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**IN THE SUPREME COURT
STATE OF ARIZONA**

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

No. CR-13-0282-AP

Maricopa County Superior Court
No. CR2003-038541-001

**MOTION TO APPEAR AS
AMICUS CURIAE**

The Maricopa County Attorney's Office ("MCAO") asks this Court's permission to file an amicus brief on February 14, 2023, along with the simultaneous briefs. Ordinarily, MCAO may file an amicus brief without seeking permission of this Court. Ariz. R. Crim. P. 31.15(b)(1)(B). And the applicant must "lodge the brief with the motion" to file as amicus curiae. Ariz. R. Crim. P. 31.15(b)(2)(A). This case, however, is not a direct appeal or special action, and this Court's January 31, 2023, order did not specify whether it would accept amicus briefs. In fact, this Court

directed the parties to email their briefs to court staff with instructions to follow (in addition to filing with the clerk through AZTurboCourt). Given this unique situation, MCAO is filing this motion seeking this Court’s permission to appear as amicus curiae.

I. MCAO represents the State and has a strong interest in this case and the legal issue presented.

In its Order, this Court directed “Gunches, the State, and the Crime Victim” to file supplemental simultaneous briefs on February 14. Although the Attorney General’s Office is currently prosecuting Gunches’ postconviction claims, MCAO was the original prosecuting agency. MCAO is also the State. *See Crosby-Garbotz v. Fell in and for Cnty. Pima*, 246 Ariz. 54, 60, ¶ 24 (2019) (“That different legal offices handle different cases does not mean that the State is not a party in both actions.”).

Additionally, MCAO’s interest in this Court’s interpretation and application of A.R.S. § 13–759 extends beyond this Case. MCAO is the largest prosecuting agency in Arizona. It handles nearly all felony prosecutions in Maricopa County, currently prosecutes first degree murder charges where the State is seeking the death penalty, and prosecuted 14 other death row inmates who have exhausted their State and federal appeals.

Lastly, as the original agency that prosecuted Gunches and the 14 other defendants with final death penalty convictions, MCAO has a strong interest in

ensuring that victims have finality of convictions and sentences. The principle of finality “is essential to the operation of our criminal justice system.” *Teague v. Lane*, 489 U.S. 288, 309 (1989) (O’Connor, J., concurring). If there is no finality, “the prime goal of the judicial process will be proportionately defeated.” *State v. Waldrip*, 111 Ariz. 516, 518 (1975) (quoting *Tucson Gas & Electric Company v. Superior Court*, 9 Ariz. App. 210, 212-13 (1969)). Consistent with that premise, a victim of a crime has a right to a “speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const. art. II § 2.1(A)(10); *see also State v. Towery*, 64 P.3d 828, 833, ¶ 14, (Ariz. 2003) (“Arizona courts are especially concerned with the finality of criminal cases because the Arizona Constitution requires courts to protect the rights of victims of crime by ensuring a ‘prompt and final conclusion of the case after the conviction and sentence.’”) (quoting Ariz. Const. art. II, § 2.1(A)(10)).

This Court’s resolution of the question presented will affect not only MCAO’s ability to ensure finality in this Case, but also MCAO’s ability to ensure finality for the 14 other cases where the defendants have exhausted their appeals. MCAO is prepared to file its amicus brief on February 14, 2023. Accordingly, it requests that this Court grant leave for the MCAO to appear as amicus curiae and file its brief.

DATED this 7th day of February, 2023.

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By /s/ Nick Klingerman
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