

ARIZONA SUPREME COURT

PLANNED PARENTHOOD)	No. CV-23-0005-PR
ARIZONA, INC., et al.,)	
Plaintiffs/Appellants,)	Court of Appeals Division Two
)	No. 2CA-CV-2022-0116
v.)	
)	Pima County Superior Court
KRISTIN K. MAYES, Attorney)	No. C127867
General of the State of Arizona, et al.,)	
Defendants/Appellees,)	
and)	
)	
ERIC HAZELRIGG, M.D., as)	
guardian ad litem of all Arizona)	
unborn infants, DENNIS McGRANE,)	
Yavapai County Attorney,)	
Intervenors/Appellees.)	

MOTION FOR RECUSAL

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Under Rule 6(a)(1), Ariz. R. Civ. App. P., and Rules 2.11(A)(1) and 1.2, Ariz. Co. Jud. Cond., Plaintiff-Appellant Planned Parenthood Arizona, Inc. (“PPAZ”) moves that Justice William Montgomery recuse from this matter. As detailed below, Justice Montgomery should recuse based on (1) his public proclamation in 2017 that PPAZ is “responsible for the greatest generational genocide known to man,” and (2) his 2015 participation in a protest outside PPAZ’s headquarters during which he publicly accused PPAZ of engaging in “profit-driven atrocities.”

Rule 2.11(A)(1), Ariz. Co. Jud. Cond., provides that:

A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Several important principles factor into this rule’s application:

- A judge is presumptively impartial, and “the party seeking recusal must prove bias or prejudice by a preponderance of the evidence.”

In re Aubuchon, 233 Ariz. 62, 66 ¶ 14 (2013) (cleaned up);

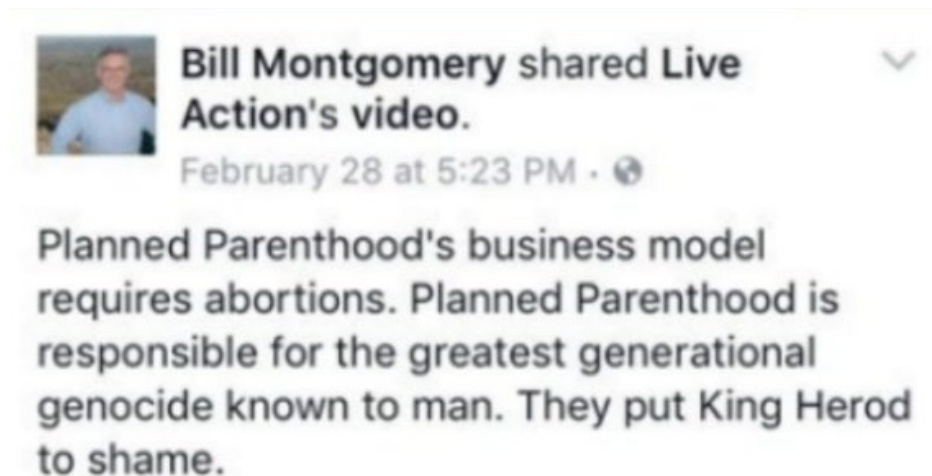
- “Bias and prejudice are evidenced by a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the litigants.” *Id.* (cleaned up);
- “[T]he bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source.” *Smith v. Smith*, 115 Ariz. 299, 303 (App. 1977); and
- “The fact that a judge may have an opinion as to the merits of the cause . . . does not make the judge biased or prejudiced.” *In re Guardianship of Styer*, 24 Ariz. App. 148, 151 (1975).

Rule 1.2, Ariz. Co. Jud. Cond., is also relevant here. That rule requires a judge to avoid even “the appearance of impropriety.” Comment 5 provides the test for whether specific conduct creates an appearance of impropriety under the rule:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party.

Together, these rules recognize that due process requires “a fair trial in a fair tribunal,” *United States v. Superior Ct.*, 144 Ariz. 265, 280 (1985) (cleaned up), and that “[t]he right to a neutral adjudicator has long been recognized as a component of a fair process.” *Horne v. Polk*, 242 Ariz. 226, 231 ¶ 17 (2017). And their application here requires Justice Montgomery’s recusal.

First, a recent news article highlighted prior reporting of this since-deleted 2017 Facebook post by Justice Montgomery (then the Maricopa County Attorney):



See, e.g., Howard Fischer, *Arizona Justice: ‘Genocide’ Comment Irrelevant to Hearing Abortion Case*, ARIZONA DAILY STAR (Oct. 23, 2023), https://tucson.com/news/local/subscriber/arizona-justice-genocide-comment-irrelevant-to-hearing-abortion-case/article_e2a566f6-71e5-

[11ee-90d1-17d038780fb3.html#tracking-source=home-top-story](https://www.phoenixnewtimes.com/news/supreme-court-justice-montgomery-planned-parenthood-abortion-arizona-11360365) (recent news story); Meg O'Connor, *Bill Montgomery in '17: Planned Parenthood Caused 'Genocide,'* PHOENIX NEW TIMES (Sep. 19, 2019), <https://www.phoenixnewtimes.com/news/supreme-court-justice-montgomery-planned-parenthood-abortion-arizona-11360365> (providing screenshot of the post). This statement alone demonstrates sufficient prejudice or bias against PPAZ to compel recusal under Rule 2.11(A)(1), Ariz. Co. Jud. Cond. It also creates an appearance of impropriety under Rule 1.2, Ariz. Co. Jud. Cond. Indeed, there can be no question that “reasonable minds” would perceive Justice Montgomery’s public statement accusing PPAZ of “genocide” as reflecting adversely on his impartiality in this case given that PPAZ is a party.

In addition, Justice Montgomery (then the Maricopa County Attorney) attended a protest held outside PPAZ’s headquarters in August 2015. Alex N. D’Angelo, *Supporters, Opponents Rally at Planned Parenthood Sites in Arizona, U.S.,* ARIZ. REPUBLIC (Aug. 22, 2015), <https://www.azcentral.com/story/news/local/phoenix/2015/08/22/supporters-opponents-rally-planned-parenthood-sites-arizona-us/32203591/>.

Speaking to reporters during that protest, Justice Montgomery said,

among other things, that PPAZ’s “profit-driven atrocities must end.” *Id.* This statement (particularly considering where it was given) is further evidence of bias or prejudice. And here again, there’s no question that “reasonable minds” would perceive Justice Montgomery’s public statement accusing PPAZ of “atrocities” while standing outside PPAZ’s headquarters amid an anti-PPAZ protest as reflecting adversely on his impartiality in a case where PPAZ is a party. This conduct thus also requires recusal under both rules.

To be clear, this Motion is in no way based on Justice Montgomery’s personal views about whether abortion is “good” or “bad” as a matter of policy. That, of course, is insufficient to warrant recusal. *See* Rule 1.2, Ariz. Co. Jud. Cond., Comment 5. Instead, this Motion rests exclusively on the prejudicial public statements identified above that Justice Montgomery made specifically about a party to this case. *See, e.g.*, 50 AM. JUR. PROOF OF FACTS 3d 449 § 13 (2023) (“[I]t is only a particular personal bias directed at a particular individual or party and not a general or judicial bias that requires disqualification”).

For all these reasons, PPAZ requests that Justice Montgomery recuse from any further involvement here.

RESPECTFULLY SUBMITTED this 26th day of October, 2023.

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By: /s/ D. Andrew Gaona
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