

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1418

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 12-751, Arizona Revised Statutes, is amended to
3 read:

4 12-751. Strategic actions against public participation; motion
5 to dismiss or quash or for summary judgment;
6 definitions

7 A. In any legal action that involves a person's lawful exercise of
8 the right of petition, the right of speech, the freedom of the press, the
9 right to freely associate, **THE RIGHT TO RELIGIOUS LIBERTY** or the right to
10 peaceably assemble pursuant to the United States Constitution or Arizona
11 Constitution, **OR WHICH OTHERWISE IMPLICATES A PERSON'S FREEDOM TO HOLD OR**
12 **EXPRESS POLITICAL OR RELIGIOUS VIEWS OR ENGAGE IN POLITICALLY RELATED**
13 **ADVOCACY WITHOUT FEAR OF RETALIATION**, the person other than a state actor
14 or an intervenor may file a motion to dismiss, ~~or~~ quash **OR OBTAIN SUMMARY**
15 **JUDGMENT IN** the action under this section.

16 B. A person who files a motion pursuant to subsection A of this
17 section has the burden of establishing prima facie proof that **A SUBSTANTIAL**
18 **MOTIVATION FOR** the legal action was ~~substantially motivated by~~ a desire to
19 deter, retaliate against or prevent ~~the lawful exercise of a constitutional~~
20 ~~right~~ **ANY PERSON FROM HOLDING OR EXPRESSING POLITICAL OR RELIGIOUS VIEWS,**
21 **FROM FREE POLITICAL ASSOCIATION OR FROM ENGAGING IN POLITICALLY RELATED**
22 **ADVOCACY WITHOUT FEAR OF RETALIATION.** The moving person may submit
23 evidence based on the record, a sworn affidavit or other evidence that is
24 submitted with the motion ~~to dismiss or quash~~. A party is not required to

1 file a response to a motion filed pursuant to subsection A of this section
2 unless and until the court finds that the moving party has established the
3 prima facie proof and orders the party to file a response. The court shall
4 grant the motion unless one of the following applies:

5 1. If the responding party is a state actor, the responding party
6 shows that the legal action on which the motion is based is justified by
7 clearly established law and that the responding party did not act ~~in order~~
8 ~~WITH A SUBSTANTIAL MOTIVE~~ to deter, ~~RETALIATE AGAINST OR~~ prevent ~~or~~
9 ~~retaliate against the moving party's exercise of constitutional rights~~ ANY
10 PERSON FROM HOLDING OR EXPRESSING POLITICAL OR RELIGIOUS VIEWS, FROM FREE
11 POLITICAL ASSOCIATION OR FROM ENGAGING IN POLITICALLY RELATED ADVOCACY
12 WITHOUT FEAR OF RETALIATION. A state actor may satisfy the requirements of
13 this paragraph by doing any of the following:

14 (a) Establishing that the person who initiated and conducted an
15 investigation that resulted in the legal action and ~~that~~ WHO made the
16 decision to pursue the legal action was unaware of the movant's lawful
17 exercise of the constitutional right OR POLITICAL BELIEFS OR ADVOCACY.

18 ~~(b) Establishing that the state actor has a consistent practice of~~
19 ~~pursuing similar legal actions against similarly situated persons who did~~
20 ~~not lawfully exercise constitutional rights.~~

21 ~~(c)~~ (b) Producing any other evidence that the court finds
22 sufficient TO ESTABLISH THAT THE STATE ACTOR DID NOT ACT WITH A SUBSTANTIAL
23 MOTIVE TO DETER, RETALIATE AGAINST OR PREVENT ANY PERSON FROM HOLDING OR
24 EXPRESSING POLITICAL OR RELIGIOUS VIEWS, FROM FREE POLITICAL EXPRESSION OR
25 FROM ENGAGING IN POLITICALLY RELATED ADVOCACY WITHOUT FEAR OF RETALIATION.

26 2. If the responding party is not a state actor, the responding
27 party shows that the legal action on which the motion is based is justified
28 by existing law or supported by a reasonable argument for extending or
29 modifying existing law.

30 C. In making its determination, the court shall conduct an
31 evidentiary hearing or consider the pleadings and supporting and opposing

1 affidavits stating facts on which the liability, defense or action is
2 based.

3 D. The motion ~~to dismiss or quash~~ may be filed within sixty days
4 after the service of the complaint or other document on which the motion is
5 based, **AT ANY LATER TIME WITHIN SIXTY DAYS AFTER ACTUAL NOTICE OF A PARTY'S**
6 **MISCONDUCT** or, in the court's discretion, at any later time on terms that
7 the court deems proper, ~~including a later time after there is actual notice~~
8 ~~of a party's misconduct~~. If the court finds that prima facie proof has
9 been established as prescribed in subsection B of this section, the court,
10 if possible, shall conduct an expedited hearing on the motion.

11 E. Unless a court rule specifically provides otherwise, all
12 discovery proceedings in the action shall be stayed on a finding of prima
13 facie proof as prescribed in subsection B of this section. The stay of
14 discovery shall remain in effect until notice of entry of the order ruling
15 on the motion. Notwithstanding this subsection, the court, on noticed
16 motion and for good cause shown, may order that specified discovery be
17 conducted.

18 F. If the court grants the motion ~~to dismiss or quash~~, the court may
19 award the moving party costs and reasonable attorney fees, including those
20 incurred for the motion, **AND SHALL AWARD COSTS AND REASONABLE ATTORNEY FEES**
21 **IF THE NONMOVING PARTY IS A STATE ACTOR**. If the court finds that a motion
22 ~~to dismiss or quash~~ **FILED PURSUANT TO THIS SECTION** is frivolous or solely
23 intended to delay, the court shall award costs and reasonable attorney fees
24 to the prevailing party on the motion **UNLESS THE PREVAILING PARTY IS A**
25 **STATE ACTOR**. For the purposes of this subsection, "costs" means all costs
26 that are reasonably incurred and includes filing fees, record preparation
27 and document copying fees, documented time away from employment to confer
28 with counsel or attend case related proceedings, expert witness fees,
29 travel expenses and any other costs that the court deems appropriate.

30 G. If the court denies the motion ~~to dismiss or quash~~, the denial
31 and the court's findings in support of the denial are not admissible in
32 evidence at any later stage of the case, or in any subsequent action, and

1 the burden of proof or degree of proof that is otherwise applicable is not
2 affected by the findings in any later stage of the case or in any
3 subsequent proceeding.

4 H. If the court determines that the moving party has established
5 prima facie proof as prescribed in subsection B of this section, an order
6 granting or denying a motion filed pursuant to this section is appealable
7 pursuant to section 12-2101.

8 I. A STATE ACTOR IS LIABLE FOR INTENTIONALLY BRINGING OR
9 MAINTAINING, CONSPIRING TO BRING OR MAINTAIN OR AIDING AND ABETTING THE
10 PURSUIT OR MAINTENANCE OF A LEGAL ACTION WHEN A SUBSTANTIAL MOTIVATION FOR
11 THE STATE ACTOR IS A DESIRE TO DETER, RETALIATE AGAINST OR PREVENT ANY
12 PERSON FROM HOLDING OR EXPRESSING POLITICAL OR RELIGIOUS VIEWS, FROM FREE
13 POLITICAL ASSOCIATION OR FROM ENGAGING IN POLITICALLY RELATED ADVOCACY. IN
14 AN ACTION BROUGHT PURSUANT TO THIS SUBSECTION:

15 1. THE ACTION SHALL BE COMMENCED WITHIN FOUR YEARS AFTER THE
16 CONCLUSION OF THE UNDERLYING ACTION.

17 2. EACH PARTY HAS THE RIGHT TO A TRIAL BY JURY, IF DEMANDED.

18 3. IT IS NOT A DEFENSE TO THE ACTION THAT EITHER:

19 (a) THE UNDERLYING LEGAL ACTION RESULTED IN AN ADVERSE JUDGMENT,
20 DECISION, OPINION, VERDICT, RULING OR OTHER ADVERSE ACTION AGAINST THE
21 PERSON WHOSE RIGHTS WERE VIOLATED.

22 (b) A MOTION FILED PURSUANT TO SUBSECTION A OF THIS SECTION WAS NOT
23 BROUGHT IN THE UNDERLYING LEGAL ACTION. IF A MOTION FILED PURSUANT TO
24 SUBSECTION A OF THIS SECTION WAS MADE IN THE UNDERLYING LEGAL ACTION AND
25 WAS UNSUCCESSFUL, THE COURT, IN ITS DISCRETION, MAY ALLOW A JURY TO
26 CONSIDER THIS FACT BUT THE DISPOSITION OF THE MOTION IS NOT BINDING ON THE
27 JURY.

28 4. A PREVAILING PARTY IS ENTITLED TO DECLARATORY RELIEF, NOMINAL
29 DAMAGES, COMPENSATORY DAMAGES, ATTORNEY FEES AND COSTS AND VACATUR AND THE
30 SEALING OF ANY ADVERSE JUDGMENTS, DECISIONS, OPINIONS, VERDICTS, RULINGS OR
31 OTHER DISPOSITIONS IN THE UNDERLYING ACTION.

1 5. IF AN INDIVIDUAL IS FOUND LIABLE, THE INDIVIDUAL MAY NOT BE
2 INDEMNIFIED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR THE
3 STATE OR POLITICAL SUBDIVISION'S INSURER.

4 6. AN ARRESTING PEACE OFFICER IS IMMUNE FROM LIABILITY UNDER THIS
5 SECTION.

6 ~~7.~~ J. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, this article
7 does not:

8 1. Affect, limit or preclude the right of the moving party to any
9 remedy otherwise authorized by law.

10 2. Create any privileges or immunities or otherwise affect, limit or
11 preclude any privileges or immunities authorized by law.

12 3. Limit or preclude a legislative or executive body or a public
13 agency from enforcing the rules of procedure and rules of order of the body
14 or agency.

15 K. THIS SECTION IS INTENDED TO PREVENT THE GOVERNMENT FROM BEING
16 USED AS A TOOL TO CHILL THE ADOPTION OR EXPRESSION OF, OR ADVOCACY FOR,
17 UNPOPULAR POLITICAL OR RELIGIOUS BELIEFS OR POSITIONS AND SHALL BE
18 LIBERALLY CONSTRUED TO EFFECTUATE THIS PURPOSE.

19 ~~8.~~ L. For the purposes of this section:

20 1. "Legal action":

21 (a) Means any of the following:

22 (i) Any civil action, claim, cross-claim or counterclaim for damages
23 other than nominal damages.

24 (ii) Any criminal prosecution, except for a drug trafficking offense
25 included in title 13, chapter 34 or 34.1, ~~a riot~~ or a serious offense or
26 violent or aggravated felony as defined in section 13-706.

27 (iii) Any written investigative demand pursuant to section 38-431.06
28 or other compulsory legal process or any regulatory or administrative
29 action by a state actor.

30 (b) Does not include a motion filed pursuant to subsection A of this
31 section.

1 2. "State actor" means any of the following:

2 (a) This state and any county, city, town or political subdivision
3 of this state AND THE UNITED STATES, TO THE MAXIMUM EXTENT PERMITTED UNDER
4 THE UNITED STATES CONSTITUTION AND THE ARIZONA CONSTITUTION.

5 (b) Any branch, department, board, bureau, commission, council,
6 PROFESSIONAL OR OCCUPATIONAL LICENSING OR REGULATORY ORGANIZATION IN WHICH
7 MEMBERSHIP IS MANDATORY FOR INDUSTRY PARTICIPANTS or committee of an entity
8 included in subdivision (a) of this paragraph.

9 (c) Any officer, employee or other agent of an entity included in
10 subdivision (a) of this paragraph who is acting in the officer's,
11 employee's or agent's official capacity.

12 Sec. 2. Legislative intent

13 The legislature intends that the change made to the definition of
14 "state actor" in section 12-751, subsection L, paragraph 2, Arizona Revised
15 Statutes, as amended by this act, is to clarify the definition and is not
16 intended to be a substantive change.

17 Sec. 3. Severability

18 If a provision of this act or its application to any person or
19 circumstance is held invalid, the invalidity does not affect other
20 provisions or applications of the act that can be given effect without the
21 invalid provision or application, and to this end the provisions of this
22 act are severable."

23 Amend title to conform

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