

IN THE SUPREME COURT

STATE OF ARIZONA

ARIZONA BOARD OF REGENTS,

Petitioner,

v.

OWEN ANDERSON,

Respondent.

Supreme Court

No. CV-26-0012-PR

Court of Appeals

No. 1 CA-SA 25-0007

Maricopa County Superior Court

No. CV2024-05713

**THE ARIZONA BOARD OF REGENTS'
CONSOLIDATED RESPONSE TO BRIEFS OF AMICI CURIAE**

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INTRODUCTION

1. Respondent Owen Anderson’s amici, Senate President Petersen and House Speaker Montenegro, repeat the fundamental flaws in Anderson’s case. Like Anderson, they ask this Court to ignore its mandate, in resolving questions of statutory interpretation, to place text first, followed by “secondary” methods only as necessary to resolve textual ambiguity. [*James v. City of Peoria*, 253 Ariz. 301, 305 ¶ 21 \(2022\)](#); see [ABOR’s Suppl. Br. at 4-7](#). Also like Anderson, they ask this Court to ignore the separation of powers by engrafting new remedies onto the statute that amici themselves were unable or unwilling to place in the law. And while amici urge the Court to find a right of action in the statute’s purpose, its placement within a civil rights chapter, and its supposed “clear prohibition” on conduct [\(at 8\)](#), they fail to explain how any of those features implies a private right of action. Were they read to imply such a right, the Legislature’s careful work of delineating remedies throughout *dozens* of Arizona statutes would all be for naught. See [ABOR’s Suppl. Br. at 11-12](#) (identifying statutes).

2. For its part, the State of Arizona largely supports the Board, concluding [\(at 20 n.2\)](#) that the correct legal principles “do not favor finding an implied private cause of action here.” The Board agrees and writes only

briefly to make two modest corrections. First, while the State at one point appears to suggest [\(at 3\)](#) that *Transamerica* places primary and secondary interpretive methods on “equal footing,” it is more precise to say that *Transamerica* was silent about the order in which its factors must be applied. As the State later recognizes [\(at 3-4\)](#), that order has been made unmistakable by subsequent decisions of this Court. Second, the State claims [\(at 2\)](#) that this Court has relied on *Transamerica*’s multi-factor test “[f]or decades.” But this Court has not implied a right of action under the multi-factor test since 1998—nearly three decades—nor has it *ever* actually invoked *Transamerica* specifically to do so. And, again, this Court’s recent precedents make clear that text does not share equal footing with secondary considerations.

For those reasons and those in the Board’s Response to the Petition and Supplemental Brief, the Court should affirm the decision of the Court of Appeals.

ARGUMENT

I. The Legislators

The President and Speaker ask this Court to adopt an argument that would contravene the separation of powers by sending the Court “on a cosmic search for legislative intent.” [*State ex rel. Ariz. Dep’t of Revenue v. Tunkey*, 254 Ariz. 432, 437 ¶ 26 \(2023\)](#) (Bolick, Beene, Montgomery, and King JJ., concurring). Amici claim [\(at 5\)](#) that “the Legislature intended” for [Section 41-1494](#) to allow broad private enforcement, concluding that application of the *Transamerica* factors requires implying a private right of action – without ever pointing to statutory text, or even any legislative history, supporting that interpretation.

A. Placing “legislative intent” on equal footing with text and context would offend the separation of powers.

Amici’s invocations of their purported special insight into what “the Legislature intended” [\(at 5\)](#) ring hollow because Arizona courts follow enacted text, not a statute’s “intended outcome.” [*Ariz. Free Enter. Club v. Hobbs*, 253 Ariz. 478, 489 ¶ 38 \(2022\)](#). A court thus “exceed[s]” its “limited constitutional authority” when it searches for “legislative intent.” [*Tunkey*, 254 Ariz. at 438 ¶ 27](#) (concurring op.). “We are governed by laws, not the intentions of legislators.” [*Conroy v. Aniskoff*, 507 U.S. 511, 519 \(1993\)](#) (Scalia,

J., concurring in the judgment); see also [*State v. Gordon in & for Cnty. of Mohave*, 581 P.3d 215, 222 ¶ 29 \(Ariz. 2025\)](#) (rejecting an interpretive approach that allows a court to “ignore the plain meaning of the text if it perceives a departure from legislative intent” as “not our method”).

A principal reason for this limitation on the judicial power is that “[l]egislative intent is at best amorphous and at worst illusory,” the “words of a statute are the only thing to which the legislature agreed,” and each legislator may have his own “intentions in enacting particular words.” [*Tunkey*, 254 Ariz. at 437-38 ¶ 27](#). So, “[t]rying to discern what motivates legislators . . . invites speculation and risks overlooking the reality that individual [legislators] often pursue multiple and competing purposes, many of which are compromised to secure a law’s passage and few of which are fully realized in the final product.” [*Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 778 \(2019\)](#).¹

Indeed, these amici—the presiding officers of both houses of the Legislature—are particularly well positioned to ensure that the *text* of laws

¹ As the Board has explained, contrary to amici’s suggestions about legislative intent, there is nothing in the relevant legislative history even discussing a private right of action. See [ABOR’s Suppl. Br. at 19](#).

matches the purported legislative intent. If amici believe that A.R.S. § 41-1494 should contain a private right of action, they could write that change into law.² This Court’s role is not to do that work for them, but rather to “interpret the law as written.” [*Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 153 ¶ 63 \(2024\)](#).

Nor, in analyzing implied rights of action, has this Court “consistently maintained” that considerations like a statute’s “purpose” should be elevated to the same status as text, as amici claim [\(at 7\)](#). The Court’s precedents on statutory interpretation place a primary focus on text and expressly reject amici’s proposed equal-status approach to the interpretive factors. *See, e.g., James*, 253 Ariz. at 305 ¶ 21 (“Because [the statute at issue] is clear, there is no need to consider secondary interpretation principles, such

² In fact, in 2024, the Legislature had before it a bill which provided that a “public entity shall not . . . require an employee to engage in a diversity, equity and inclusion program.” [S.B. 1005, 56th Leg., 2nd Reg. Sess. \(Ariz. 2024\)](#), <https://www.azleg.gov/legtext/56leg/2R/bills/SB1005S.pdf>. That bill expressly authorized a private right of action: “An employee of a public entity who is required to participate in a diversity, equity and inclusion program may bring an action against the public entity. If the employee demonstrates that the public entity violated this section, the employee is entitled to injunctive relief.” That Legislature did not pass this bill.

as the purpose of the statute”); [Rasor v. Nw. Hosp., LLC, 243 Ariz. 160, 164 ¶ 20 \(2017\)](#) (explaining that courts may “consider[] legislative history, effects and consequences, and spirit and purpose” only “[w]here the meaning is unclear from language and context”); see [ABOR’s Suppl. Br. at 1, 5-6](#). Moreover, as the Board has explained (see [ABOR’s Suppl. Br. at 16](#)), this Court has never cited *Transamerica* to imply a right of action, and it has not applied the relevant multi-factor test in nearly 30 years. [Napier v. Bertram, 191 Ariz. 238, 240 ¶ 9 \(1998\)](#) (citing [Sellinger v. Freeway Mobile Home Sales, Inc., 110 Ariz. 573 \(1974\)](#)).

B. Section 41-1494 does not create a private right of action merely because it is a “civil rights statute” with a “clear prohibition on conduct” or supposed “direct beneficiaries.”

Amici claim [\(at 10-11\)](#) that because [Section 41-1494](#) is housed within Chapter 9 of the Arizona Revised Statutes, then a person who is “directly subject to the actions in question” must be able to bring a private lawsuit to enforce its terms. But amici fail entirely to acknowledge the *dozens* of statutes that the Board has identified (see [ABOR’s Suppl. Br. at 11-12](#)), also contained within Chapter 9, some of which provide private rights of action and some of which do not. Compare, e.g., [A.R.S. § 41-1495.02\(A\)](#) (private right of action for organizations affected by religious discrimination), with [A.R.S. § 15-](#)

[717.02\(E\)](#) (right of action for prosecutors, but not private individuals, for certain unlawful trainings in K-12 context). Amici would have the Court erase all of the Legislature’s work in specifying the relief available under each of these statutes. That approach would render these statutes’ remedial language superfluous and take the policy-laden task of assigning remedies out of the Legislature’s hands.

Nor is it enough, as amici claim [\(at 8\)](#), that Section 41-1494 contains a “clear prohibition” on conduct. Quite the contrary, a “statute’s mere prohibition of a certain act does not imply creation of a private right of action for its violation.” [Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 313 \(2012\)](#); see [Alexander v. Sandoval, 532 U.S. 275, 289 \(2001\)](#) (“Statutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” (citation omitted)). Even when statutes contain clear mandates or prohibitions, a court still must ask whether the statute “provide[s] *any* remedy to those who may be injured.” [Guibault v. Pima County, 161 Ariz. 446, 448 \(App. 1989\)](#) (emphasis added); see also [FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd, 146 S. Ct. 1546, 1553 \(2026\)](#) (“Rather than augmenting statutes, we interpret them. If a statute

does not spell out a right of action, we examine the statute’s text and structure to determine whether it implicitly provides one.”). Indeed, even within Chapter 9, statutes with similar prohibitions phrased with identical language are accompanied by different remedies. For instance, [Section 41-1495.01](#) provides that the State “may not” discriminate against a religious organization, accompanied by a private right of action in [Section 41-1495.02\(A\)](#). [Section 41-1494](#) uses identical “may not” language but is not accompanied by the same remedy. In sum, the prohibition itself does not imply any particular remedy, or even any remedy at all.

Amici’s fallback citations ([at 10-11](#)) to decisions allowing injunctions to enforce state law in other contexts are unpersuasive. For one, amici are attempting to repackage the same caselaw that they lodged at a different stage of this case in support of a *different* argument: that, even if Anderson lacked a statutory cause of action, he could proceed “in equity.” [Br. of Amici Curiae Senate President Petersen and Speaker Montenegro in Supp. of Pet’r at 8, No. CV-26-0012-PR \(Apr. 8, 2026\)](#). Amici also cited the same cases, in support of that same argument, in the Court of Appeals. See [Br. of Amici Curiae Senate President Petersen and Speaker Montenegro in Supp. of Response to Pet. for Special Action at 2, Ariz. Bd. of Regents v. Anderson, No.](#)

[1 CA-SA 25-0007 \(App. Feb. 14, 2025\)](#). But the Court of Appeals correctly found that Anderson failed to raise that issue in the Superior Court or in response to the special-action petition. See [Memorandum Decision at 7 ¶ 18, Ariz. Bd. of Regents, No. 1 CA-SA 25-0007 \(Dec. 17, 2025\)](#). This Court did not grant review over that issue, see [Order Granting Pet. for Review \(June 4, 2026\)](#); Anderson has never presented it to this Court, see generally [Anderson’s Pet. For Review \(Jan. 29, 2026\)](#), [Anderson’s Suppl. Br. \(July 29, 2026\)](#); and “amic[i] curiae are not permitted to create, extend, or enlarge the issues,” [Cave Creek Unified Sch. Dist. v. Ducey, 233 Ariz. 1, 4 ¶ 7 n.2 \(2013\)](#) (citation omitted).

The only question here is one of statutory interpretation: does A.R.S. § 41-1494 imply a cause of action? None of amici’s cases raise or consider that question under any statute, nor do any of them even cite *Transamerica*. Rather, nearly all of those cases address whether a separate statute, A.R.S. § 12-1802, bars injunctive relief against a public entity that has allegedly exceeded its authority. See [Boruch v. State ex rel. Halikowski, 242 Ariz. 611, 616-19 ¶¶ 17-30 \(App. 2017\)](#) (explaining the cases). Another case arose on a writ of mandamus, see [Ariz. Pub. Integrity All. v. Fontes, 250 Ariz. 58, 62 ¶ 11](#)

(2020), an issue irrelevant here, *see* [ABOR's Response to Pet. for Review at 17 n.6.](#)

Even if amici's attempt to use a free-standing injunction remedy were an issue raised here by Anderson, "[c]ourts of equity can no more disregard statutory . . . requirements and provisions than can courts of law," and a plaintiff "cannot, by invoking [a court's] equitable powers, circumvent [the Legislature's] exclusion of private enforcement." [Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327-28 \(2015\)](#) (citation omitted). Indeed, to accept amici's appeal to a freestanding injunction remedy would render redundant the many express private rights of action throughout Chapter 9. In any event, Anderson does not and could not argue that the Board exceeds its *power* when it trains its employees. Section 41-1494 merely regulates the *content* of trainings that all agree the Board has the *power* to administer.

C. Amici cannot avoid straightforward statutory interpretation by calling their own legislative enactment "absurd."

Amici's invocation ([at 12](#)) of the canon against absurdity contorts that doctrine beyond recognition. Discarding an otherwise-correct statutory interpretation as absurd requires an extraordinary showing that the interpretation "lead[s] to an impossibility [or] an absurdity such as *cannot* be

contemplated [by] the Legislature.” [*Garrison v. Luke*, 52 Ariz. 50, 56 \(1938\)](#) (emphasis added). Courts apply this doctrine with exceeding caution, supplanting the apparent plain meaning of a statute only if that reading is “so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” [*Perini Land & Dev. Co. v. Pima County*, 170 Ariz. 380, 383 \(1992\)](#) (citation modified). Outside of such unusual cases, the Court must follow a statute’s “language,” “even though the result may be, in our opinion, harsh, unjust or a mistaken policy.” [*Garrison*, 52 Ariz. at 55-56](#); accord [*El Paso Nat. Gas Co. v. Mohave County*, 133 Ariz. 59, 62 \(1982\)](#).

Amici do not even attempt to make the proper showing—they just disagree [\(at 12\)](#) that correct statutory interpretation leaves Anderson without his preferred remedy. But that proves no more than their “dissatisfaction with the enforcement mechanism and limited remedies prescribed by the legislature.” [*McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 196 ¶ 13 \(App. 2014\)](#). Amici’s “preferred resolution” of the case “does not make a court’s application of [] plain meaning absurd.” [*Gordon*, 581 P.3d at 223 ¶ 33](#).

Nor are the statute's reporting requirements absurd. It requires reports to high-ranking officials about state agencies' compliance with the statute. [A.R.S. § 41-1494\(C\)](#). Other public bodies, similarly, must "demonstrate compliance" through annual audits. *See, e.g.,* [A.R.S. § 9-481\(H\)](#) (cities and towns); [A.R.S. § 11-661\(D\)](#) (counties); [A.R.S. § 15-1473\(F\)](#) (community college districts). If officials believe that redress for violations is appropriate, they can resort to their own power over the political process to seek compliance. Amici may think this is "mistaken policy," but that is not enough to render the interpretation absurd. [Garrison, 52 Ariz. at 56](#). Indeed, amici are *themselves* two of several state officials who must receive an annual report under subsection 41-1494(C). It is strange for amici to call their own powers so meaningless as to render the statute absurd.³

II. The State of Arizona

The State rightly concludes [\(at 20 n.2\)](#) that controlling "principles do not favor finding an implied cause of action here." The Board agrees with

³ Amici also seem to argue [\(at 12\)](#) that, without Section 41-1494, Arizona's higher education institutions would be free to engage in outright race, sex, and ethnicity discrimination. Of course, a law regulating employee training passed in 2021 is not the only law prohibiting such invidious discrimination in public institutions.

that conclusion, which resolves the only question before the Court. Despite its general agreement with the State, the Board notes two points that merit a brief response.

First, the State states [\(at 3\)](#) that *Transamerica* places its interpretive considerations on “equal footing.” It is more precise to say, however, that *Transamerica* made no mention at all of the priority in which its factors should be applied. See [ABOR’s Suppl. Br. at 7](#). As Anderson’s own numerous citations to decisions of the Court of Appeals demonstrate, it is that court that has taken the lead in developing various non-textual considerations following *Transamerica*—such as consideration of what class a statute is intended to benefit (see [Anderson’s Suppl. Br. at 15-16](#)) or whether a right of action would supply an effective remedy ([id. at 17](#)). It is Anderson who asks *this Court* for the first time to embrace those considerations and explicitly place *Transamerica*’s secondary interpretive factors on equal footing with text. As the Board has explained ([ABOR’s Suppl. Br. at 5-7](#)), this Court’s post-*Transamerica* jurisprudence rejects Anderson’s approach. The State otherwise correctly agrees with the Board (*e.g.*, [at 3-4](#)) that this Court’s statutory interpretation decisions from the “modern era” place text above other considerations.

Second, the State claims [\(at 2-3\)](#) that “[f]or decades, this Court” has relied on *Transamerica’s* multi-factor test to identify private rights of action. But this Court has *never* cited *Transamerica* to imply a right of action, and it has not applied any version of the multi-factor test since *Napier* in 1998. See [191 Ariz. at 240-41 ¶ 9](#) (citing [Sellinger, 110 Ariz. 573](#)). It is thus not correct to refer to *Transamerica* or *Sellinger* as well-established in this Court. Nor is there any basis to assume that the Legislature, in drafting Section 41-1494 in 2021, silently expected courts to apply *Transamerica’s* multi-factor test without placing special emphasis on the enacted text. If anything, this Court has instructed the Legislature for decades—and before Section 41-1494’s enactment—that “secondary interpretation methods” are considered *only when* a statute is “‘ambiguous.’” [Rosas v. Ariz. Dep’t of Econ. Sec., 249 Ariz. 26, 28 ¶ 13 \(2020\)](#) (citation omitted); accord [State v. Riggs, 189 Ariz. 327, 333 & n.4 \(1997\)](#).

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