

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000363-001 DT

04/14/2026

HONORABLE KEVIN B. WEIN

CLERK OF THE COURT
A. Rowe
Deputy

STATE OF ARIZONA

PHILIP DANIEL GARROW

v.

MICHAELA JOY KOERT (001)

ALEXANDER R ARPAD

STEPHEN DOMINIC BENEDETTO
RUSSELL B FACENTE
CHRISTINA GRIFFIN CARTER
SUSAN ALI BASSAL
JARED G KEENAN
JUDGE WEIN
REMAND DESK-LCA-CCC
UNIVERSITY LAKES JUSTICE COURT

UNDER ADVISEMENT RULING

The Court has received and reviewed the State of Arizona's Petition for Special Action, Defendant's Response, and the State's reply. The Court has also received and reviewed amici briefs from various interested parties. The Court held oral argument on February 27, 2026, and then took the matter under advisement. For the reasons discussed below, the Court accepts jurisdiction but denies relief.

Background and Procedural History

This action arises from a case in which a group of protestors on ASU's campus, including Respondent Michaela Koert, were charged with misdemeanor trespassing. On June 10, 2025, in Justice Court, Koert filed a Motion to Dismiss and a Motion to Set for Evidentiary Hearing Pursuant to ARS § 12-751(C). The parties fully briefed the issue. The Justice Court ruled that the "defense ha[d] met their burden as to the potential prima facie case warranting an evidentiary

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hearing ...” (State's Motion to Supplement the Record, Exhibit P at 6). The State filed a Motion for Reconsideration, which the Justice Court denied on October 2, 2025. The State then filed this Special Action.

In its Special Action, the State broadly makes two arguments. First, the State argues that the Justice Court abused its discretion when it found that Koert satisfied her prima facie burden to prove that the prosecution was “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” The State contends that the Justice Court misapplied the plain language of the statute. Specifically, the State argues that Koert did not make the required showing. The State argues that Koert had the burden of making a prima facie pre-trial showing that the trespassing she allegedly engaged in was lawful (or, as phrased in the Petition, that the ASU time, place, and manner restrictions were unreasonable). The State also argues that ARS § 12-751 is unconstitutional for various reasons.

Analysis

1. The Justice Court Correctly Applied the Plain Language of the Statute

ARS § 12-751, generally referred to as the “Anti-Strategic Lawsuit Against Public Participation Statute,” was substantially amended in 2022. By its plain language, the law allows an individual to obtain dismissal of a legal action, including a criminal prosecution, if there is prima facie proof that the “legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” ARS § 12-751(B).

The State argues that, to invoke this statute, a criminal defendant must bring forth prima facie proof that the defendant is not guilty of the charged offense. The State frames this slightly differently in its pleadings, but at oral argument it agreed that “the only way this statute comes into play is if, at the motion to dismiss stage ... the defense can make a prima facie showing that the conduct ... was lawful.” This position has no support in the statute’s plain language and undermines its application to criminal proceedings.

As Koert correctly notes, the statute merely requires prima facie proof that the prosecution was substantially motivated by an improper and unconstitutional purpose. Nowhere does the statute require proof that the defendant’s conduct was lawful. And, as several amici note, the statute protects against prosecutions aimed at both past and future conduct, further undermining the State’s interpretation.

The statute plainly applies to criminal proceedings, but the State’s interpretation is inconsistent with that application. If a defendant is factually innocent and can establish that innocence (notwithstanding the fact that under our criminal justice system a defendant is deemed

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innocent until proven guilty) then a motion under ARS § 12-751 would be unnecessary. And the State’s argument that Koert cannot invoke this statute because probable cause was already found, and not challenged, runs contrary to the legislature’s expressed intent.

Instead, the statute gives a defendant—including one who may otherwise be guilty—a mechanism to argue that the charges must be dismissed because of the unconstitutional motivations of the prosecutor. This is true regardless of whether the conduct was lawful. The Justice Court correctly applied the statute when it found that Koert had met her burden to bring forth prima facie evidence of the unconstitutional motivations of the prosecutor. Whether her conduct was lawful is irrelevant to an Anti-SLAPP motion.

2. ARS § 12-751 Does Not Violate the Constitution

A. The Statute Does Not Infringe on Executive Authority

The scope of the powers of the three branches of government is well-settled. As cases cited by the State acknowledge, “the legislative department has the power to define what conduct constitutes a crime.” *State v. Ramsey*, 171 Ariz. 413 (App. 1992). The Executive branch “has the power to enforce the law.” *Id.* But that power may be restricted by the legislature. *Andrews v. Wllrich*, 200 Ariz. 533, 537 (App. 2001). The judiciary, in its authority, should not exercise oversight of prosecutorial discretion. *Carson v. Gentry in and for the County of Maricopa*, 574 P.3d 205 (Ariz. 2025). But it’s the legislature that defines the bounds of that discretion and a judiciary that enforces these boundaries does not overstep its authority.

Here, the legislature limited the authority of prosecutors by prohibiting prosecutions substantially motivated by a desire to deter, retaliate against, or prevent the exercise of constitutional rights. This falls squarely within the legislature’s powers to define what conduct constitutes a crime, and the State cites no contrary authority.

The State concedes that there are already existing permissible limitations on prosecutorial charging decisions, namely selective prosecution claims and vindictive prosecution claims. The State argues that these limitations are the only permissible ones that may address prosecutorial intent. The State offers no case law or other binding authority to support this. The Court agrees with the State Senate President and the Speaker of the Arizona House of Representatives that this statute permissibly supplements and strengthens constitutional protections against vindictive prosecutions. As that brief argues, the legislature is free to create a process that “shifts the burden of proof to the government after adducing only a *prima facie* showing of an improper motive.” Brief of *Amici Curiae* Arizona State Senate President Warren Petersen and Speaker of the Arizona House of Representatives Steve Montenegro at p. 10. There is no support for the State’s argument

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that §12-751 must strictly adhere to the governing principles set forth by selectivity and vindictiveness claims to pass constitutional muster.

B. The Statute Does Not Violate the Victims' Bill of Rights

It is true that this statute does not mention victims or victims' rights. But this silence does not mean that the statute somehow violates a victim's rights or any of the statutes or constitutional provisions protecting victims' rights. Nothing in the statute suggests that victim's rights do not apply and victims retain all their rights as outlined in Arizona law.

C. The Statute Does Not Conflict With the Rules of Criminal Procedure

The legislature may not abrogate judicially-created rules of procedure. *Seisinger v. Siebel*, 220 Ariz. 85 (2009). To determine whether a statute impermissibly infringes on our Supreme Court's procedural rulemaking authority, courts evaluate whether (1) there is a conflict between the statute and the rule, and (2) the statute is a substantive or a procedural law. *State v. Brearcliffe*, 254 Ariz. 579, 585, (2023). "Substantive law creates, defines and regulates rights" whereas a procedural law "prescribes the method of enforcing such rights or obtaining redress."

This statute creates an affirmative defense to otherwise meritorious criminal actions where the motivations behind those actions are constitutionally impermissible. This is a substantive rather than procedural law and therefore this statute is not an unconstitutional infringement on the Supreme Court's procedural rulemaking authority.

D. The Statute Is Neither Vague nor Overbroad

The State argues that the term "substantially motivated" is both vague and overbroad. It is not. "The United States Supreme Court long ago recognized that vagueness challenges fail when a statute employ[s] words or phrases having ... a well-settled common-law meaning." *Arizona Creditors Bar Ass'n v. State*, 257 Ariz. 406, 413 (2024). The term "substantially motivated" appears in both statutes and case law, both Arizona and federal. The Court finds that the phrase has a well-settled common law meaning and is, therefore, not vague.

Similarly, the statute is not subject to an overbreadth challenge. As the legislative amici note, courts "have not recognized an "overbreadth" doctrine outside the limited context of the First Amendment." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The State does not assert a First Amendment interest here, and the doctrine does not apply.

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Conclusion

For all the reasons discussed, the Court finds that the Justice Court did not err in concluding that Koert made a prima facie showing that the prosecution was substantially motivated by a desire to deter, retaliate against, or prevent the lawful exercise of a constitutional right. The Court also finds that ARS § 12-751 is constitutional. The Court accepts jurisdiction of the State's Petition for Special Action but denies relief.

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