

Perkins Coie Lawyers Secure Supreme Court Writ of Certiorari for Pro Bono Client

PHOENIX and WASHINGTON, D.C. (October 10, 2023)—Perkins Coie is pleased to announce that a pro bono appellate team led by partner Hari Santhanam secured a writ of certiorari with the U.S. Supreme Court in the case of *Smith v. Arizona*. The case raises an important issue under the Confrontation Clause of the Sixth Amendment regarding a criminal defendant's right to cross-examine a non-testifying forensic analyst.

The case stems from the pro bono legal team's client, Jason Smith, being charged with drug-related offenses in Arizona state court. To prove its charges, the State had the alleged drug evidence tested by a crime lab analyst. However, by the time of trial, the analyst was no longer employed by the state-run crime lab—for reasons the State never explained. The State thus called a "substitute" expert, who reviewed only the absent analyst's report and notes but did not conduct or observe any of the tests at issue or perform any quality assurance of those tests. Although the State's expert indicated that it would have taken him less than three hours to retest the evidence, the State did not have him do so before trial.

Instead, over Smith's objections, the trial court permitted the State's expert to recount statements from the absent analyst's notes and report regarding the particular tests she performed on the evidence in Smith's case and the results she reached. The trial court entered a judgment of conviction, which the Arizona court of appeals affirmed. The court of appeals held that the substitute expert's testimony did not violate Smith's Sixth Amendment right to be confronted with the witnesses against him and further faulted Smith for not subpoenaing the absent analyst. The Arizona Supreme Court denied discretionary review.

A team of Perkins Coie attorneys then filed a petition for a writ of certiorari with the U.S. Supreme Court on behalf of Smith, challenging the Arizona court of appeals' decision. As detailed in the petition, courts across the country are divided over whether statements by an absent analyst that are admitted through a substitute expert are offered for their truth and thus implicate a criminal defendant's Sixth Amendment confrontation right, and whether a criminal defendant bears any burden to subpoena the prosecution's absent analyst. On September 29, the U.S. Supreme Court granted review to take up these issues. Merits briefing in the case is underway and the team anticipates that the case will be scheduled for argument at the beginning of next year.

The Perkins Coie pro bono legal team is led by Chicago-based partner [Hari Santhanam](#) and also includes Phoenix partner [Michael Huston](#), senior counsel [Diane Johnsen](#) and associate [Victoria Romine](#), and Washington, D.C. associate [Jonathan Tietz](#).

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Media Inquiries: Please email [Justin Cole](#), Head of Media Relations.

Contact



Hari Santhanam

Partner

HSanthanam@perkinscoie.com [312.324.8447](tel:312.324.8447)



Michael R. Huston

Partner

MHuston@perkinscoie.com [202.434.1630](tel:202.434.1630)



Diane Johnsen

Senior Counsel

DJohnsen@perkinscoie.com [602.351.8074](tel:602.351.8074)



Victoria Romine

Associate

VRomine@perkinscoie.com [602.351.8071](tel:602.351.8071)



Jonathan Tietz

Associate

JTietz@perkinscoie.com [202.942.8667](tel:202.942.8667)

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