IN THE SUPREME COURT
STATE OF ARIZONA

OWEN ANDERSON, Petitioner, v. ARIZONA BOARD OF REGENTS, Respondent.	Supreme Court No. CV-26-0012-PR Court of Appeals, Div. 1 No. 1 CA-SA 25-0007 Maricopa County Superior Court No. CV2024-005713

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INTRODUCTION

The Legislature enacted Section 41-1494 to prohibit government entities from requiring their employees to participate in certain types of discriminatory trainings and to prohibit the expenditure of taxpayer funds on those programs. The statute identifies the people it was enacted to protect: public employees (like Professor Anderson) and taxpayers. Those are the exact parties who brought this case to protect their statutory rights.

Yet the Court of Appeals imposed a remarkable new rule that is contrary to decades of Arizona law: because the statute contains no express right of action, there can be no implied right of action. *See* Op. at 5-6 ¶ 13.

This Court has never embraced such a rule.

Instead, Arizona courts have recognized implied causes of action, using the test of *Transamerica Financial Corp. v. Superior Court*, 158 Ariz. 115 (1988), and *Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573 (1974)—two controlling cases the court below never even mentioned.

Under that test, courts determine whether an implied cause of action exists by examining the context of the statute, the language used, the subject matter, the effects and consequences of the law, and the spirit and purpose of the enactment. *Transamerica*, 158 Ariz. at 117; *accord*, *Chavez v. Brewer*, 222 Ariz. 309, 317-18 ¶ 24 (App. 2009); *Douglas v. Governing Bd. of Window Rock Sch. Dist.*, 206 Ariz. 344, 346 ¶ 5 (App. 2003).

Ignoring that long-established test, the Court of Appeals effectively held that because Section 41-1494 contains no express cause of action, no implied cause of

action can exist. Op. at 5-6 ¶¶ 11-13. That conclusion is irreconcilable with *Transamerica*, *Sellinger*, and other cases. It also directly contradicts this Court's holding in *Napier v. Bertram*, 191 Ariz. 238 (1998), that legislative silence "begins, rather than ends, our inquiry." *Id.* at 240 ¶ 9 (1998). Here, silence ended the lower court's inquiry.

If that court's reasoning were correct, it would silently dismantle nearly fifty years of Arizona jurisprudence recognizing implied causes of action—a sweeping doctrinal shift. Indeed, if the Court of Appeals were correct, the doctrine of implied causes of action would cease to exist altogether.

The decision below rests on a fundamental misreading of this Court's decision in *State ex rel. Arizona Department of Revenue v. Tunkey*, 254 Ariz. 432 (2023). *Tunkey* did not address implied causes of action, did not mention *Transamerica* or the decades of Arizona precedent governing implied statutory remedies, and did not purport to overturn that settled doctrine by implication. Rather, it addressed how courts interpret statutory text—which is simply a different question from that addressed by *Transamerica*. The latter determines whether a statute that creates substantive rights also implies a private remedy to enforce them.

Correctly understood, *Transamerica* and *Tunkey* are complementary, not conflicting. And under *Tunkey*'s appropriate textual approach, Section 41-1494 unmistakably protects identifiable classes: employees from compelled participation in prohibited trainings, and taxpayers from the unlawful expenditure of public funds. This Court should reaffirm that *Tunkey* and *Transamerica* operate in

harmony, and reject the Court of Appeal's interpretation, which would erase established precedent by implication.

Properly applying the *Transamerica* factors demonstrate that Section 41-1494 creates an implied cause of action. The statute's plain language confers substantive rights on identifiable individuals by protecting public employees from being forced to attend racially discriminatory training programs, and taxpayers from financing such programs. Its placement within Arizona's Civil Rights Act confirms that it functions as a remedial civil-rights statute; its purpose is to prevent discriminatory governmental conduct. By expressly applying to state employees, the statute makes clear that it regulates the conditions of employment and is intended to be enforceable by employees like Professor Anderson. Indeed, recognizing a private remedy is the only means of effectuating the Legislature's objectives. Absent private judicial enforcement, the protections of Section 41-1494 would be illusory.

As in *Transamerica*, *Sellinger*, and the many lower court cases recognizing implied causes of action, the Legislature created substantive rights for identifiable individuals that cannot be meaningfully enforced without access to the courts. Recognizing an implied cause of action therefore gives Section 41-1494 practical effect.

The decision below should be reversed.

ARGUMENT

I. The Court of Appeals erred by failing to apply the *Transamerica* factors.

A. Legislative silence does not bar an implied cause of action; it requires courts to apply the *Transamerica* factors.

More than fifty years ago in *Sellinger*, this Court said that when determining whether legislative silence bars an implied private cause of action, legislative silence marks the *beginning* of the inquiry, not the end. Here, however, the Court of Appeals effectively said legislative silence is the end of the inquiry, not the beginning.

In fact, *Sellinger* rejected the *exact* reasoning the court below used here. Although "[t]he Consumer Fraud Act does not contain express language granting a private right of action," the *Sellinger* Court nevertheless held that consumers could sue because the statute was enacted to protect them from deceptive practices. 110 Ariz. at 575. Rather than treating legislative silence as a prohibition on suit, the Court inferred a private remedy from the statute's language and purpose, explaining that the Act "contemplates that a person who has been damaged by the practices declared to be unlawful may exert a claim by reason of such acts." *Id.* at 576. *Sellinger* thus established a foundational principle of Arizona law: statutory rights do not become unenforceable merely because the Legislature did not expressly authorize a private cause of action.

This Court reaffirmed that principle in *Transamerica*, the decision that has governed implied causes of action in Arizona ever since. There, borrowers sought to enforce Arizona's Consumer Loan Act even though the statute contained no

express private remedy. 158 Ariz. at 116-17. The Court acknowledged that the Act "does not provide an express private right of action," yet held that "Arizona case law implies such a right." *Id.* at 116. Again, rejecting the argument that legislative silence is dispositive, the Court examined whether the Legislature intended the statute to protect individual borrowers and concluded that a private cause of action existed because the statutory rights "inure[d] to the benefit of [the] individual borrower." *Id.* at 117. The Court's reasoning was straightforward: because the statute was enacted to protect borrowers, those protections would be meaningless if borrowers themselves could not enforce them.

A decade later, this Court removed any doubt about the significance of legislative silence. In *Napier*, *supra*, the Court held that "[a] statute's silence on whether a cause of action is conferred by the statute or should be recognized as a result of the statute is not dispositive." 191 Ariz. at 240 ¶ 9. Quite the opposite: "the legislature's silence begins, rather than ends, our inquiry." *Id.* That inquiry requires courts to examine a statute's text, purpose, and context.

Here, the Court of Appeals undertook no such inquiry. Instead, it treated Section 41-1494's silence as dispositive. According to the panel, "a statute's silence on a matter alone does not create ambiguity," Op. at 5 ¶ 11, and because Section 41-1494 does not "unambiguously" create a private cause of action, none exists. *Id*. The court made no effort to analyze purpose or context, but focused on questions about ambiguity or absurdity of interpretation—which, as explained in Section B below, are entirely different questions. That approach cannot be reconciled with *Sellinger*, *Transamerica*, or *Napier*, which hold precisely the

opposite: legislative silence neither answers the question nor forecloses judicial recognition of a private remedy. It simply requires courts to apply the *Transamerica* factors.

The Court of Appeals itself has in every other case applied the proper test. In *Douglas*, for example, it confirmed that statutory silence does not bar private enforcement where a statute creates mandatory protections for an identifiable class but provides no effective enforcement mechanism. 206 Ariz. at 346-48 ¶¶ 5-12. There, the Legislature required that certain education funds "may only" be used for teacher compensation, yet the statute contained no express cause of action. Applying the *Transamerica* test, it examined the statute's language and purpose and held that because the statute was obviously intended to protect the rights of teachers, teachers could sue to enforce the requirement. *Id.* at 346-47 ¶¶ 5-9. The court recognized that the statute was "silent on whether a private cause of action may be brought," but concluded that "[t]he silence is not dispositive." *Id.* at 346 ¶ 5. That is Arizona law.

The principal flaw in the Court of Appeals' decision, therefore, is not merely that it reached the wrong conclusion. It applied the wrong legal test entirely. Rather than treating legislative silence as the starting point for analysis, it transformed silence into an affirmative prohibition on private enforcement—precisely what *Sellinger*, *Transamerica*, and *Napier* forbid.

B. *Tunkey* does not abrogate *Transamerica* or Arizona's longstanding implied cause of action doctrine.

The fundamental flaw in the decision below is methodological. The question before the Court of Appeals was whether Section 41-1494 creates an implied cause of action. That question is answered by applying the *Transamerica* test and considering statutory language, context, subject matter, effects and consequences, and spirit and purpose. But the court instead focused on different questions: whether the statutory silence creates an ambiguity, or whether the lack of private enforcement would render the statute absurd. Ambiguity and absurdity, however, are different subjects.[1] Whether a statute is ambiguous or not simply doesn't determine whether or not it creates a private right of action. That explains why *Transamerica*, *Sellinger*, *Douglas*, and similar cases never address the question of ambiguity. The statutes in those cases weren't *ambiguous*—indeed, they were unambiguously silent!—yet they created private rights of action, because it was plain from their text and context that the Legislature intended them to create enforceable private rights.

The court below repeatedly emphasized that Section 41-1494 neither expressly authorizes lawsuits nor expressly creates a private remedy. Op. at 5-6

[1] Ambiguity and absurdity are questions of *interpretation,* whereas the question of private enforceability is a question of *construction*. *See generally* Randy E. Barnett, *Interpretation and Construction*, 34 Harv. J.L. & Pub. Pol'y 65 (2011). That's not to say questions about ambiguity will never overlap with questions about implied rights of action. But the Court of Appeals got the relationship between the two things right in *Burns v. City of Tucson*, 245 Ariz. 594, 596 ¶ 7 (App. 2018), when it said: "[h]ere, the statute neither expressly confers nor forecloses a private right of action. Accordingly, we must consider not only the statutory language, but also its context, subject matter, effects and consequences, and spirit and purpose." That is just the analysis the court below failed to apply.

¶¶ 12-13. Arizona's implied-cause-of-action cases exist precisely because statutes frequently create enforceable private rights without expressly prescribing a private remedy. If legislative silence alone resolved the issue, *Sellinger*, *Transamerica*, *Napier*, and *Douglas* would have different results.

This also explains why the court below erred in its reliance on *Tunkey*. *Tunkey* had nothing to do with implied causes of action. It neither addressed nor cited *Transamerica*, *Sellinger*, *Napier*, or any other case applying Arizona's implied-cause-of-action doctrine. Nor did it suggest that this Court was reconsidering—much less overruling—that settled line of authority. Instead, *Tunkey* was a case about statutory ambiguity. There, the Court was asked to determine the meaning of statutory text about tax liability, not whether a statute impliedly authorized a private judicial remedy.

Transamerica and *Tunkey* simply answer different questions. *Transamerica* establishes the framework for determining whether a statute impliedly creates a private cause of action. *Tunkey* addresses how courts interpret statutory text. Nothing in *Tunkey* purports to alter, narrow, or replace the *Transamerica* analysis.

By confusing these two subjects, the decision below works a dramatic change in Arizona law, and does so by implication. It effectively held that the *Transamerica* test was superseded in *Tunkey*, so that instead of considering context, purpose, and the other *Transamerica* factors, a court asked to decide if a statute creates an implied private right of action should say no as long as the statutory silence is unambiguous under *Tunkey*. Among the many problems with that result is the fact that this Court has repeatedly said that "well-established and

important legal principle[s] [should] not be deemed to have been overruled by implication ... unless the principle is directly involved and the inference is clear and impelling." *Shinn v. Arizona Bd. of Exec. Clemency*, 254 Ariz. 255, 263 ¶ 33 (2022) (internal quotation marks and citation omitted). If *Tunkey* had intended to eliminate Arizona's implied-cause-of-action doctrine, one would expect some discussion of *Transamerica*, *Sellinger*, *Napier*, or *Douglas* in that decision. There is none.

If allowed to stand, the panel's interpretation would silently dismantle nearly fifty years of Arizona implied-cause-of-action jurisprudence. This Court should reject that interpretation and reaffirm that *Transamerica* remains the governing framework whenever courts are asked whether a statute impliedly creates a private right of action.

II. Properly applying the *Transamerica* factors shows that there is an implied cause of action in Section 41-1494.

Under the *Transamerica* test, courts ask whether the Legislature enacted a statute that confers substantive protections upon identifiable individuals, and whether those protections can be given meaningful effect without private judicial enforcement. To answer that question, this Court examines "the context of the statutes, the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law." 158 Ariz. at 116.

Here, every *Transamerica* factor points in the same direction. Section 41-1494 creates substantive protections for identifiable individuals, appears within Arizona's civil-rights laws, was enacted to protect public employees and taxpayers,

and would be unenforceable absent a private judicial remedy. Recognizing an implied cause of action therefore effectuates the text and design of Section 41-1494.

A. The plain language of Section 41-1494 confers substantive protections on identifiable individuals.

The first *Transamerica* factor asks courts to consider the text of the statute and whether it confers substantive protections upon identifiable individuals or an identifiable class of persons. Section 41-1494 plainly does.

Subsection (A) provides that public employers "may not require an employee to engage in training, orientation or therapy" that advances the prohibited concepts identified by the Legislature. A.R.S. § 41-1494(A). The beneficiaries of that prohibition are individual public employees, like Professor Anderson. The statute thus creates a personal right not to be compelled to participate in discriminatory training. Subsection (B) likewise provides that public entities "may not use public monies" for such training. A.R.S. § 41-1494(B). That protects Arizona taxpayers from financing conduct the Legislature has declared unlawful.

Thus, the statute identifies both the prohibited conduct and the protected classes. *Employees* are protected from compelled participation, and *taxpayers* are protected from unlawful expenditures of public funds. These are the statute's plain and operative provisions. That's precisely the type of statutory language Arizona courts have repeatedly held support an implied cause of action.

In *Sellinger*, this Court recognized an implied remedy under the Consumer Fraud Act even though the statute contained no "express language granting a private right of action." 110 Ariz. at 575. The Court reasoned that because the Act was enacted to protect consumers, it necessarily "contemplates that a person who has been damaged by the practices declared to be unlawful may exert a claim by reason of such acts." *Id.* at 576.

The same principle applied in *Transamerica*. Although Arizona's Consumer Loan Act contained no express private remedy, this Court concluded that one was implied because the statutory protections "inure[d] to the benefit of the individual borrower." 158 Ariz. at 117.

Likewise, in *Chavez v. Brewer*, the Court of Appeals recognized an implied cause of action because "similar to the statutes at issue in *Transamerica*, the focus of these statutes is protecting the rights of individuals." 222 Ariz. 309, 319 ¶ 28 (App. 2009). And in *Douglas*, a law that plainly protected the rights of teachers created an implied right of action by teachers. 206 Ariz. at 346, 348 ¶¶ 9, 12.

The same reasoning applies here with even greater force. Section 41-1494 was enacted to protect identifiable individuals—not merely to regulate government operations. In *Sellinger*, the protected class consisted of consumers. In *Transamerica*, borrowers. In *Chavez*, voters. In *Douglas,* teachers. Here, the Legislature protected public employees from compelled discriminatory training and taxpayers from financing it.

The Court of Appeals overlooked this central point. The question is not whether Section 41-1494 *expressly* states that "an employee may sue." Obviously

it doesn't. But *Sellinger* and *Transamerica* said decades ago that that's the beginning of the analysis, not the end. The question is whether the Legislature created substantive rights belonging to identifiable individuals. The plain language Section 41-1494 unequivocally does exactly that.

B. Section 41-1494's context and subject matter confirm that it functions as a privately-enforceable civil rights law.

The statute's placement within Arizona's statutory civil rights scheme reinforces the same conclusion.

Transamerica directs courts to examine not only the statutory language but also the statute's context and subject matter. 158 Ariz. at 117. Here, the Legislature placed Section 41-1494 in Title 41, Chapter 9—Arizona's civil rights laws. It did not codify the provision among statutes governing agency administration, personnel management, budgeting, or internal governmental procedures.

That placement matters. The Legislature grouped Section 41-1494 alongside Arizona's other civil-rights protections because it serves the same function: protecting individuals from discriminatory governmental conduct.[2] Like the remainder of Chapter 9, Section 41-1494 establishes substantive guarantees rather than merely prescribing internal governmental procedures.

Notably, Title 41, Chapter 9 serves as Arizona's counterpart to the federal civil rights statutes. Like federal civil rights legislation, Chapter 9 is not merely a collection of administrative directives regulating government conduct. Rather, it

[2] The fact that the Legislature chooses to place a statute in a particular chapter often helps indicate Legislative intent. *See, e.g., State v. Peek*, 219 Ariz. 182, 183 ¶ 8 (2008); *State v. Espinosa*, 101 Ariz. 474, 476 (1966); *Jennings v. Woods*, 194 Ariz. 314, 324-25 ¶ 52 (1999).

establishes substantive guarantees against discrimination and protects the civil rights of specified individuals in areas such as employment, public accommodations, housing, voting, and access to government programs and services.

Viewed in context, Section 41-1494 is unmistakably remedial. It's part of Arizona's broader statutory commitment to protecting individuals against discrimination by public institutions. Its statutory setting strongly confirms that the Legislature intended the protections created by Section 41-1494 to be meaningful and enforceable.

C. The spirit and purpose of Section 41-1494 confirm that the Legislature enacted the statute to protect employees and taxpayers.

The third *Transamerica* factor likewise supports recognizing an implied cause of action. Courts must consider whether a private remedy advances the Legislature's objective in enacting the statute. 158 Ariz. at 117.

Section 41-1494 reflects a legislative determination that public employers and public educational institutions should not require employees to participate in training that "presents any form of blame or judgment on the basis of race, ethnicity or sex"—nor should public funds be used to finance such training. Through subsections (A) and (B), the Legislature established substantive limitations on governmental authority for the benefit of those directly affected by those practices. Public employees are protected from being compelled to participate in prohibited training as a condition of employment, and taxpayers are protected from financing such trainings with public funds.

Recognizing an implied cause of action directly furthers that purpose. The harms addressed by Section 41-1494 are personal and immediate. An employee suffers the injury when compelled to participate in training the Legislature has prohibited. Taxpayers suffer the injury when public monies are expended for conduct the Legislature has declared unlawful. Those injuries are not abstract concerns about governmental administration; they are the injuries the statute was enacted to prevent. Just as the voters in *Chavez* had a private right of action—since the statute was written for their "especial benefit," 222 Ariz. at 318 ¶ 27 (citation omitted), so too public employees and taxpayers have an implied right of action under this statute.

Also, absent private judicial enforcement, those statutory protections would depend almost entirely on the discretion of the very governmental entities the statute regulates. Nothing in Section 41-1494 suggests the Legislature intended such a result. To the contrary, recognizing a private cause of action gives practical effect to the Legislature's substantive prohibitions by allowing the individuals the statute protects to prevent ongoing and future violations.

D. Without a private cause of action, Section 41-1494 would be unenforceable.

The final—and perhaps most important—*Transamerica* factor requires courts to consider the "effects and consequences" of recognizing, or refusing to recognize, an implied cause of action. 158 Ariz. at 116. The question is whether the statute's substantive protections have meaningful effect without private

enforcement. When the answer is no, courts recognize an implied remedy to give effect to the rights the Legislature created. *See* *Sellinger*, 110 Ariz. at 576.

Douglas is particularly instructive on this point, because it presented the same fundamental issue. There, teachers sought to enforce a statute requiring school districts to devote designated funds to teacher compensation. Although the statute imposed reporting obligations and contained no express private cause of action, the court recognized an implied remedy because otherwise there would be "no way of holding school districts accountable for the misappropriation of [the] funds." 206 Ariz. at 347 ¶ 9. *See also* *Sellinger*, 110 Ariz. at 576 (private right of actin was "highly desirable" because "[w]ithout effective private remedies the widespread economic losses that result from deceptive trade practices remain uncompensable" contrary to legislative purpose).

Section 41-1494 prohibits public employers—including Arizona's public universities—from requiring employees to participate in trainings that involve "blame or judgment on the basis of race, ethnicity or sex." It likewise prohibits the expenditure of public monies for such trainings. Absent an implied cause of action, there is no mechanism by which employees may prevent unlawful training before it occurs and no mechanism by which taxpayers may prevent the unlawful expenditure of public funds. The Legislature would not have created substantive rights but left those rights without meaningful means of enforcement.

On this point, the court below concluded that because Subsection (C) of the statute directs the Department of Administration to submit annual compliance reports to elected officials, there can be no implied right of action. Op. ¶ 3. But the

statute's operative provisions are not reporting requirements, and reporting requirements would not accomplish the Legislature's purpose of protecting the rights of employees or taxpayers.

That becomes plain if we contrast the statute here with the statute in *Lancaster v. Arizona Board of Regents*, 143 Ariz. 451 (App. 1984), where the court said there was no private right of action because the statute only required the agency to submit a report to the Legislature. In that case, the statute required the Board of Regents to create a plan for setting wages and salaries. *Id.* at 453-54. It was a budgeting statute, which created no right on the part of any individual or group, *see id.* at 455-56, but "create[d] only an executive duty to prepare and a legislative right to receive a report." *Id.* at 457.

Here, by contrast, the statute creates duties—specifically, prohibitions in Subsections A and B, phrased in "may not" terminology—and does so for the "especial benefit" of employees and taxpayers. *Id.* (citation omitted). In *Lancaster*, the report still had to be approved by the Legislature before any individuals would benefit. Here, the statute benefits individuals directly, without the need for further legislative action. *See McCarthy v. Scottsdale Unified Sch. Dist. No. 48*, 409 F. Supp.3d 789, 822 (D. Ariz. 2019) (distinguishing Lancaster and finding private right of action for this reason). The statute in *Lancaster* created "at most … an expectation" about benefits "at some future time," 143 Ariz. at 457, whereas this statute outlaws certain categories of action by the state *vis-à-vis* certain groups of individuals. Thus, it is unreasonable to conclude that the report requirement in

Subsection C is the sole means of enforcement. *Cf. Chavez*, 222 Ariz. at 318 ¶¶ 27-28 (distinguishing *Lancaster* on the same grounds).

In fact, Subsection (C) is not an enforcement mechanism *at all*. It authorizes no investigation, creates no administrative adjudicative process, imposes no sanctions, provides no authority to compel compliance, and affords no relief to the employees and taxpayers the statute protects. It requires only that compliance be reported to elected officials, not even requiring any violation to be disclosed. But even reporting a violation would not be the same as remedying one, and Subsection (C) requires far less than that.

As with *Lancaster*, *Transamerica* and *Douglas* also rejected the notion that something like Subsection C could be the exclusive enforcement mechanism. In *Transamerica*, this Court recognized an implied cause of action even though that statute included administrative enforcement provisions, because those provisions did not adequately protect the individual borrowers for whose benefit the statute was enacted. 158 Ariz. at 117-18. Likewise, in *Douglas*, the statute included a reporting requirement—but that did not eliminate the need for private enforcement, because without the latter, the Legislature's protections would have been illusory. 206 Ariz. at 347-48 ¶¶ 9-11.[3]

[3] *McCarthy*, *supra*, reached the same conclusion, finding an implied private right of action under a statute that required parental notification following the restraint or seclusion of a student. 409 F. Supp.3d at 821. That statute, too, had a reporting requirement but the court, applying the *Transamerica* test, concluded that private enforcement was necessary because otherwise the statute's protections would be effectively unenforceable. *See id.* at 822. That reasoning is especially persuasive because Arizona recognizes implied causes of action more readily than federal courts. As the Court of Appeals observed in *Chavez*, Arizona law "more broadly implies" private rights of action than federal jurisprudence. 222 Ariz. at 317-18

Section 41-1494 presents an even stronger case. An annual report advising elected officials that unlawful training continues neither prevents future violations nor protects employees from being compelled to participate nor stops the unlawful expenditure of taxpayer funds. Recognizing an implied cause of action here doesn't expand Section 41-1494 beyond its intended reach; instead, it provides the means necessary to enforce the rights the Legislature created.

Ultimately, this case illustrates precisely why the *Transamerica* test includes the "effects and consequences" factor. The Plaintiffs/Petitioners are the *exact* individuals the Legislature chose to protect in the statute. Public employees are entitled to be free from compelled participation in training the Legislature has prohibited, and taxpayers are entitled to insist that public monies not be spent on such training. Recognizing an implied cause of action simply provides the mechanism necessary to enforce those protections. Without that remedy, Section 41-1494 would identify prohibited governmental conduct yet leave no one with the ability to stop it. Arizona law does not presume that the Legislature enacted such an empty command.

CONCLUSION

This Court should *reverse*.

¶¶ 22-24. If the plaintiffs in *McCarthy* satisfied the more demanding federal standard, Petitioners here easily satisfy Arizona's.

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Pursuant to Rule 23(g)(2) of the Ariz. R. Civ. App. and this Court's June 11, 2026 Order, I certify that the body of the attached Supplemental Brief appears in proportionately spaced type of 14 points, is double spaced using a Roman font, and does not exceed 20 pages, excluding table of contents and table of authorities.

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