

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

SUPPLEMENTAL BRIEF OF THE ARIZONA BOARD OF REGENTS

Paul F. Eckstein, Bar No. 001822

Joel W. Nomkin, Bar No. 011939

Thomas D. Ryerson, Bar No. 028073

Matthew R. Koerner, Bar No. 035018

Addison W. Bennett, Bar No. 039801

ASHURST PERKINS COIE US LLP

2525 E. Camelback Road, Suite 500

Phoenix, Arizona 85016-4227

Telephone: +1.602.351.8000

Paul.Eckstein@ashurstperkins.com

Joel.Nomkin@ashurstperkins.com

Thomas.Ryerson@ashurstperkins.com

Matthew.Koerner@ashurstperkins.com

Addison.Bennett@ashurstperkins.com

July 29, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	4
I. The Court of Appeals did not err in declining to apply secondary interpretive methods in the absence of statutory ambiguity	4
A. Respect for the separation of powers demands placing text above secondary interpretive considerations	5
B. The Court of Appeals correctly held that Section 41-1494 unambiguously does not create a private right of action	8
1. The Court of Appeals correctly considered only primary interpretive methods of statutory interpretation	8
(a) Plain Text	9
(b) Context and Other Statutes <i>in Pari</i> <i>Materia</i>	10
2. The Court of Appeals correctly refused to address the secondary, non-textual interpretive methods	13
C. In the alternative, the Court should clarify or limit <i>Transamerica</i> in favor of a clear text-first approach	14
II. Anderson's proposed approach goes beyond even <i>Transamerica</i>	16
(a) Effects and Consequences	18
(b) Spirit and Purpose	19
CONCLUSION	20

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001).....	10, 16
<i>Arizona Free Enterprise Club v. Hobbs</i> , 253 Ariz. 478 (2022)	6
<i>Assoc. Minority Contractors of Ariz. v. City of Phoenix</i> , 587 P.3d 635 (App. 2026)	15
<i>Bilke v. State</i> , 206 Ariz. 462 (2003)	20
<i>Bunker’s Glass Co. v. Pilkington PLC</i> , 206 Ariz. 9 (2003)	4, 6
<i>Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media</i> , 589 U.S. 327 (2020).....	16
<i>Conroy v. Aniskoff</i> , 507 U.S. 511 (1993).....	6, 19
<i>Cox v. Ponce in & for Cnty. of Maricopa</i> , 251 Ariz. 302 (2021)	3, 6
<i>FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.</i> , 146 S. Ct. 1546 (2026).....	<i>passim</i>
<i>Gallery Cmty. Ass’n v. K. Hovnanian at Gallery, LLC</i> , CV-24-0252-PR (Ariz. July 29, 2026)	16
<i>Glazer v. State</i> , 244 Ariz. 612 (2018)	14
<i>Guibault v. Pima County</i> , 161 Ariz. 446, 448 (App. 1989)	18

TABLE OF AUTHORITIES (continued)

	PAGE(S)
<i>Hughes v. Jorgenson</i> , 203 Ariz. 71 (2002)	14
<i>In re Drummond</i> , 257 Ariz. 15 (2024)	5, 11
<i>In re McLauchlan</i> , 252 Ariz. 324 (2022)	6
<i>J. I. Case Co. v. Borak</i> , 377 U.S. 426 (1964)	15
<i>James v. City of Peoria</i> , 253 Ariz. 301 (2022)	1, 5, 7, 13
<i>Kelly v. Ind. Bureau of Motor Vehicles</i> , 260 N.E.3d 934 (Ind. 2025)	10, 18
<i>McNamara v. Citizens Protecting Tax Payers</i> , 236 Ariz. 192 (App. 2014)	10, 13, 18
<i>N.L.R.B. v. SW Gen., Inc.</i> , 580 U.S. 288 (2017)	19
<i>Napier v. Bertram</i> , 191 Ariz. 238 (1998)	16
<i>Pima County v. State</i> , 258 Ariz. 11 (2024)	5
<i>Planned Parenthood Ariz., Inc. v. Mayes</i> , 257 Ariz. 137 (2024)	4, 5, 7, 14
<i>Rasor v. Nw. Hosp., LLC</i> , 243 Ariz. 160 (2017)	1, 5, 7, 8
<i>Rogers v. Mroz</i> , 252 Ariz. 335 (2022)	20

TABLE OF AUTHORITIES (continued)

	PAGE(S)
<i>S. Ariz. Home Builders Ass’n v. Town of Marana</i> , 254 Ariz. 281 (2023)	1
<i>Sellinger v. Freeway Mobile Home Sales, Inc.</i> , 110 Ariz. 573 (1974)	15, 16, 17
<i>State ex rel. Ariz. Dep’t of Revenue v. Tunkey</i> , 254 Ariz. 432 (2023)	5, 6
<i>State Farm Mut. Auto. Ins. v. Balzan</i> , No. CV-24-0140-PR, 2026 WL 1954333 (Ariz. July 6, 2026)	1, 5, 9
<i>State v. Burbey</i> , 243 Ariz. 145 (2017)	13
<i>State v. Gordon in & for Cnty. of Mohave</i> , 581 P.3d 215 (Ariz. 2025)	5, 7
<i>State v. Salazar-Mercado</i> , 234 Ariz. 590 (2014)	14
<i>State v. Serrato</i> , 568 P.3d 756 (Ariz. 2025)	11
<i>Transamerica Financial Corporation v. Superior Court in & for Maricopa County</i> , 158 Ariz. 115 (1988)	passim
<i>Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis</i> , 444 U.S. 11 (1979)	9, 17
<i>Welch v. Cochise Cnty. Bd. of Supervisors</i> , 251 Ariz. 519 (2021)	13
<i>Young v. Beck</i> , 227 Ariz. 1 (2011)	15

TABLE OF AUTHORITIES (continued)

PAGE(S)

STATUTES

A.R.S. § 6-628 (1988).....	17
A.R.S. § 9-481(H)	12
A.R.S. § 11-661(D)	12
A.R.S. § 15-717.02	12
A.R.S. § 15-1473(F)	12
A.R.S. § 41-1442	11
A.R.S. § 41-1443	11
A.R.S. § 41-1444	11
A.R.S. § 41-1471	11
A.R.S. § 41-1472	11
A.R.S. § 41-1481(D).....	11
A.R.S. § 41-1494	<i>passim</i>
A.R.S. § 41-1495.01	12
A.R.S. § 41-1495.02(A).....	12

OTHER AUTHORITIES

H.B. 2898, 55th Leg., 1st Reg. Sess., ch. 404, § 21 (Ariz. 2021).....	12
H.B. 2906, 55th Leg., 1st Reg. Sess., ch. 427, § 1 (Ariz. 2021).....	12
Hearing on S.B. 1074 Before the H. Comm., 55th Leg., 1st Reg. Sess. (Ariz. May 5, 2021).....	19

INTRODUCTION

This Court’s well-established, text-first approach to statutory interpretation decides this case: [A.R.S. § 41-1494](#) – the statute in dispute – does not create a private right of action. The Court of Appeals correctly held as much after surveying the text and its relevant context. Because it found the text unambiguous, the court properly declined to reach secondary interpretive methods like legislative history or “spirit and purpose.”

A court’s role is “to determine the meaning of the words the legislature chose to use.” [S. Ariz. Home Builders Ass’n v. Town of Marana, 254 Ariz. 281, 286 ¶31 \(2023\)](#). When a “statute’s text is clear and unambiguous, it controls.” [State Farm Mut. Auto. Ins. v. Balzan, No. CV-24-0140-PR, 2026 WL 1954333, at *2 ¶10 \(Ariz. July 6, 2026\)](#). Only when that text, “‘read in context,’” is ambiguous may the court employ “secondary” tools like “legislative history, effects and consequences, and spirit and purpose.” [Rasor v. Nw. Hosp., LLC, 243 Ariz. 160, 164 ¶20 \(2017\)](#). A court therefore does not err in concluding that where the text “is clear, there is no need to consider secondary interpretation principles.” [James v. City of Peoria, 253 Ariz. 301, 305 ¶21 \(2022\)](#).

The Court of Appeals correctly followed that two-step roadmap here. It analyzed Section 41-1494 and concluded that it “unambiguously” does not

imply a right of action. See [Memorandum Decision, *Ariz. Bd. of Regents v. Anderson* \(No. 1 CA-SA-25-0007 Ariz. App. Dec. 17, 2025\) \(“Op.”\) 5-6 ¶¶12-13](#). The statute’s plain text focuses on prohibiting conduct, not on creating private rights. Instead, through an express reporting requirement, the statute leaves it to the political branches to enforce compliance. And reading Section 41-1494 *in pari materia* with surrounding statutes – nearly all of which contain express rights of action – confirms that the Legislature’s omission of such a provision here was deliberate. Given the absence of ambiguity, the Court of Appeals properly declined to turn to secondary methods. [Op. 8 ¶21](#).

Respondent Owen Anderson claims that a different rule is required by this Court’s decision from four decades ago in [Transamerica Financial Corporation v. Superior Court in & for Maricopa County](#), 158 Ariz. 115 (1988). In finding an implied right of action there, the Court supplied a list of interpretive factors: “the context of the statutes, the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law.” [Id. at 116](#). But unlike more recent decisions of this Court, *Transamerica* did not prioritize or differentiate among those factors. Recent decisions clarify and control the *order* in which interpretive factors must be applied – text first, followed by secondary factors only when necessary.

To the extent that *Transamerica* can be misread to embrace a different rule—that considerations of a statute’s “intent,” “spirit and purpose,” or “effects and consequences” can supply a private right of action *despite* the text—this Court should clarify that those secondary factors have no role other than as tie-breakers when ambiguity exists. Anderson’s reading of *Transamerica* is a vestige of a bygone era, when text did not always come first.

In any case, Anderson’s proposed approach to Section 41-1494 goes beyond even the broadest reading of *Transamerica*. He argues that courts should imply a right of action wherever a statute “is enacted for the benefit of a specific class,” deviating “[o]nly where the Legislature clearly intended to *deny*” a right of action. [Pet. for Review \(“Pet.”\) 11-12](#). But *Transamerica* never said that. Anderson’s rule would require the implication of a cause of action in virtually every statute. Not only would adoption of his rule arrogate to the judiciary a power that “lies with the legislature” —the power to create substantive rights and remedies—it would also dramatically transform civil litigation in Arizona. [Cox v. Ponce in & for Cnty. of Maricopa, 251 Ariz. 302, 307 ¶21 \(2021\)](#).

This Court should affirm the decision of the Court of Appeals.

ARGUMENT

I. The Court of Appeals did not err in declining to apply secondary interpretive methods in the absence of statutory ambiguity.

Anderson contends that whether a statute implies a right of action is answered by a “multi-factor framework” that places on *equal footing* “the statute’s context, language, subject matter, effects, consequences, and overall spirit and purpose.” [Pet. 5](#). That leads him to argue that the Court of Appeals should have found a right of action in Section 41-1494’s “effects, consequences, and overall spirit,” [Pet. 1](#), despite its conclusion that Section 41-1494’s *text* “unambiguously” does not imply one, [Op. 5](#).

Not so. Whether a statute implies a right of action “turns upon the interpretation” of the statute. [*Bunker’s Glass Co. v. Pilkington PLC*, 206 Ariz. 9, 12 ¶4 \(2003\)](#). So the dispositive question here is simply whether the Court of Appeals correctly interpreted Section 41-1494. It did—following the text where it led and declining to resort to secondary methods in the absence of ambiguity in the “statutory language.” [*Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶17 \(2024\)](#) (“PPAI”).

The *Transamerica* factors that Anderson claims the Court of Appeals should have considered are what this Court has described as “secondary

methods of construction,” not to be employed “absent ambiguity.” [*State v. Gordon in & for Cnty. of Mohave*, 581 P.3d 215, 218 ¶12, 222 ¶29 \(Ariz. 2025\)](#) (citation omitted). The *Transamerica* factors survive only in this limited application.

A. Respect for the separation of powers demands placing text above secondary interpretive considerations.

Interpretation of Arizona statutes proceeds in two steps. *First*, courts discern the meaning of a statute’s “plain language,” [*In re Drummond*, 257 Ariz. 15, 18 ¶5 \(2024\)](#), in its “‘overall statutory context,’” [*Pima County v. State*, 258 Ariz. 11, 16 ¶23 \(2024\)](#) (citation omitted). When a “statute’s text is clear and unambiguous, it controls.” [*State Farm*, 2026 WL 1954333, at *2 ¶10](#). *Second*, and *only* if that text is ambiguous, may a court resort to “secondary tools,” [*Rasor*, 243 Ariz. at 164 ¶20](#); [*James*, 253 Ariz. at 305 ¶21](#), such as a statute’s “historical background, its spirit and purpose, and the effects and consequences of competing interpretations,” [*PPAI*, 257 Ariz. at 142 ¶17](#).

This text-first approach properly keeps the judicial role within the courts’ “limited constitutional authority.” [*State ex rel. Ariz. Dep’t of Revenue v. Tunkey*, 254 Ariz. 432, 438 ¶27 \(2023\)](#) (Bolick, Beene, Montgomery, and King JJ., concurring). A court “exceed[s]” that authority when it

“displace[s]” text with other goals like effectuating “legislative intent.” [*Id.*](#); see also [*Conroy v. Aniskoff*, 507 U.S. 511, 519 \(1993\)](#) (Scalia, J., concurring in the judgment) (“We are governed by laws, not the intentions of legislators.”). Stated differently, a court “cannot rewrite a statute based on the surmise that the legislature meant to draft it a different way,” [*In re McLauchlan*, 252 Ariz. 324, 326 ¶15 \(2022\)](#), even if it “divine[s] a more desirable intended outcome,” [*Arizona Free Enterprise Club v. Hobbs*, 253 Ariz. 478, 489 ¶38 \(2022\)](#).

The same two-step process applies here because identifying private rights of action “turns upon” the statute’s “interpretation.” [*Bunker’s Glass*, 206 Ariz. at 12 ¶4](#). Indeed, straying from that approach to create remedies the Legislature did not enact is *more* offensive to the “separation of legislative and judicial power” than in other contexts, because doing so “augment[s] statutes” rather than “enforc[es]” them. [*FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1553 \(2026\)](#) (quoting [*Egbert v. Boule*, 596 U.S. 482, 491 \(2022\)](#)); see [*Cox*, 251 Ariz. at 307 ¶21](#) (“If there is a remedy in these circumstances, it lies with the legislature.”).

Respecting the Legislature’s choice about who may sue to enforce its statutes properly avoids engulfing courts in policy disputes. Those judgments “are reserved” for “the legislature or the initiative process.” See

PPAI at 153 ¶63. If the Legislature believes, as Anderson does, that a private right of action is necessary to “effectuate” a “statute’s purpose,” [Pet. 15](#), it is free at any time to enact one.

Anderson seems to suggest that even if a text-first analysis applies in other contexts, it should not apply in the context of private rights of action. [Pet. 7](#). But drawing that distinction would illogically elevate secondary factors above text at the threshold (to identify a right of action), while applying a text-first, two-step approach for all other questions of interpretation of that *same language*. To be sure, *Transamerica* did not specify the order in which the interpretive factors should be considered. That is, it did not clarify that textual factors like “the context of the statute[],” and “the language used” come first, followed by “the effects and consequences, and the spirit and purpose.” [158 Ariz. at 116](#).

But that order has been clarified by this Court’s later decisions. Those decisions explicitly label *Transamerica*’s policy-based, non-textual considerations as “secondary” interpretive methods. [Rasor, 243 Ariz. at 164 ¶20](#); [James, 253 Ariz. at 305 ¶21](#). This Court has rejected an approach of “discerning legislative intent and *then* consider[ing] the text.” [Gordon, 581 P.3d at 222 ¶29](#) (describing this approach as “not our method”).

B. The Court of Appeals correctly held that Section 41-1494 unambiguously does not create a private right of action.

In this case, the Court of Appeals followed the required two-step process and reached the right conclusion. Because it correctly held that Section 41-1494 “unambiguously does not create a private right of action” through its text and context, it properly declined to resort to “alternative methods of statutory construction.” [Op. 5 ¶11](#) (citation modified). Considering those “secondary” interpretive principles like “consequences” or “spirit and purpose” in light of that finding would have been legal *error* under this Court’s precedents. *E.g.*, [Rasor, 243 Ariz. at 164 ¶20](#).

1. The Court of Appeals correctly considered only primary interpretive methods of statutory interpretation.

In judging the decision below, it is important to clarify what the Court of Appeals held. Contrary to Anderson’s suggestion ([Pet. 3](#)), the Court did *not* hold that only “express enforcement language” will support a private right of action. Rather, the Court acknowledged that a cause of action could be inferred not only from statutory language but also from “the overall statutory context.” [Op. 4 ¶9](#) (citation modified).¹ Thus, it did not end its

¹ Ignoring the Court’s consideration of statutory context, Anderson’s Petition truncated a key quotation from the decision below. He claimed the court looked exclusively for an “express” right of action because it stated

analysis before searching for *some* textual or structural indication that Section 41-1494 implies a right of action. [Op. 5-6 ¶¶12-15](#); *id.* at 8 ¶21. It found none — correctly so.²

(a) Plain Text. Where the text of a statute “is clear and unambiguous,” the analysis can begin and end at the text. [State Farm, 2026 WL 1954333, at *2 ¶10](#). Here, the Court of Appeals correctly identified two features on the face of Section 41-1494 that reject the implication of a right of action.

For one, Section 41-1494 only prohibits conduct — it does not create any rights or remedies enforceable against state agencies. *See* [Op. 5 ¶¶12-13](#). Instead, Subsection A simply prohibits certain types of “training, orientation or therapy” that impose “blame or judgment on the basis of race, ethnicity

that interpretation “begins and ends with the plain meaning of the legislature’s chosen words.” [Pet. 6](#) (quoting [Op. 4 ¶9](#)). The court was correct to focus on statutory text, but Anderson omits the court’s analysis of “the overall statutory context.” [Op. 4 ¶9](#) (citation modified).

² How might a text-first analysis support an implied right of action even in the absence of express right-to-sue language? Scalia and Garner give the example of a statute “that says: ‘In any private suit for violation of this statute, the victorious plaintiff will be entitled to attorneys’ fees.’” [Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 316 \(2012\)](#). Likewise, a statute that describes circumstances in which a contract “shall be void” could imply a right of action to void the contract. [Transamerica Mortg. Advisors, Inc. \(TAMA\) v. Lewis, 444 U.S. 11, 17, 24 \(1979\)](#).

or sex.” And Subsection B prohibits the spending of public money for that purpose. But a “statute’s mere prohibition of a certain act does not imply creation of a private right of action for its violation.” [Reading Law 313](#). This language, which focuses “‘on the person regulated rather than the individuals protected[,]’ does not fit the bill” to create a right of action. [Saba, 146 S. Ct. at 1553](#) (quoting [Alexander v. Sandoval, 532 U.S. 275, 289 \(2001\)](#)).

For another, Section 41-1494 contains a hallmark of a statute *without* a private right of action: an “independent enforcement mechanism.” See [Kelly v. Ind. Bureau of Motor Vehicles, 260 N.E.3d 934, 940 \(Ind. 2025\)](#). Specifically, Subsection C requires that a report of “state agencies in compliance with this section” be submitted “to the secretary of state,” “the governor, the president of the senate and the speaker of the house of representatives.” [A.R.S. § 41-1494\(C\)](#). As the Court of Appeals recognized, this reporting scheme gives our State’s leaders a means to monitor and address compliance in “all the enumerated political divisions.” [Op. 6 ¶15](#); see [McNamara v. Citizens Protecting Tax Payers, 236 Ariz. 192, 196 ¶¶12-13 \(App. 2014\)](#) (no right of action where the legislature specified other “enforcement procedures”).

(b) Context and Other Statutes in Pari Materia. The Court of Appeals also correctly reviewed Section 41-1494’s context and structure. See [Op. 4](#)

¶10. The “statute as a whole” and “statutes that are *in pari materia* – of the same subject or general purpose” – confirm the absence of a private right of action. [*In re Drummond*, 257 Ariz. at 18 ¶5](#) (citation modified); see [*State v. Serrato*, 568 P.3d 756, 762 ¶27 \(Ariz. 2025\)](#) (finding statute “unambiguous when read *in pari materia*”).

Section 41-1494 stands in stark contrast to other sections in the same chapter that *do* contain rights of action. Section 41-1494 falls within title 41 (titled “State Government”), chapter 9 (titled “Civil Rights”). Much of this chapter imposes obligations on entities that interact with the public. See, e.g., [A.R.S. §§ 41-1442–44](#). To enforce these obligations, the Legislature created express rights of action, including authorizing “[a]ny person” to “file a complaint with the superior court” to remedy “an alleged discriminatory practice or act contrary to article 2 or 3 of this chapter.” [A.R.S. § 41-1471\(A\)–\(B\)](#); see also [A.R.S. § 41-1472](#) (authorizing remedies, including “damages,” “injunction[s],” and “fees”).

Nearly all eleven articles within chapter 9 provide for some private right of action. See, e.g., [A.R.S. §§ 41-1481\(D\)](#) (unlawful employment practices), [-1482\(A\)](#) (recordkeeping violations), [-1491.31\(A\)](#) (“alleged discriminatory housing practice[s]”), [-1492.08\(A\)](#) (discrimination by public

entities), [-1493.01\(D\)](#) (laws burdening free exercise of religion). Indeed, the year after the Legislature enacted Section 41-1494, it added *another* section to chapter 9, prohibiting discrimination against religious organizations during a state of emergency. [A.R.S. § 41-1495.01](#). There again, it specifically provided for enforcement by affected organizations. [A.R.S. § 41-1495.02\(A\)](#).

Other contemporaneous enactments on the same subject matter confirm that the Legislature knows how to create remedies for other statutes touching on similar issues. For one, House Bill 2898, enacted at the same time as Section 41-1494, prohibits “instruction that presents any form of blame or judgment on the basis of race, ethnicity[,] or sex” in K-12 education. [H.B. 2898, 55th Leg., 1st Reg. Sess., ch. 404, § 21 \(Ariz. 2021\)](#) (codified at [A.R.S. § 15-717.02\(A\), \(B\)](#)). Unlike Section 41-1494, Section 15-717.02 authorizes a judicial remedy for certain prosecutors (not private plaintiffs). See [A.R.S. § 15-717.02\(E\)](#). For another, other provisions of the same bill that enacted Section 41-1494 impose reporting requirements—not rights of action. See [H.B. 2906, 55th Leg., 1st Reg. Sess., ch. 427, § 1 \(Ariz. 2021\)](#) (codified at [A.R.S. § 9-481\(H\)](#)); *id.* [§ 2](#) (codified at [A.R.S. § 11-661\(D\)](#)) and [§ 3](#) (codified at [A.R.S. § 15-1473\(F\)](#)). The Legislature carefully delineated which means of enforcement accompany each provision.

This statutory context—of express rights of action and enumerated reporting schemes throughout related provisions of the Arizona statutes—confirms that the Legislature’s exclusion of a right of action in Section 41-1494 was a deliberate choice. See [McNamara](#), 236 Ariz. at 195-96 ¶11; [Saba](#), 146 S. Ct. at 1553; see also [Welch v. Cochise Cnty. Bd. of Supervisors](#), 251 Ariz. 519, 529 ¶36 (2021) (“[E]xpressio unius est exclusio alterius . . . counsels us to construe the legislature’s exclusion of remedies as intentional.”).

2. The Court of Appeals correctly refused to address the secondary, non-textual interpretive methods.

Because application of the primary methods confirms that Section 41-1494 unambiguously does not create a private right of action, the Court of Appeals correctly declined the “additional analysis” of secondary methods like spirit and purpose, or effects and consequences. [Op. 8 ¶21](#). “[T]here is no need to consider secondary interpretation principles” when “[the statute] is clear.” [James](#), 253 Ariz. at 305 ¶21; see [State v. Burbey](#), 243 Ariz. 145, 147 ¶7 (2017) (“When the text is clear and unambiguous, . . . our inquiry ends.”).

The best Anderson has been able to muster to challenge this conclusion is his assertion that the statute’s “silence” on the right-of-action question is synonymous with ambiguity. See [Pet. 5-6](#). That’s wrong. A statute is

ambiguous only when its *language* “can be reasonably read in two ways” — for instance, when it is unclear as a syntactical matter how an adverb modifies a sentence. [State v. Salazar-Mercado, 234 Ariz. 590, 592 ¶5 \(2014\)](#). But the Court “typically [will] not infer legislative intent from silence.” [PPAI, 257 Ariz. at 147 ¶40](#).³

C. In the alternative, the Court should clarify or limit *Transamerica* in favor of a clear text-first approach.

As the correct textual analysis confirms, *Transamerica* can be reconciled with subsequent decisions by properly ordering its factors into primary and secondary interpretive steps. But, as happened in the Superior Court here, *Transamerica* is still occasionally misinterpreted to embrace a different and manifestly incorrect proposition: that secondary methods of interpretation can supply a private right of action where text does not. See [Pet. App. 32-33](#).

Anderson’s view of *Transamerica* — giving equal value to text, legislative intent, and considerations like “spirit and purpose” — is a vestige of a bygone era. “Once upon a time,” Arizona courts considered policy

³ The fact that true statutory ambiguity is rare is a feature, not a bug. The legislature generally “sa[ys] what it means” and means what it says. See [Hughes v. Jorgenson, 203 Ariz. 71, 73 ¶11 \(2002\)](#). And “[a] statute is not ambiguous merely because the parties disagree about its meaning.” [Glazer v. State, 244 Ariz. 612, 614 ¶12 \(2018\)](#).

rationales and searched for “legislative intent” rather than focusing on plain meaning. [*Assoc. Minority Contractors of Ariz. v. City of Phoenix*, 587 P.3d 635, 646 ¶¶71-73 \(App. 2026\)](#) (Catlett, J., specially concurring). That era is no more.

To the extent that *Transamerica* can be read as supporting Anderson’s equal-value approach, the “original soundness” of that approach has proven unpersuasive with time, and this Court should expressly reject it. [*Young v. Beck*, 227 Ariz. 1, 6 ¶23 \(2011\)](#). That approach drew on a since-abandoned view of causes of action once embraced by the U.S. Supreme Court. Specifically, *Transamerica* found its rule in [*Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573 \(1974\)](#), which in turn based its reasoning on “a continuous line of decisions of the Supreme Court of the United States providing for civil actions by private persons.” [*Id.* at 576](#) (citing, *inter alia*, [*I. Case Co. v. Borak*, 377 U.S. 426 \(1964\)](#)). At that time, the theory was that courts must “be alert to provide such remedies as are necessary to make effective the congressional purpose.” [*Borak*, 377 U.S. at 433](#). So *Sellinger* followed, instructing that “[s]tatutes shall be construed with the view to effect their object and promote justice.” [*110 Ariz. at 576*](#).

But gone is “the era when” the U.S. Supreme Court “routinely implied causes of action.” [*Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 334 \(2020\)](#). The Court has “since rejected the practice of fashioning rights of action as [it] see[s] fit,” now requiring *language* creating a right to sue. [*Saba*, 146 S. Ct. at 1553](#); see [*Sandoval*, 532 U.S. at 288](#). That leaves *Sellinger*’s multi-factor approach behind, lacking a *ratio decidendi*.

That approach has also been left behind in this Court, which has *never* cited *Transamerica*’s cause-of-action analysis. Nor has it followed *Sellinger* since 1998. See [*Napier v. Bertram*, 191 Ariz. 238, 240 ¶9 \(1998\)](#).⁴

II. Anderson’s proposed approach goes beyond even *Transamerica*.

Although Anderson claims he requests application of the *Transamerica* factors, he really advocates a far broader rule: that courts should imply a right of action wherever a statute “is enacted for the benefit of a specific class,” deviating “[o]nly where the Legislature clearly intended to *deny*” one. [*Pet. 11-12*](#). But that would imply a right of action in almost every statute.

⁴ Just today, the Court considered the extent of a homeowners’ association’s right to sue under the Homeowners’ Association Dwelling Actions statutes. See [*Gallery Cmty. Ass’n v. K. Hovnanian at Gallery, LLC*, CV-24-0252-PR \(Ariz. July 29, 2026\)](#). The Court did not rely upon (or even cite) *Transamerica* or *Sellinger*, or any secondary methods—but instead interpreted the text, context, and statutes *in pari materia*. [*Id.* ¶ 11](#).

Even giving the broadest possible reading to *Transamerica* and *Sellinger*—subordinating text to secondary factors—would not support Anderson’s radical rule. In each case, the Court still interpreted *text*, albeit not with the same precision of today’s judicial methods. Indeed, the relevant statute in both *Transamerica* and *Sellinger* could reasonably be read to imply a right of action through its text, which everyone agrees is permissible. See pp. 8-10, *supra*. Specifically, in *Transamerica*, the Court relied in part on [A.R.S. § 6-628 \(1988\)](#), since repealed, which referred to a loan that is “void.” [158 Ariz. at 117](#); see [TAMA, 444 U.S. at 19](#) (statutory reference to a “void” loan confers a right of action to void the contract). In *Sellinger*, the relevant statute stated that the law “shall not bar any claim against any person” who has violated “this article.” [110 Ariz. at 576](#). It was this “*language*” that implied private litigation. [Id.](#) (emphasis added). Put differently, by today’s parlance, it is entirely possible that both *Transamerica* and *Sellinger* would come out the same way—but because the relevant *text* contemplated private litigation. They do not suggest that every statute intended to protect some class of persons does so.⁵

⁵ *Transamerica* also recognized other features of the statute at issue (the Consumer Loan Act) that are not transferable to other statutes arising in

In all events, should the Court consider *Transamerica's* secondary methods, it will *still* find no implied right of action in Section 41-1494.

(a) Effects and Consequences. It is simply not true that denying a right of action “would nullify” the statute’s protections. *Contra* [Pet. 14](#). As discussed above, *supra* p. 10, Section 41-1494(C)’s reporting requirement ensures that high-ranking officials can monitor compliance and respond appropriately. See [Kelly, 260 N.E.3d at 940](#); [Saba, 146 S. Ct. at 1553](#). Anderson establishes no more than his “dissatisfaction with the enforcement mechanism and limited remedies prescribed by the legislature.” [McNamara, 236 Ariz. at 196 ¶13](#). And even if Section 41-1494 “create[d] rights in individuals against [the State],” which it does not, the Legislature still “is not bound to provide a remedy in the courts and may withhold all remedy . . . however mistaken its exercise.” [Guibault v. Pima County, 161 Ariz. 446, 448 \(App. 1989\)](#) (citation modified).

other contexts. Namely, the Court recognized that existing precedent had already recognized a cause of action for a predecessor statute. See [158 Ariz. at 117](#). The Court also drew on the common-law origins of the right to avoid a usurious loan contract, recognizing that a party to such a loan could maintain a common law action sounding in breach of contract to vindicate its rights. [Id. at 118](#). Anderson has never claimed that Section 41-1494 has any of these same historical or common-law features.

(b) Spirit and Purpose. Anderson has claimed – without citation – that the statute’s “spirit and purpose” support a right of action based on “[l]egislative debate.” [Pet. 14](#). He may be pointing to the Superior Court’s reliance on the statement of a single senator, discussing his desire to bar the use of “public funds” to advance “critical race theory.” [Pet. App. 32–33](#) (quoting Hearing on S.B. 1074 Before the H. Comm., 55th Leg., 1st Reg. Sess., at 2:56:30 (Ariz. May 5, 2021) (statement of Sen. Hoffman)⁶). This statement says nothing about a private right of action. But even if that senator subjectively intended private enforcement, Anderson’s approach to legislative history is “the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends.” [Conroy, 507 U.S. at 519](#) (Scalia, J., concurring in the judgment). Such “statements by individual legislators rank among the least illuminating forms of legislative history.” [N.L.R.B. v. SW Gen., Inc., 580 U.S. 288, 307 \(2017\)](#).

Finally, to accept Anderson’s view would invite a proliferation of new suits seeking recognition of new private rights in innumerable existing

⁶ <https://www.azleg.gov/videooplayer/?eventID=2021051006&startStream%20At=9779>.

statutes. If the Court were to “allow this claim to proceed,” then anyone who can claim membership in a class protected by any currently existing statute “would have a cause of action.” [*Rogers v. Mroz*, 252 Ariz. 335, 344 ¶39 \(2022\)](#). That theory has “no limiting principle,” *id.*, because every law is intended to protect *some* class or advance *some* policy interest, see [*Bilke v. State*, 206 Ariz. 462, 464 ¶11 \(2003\)](#) (legislature presumptively does not enact “superfluous” or “insignificant” statutes) (citation modified). Anderson’s approach therefore seeks to transport Arizona’s courts back in time, to an era when statutory text was not primary and when judges were free to craft their own remedial law to vindicate a statute’s purpose. But judges “have no authority to pursue those broader purposes or write those new laws.” [*Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law* 23 \(1997\)](#).

The proper course is to allow the Legislature and the people to make the delicate policy judgments about which remedies are available to advance a statute’s purpose. In Section 41-1494, the Legislature deferred to our State’s political leaders the decision of what to do when “state agencies” are not “in compliance.” [*A.R.S. § 41-1494\(C\)*](#). A court’s role is to respect that choice.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

July 29, 2026

Respectfully submitted,

ASHURST PERKINS COIE US LLP

By: s/ Thomas D. Ryerson

Paul F. Eckstein, Bar No. 001822

Joel W. Nomkin, Bar No. 011939

Thomas D. Ryerson, Bar No. 028073

Matthew R. Koerner, Bar No. 035018

Addison W. Bennett, Bar No. 039801

2525 E. Camelback Road, Suite 500

Phoenix, Arizona 85016-4227

Telephone: +1.602.351.8000

Paul.Eckstein@ashurstperkins.com

Joel.Nomkin@ashurstperkins.com

Thomas.Ryerson@ashurstperkins.com

Matthew.Koerner@ashurstperkins.com

Addison.Bennett@ashurstperkins.com