2023-20 identifies the appointee as a **"Court Commissioner."** Under **Ariz. R. Sup. Ct. 96(a)(6)**, a commissioner is strictly prohibited from hearing and determining a trial without **"consent in writing"** of the parties. No such written consent exists in the record. A "pro tempore" title is an administrative assignment; it does not bypass the jurisdictional requirement for a written stipulation.
4. **Inapplicability of the De Facto Officer Doctrine:** The "de facto officer doctrine" does not apply where a party makes a timely challenge to the constitutional validity of the appointment. *Ryder v. United States*, 515 U.S. 177, 182-83 (1995). Petitioners raised jurisdictional objections on the record at the commencement of the trial, entitling them to a decision on the merits of the appointment's validity.
5. **Non-Waivable of Jurisdictional Objections:** Subject-matter jurisdiction and constitutional authority of a tribunal cannot be waived. Petitioners'

recorded objections explicitly preserved this error. A party cannot "consent" to a jurisdictional vacuum.

## CONCLUSION

The discovery of Order No. 2024-23 confirms the judgment below was entered without lawful authority.

This structural defect violates the Due Process Clause of the Fourteenth Amendment. Petitioner respectfully requests the Court grant the petition, vacate the judgment below, and **declare it a jurisdictional nullity, void ab initio.**

Because the extreme duration of this litigation has rendered a fair second trial impossible, Petitioner further requests the Court remand with instructions to dismiss the matter with prejudice.

Respectfully submitted, March 17, 2026

Nick Casavelli

Petitioner *Pro Se*

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Nicolina Castelli

Petitioner *Pro Se*

A handwritten signature in blue ink that reads "Nicolina Castelli". The signature is written in a cursive style and is positioned above a horizontal line.

## INDEX TO APPENDICE

**Appendix 1: Administrative Order 2024-23 (pp.)**

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
)  
APPOINTMENT OF A COURT )  
COMMISSIONER TO SERVE AS )  
JUDGE PRO TEMPORE IN THE )  
SUPERIOR COURT OF THE STATE )  
OF ARIZONA IN AND FOR THE )  
COUNTY OF MARICOPA )  
\_\_\_\_\_ )

PRO TEMPORE ORDER  
No. 2024 - 23

The presiding judge of the Superior Court of Arizona in Maricopa County has requested the appointment of a court commissioner to serve as a judge pro tempore to assist that court with the processing of cases. Therefore, pursuant to Ariz. Const. Art. VI, § 31 and A.R.S. § 12-141 et seq.,

IT IS ORDERED that Christine Mulleneaux, State Bar# 018343, be appointed as a judge pro tempore to serve the Superior Court in Maricopa County for a term beginning July 1, 2024, and ending December 31, 2024.

IT IS FURTHER ORDERED that the appointee shall perform judicial duties authorized by A.R.S. § 12-144 as assigned by the presiding judge. This appointment is conditioned upon the approval of the Maricopa County Board of Supervisors pursuant to A.R.S. § 12-141, and upon the agreement by the appointee to serve without compensation or benefits, other than that to which she is entitled as a Superior Court Commissioner, as provided in A.R.S. § 12-142(C) and A.R.S. § 12-143 for service as a judge pro tempore.

IT IS FURTHER ORDERED that the appointee may perform duties of a judge authorized by A.R.S. § 25-121 et seq. and A.R.S. § 12-2222 without specific assignment by the presiding judge and subject to agreement by the appointee to perform these duties without public compensation or benefits.

DATED this 11th day of June, 2024.

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ROBERT BRUTINEL  
Chief Justice