

**IN THE SUPREME COURT
STATE OF ARIZONA**

OWEN ANDERSON,
Petitioner,

v.

ARIZONA BOARD OF REGENTS,
Respondent.

Arizona Supreme Court
No. CV-26-0012-PR

Court of Appeals Division One
No. 1 CA-SA 25-0007

Maricopa County Superior Court
No. CV2024-005713

**BRIEF OF AMICI CURIAE PRESIDENT PETERSEN AND SPEAKER
MONTENEGRO IN SUPPORT OF PETITIONER**

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INTRODUCTION

Senate President Warren Petersen and House Speaker Steve Montenegro (“Amici”) submit this amicus brief in support of Petitioner Owen Anderson’s (“Anderson”) challenge to the Arizona Board of Regent’s (“ABOR”) “inclusive communities” training as violating A.R.S. § 41-1494.

When the Arizona Legislature enacted A.R.S. § 41-1494, it made a clear and considered judgment: state and local governments may not force their employees to sit through trainings that teach that one race, ethnic group, or sex is inherently superior to another, or that an individual is inherently racist or oppressive because of the individual’s race, ethnicity, or sex. The court of appeals did not dispute that such practices are unlawful. Yet it held that no public employee actually subjected to them may ask a court to make them stop. As the presiding officers of the two chambers that enacted the statute, Amici have a direct and substantial interest in ensuring that the law is given the force and effect the Legislature intended, and in preventing the courts from reducing an important civil rights protection to an empty formality.

This case turns on a settled question of Arizona law. This Court has long held that a statute confers an implied private right of action where its context, language, subject matter, effects and consequences, and spirit and purpose reveal a legislative intent to create one. *Transamerica Fin. Corp. v. Super. Ct. in & for Maricopa Cnty.*,

158 Ariz. 115, 116 (1988). Section 41-1494 satisfies that test at every turn. It is a civil rights statute, codified within the Arizona Civil Rights Act, that prohibits specific discriminatory practices against the very employees who are forced to endure them. Those employees are the direct beneficiaries of the statute’s protections, not incidental ones, and they are precisely the persons who should be able to enforce it. This Court should apply the *Transamerica* factors, recognize the implied private right of action the statute plainly creates, and reverse the decision of the court of appeals.

INTEREST OF AMICI CURIAE

Amici are Speaker of the Arizona House of Representatives Steve Montenegro and President of the Arizona Senate Warren Petersen. They file this brief in their official capacities as the presiding officers of their respective chambers. *See* Ariz. Const. art. IV, pt. 2, § 8; Ariz. State Senate Rule 2(N); Ariz. House of Reps. Rule 4(K). In enacting § 41-1494, the Legislature acted to prohibit discriminatory practices by state and local governments. The conduct outlawed in that section—such as training employees that “[o]ne race, ethnic group or sex is inherently morally or intellectually superior to another race, ethnic group or sex”—has no place in state government. The Speaker and President file this brief supporting Anderson to ensure that § 41-1494 is given its proper force and effect.

ARGUMENT

I. Section 41-1494 Protects Public Employees from Discriminatory Government Practices and Must Be Enforceable by Those Directly Subjected to Them.

This Court has consistently maintained that a private right of action exists if the statutes context, language, subject matter, effects and consequences, and spirit and purpose imply such a right. *Transamerica*, 158 Ariz. at 116. Applying this test as the Court should, it is clear that the Legislature implied such a right when enacting A.R.S. § 41-1494.

First, the fact that the Legislature enacted § 41-1494 in part to prohibit discriminatory practices by state and local governments is critical to “the context, . . . subject matter, effects, and purpose of the statutory scheme.” *See Chavez v. Brewer*, 222 Ariz. 309, 318 ¶25 (App. 2009). Indeed, “[c]ontext is always relevant’ because when ‘a provision is part of a broader statutory scheme’—as most provisions are—‘context can tell us the overall objective.’” *Associated Minority Contractors of Ariz. v. City of Phoenix*, 262 Ariz. 43, __ ¶27 (App. 2026) (quoting *In re Chalmers*, 260 Ariz. 91, __ ¶18 (2025)).

The court of appeals ignored this key fact—that § 41-1494 is in part a civil rights statute enacted to prohibit specific discriminatory practices against employees (and others) by government agencies and the use of public monies for such discriminatory practices. In fact, the term “civil rights” never appears in the court’s

decision. Undeniably, though, § 41-1494 is codified in Chapter 9 of Title 41, which relates to “Civil Rights” and is commonly referred to as the “Arizona Civil Rights Act” or “ACRA.” *See, e.g., Higdon v. Evergreen Int’l Airlines, Inc.*, 138 Ariz. 163, 164, 165 n.1 (1983).

The fact that § 41-1494 is in part a civil rights statute that comfortably fits with longstanding prohibitions on employment discrimination supports the superior court’s conclusion that it had jurisdiction to hear Anderson’s claim and enjoin the prohibited practices by government officials. The scope of § 41-1494 relates to the employment context and the protected classes of “race” and “sex,” which are subjects that have long been covered by both ACRA and the corresponding federal civil rights law, Title VII. *See* 42 U.S.C. §§ 2000e–2000e17 (as amended). Article 4 of ACRA relates to discrimination in employment. *See* A.R.S. §§ 41-1461 to -1468. And ACRA defines “employer” as a “person,” which includes “one or more . . . governmental agencies [or] political subdivisions.” A.R.S. § 41-1461(7)(a), (11).

Moreover, the fact that § 41-1494 provides a clear prohibition—government entities “may not require an employee to engage in training”—is critical “language” further showing the existence of a private right by persons with standing to restrain statutory violations. *Chavez*, 222 Ariz. at 318 ¶25. It also clearly demonstrates that government employees are direct, not incidental, beneficiaries of A.R.S. § 41-1494. *See Transamerica*, 158 Ariz. at 117 (finding an implied private right of action

because the benefit of voiding a usurious loan “only inures to the benefit of an individual borrower”); *Chaves*, 222 Ariz. at 318 ¶28 (finding an implied private right of action for electors under voting machine statutes because electors were the direct beneficiaries of accurate election administration); *Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8*, 206 Ariz. 344, 347–48 ¶¶6–12 (App. 2003) (finding an implied private right of action for teachers because the statute’s primary purpose was teacher compensation, and without such a right of action there was no way to hold school districts accountable for misappropriation of funds earmarked for teacher compensation).

Indeed, the categories identified in § 41-1494(D) are also consistent with the protected classes throughout ACRA, including “race” and “sex.” *See* A.R.S. § 41-1463(B) (making it an “unlawful employment practice” to “fail or refuse to hire” or to “limit, segregate or classify employees or applicants for employment in any way that would . . . adversely affect the individual’s status as an employee, because of the individual’s race, color, [or] sex.”). Consistent with that prohibition, § 41-1494 prohibits trainings, orientations, and therapy by state agencies and subdivisions that are discriminatory by suggesting that:

- One race, ethnic group or sex is inherently morally or intellectually superior to another race, ethnic group or sex;

- An individual, by virtue of the individual's race, ethnicity or sex, is inherently racist, sexist or oppressive;
- An individual should be invidiously discriminated against or receive adverse treatment solely or partly because of the individual's race, ethnicity or sex;
- An individual's moral character is determined by the individual's race, ethnicity or sex; or
- An individual should feel discomfort, guilt, anguish or any other form of psychological distress because of the individual's race, ethnicity or sex.

A.R.S. § 41-1494(D).

The Legislature could reasonably conclude that if a government agency is training its employees that one race is superior or inferior to another, or that people of one race are inherently racist, sexist, or oppressive, this could well lead to additional discriminatory conduct, and even liability for the State and its subdivisions for employment discrimination under ACRA or other laws. The Legislature was within its authority to broadly prohibit “requir[ing]” or “us[ing] public monies” for this practice. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (“Eliminating racial discrimination means eliminating all of it.”). And given this purpose, the court of appeals erred when it concluded that Anderson—a person who was directly subject

to the actions in question—could not seek to enjoin officials from engaging in unlawful practices. *See Bd. of Regents of Universities & State Coll. v. City of Tempe*, 88 Ariz. 299, 302 (1960) (“[T]his Court has on several occasions held an injunction to be a proper remedy where it is alleged that the statute . . . is being applied in an unauthorized manner.”); *see also Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶14 (2020) (“[L]ike all public officials, the Recorder may be ‘enjoined from acts’ that are beyond his power.”); *Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 614 ¶6 (App. 2017) (permitting suit to advance where the State operating a water system that used plaintiffs’ properties as “‘ad hoc’ overflow relief . . . without just compensation in violation of the Arizona Constitution”); *Berry v. Foster*, 180 Ariz. 233, 235 (App. 1994) (“[T]he [school] board is still prohibited from taking action [i.e., moving forward with meeting to censure one of its members] which it has no power to take under the governing statutes.”); *Williams v. Super. Ct. In & For Pima Cnty.*, 108 Ariz. 154, 158 (1972) (“[W]here officers are acting in the execution of a public statute, they may be enjoined from acts which are beyond their power.”); *Crane Co. v. Ariz. State Tax Comm’n*, 63 Ariz. 426, 445 (1945) (Government “officers . . . may be enjoined from acts which are beyond their power.”).

II. ABOR’s Argument That There is No Remedy Other Than Reports for § 41-1494 Violations is Breathtakingly Broad and Leads to Absurd Results.

It is also important to note the breadth and absurdity of ABOR’s private-right-of-action arguments, with which the court of appeals ultimately agreed. ABOR argues that § 41-1494’s only authorized enforcement method is the report that includes state agencies in compliance with that section. ABOR’s Supplemental Br. at 10–12, 18. A state agency that required and used public money to create and carry out a training that expressly and repeatedly told its employees that “[o]ne race, ethnic group or sex is inherently morally or intellectually superior to another” and that “[a]n individual should be invidiously discriminated against . . . because of the individual’s race, ethnicity or sex” would plainly be in violation of A.R.S. § 41-1494(A) and (B).

Imagine such a training for corrections officers, teachers, DCS employees, police officers, judges, or any other government employees who exercise authority in a way that impacts the lives of countless Arizonans. If the court of appeals decision remains, no public employee subjected to that training could seek an injunction to enforce § 41-1494(A) or (B). Accordingly, the sole “remedy” would be being left off of a list in a report. This is plainly absurd. As the superior court correctly concluded § 41-1494’s “primary purpose is to ensure that public employees are not required to undergo training ‘that presents any form of blame or

judgment on the basis of race, ethnicity or sex’ as a condition of their employment.” Under Advisement Ruling at 4. Accordingly, this Court should properly apply the *Transamerica* factors and reverse the court of appeals decision and ensure such a result does not take place.

CONCLUSION

For the foregoing reasons, the Court should reverse the court of appeals decision.

RESPECTFULLY SUBMITTED this 7th day of August, 2026.

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