

ARIZONA SUPREME COURT

ROBERT BURNS,

Plaintiff/Appellant,

v.

ARIZONA PUBLIC SERVICE
COMPANY, et al.,

Defendants/Appellees.

Arizona Supreme Court No.
CV-21-0080-PR

Court of Appeals Division One No.
1 CA-CV 19-0183

Maricopa County Superior Court No.
CV2017-001831

APPELLANT’S PETITION FOR REVIEW

RICHARDS & MOSKOWITZ PLC

William A. Richards (013381)
1850 N. Central Avenue, Suite 2010
Phoenix, Arizona 85004
(P): 602-595-7800 (F) 602-812-7995
brichards@RMazlaw.com
Attorneys for Appellant Robert Burns

TABLE OF CITATIONS

TABLE OF CITATIONS..... i-iv

INTRODUCTION 1

ISSUES PRESENTED FOR REVIEW..... 2

 I. FACTS 3

 a. The 2016/2017 APS Rate Case..... 3

 b. The APS Campaign Spending Scheme 3

 c. Commissioner Burns’ Attempt to Investigate Campaign Spending.... 4

 d. The Litigation Below..... 5

 II. REASONS TO GRANT REVIEW 8

 a. The Court of Appeals’ Ruling Ignores the Plain Language of the Constitution at Article XV, § 4 8

 b. The Court of Appeals Overlooked the Plain Language of Ariz.Const., art. XV, § 6, and Applied an Inapplicable ACC Rule10

 c. The Court of Appeals’ Decision Undermines the Commissioners’ Consumer Protection Duties and Encourages Corporate Regulatory Capture Efforts.....11

 d. The Arizona UDJA Granted Burns Standing to Seek a Declaration Deciding the Investigatory Rights Issues.....13

 e. The Court of Appeals Erred in Finding Burns Had No Standing to Investigate or Raise Bias and Disqualification Issues14

 f. Attorneys’ Fees and Costs16

TABLE OF CITATIONS

Constitutional Provisions

Ariz. Const. Art. XV § 4	1-3, 5, 6, 8-12, 14
Ariz. Const. Art. XIV § 18	12
Ariz. Const. Art. XV § 6	2, 10

Statutes and Rules

A.A.C. R14-3-109.....	6
A.A.C. R14-3-109 (G and P).....	1, 6, 11
A.A.C. R14-3-109(O)	10, 11
A.R.S. § 12-1831	2, 3, 13
A.R.S. § 12-1832	13
A.R.S. § 12-1840	16
A.R.S. § 40-241(A).....	1, 5, 8, 9, 11
A.R.S. § 40-254(A).....	13

Case Law

<i>Ariz. Corp. Comm'n v. State ex rel. Woods</i> , 171 Ariz. 286 (1992).....	11
<i>Ariz. Public Serv. v. Ariz. Corp. Comm'n</i> , 155 Ariz. 263 (App. 1987)	4
<i>Burns v. Ariz. Pub. Serv. Co.</i> , 2021 Ariz.App.LEXIS 33 *7-8, 483 P.3d 229 (2021)	1, 7, 13-14

<i>Caperton v. A.T. Massey Coal Co., Inc.</i> , 556 U.S. 868, 883-85 (2009)	15
<i>Carrington v. Ariz. Corp. Comm’n</i> , 199 Ariz. 303, 304-06 (2000)	12
<i>Fitzgerald v. Md. Heights</i> , 796 S.W.2d 52 (Mo. App. 1990)	15
<i>Horne v. Polk</i> , 394 P.3d 651, 656 ¶ 17, 659 ¶ 28 (2017).....	14
<i>In re Marriage of Burroughs</i> , 691 S.W.2d 470, 474 (Mo. App. 1985)	15
<i>Jett v. City of Tucson</i> , 180 Ariz. 115, 119 (1994)	9
<i>Phelps Dodge Corp. v. Ariz. Elec. Power Coop.</i> , 207 Ariz. 95 117, ¶ 91, 83 P.3d 573, 595, ¶ 91 (App. 2004).....	3
<i>Polaris Int’l Metals Corp. v. Ariz. Corp. Comm’n</i> , 133 Ariz. 506, 507-08, 652 P.2d 1023, 1030-31 (1982).....	12, 13
<i>Rogers v. Tex. Optometry Bd.</i> , 609 S.W.2nd 248, 250 (Tex. Civ. App. 1980).....	14-15
<i>State v. Jernigan</i> , 221 Ariz. 17 (App. 2009)	9
<i>State v. Woods</i> , 237 Ariz. 214, 221 (App. 2015).....	15
<i>W. Devcor, Inc. v. City of Scottsdale</i> , 168 Ariz. 426, 430-31 (1991)	10
<i>Western Gillette v. Ariz. Corp. Comm’n</i> , 121 Ariz. 541, 542 (App. 1979).....	14

Treatises and Articles

Records of the Arizona Constitutional Convention of 1910
(John S. Goff ed., 1991)12

INTRODUCTION

This petition asks the Court to review state constitutional and statutory questions of first impression concerning the nature of the broad, constitutionally-delegated individual powers of the ACC commissioners to investigate and obtain facts impacting their official decision-making, and whether those powers can be blocked at the discretion of the ACC majority. Former¹ Arizona Corporation Commission (“ACC”) commissioner Robert Burns (“Burns”) had tried to individually investigate how an ACC-regulated utility funneled millions of dollars in campaign spending to promote its favored ACC candidates in the two statewide elections in 2014 and 2016. He wanted to learn how the spending by Pinnacle West Capital Corporation (“Pinnacle West”) of millions of dollars supplied annually by its ACC-regulated subsidiary Arizona Public Service Company (“APS”) impacted the consumer rate hike APS was seeking in a 2016-2017 rate case. And, he wanted to investigate the campaign spending to make transparent any potential for pro-APS bias among his fellow commissioners in the quasi-judicial proceedings of the rate case. He launched his investigations using powers set out in Ariz.Const., art. XV, § 4, in A.R.S. § 40-241(A), and in ACC rules, A.A.C. § R14-3-109(G and P). But the

¹ Burns completed his final ACC term in December, 2020. He argued below why his claims were not moot and were capable of repetition yet evading review. The Court of Appeals agreed. *Burns v. Ariz. Pub. Serv. Co.*, 483 P.3d 229 (2021). This Court should also find an exception to the discretionary mootness doctrine.

four other commissioners, each elected with APS campaign support, stopped Burns from conducting any investigation with an order. This forced Burns to pursue declaratory relief from the Superior Court under the Arizona Uniform Declaratory Judgment Act (“UDJA”), A.R.S. § 12-1831, *et seq.*, that would define his rights to investigate and ask questions of witnesses about the APS campaign spending and related issues without interference by his fellow commissioners.

But the Court of Appeals has improperly denied Burns his right to seek declaratory relief. In doing so, it ignored the plain language of Ariz.Const., art. XV, §§ 4, 6, applied an inapplicable and legally ineffective ACC hearing rule, misapplied statute governing judicial appeals of ACC rulings by parties (rather than commissioners themselves), ignored Burns’ entitlement to have his constitutional and statutory rights declared under the UDJA, and mistakenly ruled Burns had no “standing” to investigate potentially disqualifying risks of bias among his colleagues even though he had a constitutional due process obligation to ensure no such potential bias infected the rate case adjudication. This Court should grant review and reverse the errors in the Court of Appeals’ decision, providing instruction consistent with the Arizona framers’ intent for robust commissioner investigations.

ISSUES PRESENTED FOR REVIEW

This Court should accept review to consider the following issues of first impression and statewide, constitutional importance:

1. Whether the Arizona Constitution allows a majority of ACC commissioners to prevent any single commissioner from exercising the investigatory powers that are expressly delegated to them in Ariz.Const., art. XV, § 4.
2. Whether the Arizona UDJA at A.R.S. § 12-1831, *et seq.* grants an ACC commissioner standing to seek a declaration of their rights and their fellow commissioners' rights.
3. Whether an ACC commissioner has authority to investigate and raise for discussion if the millions of dollars in campaign support their fellow commissioners received from a regulated utility create the type of risk of bias requiring recusal under due process requirements for the quasi-judicial components of the ACC's utility rate-setting proceedings.

I. FACTS.

A. The 2016/2017 APS Rate Case.

Utility companies like APS are assigned geographic service areas with captive consumers and businesses. *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207 Ariz. 95, 101-02 (App. 2004). To prevent abuse of this arrangement, the framers of the Arizona Constitution subjected such utilities' rates to ACC regulation. Utility rates, and rate structures, are reviewed and set on a periodic basis using a "Rate Case" proceeding. The Rate Case includes a fact-finding hearing by the ACC commissioners. In January and April 2016, the APS Rate Case E-01345A-16-0036 and E-01345A-16-0123 commenced.

B. The APS Campaign Spending Scheme.

Before that, however, Burns had commenced an investigation after millions of dollars were anonymously funneled to support the election of the two successful

ACC candidates in the 2014 primary and general elections. [Burns' COA APPV1-0012-0040; APPV1-0041-45, 0046-49,0050--56, 0052-64, 0057-0060; APPV1-0065-APPV2-0051; APPV2-0058-0112]². (Substantial documents that affirm Pinnacle West (using funds from APS) was the source of the 2014 spending were later filed at ACC Docket No. E-01345A-19-0043.). Equally large spending was provided for the successful 2016 campaigns of ACC candidates Tobin and Dunn, which Pinnacle West admitted came from it. [Burns' COA APPV1-0012-40; APPV2-0062-0067; APPV2-0062-0067, 0068-0070; 0077-0084; APPV8-0040].

Pinnacle West and APS shared principal executives, and Pinnacle West “derive[s] essentially all of [its] revenues and earnings from [its] wholly-owned subsidiary, APS.” [APPV2-0071-0076; *Ariz. Public Serv. v. Ariz. Corp. Comm'n.*, 155 Ariz. 263, 265 (App. 1987)]. So, the millions spent on campaigns to elect its preferred ACC candidates in 2014 and 2016 came from APS consumer rate payments. [APPV8-0040].

C. Commissioner Burns' Attempt to Investigate Campaign Spending.

Burns was concerned that spending to capture commissioner loyalty right before they considered APS' rate increase request created a substantial risk of commissioner bias. And, he was concerned with how APS could justify the

² Citations to appendix records from Burns' filings before the Arizona Court of Appeals are noted as “Burns' COA” followed by the relevant appendix volume and pages.

substantial rate increase it was seeking when it had millions of excess cash to spend on campaign funding.

Burns wanted to know more about the campaign spending, about how APS had selected the candidates it supported, and how the spending impacted APS consumer rate requests. [Burns' COA APPV8-0040]. When APS failed to voluntarily disclose such information [*id.* at APPV3-0003], Burns sought clarification of his powers from the Arizona Attorney General, who issued an opinion confirming that Burns had *individual* constitutional authority to gather information regarding a Public Service Corporation's political and charitable contributions, and lobbying expenditures through record inspections and compelled testimony. [Pet. APPV1-0048]³.

Relying on that opinion, and using the investigatory powers delegated him by Ariz.Const., art. XV, § 4 and A.R.S. § 40-241(A), Burns issued two subpoenas to APS, Pinnacle West, and their shared CEO, Douglas Brandt ("the APS Parties"). [Pet.APPV1-0003; Burns' COA APPV2-0088; APPV8-0040; APPV2-0088].

D. The Litigation Below.

The APS Parties resisted, and eventually sued to quash his subpoenas. [Burns COA, APPV3-0018, APPV3-0033]. But, before Burns could answer and seek his

³ Documents included in the Appendix filed with this Petition are cited with the prefix "Pet.APP" followed by the relevant page numbers.

own declaration and discovery, APS dismissed its action. Burns filed his own declaratory judgment action in the Superior Court to confirm the rights to compel APS and Pinnacle West compliance that the Attorney General had affirmed. But the APS Parties preferred now to leave matters in the hands of the other ACC commissioners, and they obtained the Superior Court's order that Burns had to move his fellow commissioners to compel compliance with his subpoenas. [APPV5-0001, at lns. 16-19; APPV7-0117, at ¶ 4].

At that time, an ACC ALJ had commenced an evidentiary hearing for the APS Rate Case. [Burns COA APPV8-105]. The ALJ uses this fact-finding process to create a Recommended Opinion and Order ("ROO") which can later be adopted, rejected, or amended by the commissioners. A.A.C. § R14-3-109 (hearing rules) and R14-3-110. Burns requested that the ALJ call specific APS and Pinnacle West officials at the fact-finding hearing and question them on relevant matters, including the election spending issues, as was his right under both Ariz.Const., art. XV, § 4 and the ACC hearing rules, A.A.C. § R14-3-109(G and P). [Pet.APPV1-0127; APPV2-0003]. The ALJ refused to consider such matters without an order from the majority of the Commission. [Burns COA, at APPV7-0065, ln. 13-118, ln. 12]. So, Burns was forced to file emergency motions to enforce his investigation and witness questioning rights. [*Id.* at APPV1-0011–APPV2-0084; APPV3-00246; APPV4-0001; APPV4-0070]. Then on June 27, 2017, the four other commissioners

approved an Interlocutory Order that denied Bruns the right to enforce his subpoenas, question APS witnesses or investigate commissioner bias issues. [*Id.* at APPV3-00246, at 22, 26; APPV5-0063 at 18; APPV7-0104].

The dispute returned to the Superior Court. Nevertheless, the ACC ALJ issued her ROO, and the four commissioners moved quickly to approve a large APS rate hike on August 15, 2017 over Burns' objections. [APPV7-0052, 0083, and 0104, at 3-8].

The Superior Court granted Burns the right to twice amend his declaratory judgment complaint, but ultimately dismissed his claims. [Burns' COA APPV7-0122; APPV8-0096, at 4-7]. The Court agreed with many of Burns' assertions about his individual investigatory powers, [APPV7-0122, at 5-6, 9] but found that a majority of commissioners could forbid his further investigation and that it would violate "separation of powers" standards to review their reasons. [APPV7-0122, at 11-12]. The Superior Court further reasoned that Burns had no "standing" to investigate or raise any bias and disqualification issues. [APPV8-0096, at 4-7].

Burns timely appealed and the Court of Appeals entered its Opinion on March 4, 2021. *Burns*, 483 P.3d 229 (App. 2021). The Court of Appeals held that the Arizona Constitution granted the ACC commissioners powers to make rules governing their proceedings, that the ACC had adopted a rule subjecting all subpoena objections to resolution by the commission as a whole, that the courts were

required to give “wide berth” to the commissioners’ discretion to quash another commissioner’s investigation, and that Burns had no standing to object to the ruling denying him the right to investigate the impact of APS spending on ACC election campaigns or his fellow commissioners’ potential bias in favor of APS. *Id.*

II. REASONS TO GRANT REVIEW.

The following questions raised by this appeal have not been decided before by the Arizona appellate courts: (1) whether and how the individual investigatory powers granted commissioners under Ariz.Const., art. XV, § 4 and A.R.S. § 40-241(A) are subject to veto or override at the discretion of a majority of other commissioners; (2) whether a commissioner has a right under the Arizona declaratory judgment statutes to seek a declaration on his individual investigatory rights as an ACC commissioner; and (3) whether an individual commissioner has standing to investigate or raise for consideration the potential bias or disqualification of their fellow commissioners in an ACC adjudicatory proceeding is a matter of first impression. As explained below, they were not decided correctly by the Court of Appeals, leaving an opinion that provides erroneous guidance on critical commissioner authority issues.

A. The Court of Appeals’ Ruling Ignores the Plain Language of the Constitution at Article XV, § 4.

“When interpreting the scope and meaning of a constitutional provision, . . . “we first examine the plain language of the provision,” and, “[i]f the language is

clear and unambiguous, we generally must follow the text of the provision as written.” *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994). Here, the Court of Appeals’ interpretation that the Constitution allows the majority of commissioners to forbid an individual commissioner from using their express investigatory powers under Ariz.Const., art. XV, § 4 and A.R.S. § 40-241(A) violates this rule.

First, the language at Article XV, § 4 expresses no such veto rights. Rather, the framers commanded that “[t]he corporation commission, ***and the several members thereof***, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation . . . and of any public service corporation doing business within the state, and for the purpose of the commission, ***and of the several members thereof***, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment . . . [to] take testimony under commission or deposition . . .” (emphasis added). The plain language expresses that the investigatory powers are conferred separately and individually on each commissioner as “members” by dividing the phrase “and the several members thereof” with commas, and by using the adjective “several” before “members” to connote that the members referenced are “[s]eparate; individual; independent, [and] severable” and not “joint” with the “commission” as a whole. See Black’s Law Dictionary (5th Ed. 1979) (definition of “several”); *State v. Jernigan*, 221 Ariz. 17,

19 (App. 2009) (for reliance on legal dictionary definitions). And the plain language further mentions no right in the Commission as a whole to forbid or limit the individual investigation options.

B. The Court of Appeals Overlooked the Plain Language of Ariz.Const., art. XV, § 6, and Applied an Inapplicable ACC Rule.

The Court of Appeals' conclusion that Ariz.Const., art. XV, § 6 granted the ACC commissioners the right to adopt rules, and that by adopting A.A.C. § R14-3-109(O) the ACC had properly made all investigatory subpoenas subject to termination by the commission majority, is incorrect. First, Article XV, § 6 does not authorize anyone to create limits or veto powers on the investigatory powers conferred by Article XV, § 4. Instead, it references only enactments that “*enlarge the powers and extend the duties* of the corporation commission”. (emphasis added). As interpreted by the Court of Appeals, A.A.C. § R14-3-109(O) only allows a commission majority to “reduce the powers” or “limit the duties” to investigate expressed in Article XV, § 4. The rule would therefore violate the plain language on ACC rule-making imposed by Article XV, § 6 and be ineffective.

Moreover, statutes and agency rules cannot alter or limit constitutional delegations of government authority. *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 430-31 (1991). So, the ACC subpoena rule could not create limits on the plain language delegation at Article XV, § 4 authorizing independent commissioner investigations.

Furthermore, A.A.C. § R14-3-109(O) allows the Commission to resolve disputes over discovery subpoenas the ACC Executive Director agreed to issue at the written request of a *party*. In contrast, a commissioner subpoena under Article XV, § 4 and A.R.S. § 40-241(A) is issued by the commissioner directly and on their own volition. [Pet.APPV1-0003]. They are not the type of party subpoenas subject to the ACC rule.

Finally, even if the ACC subpoena rule applied and could legally limit an Article XV, § 4 subpoena, it could not have authorized the ACC majority's ruling that halted Burns' requests to compel attendance of witnesses at the fact-finding hearing and have them questioned. This was an exercise of the rights expressly granted to Burns by A.A.C. § R14-3-109 (G and P).

Because the Court of Appeals' ruling relies on a rule that would work an unconstitutional limit on a constitutional delegation of power, and that was inapplicable to both Burns' investigatory subpoenas and his independent requests to question witnesses at the hearing, the ruling is in error.

C. The Court of Appeals' Decision Undermines the Commissioners' Consumer Protection Duties and Encourages Corporate Regulatory Capture Efforts.

The constitution requires the commissioners to protect consumers against corporate overreaching. Ariz.Const., art. XV; *Woods*, 171 Ariz. at 298 (“The founders expected the ACC to provide ... *consumer protection against*

overreaching by those corporations . . .” (emphasis added). To help them achieve this, Article XV, § 4 vests commissioners with “broad powers to conduct public or private investigations” into matters they regulate “without undue interference or delay,” *Carrington v. Arizona Corp. Comm’n*, 199 Ariz. 303, 305 (App. 2000), and based on mere suspicions, *Polaris*, 133 Ariz. at 506.

The Arizona framers particularly feared undue corporate influence over election of the officials who would be regulating them. RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, at 731 (John S. Goff ed., 1991). So, they enacted Ariz.Const., art. XIV, § 18 to bar any corporate “contribution of money or anything of value for the purpose of influencing any election or official action.” And the framers’ debates prove they intended the broad investigatory powers under Article XV, § 4 would be used to uncover and sanction any such attempts. *See id.* (comments of Delegate Parsons).

The Court of Appeals’ decision undermines these objectives and gives the worst corporate offenders a clear playbook. They need only spend enough to capture the loyalty of a majority of the commissioners to receive favorable treatment, and to stop any commissioner dissenters from gathering facts and discussing matters that might hurt or expose them.

D. The Arizona UDJA Granted Burns Standing to Seek a Declaration Deciding the Investigatory Rights Issues.

The Court of Appeals ruled that Burns had no standing to seek relief, reasoning that A.R.S. § 40-254(A) only allowed “parties in interest or the attorney general” to challenge rulings by an ACC majority. But A.R.S. § 40-254(A) has no application where the person barred by the ACC ruling is a commissioner.

Moreover, the Court of Appeals improperly ignored the rights bestowed on any elected official to seek a declaration of their constitutional and statutory rights under the UDJA, A.R.S. § 12-1831, *et seq.*⁴ The UDJA provides broad avenues for government officials to obtain judicial resolution of disputes over their respective legal rights and duties. A.R.S. § 12-1832. The Arizona courts have affirmed the judiciary’s powers to resolve disputes over ACC commissioner investigatory rights and powers through a UDJA claim. *Polaris Int’l Metals Corp.*, 133 Ariz. at 507-08. The Court of Appeals committed legal error when it ignored the fact that Burns’ case rested on UDJA claims and did not acknowledge his rights as an elected official to pursue such declaratory resolution of his rights.

⁴ The Court of Appeals only discussed the UDJA in connection with Burns’ entitlement to declaratory relief on important sub-issues of his legal rights. *Burns*, 2021 Ariz.App.LEXIS 33 *16-18, 483 P.3d at 229 ¶¶’s 31-34.

E. The Court of Appeals Erred in Finding Burns Had No Standing to Investigate or Raise Bias and Disqualification Issues.

The Court of Appeals concluded that *only a party* to a quasi-adjudicatory ACC proceeding could raise questions about a commissioner's bias or disqualification. *Burns*, 2021 Ariz.App.LEXIS 33 *14-16, 483 P.3d at 229 ¶¶'s 27-30. This means a commissioner could witness all four of their fellow commissioners accept a large bribe from a regulated person right before they sit to adjudicate that person's hearing, but the bribed commissioners could forbid the innocent commissioner from investigating the bribery or raising the bribery in the hearing. This is illogical, contradicts Arizona and federal due process law, and conflicts with the broad investigatory powers conferred through Ariz.Const., art. XV, § 4.

The APS Rate Case evidentiary hearing was a quasi-judicial proceeding to which due process requirements apply and in which only sufficiently impartial adjudicators who do not present an unconstitutional risk of bias may constitutionally participate. *Western Gillette v. Ariz. Corp. Comm'n*, 121 Ariz. 541, 542 (App. 1979); *Horne v. Polk*, 394 P.3d 651, 656 ¶ 17, 659 ¶ 28 (2017).

The facts here gave Burns ample reason to be concerned that some commissioners might be biased after benefitting from APS-funded campaign spending. The test for mandatory disqualification was only whether the circumstances pose "an unreasonable *risk* of bias", considering "'a realistic appraisal of psychological tendencies and human weakness'", *Rogers v. Tex. Optometry Bd.*,

609 S.W.2d 248, 250 (Tex. Civ. App. 1980), and “whether ‘a reasonable person would have factual grounds to doubt [the commissioner’s] impartiality.’” *Fitzgerald v. Md. Heights*, 796 S.W.2d 52, 59-60 (Mo. App. 1990) (quoting *In re Marriage of Burroughs*, 691 S.W.2d 470, 474 (Mo. App. 1985)). The U.S. Supreme Court had held that the probability of actual bias created by campaign financial support provided to an adjudicator near the time their case is heard is too high to be “constitutionally tolerable” and requires adjudicator recusal. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 883-85 (2009).

The only issue, then, is whether the powers conferred on Burns gave him authority to investigate or raise the obvious potential bias and disqualification issues for discussion. The Court of Appeals did not cite any authority that says a commissioner has no such authority, and misconstrued Burns’ claim as a challenge that a ruling of the Commission was tainted by undue risk of bias. Instead, he was just requesting a declaration that he has constitutional authority, and even a duty, to investigate and discuss potential bias issues among his co-adjudicators. That duty and desire to have the potential bias issues fully investigated so that he did not enable a constitutionally improper process was no different than the well-accepted duty of a judge to fully investigate the potential risk of bias among jurors the judge is about to share decision-making responsibilities with. *See State v. Woods*, 237 Ariz. 214, 221 (App. 2015). The Court should accept review and reverse this dangerous

precedent.

F. Attorneys' Fees and Costs.

Upon review and reversal of the Court of Appeals' opinion, the Court should award Petitioner Burns his reasonable attorneys' fees and costs to the extent allowed by law, including pursuant to A.R.S. § 12-1840, the Rules of this Court and all applicable statutes and rules.

RESPECTFULLY SUBMITTED this 14th day of May, 2021.

RICHARDS & MOSKOWITZ PLC

/s/ William A. Richards
William A. Richards
Richards & Moskowitz PLC
1850 N. Central Avenue, Suite 2010
Phoenix, Arizona 85004