

Arizona Supreme Court
Civil Petition for Review - Appeal

CV-23-0181-PR

AMY SILVERMAN, et al. v ADES

Appellate Case Information

Case Filed: 13-Jul-2023 Archive on: 19-Jun-2034 (planned)
Case Closed: 18-Jun-2024

Dept/Composition

En Banc

Hon. Ann A. Scott Timmer
Hon. Clint Bolick
Hon. John R Lopez
Hon. James P Beene
Hon. William G Montgomery
Hon. Kathryn H. King
Hon. John Pelander

Side 1. AMY SILVERMAN, et al., Plaintiff/Appellee

(Litigant Group) AMY SILVERMAN, et al.

- Amy Silverman
- TNI Partners

Attorneys for: Plaintiff/Appellee

Gregg Leslie, Esq. (AZ Bar No. 35040)
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Markus Jakob Auers, Esq. (AZ Bar No. markusjauers)
Samuel Marvin Lederman, Esq. (AZ Bar No. samuelmlederman)

Side 2. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, Defendant/Appellant

(Litigant Group) ARIZONA DEPARTMENT OF ECONOMIC SECURITY

- Arizona Department of Economic Security

Attorneys for: Defendant/Appellant

William A Richards, Esq. (AZ Bar No. 13381)
Karen J Moskowitz, Esq. (AZ Bar No. 14568)

Side 3. AMERICAN CIVIL LIBERTIES UNION OF ARIZONA, Amicus Curiae

(Litigant Group) AMERICAN CIVIL LIBERTIES UNION OF ARIZONA

- American Civil Liberties Union Foundation of Arizona

Attorneys for: Amicus Curiae

Jared G Keenan, Esq. (AZ Bar No. 27068)
Lauren Beall, Esq. (AZ Bar No. 35147)
Rachel Carroll, Esq. (AZ Bar No. rachelcarroll)

Side 4. GOLDWATER INSTITUTE, Amicus Curiae

(Litigant Group) GOLDWATER INSTITUTE

- Goldwater Institute

Attorneys for: Amicus Curiae

Timothy Sandefur, Esq. (AZ Bar No. 33670)
Parker Dee Jackson, Esq. (AZ Bar No. 37844)

CASE STATUS

Jun 18, 2024....Case Closed

Jun 3, 2024.....Decision Rendered

Feb 6, 2024.....Oral Argument Granted

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-CV 22-0209					
➡ MAR	LC2021-000182-001	Complaint for Statutory Special Action		Sally Schneider Duncan, Authoring Judge of Order Comments: (none)		

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CASE DECISION

03-Jun-2024 OPINION

* For the foregoing reasons, we vacate the court of appeals' opinion. We affirm the superior court's judgment insofar as it denied ADES's motion to dismiss. But we reverse the superior court's judgment for Silverman and remand for further proceedings. AD

Ann Timmer.....Author
Clint Bolick.....Concur
John Lopez.....Concur
James Beene.....Concur
William Montgomery.....Concur
Kathryn King.....Concur
John Pelander.....Concur

Filed: **03-Jun-2024**

Mandate: **19-Jun-2024**

Decision Disposition

Affirmed in Part
Reversed in Part
Remanded
Vacated

32 PROCEEDING ENTRIES

1. 13-Jul-2023 FILED: Appellant Arizona Department of Economic Security's Petition for Review; Certificate of Service; Certificate of Compliance (Appellant ADES)
2. 13-Jul-2023 FILED: Appendix Volume 1; Certificate of Service; Appendix Volume 2 (Appellant ADES)
3. 13-Jul-2023 FILED: Opinion (Appellant ADES)
4. 17-Jul-2023 FILED: Record From CofA: Electronic Record
5. 28-Jul-2023 FILED: Plaintiffs'/Appellees' Cross-Petition for Review; Certificate of Service; Certificate of Compliance; Appendix (Appellees Silverman, et al.)
6. 4-Aug-2023 FILED: Joint Motion for Procedural Order to Extend the Deadline for Responses to Petition and Cross-Petition for Review; Certificate of Service (Appellees Silverman, et al./ Appellant ADES)
7. 7-Aug-2023 A "Joint Motion for Procedural Order to Extend the Deadline for Responses to Petition and Cross-Petition for Review" (Appellees Silverman, et al./ Appellant ADES) having been filed on August 4, 2023,

IT IS ORDERED granting an extension of time to file the responses to petition and cross-petition for review on or before September 27, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
8. 8-Aug-2023 RECEIPT No.: 2023-00591 ; \$280.00, Authorization: 8385747250369182, Applied to: AMY SILVERMAN, et al. - Class A Filing Fee (\$280.00) Paid for: AMY SILVERMAN, et al. - By nCourt LLC
9. 27-Sep-2023 FILED: Appellant Arizona Department of Economic Security's Response to Appellees' Cross-Petition for Review; Certificate of Service; Certificate of Compliance (Appellant ADES)
10. 27-Sep-2023 FILED: Plaintiffs'/Appellees' Response to Petition for Review; Certificate of Service; Certificate of Compliance (Appellees Silverman, et al.)

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11. 6-Feb-2024 ORDERED: Appellant Arizona Department of Economic Security's Petition for Review = GRANTED as to these rephrased issues:
- "1. Did the court of appeals err in deciding what qualifies as "bona fide research" under A.R.S. § 46-460(D)(8), which authorizes DES to disclose confidential records about vulnerable adults to a researcher "engaged in bona fide research," if no personally identifying information is made available?
2. Are there any relevant state or federal constitutional considerations in determining whether journalists are included within the "bona fide research" exception under A.R.S. § 46-460(D)(8)?"
- FURTHER ORDERED: Plaintiffs'/Appellees' Cross-Petition for Review = GRANTED as to this rephrased issue:
- "Is the record on appeal sufficient to determine whether the request for records from DES meets the "bona fide research" exception under A.R.S. § 46-460(D)(8)?"
- FURTHER ORDERED: The case shall be set for oral argument.
- FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than February 26, 2024. Any amicus briefs are due on or before March 11, 2024 and any responses to amicus briefs are due on or before April 1, 2024. Any amicus briefs or responses may not exceed 20 pages in length.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellant ADES) = CONTINUED.
- Chief Justice Brutinel did not participate in the determination of this matter.
12. 8-Feb-2024 NOTICE OF ORAL ARGUMENT: Set for Tuesday, April 9, 2024 at 10:15 A.M. [twenty (20) minutes per side]
13. 12-Feb-2024 FILED: Notice of Acknowledgment of Oral Argument (William A. Richards will argue) (Appellant ADES)
14. 12-Feb-2024 FILED: Notice of Acknowledgment of Oral Argument (Markus Auers will argue) (Appellees Silverman, et al.)
15. 12-Feb-2024 FILED: Notice of Acknowledgment of Oral Argument (Samuel Lederman will argue) (Appellees Silverman, et al.)
16. 23-Feb-2024 FILED: Appellant's Supplemental Brief Regarding Petition for Review; Certificate of Service; Certificate of Compliance (Appellant ADES)
17. 26-Feb-2024 FILED: Plaintiffs'/Appellees' Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellees Silverman, et al.)
18. 6-Mar-2024 Chief Justice Brutinel is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution, IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court is designated to sit on the case until it is finally determined. (Hon. Ann A. Scott Timmer)
19. 6-Mar-2024 FILED: Record From CofA: Electronic Record
20. 11-Mar-2024 FILED: Amicus Brief for the American Civil Liberties Union of Arizona; Certificate of Service; Certificate of Compliance (Amicus ACLU)
21. 11-Mar-2024 FILED: Motion for Leave to File Amicus Curiae Brief; Certificate of Service (Amicus ACLU)
22. 11-Mar-2024 FILED: Brief Amicus Curiae of Goldwater Institute in Support of Plaintiffs Appellees; Certificate of Service; Certificate of Compliance (Amicus Goldwater)
23. 11-Mar-2024 FILED: Motion for Leave to File Brief Amicus Curiae of Goldwater Institute (Amicus Goldwater)
24. 14-Mar-2024 A "Motion for Leave to File Amicus Curiae Brief" (Amicus ACLU) and the brief of amicus curiae were filed on March 11, 2024. After consideration,
- IT IS ORDERED the "Motion for Leave to File Amicus Curiae Brief" is granted. The brief shall be filed as of March 11, 2024. (Hon. Ann A. Scott Timmer)
25. 14-Mar-2024 A "Motion for Leave to File Brief Amicus Curiae of Goldwater Institute" (Amicus Goldwater Institute) and the brief of amicus curiae were filed on March 11, 2024. After consideration,
- IT IS ORDERED the "Motion for Leave to File Brief Amicus Curiae of Goldwater Institute" is granted. The brief shall be filed as of March 11, 2024. (Hon. Ann A. Scott Timmer)

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32 PROCEEDING ENTRIES

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| 26. | 1-Apr-2024 | FILED: Appellant's Response to Amicus Curiae Briefs of the American Civil Liberties Union of Arizona and the Goldwater Institute; Certificate of Service; Certificate of Compliance (Appellant ADES) |
| 27. | 3-Apr-2024 | FILED: Motion for Procedural Order Allowing Appearance of Certified Limited Practice Students for Oral Argument; Certificate of Service; Exhibits (Appellees Silverman, et al.) |
| 28. | 8-Apr-2024 | On April 3, 2024, Appellees Silverman, et al., filed "Motion for Procedural Order Allowing Appearance of Certified Limited Practice Students for Oral Argument." Pursuant to Supreme Court Rule 39(c)(4)(C)(i),

IT IS ORDERED granting the motion. (Hon. Ann A. Scott Timmer) |
| 29. | 9-Apr-2024 | ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: William A. Richards, Markus Jakob Auers, Samuel Marvin Lederman) |
| 30. | 3-Jun-2024 | For the foregoing reasons, we vacate the court of appeals' opinion. We affirm the superior court's judgment insofar as it denied ADES's motion to dismiss. But we reverse the superior court's judgment for Silverman and remand for further proceedings. ADES requests an award of attorney fees under A.R.S. § 12-1840. Because no party has yet prevailed in this case, we deny ADES's request. (Hon. Ann A. Scott Timmer - Author; Hon. Clint Bolick - Concur; Hon. John R. Lopez IV - Concur; Hon. James P Beene - Concur; Hon. William G. Montgomery - Concur; Hon. Kathryn H. King - Concur; Hon. John Pelander - Concur) |
| 31. | 18-Jun-2024 | ----CASE STATISTICALLY TERMINATED---- |
| 32. | 19-Jun-2024 | MANDATE REMANDING TO SUPERIOR COURT

Issued Mandate and Copy of Opinion to Trial Court |
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