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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-17-0028

**PETITION TO DELETE RULE 20,
TO ADD RULE 24.1 AND TO
RENUMBER RULES 24.1, 24.2,
24.3, AND 24.4, ARIZONA RULES
OF CRIMINAL PROCEDURE**

**COMMENT OF
THE ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL**

The Maricopa County Attorney has renewed a petition filed in 2016 (R-16-0031) to delete Rule 20, Arizona Rules of Criminal Procedure, move the post-verdict portions of Rule 20 to a new Rule 24.1, and renumber that existing rule's subsections. As stated last year, the effect of the petition would maintain a defendant's procedural right to have a judgment of acquittal entered, but would also allow appellate review of any judgment of acquittal, thereby assuring a victim's right to justice and due process along with the State's right to a jury trial. Despite the unusual posture of this petition, the Arizona Prosecuting Attorneys' Advisory Council ("APAAC") has again considered the proposed changes in the petition and

1 supports them.

2 **II. DISCUSSION/ANALYSIS**

3 While APAAC will not reiterate and repeat here its comment to R-16-0031, it
4 stands by the position urged in that comment and offers the following addition:
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6 Petitioner references yet another new example of how a judgment of acquittal
7 before verdict, once made, precludes appeal by the state, even when the trial court
8 acts to change the acquittal. In *State v. Ruiz*, 239 Ariz. 379, 372 P.3d 323 (App.
9 2016), the trial court initially granted the defendant's Rule 20 motion for judgment
10 of acquittal on two robbery counts. After hearing rebuttal argument from the state
11 and granting an amendment, the court then denied the Rule 20 motion. *Ruiz*, 239
12 Ariz. at 383, ¶ 14, 372 P.3d at 327. A jury convicted Ruiz on those robbery counts,
13 but Division Two held that double jeopardy barred the court from reversing its initial
14 decision and vacated Ruiz's convictions. *Id.*, ¶ 16, 372 P.3d at 328. The Court
15 acknowledged, however, that its double jeopardy decisions "are very strict." *Id.*, fn.
16 5.
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20 This is just another example of why a pre-verdict judgment of acquittal creates
21 an unjust result in many instances; the jury convicted Ruiz of the robbery counts
22 after the trial court changed its mind. That underscores supports the argument that
23 a pre-verdict judgment of acquittal creates an unfair windfall to defendants when
24 there is otherwise sufficient evidence to convict. Arizona could change this. As the
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1 United States Supreme Court stated in *Evans v. Michigan*, ___ U.S. ___, 133 S.Ct.
2 1069, 185 L.Ed.2d 124 (2013):

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4 But sovereigns are hardly powerless to prevent this sort of situation, as
5 we observed in *Smith*, 543 U.S., at 474, 125 S.Ct. 1129. Nothing
6 obligates a jurisdiction to afford its trial courts the power to grant a
7 midtrial acquittal, and at least two States disallow the practice.

8 *Evans v. Michigan*, 133 S.Ct. at 1081. Arizona could choose, as suggested by the
9 petitioner, to allow trial courts to defer ruling on a motion to acquit until after the
10 jury returns a verdict.

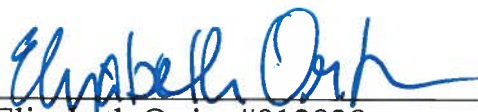
11 The right to a trial by jury in Arizona is “inviolable,” and in all criminal cases
12 the unanimous consent of jurors is necessary to render a verdict. Ariz. Const. art. 2,
13 § 23. That right extends to both the defendant and the state. In addition, crime
14 victims in Arizona have the right to “justice and due process.” Ariz. Const. art. 2, §
15 2.1. Under the proposed rule change offered by petitioner, trial judges who believe
16 evidence is insufficient would still be able to enter a judgment of acquittal post-
17 verdict. This would ensure that all parties, including the victim(s), receive a fair and
18 just trial and would protect a defendant’s procedural right to have a judgment of
19 acquittal entered.
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22 III. CONCLUSION

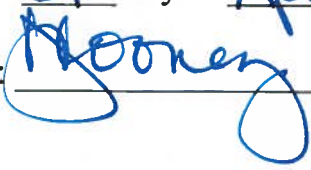
23 The Arizona Prosecuting Attorneys’ Advisory Council urges this Court to
24 again consider abolition of Rule 20, Arizona Rules of Criminal Procedure. Under
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1 the proposal in R-17-0028, a trial court would still be able to either grant, post-
2 verdict, a motion for acquittal or enter a judgment of acquittal *sua sponte*. In this
3 way, the rights of all parties would be protected and an unfair windfall would be
4 prevented.
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6 RESPECTFULLY SUBMITTED this 24th day of April, 2017.
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9 
10 Elizabeth Ortiz, #012838
11 Executive Director
12 Arizona Prosecuting Attorneys'
Advisory Council

13 Electronic copy filed with the
14 Clerk of the Arizona Supreme Court
15 this 24 day of April, 2017.

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