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16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

17 **IN AND FOR THE COUNTY OF MARICOPA**

18 STEPHEN RICHER,

19 Plaintiff,

20 v.

21 KARI LAKE, KARI LAKE FOR
22 ARIZONA, and SAVE ARIZONA
FUND.

Defendants.

NO. CV2023-009417

**DEFENDANTS' MOTION TO
DISMISS PURSUANT TO
A.R.S. § 12-751**

(Assigned to the Honorable Jay Adleman)

1 Defendants Kari Lake (“Lake”), Kari Lake for Arizona (“KLA”), and Save Arizona
2 Fund (“SAF”) (collectively “Defendants”) request that the Court dismiss Plaintiff Stephen
3 Richer’s (“Richer”) Complaint (6/22/2023) pursuant to A.R.S. Section 12-751 (Arizona’s
4 Strategic Action Against Public Participation statute – traditionally called an “Anti-
5 SLAPP” statute). Defendants would like to reserve their right under the newly established
6 procedure of Section 12-751 to address all arguments and evidence presented in Richer’s
7 response brief, should it be ordered by this court, in an attempt to meet his burden under
8 Section 12-751(B) through further briefing and a hearing before the Court pursuant to
9 Sections 12-751(C) or (D). However, as is explained in Section II(C) below, the Court
10 should ultimately dismiss Richer’s Complaint without the need for an evidentiary hearing
11 pursuant to Sections 12-751(B)-(D) because Richer cannot satisfy his burden as a “state
12 actor” to establish that his lawsuit was not motivated to deter, retaliate against, and/or
13 prevent Defendants’ lawful exercise of their free speech rights.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 The sole issue in this case is whether a political candidate should have a judgment
16 entered against her for comments about a public official regarding an election, a matter of
17 significant public concern. The Arizona Legislature has addressed this question by passing
18 Section 12-751, the purpose of which is to make it easier to dismiss suits that directly
19 interfere with a speaker’s constitutional rights.

20 Section 12-751 requires that Richer’s Complaint be dismissed because he is a “state
21 actor” that brings this lawsuit to deter, retaliate against, and prevent Defendants’ lawful
22 exercise of their free speech rights on the core public issue of election integrity. Richer

1 certainly has the right to publicly dispute Defendants’ speech. However, Section 12-751
2 does not allow him to bring this lawsuit in an attempt to punish or silence such speech
3 simply because he disagrees with it. In fact, Richer's own public statements about this
4 lawsuit shows that his intention is to violate Kari Lake's right to free speech.

5 This case presents an important opportunity for the Court to carry out the core
6 purpose of Arizona’s recently amended Anti-SLAPP statute to prevent public officials
7 from using private litigation as a means to punish and prevent speech on political issues
8 that should be considered as part of the open public discourse guaranteed by the United
9 States and Arizona Constitutions.

10 Evaluation of the protections of Section 12-751 have nothing to do with whether the
11 speech is “false,” as Plaintiff has alleged, because that issue would not have been
12 adjudicated yet at the point that an Anti-SLAPP motion is filed. In fact, the statute is
13 designed to protect speakers from the often-arduous litigation involved in determining such
14 a question. Furthermore, even if judges in other actions in this controversy have held that
15 Lake failed to present sufficient evidence of fraud to prevail in a claim (as opposed to
16 finding it “false”), she is still entitled to have an opinion and state her beliefs about what
17 happened in the 2022 election and who is to blame for mistakes. “False” speech is not at
18 issue here, only the type of speech that “may well include vehement, caustic, and
19 sometimes unpleasantly sharp attacks on government and public officials” that the U.S.
20 Supreme Court has specifically said must be protected. *New York Times Co. v. Sullivan*,
21 376 U.S. 254, 270 (1964).

1 **I. Argument**

2 Section 12-751(A) provides that a defendant may file a motion to dismiss in any
3 lawsuit involving the lawful exercise of her right to free speech under the U.S.
4 Constitution or Arizona Constitution. A defendant satisfies her prima facie burden for a
5 motion to dismiss under Section 12-751(A) by demonstrating that the plaintiff’s “legal
6 action was substantially motivated by a desire to deter, retaliate against or prevent the
7 lawful exercise of a constitutional right.” § 12-751(B). No Arizona appellate court has yet
8 ruled on this test, which was part of the 2022 amendments to the law.

9 Once this element is established, the burden then shifts to the plaintiff to justify his
10 lawsuit. Importantly, if the plaintiff is a “state actor,” Section 12-751(B)(1) provides that
11 the “court shall grant the motion” unless the plaintiff demonstrates *both* that: 1) “the legal
12 action on which the motion is based is justified by clearly established law;” and 2) he
13 “did not act in order to deter, prevent or retaliate against the moving party’s exercise of
14 constitutional rights.” (Emphasis added). Again, no Arizona appellate court has yet ruled
15 on the issue of what constitutes an action “justified by clearly established law.”

16 **A. The protections of the Anti-SLAPP statute should be applied with**
17 **“great diligence” to provide the “utmost protection” for speech.**

18 When the initial version of the Anti-SLAPP law was passed in 2006, the
19 Legislature in its “findings and declarations” section of the statute specifically noted that:

20 It is the policy of this state that the rights of citizens and organizations under the
21 constitutions of the United States and this state to be involved and participate
22 freely in the process of government shall be encouraged and safeguarded with
great diligence. ... The laws, courts and other agencies of this state and its political
subdivisions shall provide the utmost protection for the free exercise of these
petition, speech and association rights.

1 2006 Ariz. Legis. Serv. Ch. 234 (H.B. 2440), Sec. 2(A) (Public Participation in
2 Government – Lawsuits). (See Exhibit B.) Furthermore,

3
4 The threat of strategic lawsuits against public participation, personal liability and
5 burdensome litigation costs significantly chill and diminish citizen participation in
6 government, voluntary public service and the exercise of these important
7 constitutional rights. The threat of strategic lawsuits against public participation
8 further deprives government bodies of the free flow of ideas, information and
9 opinions that are essential to carrying out their functions. This abuse of the judicial
10 process can and has been used as a means of intimidating, harassing or punishing
11 citizens and organizations for involving themselves in public affairs.

12 *Id.*, Sec. 2(B). (See Exhibit B.)

13 The 2022 amendments to Section 12-751 did nothing to limit this protection, and
14 instead expanded it well beyond the original limitations of the law.

15 Under this law, even though it may look like defendants have an advantage –
16 getting a libel case dismissed solely because it interferes with their free speech rights – it
17 is essential to realize that is exactly what the Legislature intended. Speech about the
18 integrity of the election process is exactly the type of “public participation” that the
19 Legislature chose to protect.

20 **B. Richer’s Complaint provides prima facie proof on its face that Richer’s
21 lawsuit is “substantially motivated by a desire to deter, retaliate
22 against or prevent the lawful exercise” of Defendants’ free speech
rights.**

1) Richer’s lawsuit involves Defendants’ legal exercise of their free speech
rights under the U.S. Constitution and Arizona Constitution.

23 Richer has served as the Recorder of Maricopa County since January of 2021.
24 Complaint, ¶ 6. Richer was the acting Recorder of Maricopa County during the 2022
25 Arizona general election (the “2022 Election”). *See id.* Richer brings five defamation

1 counts against Defendants’ respectively that he categorizes into two subject areas of
2 speech relating to the integrity of the 2022 Election:

3 In particular, Defendants have repeatedly and falsely claimed—at in-person
4 rallies and speeches, and on podcasts and social media—that Richer (i)
5 intentionally printed 19-inch images on 20-inch ballots to sabotage the 2022
6 Arizona general election (the “Ballot Size Sabotage”), and (ii) inserted
7 300,000 “illegal,” “invalid,” “phony,” and or “bogus” early-vote ballots into
8 the Maricopa County vote count (the “Bogus Ballot Injection”).

9 Complaint, ¶ 14. Though Richer’s Complaint is comprised of numerous alleged
10 statements made by Defendants, each alleged statement that Richer includes as a part of
11 his defamation claims falls within either the self-described Ballot Size Sabotage or Bogus
12 Ballot Injection categories in relation to the 2022 Election. *See generally id.*, ¶¶ 15-170.
13 Indeed, each of Richer’s defamation counts is specifically pled either “regarding Ballot
14 Size Sabotage” or “regarding Bogus Ballot Injection.” *See id.*, ¶¶ 171-212. Accordingly,
15 Richer’s entire Complaint pertains to Defendants’ speech on two issues involving the
16 integrity of the 2022 Election.

17 Both the First Amendment of the United States Constitution and Article 2, Section 6
18 of the Arizona Constitution protect the right of free speech. “‘At the heart of the First
19 Amendment is the recognition of the fundamental importance of the free flow of ideas and
20 opinion on matters of public interest and concern.’” *Rodriguez v. Fox News Network, LLC*,
21 238 Ariz. 36, ¶ 10, 356 P.3d 322, 325 (Ct. App. Div. 1 2015) (quoting *Hustler Magazine v.*
22 *Falwell*, 485 U.S. 46, 50 (1988)). “[D]iscussion about government officials and
controversial issues ‘is at the very core of ‘public concern’ and is protected by the [F]irst
[A]mendment.’” *Rogers v. Mroz*, 252 Ariz. 335, ¶ 2, 502 P.3d 986, 988 (2022) (quoting

1 *Dombey v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 481, 724 P.2d 562, 567 (1986)).

2 Defendants' speech about the Ballot Size Sabotage and Bogus Ballot Injection
3 issues qualifies as core political speech about the integrity of the 2022 Election, which is a
4 matter of tremendous public concern. Richer seems to acknowledge this point at least to
5 some degree in his Complaint:

6 Defendants, like all Americans, have a right to free speech, and that freedom
7 extends to expressing views and opinions that others find distasteful or
8 offensive, and to criticizing the government. Defendants have made many
9 statements since the election, including statements about Richer, that are
protected by the Arizona and U.S. Constitutions. Richer might vehemently
disagree with the Defendants regarding many of these statements, but he
recognizes their right to express them.

10 Complaint, ¶ 4. Richer, like the typical defamation plaintiff, argues that Defendants'
11 speech at issue is not protected because the alleged statements were "intentional or reckless
12 falsehoods." *Id.*, ¶ 5. Section 12-751 however does not condition its protection upon
13 whether the defamation plaintiff claims that the speech at issue was false. Furthermore,
14 "falsity" is almost never a black-and-white issue, and even a court decision finding
15 insufficient evidence to support a fraud claim to challenge election results is not a finding
16 that the statements are objectively false and cannot be the basis of an opinion about the
17 fairness of an election.

18 Again, Sections 12-751(A) and (B) provide for dismissal of claims that are
19 "substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise
20 of a constitutional right." Section 12-751's "lawful exercise" requirement does not allow
21 for a plaintiff to avoid a motion to dismiss merely by claiming that the speech was false.
22 The "lawful" qualifier is intended to prevent the protection of speech that is connected to

1 criminal activity. The legislature adopted such language after hearing testimony that the
2 proposed “lawful” qualifier arose after consultations with prosecutors who sought to avoid
3 unintended consequences with respect to suppression of evidence in criminal proceedings.
4 *See Strategic Actions; Public Participation: Hearing on H.B. 2722 Before the S. Judiciary*
5 *Comm., 55th Leg., 2nd Regular Sess. (Ariz. 2022) (statement of Kory Langhofer). For*
6 *example, Section 12-751 is not meant to interfere with the prosecution of criminal threats*
7 *or speech that incites riots and trespass.*

8 Indeed, the very purpose of state Anti-SLAPP statutes like Section 12-751 is to
9 protect individuals from expensive defamation lawsuits that have a chilling effect on
10 speech. An Anti-SLAPP motion is not an attempt to adjudicate falsity, but to avoid the
11 burden of having to justify statements concerning core political speech.

12 2) The allegations and relief included in Richer’s Complaint establish that
13 his lawsuit is “substantially motivated by a desire to deter, retaliate
against or prevent the lawful exercise” of Defendants’ free speech rights.

14 In some instances, a plaintiff will seek to punish or deter the exercise of a
15 defendant’s constitutional right indirectly by bringing a legal action against the defendant
16 that does not expressly attack the constitutional right at issue. While the express subject of
17 the lawsuit pertains to a separate matter, the plaintiff has a hidden motivation to burden the
18 defendant with a lawsuit that will have the corollary effect of punishing or deterring the
19 defendant’s separate exercise of her constitutional right. In such an instance, a defendant
20 would need to provide some outside evidence under Section 12-751 to demonstrate that the
21 lawsuit was actually motivated by a desire to punish or deter a constitutional right that is
22 not expressly at issue in the lawsuit. However, in a lawsuit like the one filed by Richer,

1 which on its face expressly attacks the speech at issue, Section 12-751’s prima facie burden
2 is satisfied by the Complaint itself.

3 Indeed, Richer’s numerous factual allegations vehemently assail Defendants’ speech
4 on the Ballot Size Sabotage and Bogus Ballot Injection matters. *See generally* Complaint.
5 Richer then requests nominal damages, compensatory damages, punitive damages,
6 attorney’s fees, costs, and interest to retaliate against Defendants’ speech on the Ballot Size
7 Sabotage and Bogus Ballot Injection issues and to deter any such speech in the future. *Id.*
8 at 44, ¶¶ A-F. Richer also expressly seeks to deter and prevent future speech on the Ballot
9 Size Sabotage and Bogus Ballot Injection matters by seeking injunctive relief which
10 declares such speech false and requires Defendants to remove all such statements from any
11 published material. *Id.* at 44, ¶¶ G, I. A review of Richer’s Complaint through the prism of
12 Section 12-751 therefore must result in the conclusion that Defendants’ have established
13 their prima facie burden of showing that Richer’s lawsuit is “substantially motivated by a
14 desire to deter, retaliate against or prevent the lawful exercise” of Defendants’ free speech
15 rights.

16 As Richer himself summarized in a Tweet posted on the day he filed this lawsuit:
17 “So I’m suing Kari Lake to hopefully put an end to the false statements.” *See* Richer
18 Tweet (6/22/2023) attached as Exhibit A. This statement alone should be sufficient to show
19 that his intent is to prevent Lake from speaking on this topic.

1 **C. The Court should dismiss Richer’s Complaint because he is a “state**
2 **actor” that cannot overcome his burden of demonstrating that his**
3 **lawsuit was not “substantially motivated by a desire to deter, retaliate**
4 **against or prevent the lawful exercise” of Defendants’ free speech rights.**

5 1) Presumption of dismissal and the burden of “state actors” vs. non-“state
6 actors.”

7 Section 12-751(B) provides two pathways for the Court after a defendant has
8 established her prima facie burden under Section 12-751, which depends upon whether the
9 plaintiff is a “state actor.” Each of these two pathways, however, begin with the
10 presumption that the Court “shall grant the motion” unless the plaintiff overcomes a
11 specific burden.

12 A “state actor” has the burden of demonstrating that his lawsuit is “justified by
13 clearly established law and that the responding party did not act in order to deter, prevent
14 or retaliate against the moving party's exercise of constitutional rights.” § 12-751(B)(1)
15 (emphasis added). In contrast, a person who is not a “state actor” only has the burden of
16 establishing that the lawsuit is “justified by existing law or [is] supported by a reasonable
17 argument for extending or modifying existing law.” § 12-751(B)(2).

18 Section 12-751(B) provides that Richer is not required to file a response until the
19 Court has found that Defendants have met their prima facie burden. Defendants have met
20 such prima facie burden in Section I(B) of this Motion. In Section I(C), Defendants will
21 provide initial argument relating to Richer’s burden under Section 12-751(B), in particular,
22 his burden as a “state actor” under Section 12-751(B)(1) to prove that his lawsuit was not
 “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise”
 of Defendants’ free speech rights. Such an argument is important for the context of

1 reviewing the recently amended Section 12-751’s treatment of defamation lawsuits filed by
2 public officials. Defendants however reserve the right to address all arguments and
3 evidence presented in Richer’s response brief through further briefing and/or a hearing
4 before the Court pursuant to Sections 12-751(C) or (D).

5 2) Richer is a “state actor” under Section 12-751(J)(2).

6 Section 12-751(J)(2) defines a “state actor” for purposes of the statute to include
7 any employee or agent of Arizona (or a county or city) acting in his official capacity.
8 Richer has served as the Recorder of Maricopa County since January of 2021.
9 Complaint, ¶ 6. Richer’s assertion that he brings this lawsuit in his “personal capacity”
10 does not allow him to avoid his qualification as a “state actor” under Section 12-
11 751(J)(2). The numerous alleged statements that comprise Richer’s defamation counts
12 regarding the Ballot Size Sabotage and Bogus Ballot Injection issues all clearly pertain to
13 Richer’s official conduct as the Recorder of Maricopa County. Richer is a publicly
14 elected official that is bringing a lawsuit relating to statements that cut to the core of his
15 official duties while he is still in office. He must be seen as a “state actor” for purposes
16 of Section 12-751.

17 When interpreting statutes, Arizona courts “presume that the legislature did not
18 intend an absurd result and [a court’s] construction must avoid such a consequence.” *In*
19 *re Estate of Zaritsky*, 198 Ariz. 599, ¶¶ 11, 12 P.3d 1203, 1207 (Ct. App. 2000). State
20 entities and public officials do not bring defamation/libel claims in their official
21 capacities. Like Richer, public officials commonly bring defamation claims in their
22 personal/individual capacity even though the alleged defamation pertains to their official

1 public duties. As such, to hold that the “state actor” definition in Section 12-751(J)(2)
2 would only apply to defamation/libel claims pled by public officials in their “official
3 capacity” would require the “absurd” result that the Legislature’s state actor burden test
4 will simply never apply to defamation/libel claims brought by public officials. This is of
5 course antithetical to the very purpose of an Anti-SLAPP statute that seeks to protect free
6 speech about public officials.

7 Though Section 12-751 provides protection separate and apart from the actual
8 malice privilege established by the U.S. Supreme Court in *New York Times v. Sullivan*
9 regarding speech about public officials, it is instructive that such free speech privilege
10 applies to defamation/libel claims brought by public officials in their personal/individual
11 capacities. *See e.g., Selby v. Savard*, 134 Ariz. 222, 224-25, 655 P.2d 342, 344-45 (1982)
12 (applying the actual malice privilege to plaintiff’s defamation claims because he was a
13 public official at the time the publication was made). Indeed, this includes application of
14 the privilege even in a lawsuit brought *after* the public official has left office if the speech
15 pertains to conduct that occurred within the public official’s time in office. *See id.*; *see*
16 *also e.g. Gray v. Udevitz*, 656 F.2d 588, 591 n.3 (10th Cir.1981) (citing *Rosenblatt v.*
17 *Baer*, 383 U.S. 75, 87 n.14 (1966)) (“That the person defamed no longer holds the same
18 position does not by itself strip him of his status as a public official for constitutional
19 purposes. If the defamatory remarks relate to his conduct while he was a public official
20 and the manner in which he performed his responsibilities is still a matter of public
21 interest, he remains a public official within the meaning of *New York Times*.”). *See also*
22 *e.g., Revell v. Hoffman*, 309 F.3d 1228, 1232 (10th Cir. 2002) (same); *Zerangue v. TSP*

1 *Newspapers, Inc.*, 814 F.2d 1066, 1069-70 (5th Cir. 1987) (holding that law enforcement
2 officials who had left their positions six years prior to newspaper report about their in-
3 office activities were still public officials for purposes of libel action); *Pierce v. Cap.*
4 *Cities Communications, Inc.*, 576 F.2d 495, 510 n.67 (3d Cir. 1978) (“The passage of
5 some three years between the time of [plaintiff’s] departure from the Port Authority and
6 the airing of the broadcast did not, by itself, strip [plaintiff] of his status as a ‘public
7 official’ for purposes of analyzing this case”). Richer is a “state actor” for purposes of
8 Section 12-751.

9 3) Richer cannot demonstrate that his lawsuit was *not* “substantially
10 motivated by a desire to deter, retaliate against or prevent the lawful
exercise” of Defendants’ free speech rights.

11 Section 12-751(B)(1) provides specific ways in which a state actor might overcome
12 his burden:

- 13 (a) Establishing that the person who initiated and conducted an investigation
14 that resulted in the legal action and that made the decision to pursue the legal
15 action was unaware of the movant's lawful exercise of the constitutional
16 right.
17 (b) Establishing that the state actor has a consistent practice of pursuing
18 similar legal actions against similarly situated persons who did not lawfully
19 exercise constitutional rights.
20 (c) Producing any other evidence that the court finds sufficient.

21 Notably, the examples provided by Section 12-751(B)(1) go to proof that the
22 public official initiated a lawsuit that he genuinely did not know would impact a
constitutional right. These examples pertain to a situation where the defendant files a
motion to dismiss under Section 12-751 to argue that the plaintiff’s lawsuit has a hidden
motivation to retaliate against or deter the lawful exercise of a constitutional right that is

1 not evident in the subject matter of the complaint itself. Such examples do not pertain to
2 a case where the public official is expressly attacking the constitutional right in the
3 subject matter of the lawsuit. In other words, a public official that files a defamation
4 lawsuit to deter, retaliate against, and/or prevent speech by requesting damages and
5 injunctive relief against the speech cannot overcome Section 12-751(B)(1)'s burden (so
6 long as the speech is not exercised illegally, such as by criminal threats or speech that
7 incites riots and trespass).

8 Such is the case with Richer's lawsuit against Defendants. As was explained
9 above, Richer's numerous factual allegations vehemently assail Defendants' speech on
10 the Ballot Size Sabotage and Bogus Ballot Injection issues. *See generally* Complaint.
11 Richer then requests nominal damages, compensatory damages, punitive damages,
12 attorney's fees, costs, and interest to retaliate against Defendants' speech on the Ballot
13 Size Sabotage and Bogus Ballot Injection matters and deter any such speech in the future.
14 *Id.* at 44, ¶¶ A-F. Richer also expressly seeks to deter and prevent future speech on the
15 Ballot Size Sabotage and Bogus Ballot Injection matters by seeking injunctive relief
16 which declares such speech false and requires Defendants to remove all such statements
17 from any published material. *Id.* at 44, ¶¶ G, I. There is no conceivable evidence that
18 Richer could provide that could negate the express purposes of his lawsuit to deter,
19 retaliate, and prevent Defendants' speech. Because Richer cannot overcome his burden
20 under Section 12-751(B)(1), Richer's Complaint must be dismissed.

21 This is not an unreasonable or unfair conclusion from the plain language of
22 Section 12-751(B)(1). Such conclusion preserves the core purpose of Arizona's recently

1 amended Anti-SLAPP statute to simply prevent *public officials* from using private
2 litigation as a weapon to punish and prevent speech on political issues that should be
3 considered by the public within the open discourse guaranteed by the free speech
4 protections of the United States and Arizona Constitutions. Public officials have the right
5 to voice their disagreement through such open discourse—but they may not use a lawsuit
6 to silence their opponents.

7 4) Richer cannot meet his burden of establishing that his Complaint is
8 “justified by clearly established law.”

9 Importantly, because Richer cannot meet the motivation component of his burden
10 under Section 12-751(B)(1), Richer’s lawsuit cannot avoid dismissal regardless of the
11 separate clearly established law component. Defendants however reserve the right to
12 address and rebut any argument or evidence that Richer may offer in an attempt to meet
13 the clearly established law component.

14 **II. Conclusion.**

15 For the foregoing reasons, Defendants request that the Court dismiss Plaintiff’s
16 Complaint pursuant to A.R.S. Section 12-751. As noted herein, Defendants would like to
17 reserve the right to address any arguments or evidence presented by Richer in an attempt to
18 meet his burden under Section 12-751(B) in further briefing and/or a hearing before the
19 Court pursuant to Sections 12-751(C) or (D). Defendants make this point only because the
20 procedure outlined in the statute does not specifically indicate that Defendants will be able
21 to reply or respond to Plaintiff’s response, if one is ordered.
22

1 RESPECTFULLY SUBMITTED this 21st day of August, 2023.

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1 **Certificate of Service**

2 The foregoing was filed via TurboCourt this 21st day of August, 2023, with the Clerk of
3 the Superior Court for Maricopa County.

4 A COPY of the foregoing was served this same day Via TurboCourt to:

5 Honorable Jay Adleman
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15
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17

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21

22

1 **Exhibit A – June 22, 2023 Richer tweet**

2 ← **Post**

3  **Stephen Richer—Maricopa Cnty Recorder (prsnl acct)** ✓
@stephen_richer

4 I'm suing Kari Lake.

5 I'd hoped the defamation would stop after the election. I waited.

6 I'd hoped it would stop after the first election trial. I waited.

7 I'd hoped it would stop after the appeal. I waited.

8 I'd hoped it would stop after the second trial. I waited.

9 I'd hoped it would stop after she got a new job. I waited.

10 But then I realized I AM the job. Defaming me is her path to campaign
donations, speaking opportunities, and national trips.

11 I live a very lucky, wonderful life.

12 But these defamatory statements have altered my life. For the worse.
Materially.

13 And just because I live a great life doesn't mean I have to sit back while
somebody says false things about me and says I did truly horrible things
-- things that multiple courts found to be false.

14 I wish it would have stopped on its own.

15 But it didn't.

16 So today I'm suing Kari Lake to hopefully put an end to the false
statements.

17 Thanks to @yvonnevingett and @marianaa_alfaro of the
18 @washingtonpost for this write up.

19 It is the first interview I've given on this. And it is the only one I will give
today.

20 [washingtonpost.com/politics/2023/...](https://www.washingtonpost.com/politics/2023/...)

21 4:44 PM · Jun 22, 2023 · 3M Views

22

Exhibit B: Public Participation in Government Act

PUBLIC PARTICIPATION IN GOVERNMENT—LAWSUITS, 2006 Ariz. Legis. Serv....

2006 Ariz. Legis. Serv. Ch. 234 (H.B. 2440) (WEST)

ARIZONA 2006 LEGISLATIVE SERVICE

Second Regular Session of the Forty-Seventh Legislature

Additions are indicated by **Text**; deletions by

~~Text~~ . Changes in tables are made but not highlighted.

CHAPTER 234

H.B. 2440

PUBLIC PARTICIPATION IN GOVERNMENT—LAWSUITS

AN ACT AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 15; RELATING TO LAWSUITS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended by adding article 15, to read:

<< AZ ST pr. 12–751 a. 15 hd. >>

ARTICLE 15. PUBLIC PARTICIPATION IN GOVERNMENT

<< AZ ST § 12–751 >>

§ 12–751. Definitions

In this article, unless the context otherwise requires:

1. “Exercise of the right of petition” means any written or oral statement that falls within the constitutional protection of free speech and that is made as part of an initiative, referendum or recall effort or that is all of the following:

- (a) Made before or submitted to a legislative or executive body or any other governmental proceeding.
- (b) Made in connection with an issue that is under consideration or review by a legislative or executive body or any other governmental proceeding.
- (c) Made for the purpose of influencing a governmental action, decision or result.

2. “Governmental proceeding” means any proceeding, other than a judicial proceeding, by an officer, official or body of this state and any political subdivision of this state, including boards and commissions, or by an officer, official or body of the federal government.

3. “Legal action” means any action, claim, cross-claim or counterclaim for damages that is based on the defendant's exercise of the right of petition.

<< AZ ST § 12–752 >>

§ 12–752. Strategic lawsuits against public participation; motion to dismiss

A. In any legal action that involves a party's exercise of the right of petition, the defending party may file a motion to dismiss the action under this section. When possible, the court shall give calendar preference to an action that is brought under this

PUBLIC PARTICIPATION IN GOVERNMENT—LAWSUITS, 2006 Ariz. Legis. Serv....

subsection and shall conduct an expedited hearing after the motion is filed with the court and notice of the motion has been served as provided by court rule.

B. The court shall grant the motion unless the party against whom the motion is made shows that the moving party's exercise of the right of petition did not contain any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual compensable injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating facts on which the liability or defense is based. At the request of the moving party, the court shall make findings whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the court finds that the lawsuit was brought to deter or prevent the exercise of constitutional rights or otherwise brought for an improper purpose, the moving party is encouraged to pursue additional sanctions as provided by court rule.

C. The motion to dismiss may be filed within ninety days after the service of the complaint or, in the court's discretion, at any later time on terms that the court deems proper.

D. If the court grants the motion to dismiss, the court shall award the moving party costs and reasonable attorney fees, including those incurred for the motion. If the court finds that a motion to dismiss is frivolous or solely intended to delay, the court shall award costs and reasonable attorney fees to the prevailing party on the motion. For the purposes of this subsection, "costs" means all costs that are reasonably incurred in connection with a motion to dismiss pursuant to this section and includes filing fees, record preparation and document copying fees, documented time away from employment to confer with counsel or attend case related proceedings, expert witness fees, travel expenses and any other costs that the court deems appropriate.

E. This article does not:

1. Affect, limit or preclude the right of the moving party to any remedy otherwise authorized by law.
2. Apply to an enforcement action that is brought in the name of this state or a political subdivision of this state.
3. Create any privileges or immunities or otherwise affect, limit or preclude any privileges or immunities authorized by law.
4. Limit or preclude a legislative or executive body or a public agency from enforcing the rules of procedure and rules of order of the body or agency.

<< Note: AZ ST § 12-751 >>

Sec. 2. Legislative findings and declarations

A. It is the policy of this state that the rights of citizens and organizations under the constitutions of the United States and this state to be involved and participate freely in the process of government shall be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments and other expressions that are provided by citizens and organizations are vital to effective law enforcement, the operation of government, the making of public policy and decisions and the continuation of representative democracy. The laws, courts and other agencies of this state and its political subdivisions shall provide the utmost protection for the free exercise of these petition, speech and association rights.

B. The legislature finds that civil actions have been filed against citizens and organizations of this state as the result of the valid exercise of their constitutional rights of petition, speech and association. The threat of strategic lawsuits against public participation, personal liability and burdensome litigation costs significantly chill and diminish citizen participation in government, voluntary public service and the exercise of these important constitutional rights. The threat of strategic lawsuits against public participation further deprives government bodies of the free flow of ideas, information and opinions that are essential to carrying out their functions. This abuse of the judicial process can and has been used as a means of intimidating, harassing or punishing citizens and organizations for involving themselves in public affairs.

C. It is in the public interest and it is the purpose of this article to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons of petition, speech and association, to protect and encourage public participation

PUBLIC PARTICIPATION IN GOVERNMENT—LAWSUITS, 2006 Ariz. Legis. Serv....

in government to the maximum extent allowed by law, to establish an efficient process for identification and adjudication of strategic lawsuits against public participation and to provide for costs and attorney fees.

Sec. 3. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Approved by the Governor, April 28, 2006.

Filed in the Office of the Secretary of State, April 28, 2006.

AZ LEGIS 234 (2006)

End of Document

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