

GOLDWATER

I N S T I T U T E

The Constitutional Accountability Act

A. An agency shall not:

1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule;¹
2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority;²
3. Make a rule that is not specifically authorized by statute;³ or
4. Make a rule that is not reasonably necessary to carry out the purpose of a statute.⁴

B. An agency shall not make a rule concerning an issue of vast economic, material, political, cultural, or social significance unless the Legislature has clearly and specifically authorized the agency to do so.⁵ If an agency makes such a rule without clear and specific authorization from the Legislature, then that rule shall be void and without effect until it is approved by a majority of each house of the Legislature, and it shall have no retroactive effect at any time prior to such approval. A rule concerns an issue of vast economic, material, political, cultural, or social significance if:

1. It has resulted in or is likely to result in:
 - a. An annual effect on the statewide economy of \$5 million or more,
 - b. An annual effect on any single municipal or county economy of \$1 million or more,
 - c. A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, municipalities, or other political subdivisions, or geographic regions,

¹ See A.R.S. § 41-1030(D)(1).

² See *id.* (D)(2).

³ See *id.* (D)(3).

⁴ See A.R.S. § 41-1030(A) (“A rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with §§ 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.”).

⁵ See *West Virginia v. E.P.A.*, 597 U.S. 697, (2022); *Util. Air Reg. Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014).

d. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of businesses in the state to compete with businesses outside the state,

e. A significant change in the availability to consumers of a product or type of product;

2. It abridges in any way:

a. The freedom of speech, including advertising and commercial speech, the freedom of association, the free exercise of religion, the freedom of the press, the right to peaceably assemble, or the right to petition the government,

b. The right to work in the occupation of one's choice,

c. The right to direct the upbringing, education, health care, and mental health of one's children; or

3. Any other relevant consideration indicates that the rule concerns an issue of vast economic, material, political, cultural, or social significance.

C. No agency, municipality, or other political subdivision shall delegate to any private person or organization the power to make laws, regulations, or rules, or exercise discretion in the execution thereof, that restricts the constitutional rights of other private persons.

D. Any person affected by a rule has standing to bring an action seeking injunctive and declaratory relief for violations of this section.⁶ The court shall award reasonable attorney fees and any other expenses, in addition to any costs that are awarded as prescribed by statute, to any person who prevails by an adjudication on the merits in any action brought pursuant to this section.⁷

⁶ See A.R.S. § 41-1030(E). The model language aims to expand standing by changing “This section may be enforced in a private civil action” to “Any person has standing to bring an action.” It limits this broad standing, however, to injunctive and declaratory relief actions, not damages claims.

⁷ See A.R.S. § 12-348(A) (“In addition to any costs that are awarded as prescribed by statute, a court shall award fees and other expenses to any party other than this state or a city, town or county that prevails by an adjudication on the merits in any of the following”).