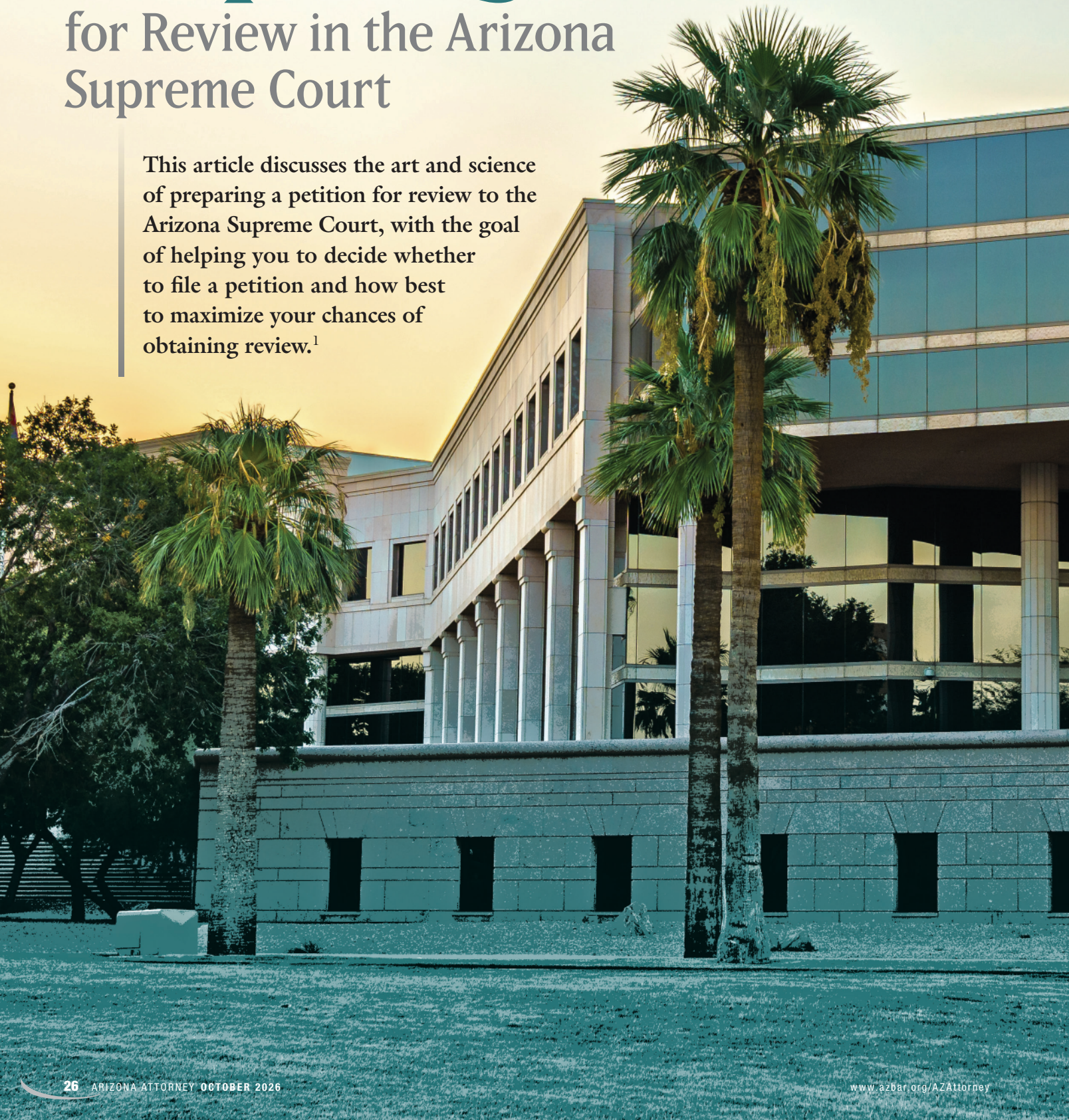
The Art and Science of Preparing a Petition for Review in the Arizona Supreme Court

BY ERIC M. FRASER & THOMAS L. HUDSON

This article discusses the art and science of preparing a petition for review to the Arizona Supreme Court, with the goal of helping you to decide whether to file a petition and how best to maximize your chances of obtaining review.[1]



Deciding Whether to File a Petition: Most Cases Do Not Make the Cut

A petition should be filed only after carefully considering the likelihood of its success. During the past five years, the Supreme Court has considered, on average, 694 petitions per year. It has, on average, granted review in 28 cases per year that resulted in an opinion. That means the Court grants review in only approximately four percent of cases.

Other things being equal, you have a 1 in 25 chance. In civil cases, the Court grants review about 6.3 percent of the time (a 1 in 15 chance). In criminal cases, the Court grants review about 2.6 percent of the time (a 1 in 38 chance), but that number includes the large number of criminal petitions for review that raise successive and precluded arguments.[2]

Evaluating whether your case is a good candidate for the Supreme Court requires considering why the Supreme Court *should* grant review. The governing rule lists four broad factors: "[1] no Arizona decision controls the point of law in question, [2] a decision of the Supreme Court should be overruled or qualified, [3] that conflicting decisions have been rendered by the Court of Appeals, or [4] that important issues of law have been incorrectly decided."[3] These four factors flesh out the concept of "statewide importance," the touchstone that generally drives the Supreme Court's review decisions.

The first listed factor—that "no Arizona decision controls the point of law in question"—applies if neither an Arizona Court of Appeals nor Supreme Court decision controls the point of law. For many years, the Supreme Court typically did not grant review when a legal rule had been settled by several consistent decisions from the Court of Appeals. More recently, the Supreme Court has more often taken review where there is no Supreme Court authority on point, and it believes there should be, even if the issue appears settled in the Court of Appeals.

If your case includes a concurrence or dissent, that may also be a good indication that no Arizona decision controls the relevant point of law (or at least there is disagreement on that point). In most cases, such a dissent provides a great hook to get the Court's attention; cases that include a dissent are much more likely to have review granted.[4]

The second listed factor—"a decision of the Supreme Court should be overruled or qualified"—does not extend to every case in which you or your client may disagree with the current state of the law. Instead, whether the Court will consider overruling or qualifying a prior decision depends on the current Justices' attitude towards precedent, and whether there has been a shift in legal doctrine generally that might interest the Justices.

It also arises when Arizona has historically followed some other body of law (e.g., federal law or the Restatement), that body of law has changed, and there are good reasons for Arizona to again follow that other body of law, even if it means overruling a prior decision.[5] Moreover, if other jurisdictions have revised their precedent for some reason on some issue on which they were historically aligned with Arizona, it may be worth considering whether the Arizona Supreme Court will do the same.

The third listed factor—"that conflicting decisions have been rendered by the Court of Appeals"—covers explicit and implicit conflicts. The clearest conflicts arise when one opinion expressly disagrees with the holding in another case and explains that it will reach a different outcome in the present case by following a different legal rule.[6] But sometimes the Court of Appeals creates conflicts without acknowledging that it is doing so. For example, the Court of Appeals may have been unaware of a prior case, but there is no question that the two conflict. In other cases, the rationale in one case may conflict with the rationale in a prior case. Although a weaker conflict, this may still get the Supreme Court's attention if you can show that these differing rationales will likely create confusion or mischief in other cases. But do not overplay the conflict card. Lawyers sometimes claim the Court of Appeals has issued conflicting decisions, when in fact the cases merely involve applying the same settled legal rule to different facts to get different outcomes. Claiming a conflict exists in those cases will fool no one.

The fourth listed factor—"that important issues of law have been incorrectly decided"—encompasses incorrectly decided opinions from the Court of Appeals. The rule is framed to focus on significant pure legal issues.[7] Although almost everyone tempted to file a petition for review will believe the Court of Appeals erred, as with the other factors, it matters whether the error is purely legal, likely to recur or otherwise an issue of statewide importance.

Big picture, as these factors reflect, the Court generally views its business as "lawmaking" rather than "error correcting." In other words, there is something important about the case that goes beyond the particular dispute between the parties and that warrants the Supreme Court's attention because it is one of statewide importance.

As the rules further state, these listed factors are "among" those that count. The list is not exhaustive, and the Supreme Court's opinions and practices teach valuable lessons about these other factors too. For example, although the third listed factor is expressly limited to conflicting decisions from the Court of Appeals, in practice the Supreme Court may also care about other types of conflicts. If the Court of Appeals creates a conflict with federal law on an important issue where synchronizing the two bodies of law matters, that may get the Supreme Court's attention. Or if Arizona has become an outlier compared to other states on a particular legal issue, that may get the Supreme Court's attention.[8] So consider conflicts more broadly than just those within the Arizona Court of Appeals.[9]



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Other unlisted factors (or patterns) include Court of Appeals decisions with concurring opinions that flag some underlying tension in how courts should apply the law, important procedural or evidentiary rule questions,[10] cases turning on statutory or constitutional interpretation,[11] issues with broad public concern such as health and safety or government operations,[12] and cases with a significant impact on major industries.[13] There are also some issues that at any given time may pique some Justices' interest.

For example, over several years the Supreme Court granted review in several cases concerning the existence and scope of tort duty.[14] These zeitgeist issues may provide good hooks. On rare occasions the Court will take review to correct a substantial miscarriage of justice. But if that is your only hook, it better be a truly extraordinary case unlike the hundreds of others involving alleged injustices the Court rejects each year.

Ultimately, studying recent Supreme Court opinions will provide insight into the Supreme Court's current practices, how it views these factors, and which ones are most likely to get the Court's attention in your case. The Court's minutes can also help reveal issues that interest the Justices because the minutes indicate when one or two Justices voted to grant review.[15]

How strictly or narrowly the Court views these factors and how easy (or difficult) it is to predict in advance which cases they will take has varied over time depending on the particular "culture" of the Court as Justices come and go. By custom (but not codified in any rule or order), it takes only three of the seven Justices to vote to grant a petition for review.

With that, here is a checklist you can use to help think about the petition hooks you might develop for your case (or whether instead to forgo a petition for review):

Factors that may make for a good petition

- **Statewide importance.** The legal issue in the case affects not just the parties to the case, but also many other similarly situated people in the state. This includes major policy questions and significant matters of public concern.
- **Conflict within Arizona.** Decisions in the Court of Appeals conflict, and the Supreme Court needs to resolve the conflict.
- **Conflict with other jurisdictions.** Although Arizona is not afraid to be an outlier, the Arizona Supreme Court may want to be the one to say so.
- **Major policy questions.** Issues that involve significant matters of public concern.
- **Constitutional or statutory interpretation.** A substantial portion of the Supreme Court's docket involves constitutional issues or interpretations of major statutes.
- **Pure legal questions.** The Supreme Court is more likely to grant review of a cleanly presented legal question.
- **Issues of first impression.** The first case to present an important legal question has a leg up.
- **Challenge to Supreme Court precedent.** The Supreme Court is the only court that can overrule a Supreme Court opinion on a question of state law. Serious questions about a prior Supreme Court decision can make for a compelling petition.
- **Separate opinions.** Cases with a powerful dissent or concurring opinion in the Court of Appeals make excellent candidates for a petition.
- **Issues in the zeitgeist.** Cases that involve "trendy" issues in which the justices currently seem particularly interested.

On the other side of the coin, there are cases that involve factors that make them a poor candidate. Honestly assess your case with these factors too:

Factors that generally make for a poor petition

- **Pure error correction.** A Court of Appeals decision that is merely wrong typically is not enough to get review granted, particularly if it will only affect the parties to your particular case.
- **Fact disputes.** The Supreme Court typically does not review factual questions.
- **Narrow impact.** If the outcome affects only the parties to the case, without broader impact to other parties, the Supreme Court is unlikely to grant review.
- **Vehicle problems.** Even if the case presents an interesting and important legal issue, the Supreme Court is less likely to grant review if the Court would have to resolve messy or complicated factual, procedural, or jurisdictional issues before resolving the main legal question.
- **Unpublished decision.** Because unpublished decisions are not binding, the Supreme Court tends to grant review more sparingly with unpublished decisions than with published opinions.
- **Waived issue.** High courts say they are courts of review, not of first view. The Supreme Court generally should not be the first time an issue appears in the case.

In sum, take a good hard look at whether there is something in your case that really warrants Supreme Court review.

That is not to say that the Court is never interested in cases involving an egregious legal error that results in an injustice, but focusing on case-specific error that affects only your client will rarely pique the Court's interest.



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A Little Help from Your Friends

In addition to scrutinizing your case, consider early on whether your case may affect other groups or parties who might be interested in participating as amicus curiae during the petition stage. If the case truly presents an issue of statewide importance, others will likely want to see the Court take review.

Although an amicus brief that merely parrots the party's brief offers little value, the Court may find helpful an amicus brief that explains the decision's broader impact on an industry or group.

At the petition stage, an amicus brief must be filed 21 days after the petition.[17] It's wise to have amici lined up before you file so they have time to prepare a brief. Involving amici early can also help you refine the issue and develop an effective "pitch" for why the Court should grant review.

Drafting the Petition for Review: General Considerations

If you decide to file a petition, do not merely cut and paste the arguments made in your Court of Appeals briefs. Instead, focus on the factors you identified during your initial evaluation. Ultimately, the petition should be written in a manner that grabs the Court's attention and has the justices wanting to grant review. In pitching your case, however, stay true to the record. Resist the temptation to stretch your case to be more interesting than it really is. The fact is, your petition will be scrutinized by seven very smart justices and a group of very experienced and talented staff attorneys who have seen many, many petitions. You will not fool the Court into believing your case is something that it is not.

Also, resist the urge to simply criticize the Court of Appeals decision. Every party seeking Supreme Court review thinks the Court of Appeals decided the case incorrectly, so that does not make your case stand out. Resist the temptation to characterize the Court of Appeals decision as an outrage or idiotic (even though your client may prefer that approach). Although including such hyperbole in an early draft may have a cathartic effect, ultimately treat the decision below as incorrectly deciding an interesting and important question.

With your focus honed, schedule ample time in the drafting process for editing and re-editing to make your petition as short and concise as possible. Toward that end, avoid unnecessary legal citations stating obvious propositions (e.g., the summary judgment

standard). Some of the best and most effective petitions are short. Reserve the more exhaustive discussion of the issues for the supplemental brief (if review is granted).

Ideally, share your draft with someone with fresh eyes who knows nothing about the case, but something about how the Arizona Supreme Court works. Lawyers almost always become convinced that their side of the case is right. As a consequence, those litigating the case often develop blind spots for certain issues that may stand out to someone unfamiliar with the case who reads only the Court of Appeals decision and your draft petition. Take advantage of that fresh perspective.

The Substantive Components

The governing rules specify the bare minimum for what the petition must contain.[18] But the best petitions go beyond the rules' minimum requirements.

Introduction

Although not required by rule, an introduction is an important part of many good petitions. The introduction should provide an overview of the case, including the nature of the dispute, the holding of the Court of Appeals, and your initial pitch for why the case warrants the Supreme Court's attention. The introduction should put the balance of the petition in context. A justice who reads only the introduction should want to grant review.

> If you decide to file a petition, do not merely cut and paste the arguments made in your Court of Appeals briefs.

To best serve its purposes, however, keep the introduction short (ideally one page). Although it is the first part of the petition, consider drafting or rewriting the introduction last, after you have written the rest of the petition. Doing so helps crystallize the introduction so that it includes only the most important points and themes with the best framing.

Issues Presented for Review—Finding the Right Hook

In many cases, the statement of issues can effectively determine whether the Court grants review. In fact, this is the only section of the petition that will be included, verbatim, in the memorandum prepared about your case by a staff attorney. Accordingly, think strategically about the issues and draft them carefully.

Keep the statement of issues concise, easy to understand, and interesting. Draft each issue in a manner that suggests it has



broad application and is important. Making an issue too fact-specific suggests it is unique and not likely to recur. An uninteresting statement of issues makes it easier to overlook compelling arguments made in the balance of the petition.

The preferred style for issue statements has changed over time. Make sure you understand the Court's current preferred method, and comport your issue statement to that style. In fact, in recent years, the Supreme Court has frequently rewritten issue statements when granting review if they do not comport with the Court's preferred style. In some cases, the Court has then unwittingly rephrased the issues in a way that harms the petitioner's position or forces the petitioner to defend a position that it would rather not defend. Following the Court's preferred method helps to minimize this risk.

Currently, this means using short, single-sentence issue statements, in contrast to the "deep issue" method promoted by Bryan Garner and many appellate lawyers and judges. In addition, the Court also currently favors relatively neutral issue statements that do not obviously favor one side, rather than "lopsided" or argumentative issue statements. The Court also currently prefers issue statements that avoid case-specific party names and case-specific facts. On the other hand, phrasing an issue statement as too abstract (e.g., "Was summary judgment appropriate") is bad, too, and the Court may be concerned that a vague issue will not capture the attention of potential interested amici. All of this makes drafting the issues a challenging exercise that requires a thoughtful approach.

In terms of the number of issues, keep it to the minimum (ideally one or two compelling issues). Although in exceptional cases you may need to raise several major issues, a petition with too many issues suggests that none is compelling.

In framing the issues, also think strategically about their scope and how that may impact the manner in which the case is decided. For example, a narrow issue may fit the ARCAP 23 criteria better, but may also require a remand even if the Court rules in your client's favor. In contrast, presenting multiple issues may allow the Court to resolve the case without further proceedings, but may also decrease the chances of the Court granting review.

> Some of the best and most effective petitions are short.

Finally, stick to issues actually decided by the Court of Appeals. Although you may be able to frame a great issue for review, it will not be very effective if the Court of Appeals did not actually resolve it.

Additional Issues Presented to but Not Decided by the Court of Appeals

An unusual quirk of Supreme Court practice is that "[t]he petition also must list, separately and without argument, any additional issues presented to, but not decided by, the Court of Appeals that the Supreme Court may need to decide if it grants review."[19]

For example, if your appeal presented arguments about statutory interpretation and unconstitutionality, but the Court of Appeals avoided the constitutional issue with its interpretation of the statute, your petition must list the constitutional issue, or it could be deemed abandoned. Although it may be tempting, resist presenting any argument on these issues; simply identify them.

Background

Include in a separate section the material facts and procedural background relevant to the petition. By the time a petition for review is filed, a case often has a long history, but most of it often no longer matters. Focus on the facts essential to putting the issues in context, and those necessary to help the Court understand the case's significance. Also include any important procedural history such as the lower court rulings concerning the issues presented for review.

While drafting the facts, also keep in mind the standard of review. For example, if the case arises from a jury verdict, the Court will view the facts in the light most favorable to upholding that verdict. If you cannot convince the Court to take the case without stating the facts in a manner contrary to the standard of review, reconsider whether to file a petition. If possible, cite the facts from the Court of Appeals decision, which can help confirm that your petition raises a question about the law, not the facts.

Reasons to Grant the Petition

Devote a separate section of your petition to the "Reasons to Grant Review." This section is the meat of the petition, and where you should make your case and advance your best arguments. This is typically the longest section, and should generally take up at least half of the overall substantive length of the petition.

This section takes the place of the "argument" section from lower-court briefs. Although stylistically similar to an argument section, the central focus is different. An argument section in a Court of Appeals brief focuses on trial court error (or the lack thereof). By contrast, the petition must convince the Supreme Court that the case presents important legal questions warranting "institutional" review (not merely that error occurred). This section should therefore focus on the factors that make your case a good petition.

You can use the above list to help frame this section, and in some cases develop subheadings that borrow from that list. For example, if there truly are conflicting lower court decisions, you could have a section in your "reasons to grant review" titled "The Opinion conflicts with prior Court of Appeals decisions." If the issue is arising with some frequency – or presents an issue in common with another pending petition – explain that. If there is a dissent, include a section that explains why the majority erred, and why having the Supreme Court resolve the issue is important. In other words, explain why the issue is one of statewide importance and affects other parties.

You should also demonstrate (expressly or implicitly) that the Court should decide the issue now (rather than allowing the issue to percolate further in the lower courts), and that your case presents a good "vehicle" for review (because of a well-developed factual record, etc.).



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Although your petition will likely convey that the Court of Appeals erred (on an issue of statewide importance), a petition focusing merely on appellate court error will at best secure depublication of a published opinion (although depublication may be an independent goal). Remember that if the Court grants review, it will almost always order supplemental briefing, so you will get an opportunity to focus on the merits.

Right now, your goal is to get the Court to grant review, so your petition should focus more on why the Court should take your case, and comparatively less on how it should rule on the merits (unless, of course, your pitch is that an important issue of law has been incorrectly decided).

Request for Attorneys' Fees and Costs

If your case is fee-eligible, your petition must include a separate request for fees, including the substantive basis for fees (e.g., a statute or contractual provision). *See* ARCAP 21. Skipping this will likely result in waiving your fee request. Your petition need not request taxable costs, but may do so.

Conclusion

Close with a short conclusion. "The Court should grant review" typically does the trick. Some cases require more (e.g., if you request depublication or a simple grant-vacate-remand order in light of new authority).

Additional Components of the Petition

In addition to the above substantive components, the petition should include several non-substantive components.

Caption

The petition must include a caption. The caption stays the same from the Court of Appeals to the Supreme Court. Unlike in the U.S. Supreme Court, the caption in the Arizona Supreme Court does not "flip" if the appellee seeks review. In addition, all parties listed in the Court of Appeals caption stay on the Arizona Supreme Court caption, even if not all parties are participating in the Supreme Court.

The caption should include a blank space for the Supreme Court case number (which the clerk will assign). It should also include the case numbers from the Court of Appeals and superior court. Like other appellate briefs, it should include the list of attorneys, with bar numbers and contact information.

Tables

Although the rules do not require any tables, the best practice is to include both a table of contents and a table of authorities. It makes the petition easier to use, and some law clerks, staff attorneys, and justices may read the table of contents first. Accordingly, part of the drafting process should include reviewing and editing the section headings so that the table of contents independently tells the story of your case in an outline format. Also consider how the table of contents will appear in the bookmarking section, and consider shortening those titles to make it easier for judges to read on smaller screens.

Signature Block

As with other court filings, include a signature block after the conclusion that includes the date, law firm, attorneys, and bar numbers.

Copy of Court of Appeals Decision

The petition must include a copy of the relevant Court of Appeals decision and any order on a motion for reconsideration to the petition.

Appendix

The petition must include an appendix containing only the "documents in the record on appeal that are necessary for determination of the issues raised by the petition."[20] Less is more. Do not include every document filed in the trial court or even in the Court of Appeals. Include only the documents that the Court will need to resolve the case. The appendix has specific requirements, so review ARCAP 13.1 or Ariz. R. Crim. P. 31.11 for details. Generally, you must include a table of contents, sequentially number the pages, and bookmark or hyperlink the appendix.

Your appendix generally can contain only items from the record (e.g., court filings, transcripts, exhibits). You cannot introduce new evidence at this stage. You can, however, include copies of *legal authorities*. If your case requires careful analysis of a complicated statute, include a copy of the statute in your appendix. If your petition relies on difficult-to-access sources (e.g., historical dictionaries), include those, too. You want the Court and its staff to have easy access to the materials you want them to review when considering your petition.

More Nuts and Bolts

Length

Petitions must not exceed 3,500 words.[21] Aim to stick within this limit. In all but the most exceptional and complicated cases, asking for more words often signals that the petition is fact-intensive, convoluted, or a poor vehicle for review. The goal of the petition is to get the Supreme Court to grant review. If the Court grants review, you will typically get a supplemental brief to cover the merits.

Certificates

As with other appellate briefs, you must file a certificate of service and a certificate of compliance as separate documents.

When to File

The petition is due 30 days after the appellate clerk files the decision (or 15 days after the court files an order resolving a motion for reconsideration).

Extensions

It is common for parties to request an extension to file the petition. You must file a motion requesting an extension with the Supreme Court (not the Court of Appeals). The Court typically grants an extension of up to 30 days, so the opposing party should not object to the extension when asked.

Conclusion

Most cases do not warrant the Supreme Court's attention. But if you believe your case does, take the time to develop your petition strategically to maximize your chances of review. The most important thing to remember is that the petition should focus on why the case is review-worthy, not why your client should win. AZ AT

endnotes

1. This article builds on themes discussed in Hudson's November 2012 *Arizona Attorney* article, "The Arizona Supreme Court Petition for Review: Art, Science and More." Check out the 2012 article at tinyurl.com/AZATpetition.
2. The Court also considers a large number of cases and motions that proceed other than through the petition-for-review process. This article does not address those procedures. For example, the Court accepts nearly all certified questions from federal courts.
3. ARCAP 23; Ariz. R. Crim. P. 31.21 (bracketed numbers added).
4. *See, e.g.*, *State v. Marner*, 261 Ariz. 275 (2026) (granting review from Court of Appeals opinion with concurrence and dissent).
5. *See*, *e.g.*, *Aroca v. Tang Inv. Co. LLC*, 259 Ariz. 302 (2025) (granting review to determine whether prior Arizona Supreme Court decision conflicted with "more recently enacted statutes").
6. *See, e.g.*, *Torres v. JAI Dining Services (Phoenix), Inc.*, 256 Ariz. 212, 215, ¶ 6 (2023) ("The court [of appeals] acknowledged that its holding conflicted with an earlier decision[.]").
7. *See, e.g.*, *Montenegro v. Fontes*, 576 P.3d 692 (Ariz. 2025) (legislative standing).
8. *See, e.g.*, *Roberts v. State*, 253 Ariz. 259 (2022) (addressing relationship between federal and state law as interpreted by federal and state courts).
9. *See, e.g.*, *State v. Jean*, 243 Ariz. 331 (2018) (granting review on whether warrantless GPS tracking constituted a search, when the issue had divided other courts).
10. *See, e.g.*, *Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84 (2019) (granting review on interpretation of procedural rule).
11. *See*, *e.g.*, *Garibay v. Johnson*, 259 Ariz. 248, ¶ 7 (2025) (granting review on "an issue of first impression, statewide importance, and likely to recur").
12. *See, e.g.*, *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396 (2020) (granting review on whether signatures for initiative petitions had to be gathered in person during Covid pandemic).
13. *See, e.g.*, *State Farm Auto. Ins. Co. v. Orlando*, 259 Ariz. 531 (2025) (interpreting term common in automobile insurance policies).
14. *See Gipson v. Kasey*, 214 Ariz. 141 (2007); *Quiroz v. ALCOA Inc.*, 243 Ariz. 560 (2018); *Dinsmoor v. City of Phoenix*, 251 Ariz. 370 (2021); *CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511 (2021).
15. ARCAP 23(j) ("An order of the Supreme Court denying review must specify those justices of the Supreme Court, if any, who voted to grant review.").
16. If you need to preserve an issue for review by the United States Supreme Court, such review (certiorari) lies only from "final judgments or decrees rendered by the highest court of a State." 28 U.S.C. § 1257(a). Therefore, if a party plans to seek review in the U.S. Supreme Court, a petition for Arizona Supreme Court review must be filed.
17. ARCAP 16(d)(1); Ariz. R. Crim. P. 31.15(d)(1)).
18. ARCAP 23 and Ariz. R. Crim. P. 31.21.
19. ARCAP 23(d)(1); Ariz. R. Crim. P. 31.21(d)(1)(A).
20. ARCAP 23(e); Ariz. R. Crim. P. 31.21(e).
21. ARCAP 23(g)(2); Ariz. R. Crim. P. 31.21(g)(2).