

STATE OF ARIZONA

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GOVERNOR

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March 2, 2007

The Honorable Timothy S. Bee  
President  
Arizona State Senate  
1700 West Washington Street  
Senate Office Building  
Phoenix, Arizona 85007

Re: SB 1302: self-defense; home protection; applicability

Dear President Bee:

Let me begin by expressing my sincere appreciation for the constructive tone that has marked the legislative session to date, and for your role in helping to set that tone. I believe the people of Arizona are well served by the thoughtful and collaborative spirit that you and other members of the legislature have brought into this legislative session, and I look forward to continuing to work with you in that spirit to do what is best for our state.

Despite that cooperative spirit, there will of course be some issues on which we cannot agree. Regretfully, such an issue has arisen with respect to Senate Bill 1302, which would have made the justification defense we created last year through Senate Bill 1145 retroactive to any case pending trial as of April 24, 2006. Although I remain very optimistic that the bipartisan and cooperative tone that has marked this session so far will lead to fewer bills being vetoed this year than in prior years, I have today vetoed Senate Bill 1302.

Although I understand this bill was intended to cover one specific case where a defendant was unable to invoke our new law and was convicted of second degree murder, I am told by several of Arizona's leading prosecutors (Republican and Democrat) that this bill would lead to the reopening of a large number of cases, including routine cases where a criminal has already pled guilty to assault or aggravated assault. Prosecutors are particularly concerned that if this law were applied retroactively, they would be deluged by motions pursuant to Ariz. R. Crim. P. 32.1(g), which allows defendants who have pled guilty to crimes to file post-conviction relief proceedings when there has been a significant change in the law related to their conviction. *See, e.g., Supp. Amicus Brief of the Maricopa County Attorney in Garcia v. Browning*, CV-06-0320-PR (Nov. 13, 2006) at 8, 14 (noting that the Maricopa County Attorney "expects that defendants in many other cases" will seek

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March 2, 2007

Page Two

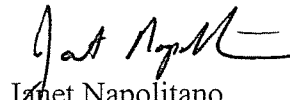
retroactive application of the justification defense and noting that such retroactive application "makes no sense" and would create "a rule that is impossible to administer").

I have also heard from victims rights groups that it is unfair to crime victims to re-open cases where a criminal has already pled guilty.

When the legislature seeks to have a criminal law applied retroactively, it is important that such legislative intent be expressed at the time the law is passed, not a year later (and by a different legislature). Otherwise, too many cases that have proceeded through our overburdened criminal justice system need to be resolved again, thereby re-opening wounds for the victims of those crimes and delaying other cases awaiting trial. To the extent we are re-trying old cases, prosecutorial work on new and substantial matters is either suspended or delayed. Such a result is not in the state's best interest.

For these and other reasons, I have vetoed Senate Bill 1302.

Yours very truly,



Janet Napolitano  
Governor

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cc: The Honorable Jim Weiers  
The Honorable Linda Gray