

PROPOSED
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2633
(Reference to printed bill)

Amendment instruction key:
[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.
[Green underlining in brackets] indicates text added to new session law or text restoring existing law.
[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.
[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.
<<Green carets>> indicate a section added to the bill.
<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 12-751, Arizona Revised Statutes, is amended to
3 read:

4 12-751. Strategic actions against public participation:
5 motion to dismiss or quash or for summary judgment;
6 definitions

7 A. In any legal action that involves a person's lawful exercise of
8 the right of petition, the right of speech, the freedom of the press, the
9 right to freely associate, **THE RIGHT TO RELIGIOUS LIBERTY** or the right to
10 peaceably assemble pursuant to the United States Constitution or Arizona
11 Constitution, **OR WHICH OTHERWISE IMPLICATES A PERSON'S FREEDOM TO HOLD OR**
12 **EXPRESS POLITICAL OR RELIGIOUS VIEWS OR ENGAGE IN POLITICALLY RELATED**
13 **ADVOCACY WITHOUT FEAR OF RETALIATION**, the person other than a state actor
14 or an intervenor may file a motion to dismiss, ~~or~~ quash **OR OBTAIN SUMMARY**
15 **JUDGMENT IN** the action under this section, **EXCEPT THAT REMEDIES FOR A**
16 **VIOLATION OF THIS SECTION WITH RESPECT TO LEGAL ACTIONS SET FORTH IN**
17 **SUBSECTION L, PARAGRAPH 1, SUBDIVISION (a), ITEM (ii) OF THIS SECTION**
18 **SHALL BE AS SET FORTH IN SECTION 13-4242.**

19 B. A person who files a motion pursuant to subsection A of this
20 section, **OR WHO FILES A PETITION FOR POSTCONVICTION RELIEF AS SET FORTH IN**
21 **SECTION 13-4242**, has the burden of establishing prima facie proof that **A**
22 **SUBSTANTIAL MOTIVATION FOR** the legal action was ~~substantially motivated by~~
23 a desire to deter, retaliate against or prevent ~~the lawful exercise of a~~
24 ~~constitutional right~~ **ANY PERSON FROM HOLDING OR EXPRESSING POLITICAL OR**
25 **RELIGIOUS VIEWS, FROM FREE POLITICAL ASSOCIATION OR FROM ENGAGING IN**
26 **POLITICALLY RELATED ADVOCACY WITHOUT FEAR OF RETALIATION OR FROM THE**
27 **LAWFUL EXERCISE OF ANY CONSTITUTIONAL RIGHT.** The moving person may submit
28 evidence based on the record, a sworn affidavit or other evidence that is

1 submitted with the motion ~~to dismiss or quash~~ OR PETITION FOR
2 POSTCONVICTION RELIEF. A party is not required to file a response to a
3 motion filed pursuant to subsection A of this section unless and until the
4 court finds that the moving party has established the prima facie proof
5 and orders the party to file a response. The court shall grant the motion
6 unless one of the following applies:

7 1. If the responding party is a state actor, the responding party
8 shows that the legal action on which the motion OR PETITION FOR
9 POSTCONVICTION RELIEF is based is justified by clearly established law and
10 that the responding party did not act ~~in order~~ WITH A SUBSTANTIAL MOTIVE
11 to deter, RETALIATE AGAINST OR prevent ~~or retaliate against the moving~~
12 ~~party's exercise of constitutional rights~~ ANY PERSON FROM HOLDING OR
13 EXPRESSING POLITICAL OR RELIGIOUS VIEWS, FROM FREE POLITICAL ASSOCIATION
14 OR FROM ENGAGING IN POLITICALLY RELATED ADVOCACY WITHOUT FEAR OF
15 RETALIATION. A state actor may satisfy the requirements of this paragraph
16 by doing any of the following:

17 (a) Establishing that the person who initiated and conducted an
18 investigation that resulted in the legal action and ~~that~~ WHO made the
19 decision to pursue the legal action was unaware of the movant's lawful
20 exercise of the constitutional right OR POLITICAL BELIEFS OR ADVOCACY.

21 ~~(b) Establishing that the state actor has a consistent practice of~~
22 ~~pursuing similar legal actions against similarly situated persons who did~~
23 ~~not lawfully exercise constitutional rights.~~

24 ~~(c)~~ (b) Producing any other evidence that the court finds
25 sufficient TO ESTABLISH THAT THE STATE ACTOR DID NOT ACT WITH A
26 SUBSTANTIAL MOTIVE TO DETER, RETALIATE AGAINST OR PREVENT ANY PERSON FROM
27 HOLDING OR EXPRESSING POLITICAL OR RELIGIOUS VIEWS, FROM FREE POLITICAL
28 EXPRESSION OR FROM ENGAGING IN POLITICALLY RELATED ADVOCACY WITHOUT FEAR
29 OF RETALIATION.

30 2. If the responding party is not a state actor, the responding
31 party shows that the legal action on which the motion is based is
32 justified by existing law or supported by a reasonable argument for
33 extending or modifying existing law.

34 C. In making its determination, the court shall conduct an
35 evidentiary hearing or consider the pleadings and supporting and opposing
36 affidavits stating facts on which the liability, defense or action is
37 based.

38 D. The motion ~~to dismiss or quash~~ may be filed within sixty days
39 after the service of the complaint or other document on which the motion
40 is based, AT ANY LATER TIME WITHIN SIXTY DAYS AFTER ACTUAL NOTICE OF A
41 PARTY'S MISCONDUCT or, in the court's discretion, at any later time on
42 terms that the court deems proper, ~~including a later time after there is~~
43 ~~actual notice of a party's misconduct.~~ If the court finds that prima
44 facie proof has been established as prescribed in subsection B of this
45 section, the court, if possible, shall conduct an expedited hearing on the
46 motion.

1 E. Unless a court rule specifically provides otherwise, all
2 discovery proceedings in the action shall be stayed on a finding of prima
3 facie proof as prescribed in subsection B of this section. The stay of
4 discovery shall remain in effect until notice of entry of the order ruling
5 on the motion. Notwithstanding this subsection, the court, on noticed
6 motion and for good cause shown, may order that specified discovery be
7 conducted.

8 F. If the court grants the motion ~~to dismiss or quash~~, the court
9 may award the moving party costs and reasonable attorney fees, including
10 those incurred for the motion, AND SHALL AWARD COSTS AND REASONABLE
11 ATTORNEY FEES IF THE NONMOVING PARTY IS A STATE ACTOR. If the court finds
12 that a motion ~~to dismiss or quash~~ FILED PURSUANT TO THIS SECTION is
13 frivolous or solely intended to delay, the court shall award costs and
14 reasonable attorney fees to the prevailing party on the motion UNLESS THE
15 PREVAILING PARTY IS A STATE ACTOR. For the purposes of this subsection,
16 "costs" means all costs that are reasonably incurred and includes filing
17 fees, record preparation and document copying fees, documented time away
18 from employment to confer with counsel or attend case related proceedings,
19 expert witness fees, travel expenses and any other costs that the court
20 deems appropriate.

21 G. If the court denies the motion ~~to dismiss or quash~~, the denial
22 and the court's findings in support of the denial are not admissible in
23 evidence at any later stage of the case, or in any subsequent action, and
24 the burden of proof or degree of proof that is otherwise applicable is not
25 affected by the findings in any later stage of the case or in any
26 subsequent proceeding.

27 H. If the court determines that the moving party has established
28 prima facie proof as prescribed in subsection B of this section, an order
29 granting or denying a motion filed pursuant to this section is appealable
30 pursuant to section 12-2101.

31 I. A STATE ACTOR IS LIABLE FOR INTENTIONALLY BRINGING OR
32 MAINTAINING, CONSPIRING TO BRING OR MAINTAIN OR AIDING AND ABETTING THE
33 PURSUIT OR MAINTENANCE OF A [NONCRIMINAL OR TRAFFIC] LEGAL ACTION WHEN A
34 SUBSTANTIAL MOTIVATION FOR THE STATE ACTOR IS A DESIRE TO DETER, RETALIATE
35 AGAINST OR PREVENT ANY PERSON FROM HOLDING OR EXPRESSING POLITICAL OR
36 RELIGIOUS VIEWS, FROM FREE POLITICAL ASSOCIATION OR FROM ENGAGING IN
37 POLITICALLY RELATED ADVOCACY. IN AN ACTION BROUGHT PURSUANT TO THIS
38 SUBSECTION:

39 1. THE ACTION SHALL BE COMMENCED WITHIN FOUR YEARS AFTER THE
40 CONCLUSION OF THE UNDERLYING ACTION.

41 2. EACH PARTY HAS THE RIGHT TO A TRIAL BY JURY, IF DEMANDED.

42 3. IT IS NOT A DEFENSE TO THE ACTION THAT EITHER:

43 (a) THE UNDERLYING LEGAL ACTION RESULTED IN AN ADVERSE JUDGMENT,
44 DECISION, OPINION, VERDICT, RULING OR OTHER ADVERSE ACTION AGAINST THE
45 PERSON WHOSE RIGHTS WERE VIOLATED.

46 (b) A MOTION FILED PURSUANT TO SUBSECTION A OF THIS SECTION WAS NOT
47 BROUGHT IN THE UNDERLYING LEGAL ACTION. IF A MOTION FILED PURSUANT TO

1 SUBSECTION A OF THIS SECTION WAS MADE IN THE UNDERLYING LEGAL ACTION AND
2 WAS UNSUCCESSFUL, THE COURT, IN ITS DISCRETION, MAY ALLOW A JURY TO
3 CONSIDER THIS FACT BUT THE DISPOSITION OF THE MOTION IS NOT BINDING ON THE
4 JURY.

5 4. A PREVAILING PARTY IS ENTITLED TO DECLARATORY RELIEF, NOMINAL
6 DAMAGES, COMPENSATORY DAMAGES, ATTORNEY FEES AND COSTS AND VACATUR AND THE
7 SEALING OF ANY ADVERSE JUDGMENTS, DECISIONS, OPINIONS, VERDICTS, RULINGS
8 OR OTHER DISPOSITIONS IN THE UNDERLYING ACTION.

9 5. IF AN INDIVIDUAL IS FOUND LIABLE, THE INDIVIDUAL MAY ~~[NOT]~~ BE
10 INDEMNIFIED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR THE
11 STATE'S OR POLITICAL SUBDIVISION'S INSURER.

12 6. A PEACE OFFICER IS IMMUNE FROM LIABILITY UNDER THIS SECTION.

13 7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, THE
14 EXCLUSIVE MEANS OF REDRESS FOR A VIOLATION OF THIS SECTION WITH RESPECT TO
15 LEGAL ACTIONS SET FORTH IN SUBSECTION L, PARAGRAPH 1, SUBDIVISION (a),
16 ITEM (ii) OF THIS SECTION SHALL BE AS SET FORTH IN SECTION 13-4242.

17 ~~f.~~ J. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, this article
18 does not:

19 1. Affect, limit or preclude the right of the moving party to any
20 remedy otherwise authorized by law.

21 2. Create any privileges or immunities or otherwise affect, limit
22 or preclude any privileges or immunities authorized by law.

23 3. Limit or preclude a legislative or executive body or a public
24 agency from enforcing the rules of procedure and rules of order of the
25 body or agency.

26 K. THIS SECTION IS INTENDED TO PREVENT THE GOVERNMENT FROM BEING
27 USED AS A TOOL TO CHILL THE ADOPTION OR EXPRESSION OF, OR ADVOCACY FOR,
28 UNPOPULAR POLITICAL OR RELIGIOUS BELIEFS OR POSITIONS AND SHALL BE
29 LIBERALLY CONSTRUED TO EFFECTUATE THIS PURPOSE.

30 ~~f.~~ L. For the purposes of this section:

31 1. "Legal action":

32 (a) Means any of the following:

33 (i) Any civil action, claim, cross-claim or counterclaim for
34 damages other than nominal damages.

35 (ii) Any criminal prosecution, except for a drug trafficking
36 offense included in title 13, chapter 34 or 34.1, ~~a riot~~ or a serious
37 offense or violent or aggravated felony as defined in section 13-706.

38 (iii) Any written investigative demand pursuant to section
39 38-431.06 or other compulsory legal process or any regulatory or
40 administrative action by a state actor.

41 (b) Does not include a motion filed pursuant to subsection A of
42 this section.

43 2. "State actor" means any of the following:

44 (a) This state and any county, city, town or political subdivision
45 of this state AND THE UNITED STATES, TO THE MAXIMUM EXTENT PERMITTED UNDER
46 THE UNITED STATES CONSTITUTION AND THE ARIZONA CONSTITUTION.

1 (b) Any branch, department, board, bureau, commission, council,
2 PROFESSIONAL OR OCCUPATIONAL LICENSING OR REGULATORY ORGANIZATION IN WHICH
3 MEMBERSHIP IS MANDATORY FOR INDUSTRY PARTICIPANTS or committee of an
4 entity included in subdivision (a) of this paragraph.

5 (c) Any officer, employee or other agent of an entity included in
6 subdivision (a) of this paragraph who is acting in the officer's,
7 employee's or agent's official capacity.

8 Sec. 2. Title 13, chapter 38, article 29, Arizona Revised Statutes,
9 is amended by adding section 13-4242, to read:

10 13-4242. Postconviction relief for criminal political
11 prosecution; definitions

12 A. NOTWITHSTANDING ANY OTHER LAW, A DEFENDANT WHO HAS BEEN
13 CONVICTED OF A CRIMINAL OFFENSE IN A LEGAL ACTION COMMENCED OR MAINTAINED
14 IN VIOLATION OF SECTION 12-751 AND WHO IS AN ELIGIBLE PETITIONER MAY FILE
15 A PETITION FOR POSTCONVICTION RELIEF PURSUANT TO THIS SECTION AND SECTION
16 13-4231, PARAGRAPH 2, EXCEPT THAT RELIEF MAY NOT BE PRECLUDED FOR THE
17 FAILURE TO TIMELY RAISE THE ISSUE OR ON THE GROUNDS THAT THE ACCUSED
18 CONSENTED TO JURISDICTION OF THE COURT.

19 B. A DEFENDANT WHO OBTAINS RELIEF PURSUANT TO SECTION 12-751 AND
20 THIS SECTION SHALL HAVE THE CONVICTION SET ASIDE AND SHALL BE AWARDED
21 REASONABLE ATTORNEY FEES AND COSTS INCURRED IN DEFENDING AGAINST THE LEGAL
22 ACTION AND BRINGING AND MAINTAINING THE PETITION FOR POSTCONVICTION
23 RELIEF, INCLUDING ANY FEES AND COSTS INCURRED ON APPEAL.

24 C. TO BE ELIGIBLE FOR RELIEF UNDER THIS SECTION, A DEFENDANT SHALL
25 FILE A NOTICE WITH THE COURT WITHIN THIRTY DAYS AFTER THE DATE OF
26 SENTENCING INDICATING AN INTENT TO REQUEST POSTCONVICTION RELIEF BY REASON
27 THAT THE DEFENDANT WAS CONVICTED IN AN ACTION BROUGHT OR MAINTAINED IN
28 VIOLATION OF SECTION 12-751.

29 D. WITHIN SIXTY DAYS AFTER THE FILING OF THE NOTICE UNDER
30 SUBSECTION C OF THIS SECTION, THE COURT SHALL HOLD A HEARING TO DETERMINE
31 WHETHER THE DEFENDANT QUALIFIES AS AN ELIGIBLE PETITIONER. IF THE COURT
32 FINDS THAT THE DEFENDANT IS AN ELIGIBLE PETITIONER, THE DEFENDANT SHALL BE
33 ALLOWED TO PROCEED WITH THE PETITION FOR POSTCONVICTION RELIEF.

34 E. THIS SECTION SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS
35 PURPOSES, WHICH INCLUDE THE PROTECTION OF INDIVIDUALS WHO HAVE BEEN
36 SUBJECTED TO POLITICAL PROSECUTIONS AND THE PRESERVATION OF THE INTEGRITY
37 OF THE CRIMINAL JUSTICE SYSTEM.

38 F. FOR THE PURPOSES OF THIS SECTION:

39 1. "ELIGIBLE PETITIONER" MEANS AN INDIVIDUAL WHO WAS, AT THE TIME
40 OF ARREST, ONE OR MORE OF THE FOLLOWING:

41 (a) A CURRENT OR FORMER PUBLIC OFFICIAL, INCLUDING A PRECINCT
42 COMMITTEEMAN.

43 (b) A CURRENT OR FORMER CANDIDATE FOR PUBLIC OFFICE, INCLUDING A
44 PRECINCT COMMITTEEMAN.

45 (c) A CURRENT OR FORMER OFFICER OF A NONPROFIT ORGANIZATION,
46 POLITICAL ACTION COMMITTEE OR RECOGNIZED POLITICAL PARTY.

1 (d) A CURRENT OR FORMER PUBLIC FIGURE AS THAT TERM IS DEFINED AT
2 COMMON LAW.

3 (e) A CURRENT OR FORMER POLICE OFFICER.

4 (f) A CURRENT OR FORMER PARTICIPANT IN A PROTEST WHERE THE
5 INDIVIDUAL'S ARREST WAS RELATED TO THE INDIVIDUAL'S INVOLVEMENT IN THE
6 PROTEST.

7 (g) AN AGENT, EMPLOYEE OR ATTORNEY OF ANY PERSON SET FORTH ABOVE OF
8 A NONPROFIT ORGANIZATION, POLITICAL ACTION COMMITTEE OR RECOGNIZED
9 POLITICAL PARTY.

10 2. "LEGAL ACTION" HAS THE SAME MEANING PRESCRIBED IN SECTION
11 12-751.

12 Sec. 3. Legislative intent

13 The legislature intends that the change made to the definition of
14 state actor in section 12-751, subsection L, paragraph 2, Arizona Revised
15 Statutes, is to clarify the definition and is not intended to be a
16 substantive change.

17 Sec. 4. Legislative findings

18 The legislature finds that:

19 1. Systemic issues with current law render our current system of
20 justice unworthy of the fairness that we demand as Arizonans.

21 2. State and federal statutes, rules, laws and regulations are so
22 numerous, broad and expansive that they allow for virtually any person to
23 be targeted by the government for their violation. Once targeted,
24 sentencing rules do not allow for the appropriate degree of judicial
25 discretion. Legal ambiguity in sentencing orders threatens to further
26 compound this problem.

27 3. Our judicial system requires additional adjustments to ensure
28 procedural fairness.

29 Sec. 5. Severability

30 If a provision of this act or its application to any person or
31 circumstance is held invalid, the invalidity does not affect other
32 provisions or applications of the act that can be given effect without the
33 invalid provision or application, and to this end the provisions of this
34 act are severable.

35 Sec. 6. Short title

36 This act may be cited as the "Justice For All Act".

37 Enroll and engross to conform

38 Amend title to conform

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