

No. _____

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

ACCORD TRUCKING, INC.,

Petitioner,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.,

Respondent.

**On Petition for a Writ of Certiorari to the
Arizona Court of Appeals, Division One**

PETITION FOR A WRIT OF CERTIORARI

Gregory G. McGill
Ryan G. McGill
MCGILL LAW FIRM
4421 N. 75th Street, Ste. 101
Scottsdale, AZ 85251
(480) 970-6720
gregmccill@mccillazlaw.com
ryanmccill@mccillazlaw.com

Dallin B. Holt
Counsel of Record
FRAZIER LAW PLLC
7702 E. Doubletree Ranch Rd.
Suite 300
Scottsdale, AZ 85258
(480) 691-0975
dholt@frazierlawpllc.net

July 27, 2026

Counsel for Petitioner

QUESTION PRESENTED

The American judicial system is a “party-presentation system” in which courts are to decide only the claims and defenses raised by the parties. *United States v. Sineneng-Smith*, 590 U.S. 371, 375-376 (2020).

The Question Presented is:

Whether a court violates the party-presentation principle, due process, and the Seventh Amendment by granting dispositive relief based on a non-jurisdictional legal theory never raised by the parties.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff/Appellant below

- Accord Trucking, Inc.,

Respondent and Defendant/Appellee below

- FedEx Ground Package System, Inc.

RULE 29.6

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Accord Trucking, Inc. states that it is a privately held Arizona corporation. Accord Trucking, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respondent FedEx Ground Package System, Inc. is a subsidiary of FedEx Corporation, which is publicly traded (NYSE: FDX).

LIST OF PROCEEDINGS

Arizona Supreme Court

No. CV-25-0057-PR

Accord Trucking v. FedEx

Order Denying Review: December 12, 2025

Arizona Court of Appeals, Division One

No. 1 CA-CV 23-0710

Accord Trucking, Inc., *Plaintiff/Appellant*, v.

FedEx Ground Package System, Inc.,

Defendant/Appellee

Memorandum Opinion: October 29, 2024

Superior Court of Arizona, Maricopa County

CV 2018-010982

Accord Trucking, Inc., *Plaintiff* v.

FedEx Ground Package System, Inc., *Defendant*

Order Granting Judgment as a Matter of Law:

March 21, 2023

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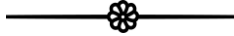
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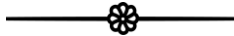
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The opinion of the Arizona Court of Appeals is reproduced at App.3a. The order of the Arizona Supreme Court denying review is reproduced at App.1a.



JURISDICTION

The Arizona Supreme Court denied review on December 12, 2025. App.1a. Justice Kagan extended the time to file a petition for a writ of certiorari to May 11, 2026. Sup. Ct. No. 25A1007. By letter dated May 28, 2026, the Clerk of Court provided an additional 60 days to file this petition. This Court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .

U.S. Const. amend XIV § 1

No State shall . . . deprive any person of life, liberty, or property, without due process of law.



INTRODUCTION

This case concerns the role of courts in the civil adversarial system nationwide. This case presents an ideal opportunity to clearly delineate and enforce the principle of party presentation to ensure that the civil courts are passive instruments of government and to prevent trial by ambush. No judge is King. The Declaration of Independence arose from many acts of tyranny by the King of England, and one act cited: “For depriving us in many cases of the benefits of Trial by Jury.”

Here, after five years of discovery, pretrial motions, and motions for summary judgment, the trial court decided to move the case forward to trial. On the eve of trial, a new judge rotated in. After several days of trial, the new judge, *sua sponte* and without notice, introduced new legal theories to dismiss the case. The new judge did not provide Accord with an opportunity to research or brief his new dispositive legal theories, and then quickly dismissed the case. The Arizona Court of Appeals affirmed this dismissal because it wrongfully held that Accord was the party who introduced the legal theories that led to dismissal—this framing was incorrect. The Court should permit Accord the opportunity to brief the dispositive legal theories that were presented by the second judge without any prior disclosure or notice.

Once a trial judge under Fed. R. Civ. P. 56 properly evaluates the proffered evidence and argument of the parties, finds genuine issues of material fact and sets a jury trial — which implies no legal impediment to

jury deliberation or the disputed fact would not be material — the principle of party presentation limits the power of the judge at trial to address only legal theories and defenses that were raised by the parties before the trial. Here, a retired judge (“Commissioner Rea” or the “second judge”) rotated into the case on the eve of trial, raised legal defenses never disclosed, aired, or briefed by the parties in the litigation or the Joint Pretrial Statement (“JPTS”) which is the trial roadmap under Ariz. R. Civ. P. 16(f), and precluded the jury trial that Judge Mikitish (the “first judge”) had set for Accord’s core claims. The prejudice from the lack of notice, briefing, and opportunity to evaluate the legal defenses for case strategy, settlement or trial over the prior four-year period, is self-evident.

Trial judge departures from the principle of party presentation are systemic in large urban areas throughout the nation that rotate judges, and even in civil courts that do not rotate. In 2005 Justice Roberts famously said in confirmation hearings that “Judges are like umpires. Umpires don’t make the rules; they apply them. . . . I will remember that it’s my job to call balls and strikes and not to pitch or bat.” Confirm. Hearing on Nomination, S. Judiciary Comm., 109th Cong. (Sept. 12, 2005). And in *United States v. Rahimi*, 602 U.S. 680 (2024) Justice Kavanaugh wrote in a concurring opinion in a criminal case over Second Amendment rights that “Judges are like umpires, as THE CHIEF JUSTICE has aptly explained. And in a constitutional system that counts on an independent Judiciary, judges must act like umpires. To be an umpire, the judge “must stick close to the text and the history, and their fair implications,” because there “is

no principled way” for a neutral judge “to prefer any claimed human value to any other.”

In *Greenlaw v. United States*, 554 U.S. 237 (2008) Justice Ginsburg wrote in a majority opinion on the government’s attempt to increase a criminal sentence in the absence of a cross-appeal that “In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.”

In 2020 the principle of party presentation resurfaced in another criminal case. In *United States v. Sineneng-Smith*, 590 U.S. 371, 375-376 (2020), Justice Ginsburg again writing for the majority stated “In short, [C]ourts are essentially passive instruments of government.’ They ‘do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties.”

Finally, in *Carlucci v. Regan*, 714 F.2d 171 (D.C. Cir. 1983) which barred access to the courts for lesser personnel actions that did not involve constitutional claims after exhaustion under the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, Justice Scalia refused to consider a conclusory sentence about due process rights in the absence of any briefing on the exclusiveness of entitlements under the CSRA: “The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.” Here, after a last-minute rotation Sr. Commissioner

Rea (Ret.) did research before and during trial on several legal defenses never presented or argued by FedEx in the case or JPTS and dismissed the jury when Accord was unable to quickly convince him to allow Judge Mikitish's jury trial order to stand on the legal defenses FedEx disclosed and asserted over the four-year case.

As a prelude to the Declaration of Independence, the Virginia Declaration of Rights in June 1776 stated:

That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them . . . That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.

In the course of events, this Court is called upon to ensure that judges in our adversarial system do not evolve into Kings, and this is a case to remind all magistrates to assiduously apply the principle of party presentation so the judiciary remains impartial, calls balls and strikes instead of pitching or batting for one side, and prevents the prejudice created by the deprivation of a jury at trial based on legal defenses never raised by the parties in the case.

In sum, this case concerns the limits of the principle of party presentation, a foundational rule of the American adversarial system. As this Court has emphasized, courts ordinarily decide "only the questions presented by the parties." *Sineneng-Smith*, 590 U.S. at 375-376; *see also Greenlaw*, 554 U.S. at 243-244.

This Court’s two most recent party-presentation decisions confirm the principle’s continuing force. In *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam), this Court summarily reversed the Fourth Circuit for “granting relief” on a claim the habeas petitioner “never asserted and that the State never had the chance to address.” And in *Margolin v. National Ass’n of Immigration Judges*, 146 S.Ct. 1285, 1288 (2026) (per curiam), this Court again summarily reversed — this time in a civil action — where the Fourth Circuit “*sua sponte* addressed” a dispositive question the parties never raised and “did so without giving either side a chance to address its theory.” Here, in *Margolin*’s words, the courts below decided “a case different from the one [Accord] advanced.” 146 S.Ct. at 1288 (citation omitted). As shown below, the decision here rests on the same error those cases condemn.

The decision below departed from that principle. After more than five years of litigation framed by the parties’ pleadings, arguments, and evidence, the court granted dispositive relief based on legal defenses that neither party ever advanced. The case was thus resolved on a ground that was never presented, never briefed, and never subjected to adversarial testing.

That approach has serious consequences. When courts decide cases on claims and legal defenses the parties did not raise, they cease to act as neutral arbiters and instead assume the role of advocate. The resulting decisions undermine the adversarial process, create uncertainty about the limits of judicial authority, prejudice the losing party deprived of notice, litigation strategy, and briefing opportunity, and risk depriving litigants of their right to have disputed issues resolved by a jury.

Lower courts have increasingly treated the principle of party presentation as a discretionary practice rather than a binding limitation on judicial authority, allowing courts to affirm or grant dispositive relief on grounds never argued by the parties. In addition, in *Sineneng-Smith* at 590 U.S. 371, Justice Ginsburg stated that “The party presentation principle is supple, not ironclad” and there are instances when “a modest initiating role for the court is appropriate.”

This case presents an ideal opportunity to draw a brighter line in civil litigation that judges may not resolve cases on legal theories or defenses the parties never disclosed, asserted or presented.



STATEMENT OF THE CASE

1. Proceedings Below

This case arises from a multi-year commercial dispute between Petitioner Accord Trucking, Inc. and Respondent FedEx Ground Package System, Inc. The litigation proceeded in Arizona state court for more than five years, during which the parties framed the issues through their pleadings, motions, and evidentiary submissions. App.38a, App.69a, App.97a.

The trial court entered judgment at trial in favor of Respondent. App.27a, App.97a. The Arizona Court of Appeals affirmed. App.3a. The Arizona Supreme Court denied review. App.1a.

2. The Parties' Claims and Legal Defenses

Throughout the litigation, the parties advanced competing legal theories and defenses on liability and relief. The claims, defenses, and dispositive motions defined the issues to be resolved, and the case proceeded on that basis through discovery and dispositive briefing before the first judge, Joseph Mikitish. App.38a, App. 69a. Before trial, the parties through counsel entered into a mandatory Joint Pretrial Statement that served as the roadmap for trial. Ariz. R. Civ. P. 16(f). At no point did FedEx present the legal defenses on which the second judge ultimately relied to grant it a JMOL that prevented the jury from deciding the contract and tort claims at trial. App.69a, App.97a.

Legal defenses raised by the court, not the parties, at trial were as follows:

- (i) *Estrada v. FedEx Ground Package System, Inc.*, 64 Cal. Rptr. 3d 327 (Ct. App. 2007) and *Alexander v. FedEx Ground Package System, Inc.*, 765 F.3d 981 (9th Cir. 2014), both finding FedEx liable for misclassification on similar contracts and control factors, were inapplicable to *Accord v. FedEx* because the Accord case was not rooted in Arizona “labor laws.”
- (ii) The trial court ruled as a matter of law at trial that the FedEx “point system” in its LCOA and TSPA contracts which gave “points and routes” to TSPs who were available to FedEx each week at least 90% of the time (preventing any runs for another company), was not a contract term that violated the covenant of good faith and fair dealing. App.97a.

- (iii) The FedEx’s deletion of the “full use” provision when the contract went from the LCOA to the TSPA in late 2018, after Accord sued FedEx for a reduction in runs, could not be a basis for a breach because the TSPA was a “requirements contract.” App.97a.
- (iv) The LCOA and TSPA could not fraudulently misrepresent independent contractor (“IC”) status as a matter of law even if they were deceptive as applied. App.97a.
- (v) FedEx contracts could not be fraudulent instruments unless it was first adjudicated that FedEx had no intention to perform them (despite the express bar to misclassification fraud in Ariz. Rev. Stat. § 23-902). App.97a.
- (vi) Accord Trucking, Inc. could not be misclassified as an “employee” as a matter of law because it was a corporation (an entity FedEx required as a condition to contract). App.97a.

3. The Decision Below

Judge Mikitish’s ruling on February 27, 2023 denying FedEx’s motion for summary judgment found genuine, material facts on breach of contract, misclassification and common law fraud and set the five-year case for a jury trial. App.30a. This ruling implied there were no legal impediments to the claims for trial purposes, or the disputed fact issues would not be material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (Only disputes over facts that may affect the outcome under the governing law will properly preclude the entry of summary judgment). On the eve of trial, Commissioner Rea (Ret.) was rotated in as trial

judge, raised legal defenses the parties never raised in the case, and dismissed Accord's contract and tort claims under Ariz. R. Civ. P. Rule 50.

The legal defenses raised by the court at trial were not in the JPTS, the required roadmap for trial predicated on disclosed claims and defenses. In *Reyes v. Town of Gilbert*, 247 Ariz. 151, 447 P.3d 332 (2019) the court held that a withheld city traffic impact statement was not a violation because the plaintiff raised warning signs, not traffic design, as a legal theory in the case—so the design theory could not be raised at the time of trial. The court noted the importance of disclosures in civil litigation: “[The Rule 26.1] disclosure statement is the primary vehicle by which the parties are informed of their opponent’s case. Thus, it should fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon.” *Reyes* also noted the importance of the JPTS, stating that it must identify all “contested issues of fact and law that the parties agree are material or applicable.” Ariz. R. Civ. P. 16(f)(2)(B). It also must include “a separate statement by each party of other issues of fact and law that the party believes are material.” Ariz. R. Civ. P. 16(f)(2)(C). The joint pretrial statement supercedes the pleadings and “controls the subsequent course of the litigation.” *Carlton v. Emhardt*, 138 Ariz. 353, 355, 674 P.2d 907 (App. 1983).

As to the legal defenses the court raised at trial, after the court’s JMOL, plaintiff discovered that Ariz. Rev. Stat. § 23-902(F) provides that a presumption regarding IC status is overcome if the agreement is “obtained through misrepresentation, false statements, fraud . . . “App.164a. The court’s legal defense regarding “no labor laws” in support of Accord’s contract claim

over misclassification left no time to brief and present Ariz. Rev. Stat. § 23-902. Faced with the surprise legal defense at trial, Accord cited the Arizona wage act under Ariz. Rev. Stat. § 23-355 and the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) but Commissioner Rea replied: “You’ll have to do better than that.” App.165a.

Arizona law in fact supplied the statutory authority the trial court demanded. Ariz. Rev. Stat. § 23-902(B) provides that when an employer “procures work to be done for the employer by a contractor over whose work the employer retains supervision or control, and the work is a part or process in the trade or business of the employer,” the contractor and its employees are, “within the meaning of this section, employees of the original employer.” And Ariz. Rev. Stat. § 23-902(F) provides that a written independent-contractor agreement “shall be null and void and create no presumption of an independent contractor relationship” if either party’s consent was “[o]btained through misrepresentation, false statements, fraud or intimidation.” Because the trial court raised its “no labor laws” theory for the first time at trial, Accord had no opportunity to research and brief that statute; pressed for an immediate answer, counsel cited the Arizona Wage Act instead. App.110a, App.164a-165a. The framing stuck: much of the Memorandum Decision is devoted to the wage statutes that entered the case only in answer to the trial court’s demand. App.16a-19a. When Accord cited Ariz. Rev. Stat. § 23-902 on appeal, the Arizona Court of Appeals measured subsections (B), (D)(1), and (F) against a single question — whether they make a corporation an “employee” under the wage statutes — and did not consider subsection (F) as statutory

support for the fraud and misrepresentation claims that Judge Mikitish had set for the jury. App.17a-18a, App.30a. That is the harm the principle of party presentation guards against: a dispositive theory injected without notice that dictates the terms on which every later argument is heard.

And as to whether the LCOA and TSPA contracts, as applied, could provide a basis for a misrepresentation claim, *see Estrada*, 64 Cal. Rptr. 3d at 334 (quoting the trial court’s description of FedEx’s operating agreement as “a brilliantly drafted contract creating the constraints of an employment relationship with [the drivers] in the guise of an independent contractor model”). *See also Tarron v. Bowen Machine & Fabricating, Inc.*, 225 Ariz. 147, 152, 235 P.3d 1030, 1035 (Ariz. 2010) where the court concluded that “contract language does not determine the relationship of the parties.” *See also Santiago v. Phoenix Newspapers*, 164 Ariz. 505, 794 P.2d 138 (1990): “Whether an employer-employee relationship exists may not be determined as a matter of law in either side’s favor, because reasonable minds may disagree on the nature of the employment relationship. A jury could infer from these facts that Frausto was an employee . . .” Finally, *see Alexander*, 765 F.3d 981 where the court stated: “the label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.” 765 F.3d at 989 (quoting *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 769 P.2d 399, 404 (Cal. 1989)). Thus, many courts recognized that the use of the FedEx contract could be deceitful and harmful to the trucker.

Because the court raised for the first time at trial the legal defense that the FedEx contracts could not

serve as a basis for a misrepresentation claim because there were no “labor laws” to support it in Arizona, there was no time to find and brief Ariz. Rev. Stat. § 23-902 that statutorily allowed a misrepresentation claim and Accord’s tort claims were dismissed under Rule 50.

In affirming, the Arizona Court of Appeals acknowledged Accord’s argument that “the grounds the superior court relied on had not been disclosed or argued before trial,” but held that “[t]he record does not show any violation of this principle.” App.14a. In the Arizona Court of Appeals’ view, because Accord “expressly relied on [A.R.S. § 23-350] to support its theory of damages, the court was obligated to apply that statute correctly,” and Accord “cannot reasonably contend the court’s JMOL ruling on this issue was an unfair surprise at trial.” App.15a. But the exchange the Arizona Court of Appeals itself quoted shows the opposite sequence: it was the trial court that demanded authority from counsel — “There’s got to be a basis for that. . . . It’s got to be a statute or some other form of authority.” App.15a. The Trial Day 6 transcript reflects the same pattern. The trial court asked whether the FLSA “ha[s] a definition of ‘employee,’” and Accord’s counsel read Ariz. Rev. Stat. § 23-350 in direct response to the court’s question, as a comparison to the federal definition. App.110a. And when the trial court granted judgment, it announced a theory of its own devising: “[I]f we look at other Arizona statutes, there are other examples of ‘employee’ being defined in a way that includes corporations. I can’t give you the specifics right now because I left that paper back in the office.” App.130a-131a. Citing a statute in answer to a judge’s question is not party presentation of a dispositive

defense the court had prepared in advance. Moreover, it was the second judge — not FedEx — who demanded a statutory basis at trial for claims that the first judge had allowed to proceed to a jury after five years of litigation. App.15a, App.30a, App.110a. Entering judgment on grounds generated by the court's own demand, rather than on grounds the parties presented, is a classic violation of the principle of party presentation.

In addition, virtually all civil jurisdictions throughout the nation require a timely disclosure of legal theories and defenses by the parties. In Arizona, Rule 26.1(a)(2) requires timely disclosure of legal defenses for settlement or to prepare for trial but that rule was not enforced here. The legal defenses the trial court raised for FedEx were not in the Joint Pretrial Statement. App.69a. In *Zuern v. Ford Motor Co.*, 188 Ariz. 486, 937 P.2d 676 (1996) the court stated:

Plaintiffs first disclosed that new . . . theory informally during their expert's supplemental deposition one month before trial, and then formally through a supplemental disclosure a few days later. Thus, the trial court did not err in excluding the evidence based on plaintiffs' failure to timely and properly disclose the new liability theory.

Moreover, FedEx cited Arizona law throughout the case, but at trial Commissioner Rea applied Pennsylvania law to the Arizona trial, not *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 38 P.3d 12 (2002) which may have sustained the implied covenant claim. Despite that, Pennsylvania law has a doctrine similar to Arizona's duty of good faith and fair dealing. See *John B. Conomos, Inc. v. Sun Co.*, 831 A.2d 696 (Pa. Super. Ct. 2003): "In the absence of an express

term, the doctrine of necessary implication may act to imply a requirement necessitated by reason and justice without which the intent of the parties is frustrated.”

Thus, the court below affirmed the judgment on legal defenses not asserted by FedEx throughout the five-year case. Rather than resolving the dispute based on the claims and defenses framed by the litigants and allowed by the first judge to go to the jury on disputed issues of material fact, the court adopted several legal defenses that FedEx never pled, disclosed, argued, briefed, or subjected to adversarial testing. The JMOL by Commissioner Rea (Ret.) resolved the core case on a basis that Accord had no opportunity to address or brief during the litigation that survived a FedEx motion for summary judgment and was set for a jury trial. App.27a, App.69a, App.97a.

4. Effect of the Decision

By affirming on several legal defenses never raised by FedEx, the court displaced the adversarial framework that governed the proceedings and resolved the case on issues outside the scope of the parties’ presentation. That approach resulted in the disposition of Petitioner’s claims without the opportunity to present evidence, argument, and law directed to the legal defenses that ultimately controlled the outcome.

5. This Case

This case squarely presents whether a court may grant dispositive relief based on legal theories never raised by the parties, consistent with the principle of party presentation, due process under the Fourteenth

Amendment, and the Seventh Amendment right to a jury trial.



REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S PARTY-PRESENTATION JURISPRUDENCE.

This Court has repeatedly reaffirmed that the American judicial system is a “party-presentation system” in which courts ordinarily decide only the claims and defenses raised by the parties. *Sineneng-Smith*, 590 U.S. 371, 375-376. That principle reflects the basic structure of adversarial adjudication: parties frame the issues, develop the record, and present the arguments – and courts act as neutral arbiters of the matters the parties present.

In *Greenlaw*, this Court through Justice Ginsburg explained that “in both civil and criminal cases, in the first instance and on appeal,” courts “rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” 554 U.S. 237, 243 (2008). The Court warned that judges do not “sally forth each day looking for wrongs to right,” but instead “normally decide only questions presented by the parties.” *Id.* at 244.

That rule is not a technicality. It preserves the distinction between advocate and adjudicator. It protects the litigants’ ability to decide their litigation strategy regarding the claims, defenses, facts, and discovery to pursue. And it ensures that the issues controlling the

outcome of a case are subjected to adversarial testing before a court resolves them.

The decision below cannot be reconciled with those principles. After more than five years of litigation defined by the parties' pleadings, arguments, and evidentiary submissions, the court granted dispositive relief based on a legal theory that neither party advanced. The case was resolved on a ground that was never presented, never briefed, and never tested through the adversarial process.

This Court's decision in *Sineneng-Smith*, a case involving an immigration consultant charged with federal felonies, illustrates the problem. There, the Court unanimously vacated a Ninth Circuit judgment because the court of appeals had "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." 590 U.S. at 375. The panel had invited amici to brief issues the parties had not raised and then resolved the case on those grounds. *Id.* at 376-378. This Court held that such a judicial takeover was inconsistent with the proper role of courts in an adversarial system. *Id.* at 375-376.

This Court has since enforced that limit twice, each time summarily. In *Clark v. Sweeney*, the Fourth Circuit "transgressed the party-presentation principle" by granting habeas relief on a claim the petitioner "never asserted and that the State never had the chance to address"; this Court reversed, explaining that courts "call balls and strikes" and do not "get a turn at bat." 607 U.S. 7, 9 (2025) (per curiam). In *Margolin v. National Ass'n of Immigration Judges*, this Court reversed a civil judgment because the Fourth Circuit "*sua sponte* addressed" a dispositive question the parties never raised and "did so without giving either

side a chance to address its theory” — a “drasti[c]” departure that “constitute[d] an abuse of discretion.” 146 S. Ct. 1285, 1288 (2026) (per curiam). The trial court here did what *Clark* and *Margolin* forbid: it injected a half-dozen legal defenses that FedEx never raised, disclosed, or asserted in the required Joint Pretrial Statement, announced a dispositive Wage Act theory FedEx never presented — one the court had researched on its own (“I can’t give you the specifics right now because I left that paper back in the office”) — and entered judgment on those grounds. App.69a, App.97a, App.130a-131a.

The same structural problem is present here. The court below did not merely refine an argument the parties made. It adopted legal defenses that FedEx never disclosed or advanced before trial. That approach does not supplement the adversarial process; it replaces it. It permits courts to create and decide legal theories for the parties, converting neutral adjudication into judicial issue creation. The Arizona Court of Appeals held otherwise only by treating counsel’s answer to the trial court’s own question as party presentation of the dispositive defense. App.14a-15a. But a litigant does not “frame the issues for decision,” *Greenlaw* at 554 U.S. at 243, when the court demands statutory authority and then deploys the answer as the basis for a ground the court researched itself. App.110a, App.130a-131a.

This Court has long recognized that the adversarial system rests on the premise that parties represented by counsel are responsible for advancing the facts and arguments entitling them to relief. *See Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and in the judgment). In fact, this bulwark of the civil litigation system is embedded in the Joint

Pretrial Statement. When courts disregard the JPTS and decide cases on unrepresented theories, the party-presentation premise collapses. The parties lose control over the issues that determine the outcome, and the court assumes a role the adversarial system does not assign to it.

The consequences are especially serious when the unrepresented theory is dispositive. A court that grants or affirms dispositive relief on a legal defense never raised by the defendant does more than choose among competing arguments. It determines the case on a basis the losing party had no fair opportunity to address, brief or argue. That creates due-process concerns and undermines confidence in the fairness of the resulting judgment.

Those concerns are heightened where, as here, judicial theory creation results in the disposition of claims that otherwise would have proceeded to a jury. The Seventh Amendment preserves the right to have disputed issues tried by a jury in suits at common law. When a court removes those issues from the jury based on a theory neither party raised, it bypasses both adversarial testing and the constitutional structure that protects the jury's role.

The decision below conflicts with this Court's party-presentation jurisprudence in a direct and recurring way. *Greenlaw* and *Sineneng-Smith* confirm that courts are to decide the issues the parties present. The decision below authorizes civil courts to grant dispositive relief on issues the defendant did not present. That conflict warrants this Court's review so the line on the principle of party presentation in civil cases is more clearly drawn.

II. THE PARTY-PRESENTATION QUESTION IS IMPORTANT TO CIVIL LITIGATION AND RECURRING.

The principle of party presentation is a foundational feature of the American adversarial system. It defines the proper role of courts and ensures that legal disputes are resolved through the presentation of competing arguments by the parties themselves. The principle is essential to fairness because parties must have notice of the issues that may determine their rights and a meaningful opportunity to address them.

The decision below reflects a growing departure from that principle. Civil court judges throughout the nation increasingly treat the principle of party presentation not as a binding limitation on judicial authority, but as a discretionary practice that may be disregarded whenever a court identifies an alternative ground for decision, whether disclosed in the case or not. That approach permitted Commissioner Rea to grant dispositive relief on legal defenses FedEx never disclosed, aired or argued in five years of litigation — until raised by a rotated-in judge at trial — effectively transforming the trial court from neutral arbiter to active participant for FedEx in the litigation.

The consequences of that shift are substantial. When courts decide cases on unrepresented theories or defenses, litigants are deprived of notice and a meaningful opportunity to be heard on the issues that determine the outcome of their case. The adversarial process, which depends on the parties to develop the factual record and legal arguments, is displaced by judicial issue creation. The resulting decisions lack the benefit of adversarial testing and risk undermining confidence in the fairness and reliability of judicial outcomes in the national civil court system.

The problem is not confined to a particular subject matter. It arises across a wide range of civil and criminal cases, including appeals from summary judgment, motions to dismiss, and other dispositive rulings. Because courts may identify alternative grounds for decision in virtually any case, the question presented here recurs frequently and affects the basic structure of adjudication in federal and state courts across the country. The issue is especially important where judicial reliance on unpresented theories results in the disposition of claims that otherwise would have been submitted to a jury. When courts resolve cases on grounds never raised by the parties, they effectively remove disputed issues from the jury without the adversarial process the Constitution presupposes. That practice threatens the Seventh Amendment's guarantee of trial by jury and raises serious due-process concerns.

Absent this Court's intervention, the scope of the principle of party presentation will continue to erode. Some courts will adhere to this Court's guidance and limit themselves to the issues the parties present, while others will treat the principle as optional. The resulting uncertainty invites inconsistent application and expands judicial authority beyond its proper bounds. That this Court has had to summarily reverse party-presentation violations in each of the last two Terms, *see Clark*, 607 U.S. 7; *Margolin*, 146 S.Ct. 1285, confirms the problem is recurring.

This case presents an appropriate vehicle to address that important and recurring question and to reaffirm that courts may not grant dispositive relief based on legal theories the parties themselves never raised.

III. THIS IS AN IDEAL CASE FOR DRAWING A CLEAR LINE ON THE PRINCIPLE OF PARTY PRESENTATION IN CIVIL COURTS.

This case is an excellent vehicle for resolving the question presented in the civil courts. The issue is cleanly presented by the proceedings below and was dispositive of the outcome. The court's decision rested on a half-dozen legal defenses that FedEx never raised, disclosed, argued or asserted in the five-year litigation, making the departure from the principle of party presentation clear and significant. And this Court has shown that such departures are amenable to summary correction. *See Clark*, 607 U.S. at 9-10; *Margolin*, 146 S. Ct. at 1287-1288.

The record cleanly presents the question whether a court may grant dispositive relief based on legal defenses never raised by the defendant. There are no threshold jurisdictional obstacles to this Court's review. The judgment below is final, and this Court has jurisdiction under 28 U.S.C. § 1257(a).

The court's reliance on legal defenses not advanced by the parties was a central and dispositive feature of the judgment below. The court affirmed the trial court's ruling by adopting legal grounds that were neither pled, argued, nor subjected to adversarial testing during the litigation. Review of the question presented would therefore materially affect the judgment below. At a minimum, the decision rests on judicial decision-making that conflicts with this Court's party-presentation jurisprudence and warrants correction and clarification regardless of any additional reasoning offered by the court.

The issue is purely legal. It does not require this Court to resolve disputed facts or review the evidentiary record in detail. The question is whether the party-presentation principle, due process, and the Seventh Amendment permit a court to grant dispositive relief on a theory the parties never raised.

Finally, this case arises in a common procedural posture: a dispositive ruling affirmed on a ground not raised by the parties. Review in this case would allow the Court to clarify the scope of the party-presentation principle in a setting that recurs frequently in the civil courts throughout the nation and does not depend on unusual facts. For these reasons, this case provides a clean and appropriate vehicle for resolving the important and recurring question presented.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Dallin B. Holt

Counsel of Record

FRAZIER LAW PLLC

7702 E. Doubletree Ranch Rd.

Suite 300

Scottsdale, AZ 85258

(480) 691-0975

dholt@frazierlawpllc.net

Gregory G. McGill

Ryan G. McGill

MCGILL LAW FIRM

4421 North 75th Street, Ste. 101

Scottsdale, AZ 85251

(480) 970-6720

gregmcgill@mcgillazlaw.com

ryanmcgill@mcgillazlaw.com

Counsel for Petitioner

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