

Supreme Court, U.S.
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No. **26-66**

In the Supreme Court of the United States

MICHELET MICHAEL SMITH,

Petitioner,

v.

KEELEY ANNE SMITH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS
DIVISION TWO

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state appellate court may treat as waived a preserved Fourteenth Amendment procedural due process claim based on a hyper-technical subsection miscitation, where the court understood the substance of the federal claim and the application of the state rule is not strictly or regularly followed but is instead unexpectedly strict and outcome-determinative (thus not an adequate and independent state ground).

2. Whether the Due Process Clause permits a state court to bypass a meaningful prejudice analysis and deem harmless—by labeling “technical”—a defect affecting notice and the opportunity to be heard (including notice/service and subpoena routing), without identifying the operative order governing notice/routing; and without making any prejudice findings.

3. Whether due process is satisfied when the State creates a procedural “catch-22” by denying a party’s request for record completion/correction before merits briefing, and the appellate court later applies missing-record presumptions to reject those same record-dependent federal due process claims.

PARTIES TO THE PROCEEDINGS

Petitioner, and respondent-appellant below is Michael Smith.

Respondent, and petitioner-appellee below is Keeley Anne Smith.

RELATED PROCEEDINGS

Maricopa County Superior Court:

No. FC2023-092114.

Arizona Court of Appeals, Division Two:

No. 2 CA-CV 2025-0101-FC.

Supreme Court of Arizona:

No. CV-26-0040-PR.

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OPINIONS AND ORDERS BELOW

The Arizona Court of Appeals, Division Two, issued a memorandum decision filed January 20, 2026 (No. 2 CA-CV 2025-0101-FC), affirming the Maricopa County Superior Court's Decree of Dissolution (Case No. FC2023-092114). The memorandum decision is reproduced at App. A.

The Court of Appeals denied Petitioner's motion for reconsideration and motion for publication by order filed January 26, 2026. That order is reproduced at App. B.

The Supreme Court of Arizona denied discretionary review by order filed March 5, 2026 (No. CV-26-0040-PR) and denied as moot Petitioner's motion seeking limited revesting jurisdiction for record correction. That order is reproduced at App. C. Additional relevant motions and orders are reproduced at App. D-L.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the final judgment of the Supreme Court of Arizona. The Supreme Court of Arizona entered its order denying review on March 5, 2026. This petition is timely under Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const., Amdt. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUMMARY OF REASONS FOR GRANTING THE PETITION

This petition presents recurring Fourteenth Amendment due process issues that arise in high-volume family proceedings and risk insulating federal claims from meaningful review. First, the Arizona Court of Appeals treated a preserved federal due process claim as waived based on a hyper-technical subsection miscitation, even though the court understood the substance of the constitutional claim—an unexpectedly strict application of a state procedural rule that should not operate as an adequate and independent bar to federal review. Second, the decision below labeled notice/service and subpoena-routing defects “technical” and harmless without identifying the operative order governing notice/routing and without prejudice findings, raising a core question about meaningful notice and the opportunity to be heard. Third, the State created a procedural “catch-22” by denying a timely request for record completion before merits briefing and then applying missing-record presumptions to reject record-dependent federal due process claims, warranting guidance on the constitutional limits of “regularity presumptions.” *This case is a suitable vehicle because the decision below expressly relied on the waiver and presumption rationales at*

issue, and the appendix contains the operative orders and motions establishing preservation and the denied request to complete the record.

STATEMENT OF THE CASE

1. Proceedings below. This case arises from dissolution proceedings in Maricopa County Superior Court, Case No. FC2023-092114. The Arizona Court of Appeals, Division Two, affirmed the decree in a memorandum decision. App. A.

2. Hearing time limits and cross-examination. At a contested supplemental hearing, Petitioner argued that rigid time limits prevented meaningful testimony and cross-examination. The Court of Appeals addressed Petitioner's due process claim regarding thirty-minute evidentiary limits and the admission/exclusion of exhibits. App. A ¶14. In footnote 4, the Court of Appeals stated: "No such subsection to Rule 77 exists." App. A ¶14 n.4. See App. H.

3. Counsel-of-record uncertainty and "technical error" treatment. The Court of Appeals acknowledged that the initial substitution notice referenced written consent but did not attach it, that the superior court approved substitution in April 2024, and that an amended notice with written consent was filed in September 2024. App. A ¶10. It then held that "[a] technical error in a notice of substitution . . . will not warrant reversal" where "substantial justice has been done," citing Arizona's constitution and a criminal case. App. A ¶10. See App. I; App. J.

The memorandum decision also stated that Petitioner failed to identify any "pending amended substitution" in the record. App. A ¶7 n.2. Petitioner contends the absence of an identified operative approval

order/effective date affected notice, service, and subpoena routing and impaired his opportunity to respond to third-party subpoenaed evidence.

Petitioner also sought superior-court clarification regarding prior counsel (Crider) status and certification of post-substitution service recipients relevant to notice/service routing, but those requests were denied. See App. K; App. L.

4. Missing-record presumption. The Court of Appeals stated Petitioner failed to provide transcripts and applied a presumption that missing transcripts support the trial court's rulings, citing ARCAP 11(c)(1)(B) and *Baker v. Baker*, 900 P. 2d 764 (Ariz. 1995). App. A ¶¶15–16. See App. D; App. F; App. E; App. G. Petitioner also sought limited revesting jurisdiction in the Arizona Supreme Court to correct/clarify a clerical hearing-time misstatement and settle/correct the record before final review concluded, but that motion was denied as moot when review was denied. See App. C.

REASONS FOR GRANTING THE PETITION

I. Hyper-technical waiver rulings cannot operate as a procedural trap to avoid review of preserved federal due process claims.

The Arizona Court of Appeals declined to reach the merits of Petitioner's preserved Fourteenth Amendment claim based on a subsection-miscitation ("No such subsection to Rule 77 exists"), rather than addressing the substance of Petitioner's record-based procedural due process challenge to hearing time limits and meaningful cross-examination. The court's own opinion shows it understood the substance of the

federal due process claim; the subsection miscitation did not impede adjudication of the constitutional issue. App. A ¶14 n.4; see also App. H. A state procedural ground is not “adequate” to bar federal review when it is not strictly or regularly followed but is instead applied in an unexpectedly strict, outcome-determinative manner that serves no legitimate state interest and frustrates the vindication of federal rights. See *Lee v. Kemna*, 534 U.S. 362 (2002). This Court may review because the decision below rests on an inadequate state-law ground that forecloses review of a preserved federal claim. *Michigan v. Long*, 463 U.S. 1032 (1983). This case is a suitable vehicle because the decision below expressly relied on the subsection-miscitation waiver rationale (App. A ¶14 n.4) and the appendix contains the operative hearing-time order and record-completion motions/orders establishing preservation and the denied request to complete the record (App. H; App. D–G).

II. Treating notice-and-opportunity defects as “technical” without identifying the operative order and without prejudice findings raises a due process question.

The court below acknowledged substitution-related defects affecting notice/service and subpoena routing, yet dismissed the issue as “technical” and harmless without identifying the operative approval order/effective date governing notice/subpoena routing and without making prejudice findings. App. A ¶10; see also App. I; App. J. Due process requires notice “reasonably calculated” to apprise interested parties and an opportunity to respond. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950); *Goldberg v.*

Kelly, 397 U.S. 254 (1970). The question presented is whether a court may bypass meaningful prejudice analysis by labeling a breakdown affecting notice and the opportunity to be heard as “technical.” A “technical/harmless” label cannot substitute for a specific finding of no prejudice where notice/service or subpoena routing affects a party’s opportunity to respond to evidence.

III. Denying record completion and then applying missing-record presumptions can insulate preserved due process challenges from meaningful review.

Petitioner sought record completion/correction before merits briefing, but the requested stay was denied. See App. D; App. F; App. E; App. G. The Court of Appeals then relied on the absence of transcripts/record materials to presume regularity and reject record-dependent due process challenges. App. A ¶¶ 15–16. This sequence creates a procedural “catch-22” in which the State denies a mechanism to complete or correct the record and then uses the resulting incompleteness to defeat federal constitutional claims. Due process is violated when the State deprives a person of a protected interest through procedures that are fundamentally unfair. *Logan v. Zimmerman Brush Co.*, 455 U. S. 422 (1982). This recurring problem warrants this Court’s review, particularly in high-volume family dockets where self-represented litigants must rely on court-controlled record systems and may have no practical alternative once record completion is denied. Granting review would provide needed guidance on the constitutional limits of state “regularity presumptions” when they are applied to

defeat record-dependent Fourteenth Amendment due process claims after a timely request for record completion has been denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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JUNE 2026

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