

NAME Members,

The Executive Committee wants the membership to be aware that on June 21, 2024, the United States Supreme Court issued its decision in *Smith v. Arizona*, Supreme Court Docket 22-899. This decision may have impacts for forensic pathologists testifying in criminal cases. The Supreme Court's decision disallows surrogate witness testimony that is based solely on another professional's "statements," (e.g., reports, notes, and testing documents) if those statements are deemed "testimonial". The term testimonial has never been specifically defined by the Supreme Court, but the *Smith* decision follows prior Supreme Court decisions that indicate the term "testimonial" means focused on, prepared for, or reasonably expected to relate to future court proceedings. The *Smith* decision implies that we cannot testify for our unavailable colleagues on their cases in circumstances where the autopsy report is deemed testimonial. We cannot forecast how this decision will impact the whole of our profession immediately as each jurisdiction will interpret *Smith* independently. We can, however, predict that courts and attorneys in your respective jurisdictions will be aided in the interpretation of *Smith v. Arizona* if you and all forensic pathologists in the NAME membership are able to articulate all of the reasons why forensic pathology, the autopsy, and all diagnostic measures taken in the autopsy are medical practice and procedures primarily focused on medical diagnosis.

The Supreme Court's decision in *Smith* instructs that each court should determine whether a statement is testimonial by looking at the "primary purpose" for which the statement was made. In light of the Court's decision, we strongly urge the membership to make sure that attorneys and courts understand that medicolegal autopsies are the practice of medicine, plain and simple. As forensic pathologists, we have many years of postgraduate training, akin in years to some of our Neurosurgeon colleagues. The autopsy report is a medical record that represents the forensic pathologist's medical charting and medical examination; it is a medical record like any other medical record. The autopsy report encompasses the doctor's notes and diagrams, their medical diagnoses, postmortem photography (images of the injuries), postmortem imaging, toxicological findings, and investigative reports within the case file to include circumstances of death. The autopsy report is generated in and for the normal course of our practice of medicine, and NOT for the purpose of being used in court. We, as medical doctors who would provide surrogate testimony on behalf of our colleagues, would act no differently than any other medical expert reviewing a medicolegal case and being asked to testify. Instead of us commenting on whether medical care was appropriate based on our training and experience, or whether the correct surgical procedure was performed, we as forensic pathologists would look at all the autopsy evidence—the autopsy report being just one component among others—and formulate an independent medical diagnosis which informs cause and manner of death. The primary purpose for every diagnostic step in the autopsy process is demonstrably tied to the medical practice as applied in the autopsy.

For a more in-depth of analysis of the Court's decision, we urge you to read and refer to the attached Executive Summary – *Smith v. Arizona*, June 21, 2024, published by the NAME Executive Committee and authored by M.J. Menendez, J.D.