

**DOES THE ARIZONA PARENTS' BILL OF RIGHTS ACT NOW
PROVIDE A SECTION 1983-TYPE CIVIL RIGHTS CAUSE OF ACTION
THAT ENTIRELY FORECLOSES QUALIFIED AND ABSOLUTE
IMMUNITIES IN FEDERAL COURT?**

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"Being wrongfully prosecuted and detained for months for a crime I *know* didn't commit is a torment that haunts every waking moment. The anguish of knowing that I'm unjustly behind bars, separated from my child, is a soul-crushing despair that consumes me. It's an unimaginable pain, the depths of which only those who have endured it can truly understand. The loss of freedom and the absence of any contact with my child inflict wounds that cut deep into the core of my being, leaving scars that may never fully heal. It's a haunting agony that no words can adequately capture."

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This article is grounded in extensive legal research conducted over several years, with the singular objective of establishing a means to hold these reprehensible tyrants accountable. It is essential to acknowledge that certain judicially-created doctrines have contributed to the dire and widespread predicament we currently face: a distressing proliferation of psychopathic conduct exhibited by those who are supposed to serve the public.

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INTRODUCTION

The doctrine of absolute immunity for prosecutors and qualified immunity for law enforcement officers has long been a subject of debate and critique within the legal community. These immunities, designed to shield government officials from personal liability, often present significant challenges for individuals seeking redress for violations of their constitutional rights. However, the genesis of a potential avenue to circumvent these immunities and ensure accountability may lie within the framework of the Arizona Parents' Bill of Rights Act, (the "Act"), which expressly permits such claims to be brought in federal court.

In this article, I will delve into a compelling argument that a recent revision to the Arizona Parents' Bill of Rights Act arms parents with a *formidable* tool to confront state actors who brazenly disregard the constitutional rights of those under their supposed protection: Parents possess the means to bypass both qualified immunity for Arizona police officers and absolute immunity for Arizona prosecutors. The key lies in their ability to assert that agents of the state in committing acts which would independently support a cause of action in federal court under § 1983, also interfered with or infringed upon their substantive due process rights as parents. Specifically, I will focus on the original jurisdiction of federal courts to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution of the United States independent of a § 1983 cause of action, and how this applies to the statutory cause of action now available to parents under the Act. What's more, this provision contains an express Eleventh Amendment waiver, thereby permitting suits against the State of Arizona and its officers in federal court without regard to the "person" requirements of Section 1983.

In the first part of this article, I provide a history of Section 1983 and discuss how it has gradually been weakened over time by the Supreme Court, such that now it is essentially useless to the vast majority of persons subjected to constitutional rights violations by state actors. In the second part, I discuss the past and present status of Arizona's immunities from tort liability. In the third part, I discuss the Act in detail, with a reasoned analysis of the Act's statutory language in light of Arizona jurisprudence. In the fourth part, I argue that the Arizona legislature was crystal clear in setting forth that the Act was to be applied in an astonishingly-broad manner. In the fifth part, I discuss the application of the Act to suits in federal court. In the seventh and final

part, I briefly discuss why, now more than ever, accountability for police and prosecutors is *crucial*.

In summary, the magnitude of the remedies potentially available under the Act is nothing short of astonishing—encompassing critical issues ranging from police brutality and unjust pre-trial detention to instances of prosecutorial misconduct. Through this lens, I will explore the far-reaching implications and potential for justice that this legal avenue holds, not just for Arizona parents, but all for all Arizonans. Everyone stands to benefit from a new era of police and prosecutor accountability.

I. SECTION 1983 FALLS TO A “VORACIOUS APPETITE FOR JUDICIAL ACTIVISM”¹

A. History of Section 1983

Following the Civil War, the United States experienced a profound reckoning regarding racial issues, acknowledging the imperative of granting Black Americans full citizenship rights. At the core of this endeavor were the Reconstruction Amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments) proposed by Congress and ratified by the States. These amendments, among their provisions, abolished slavery, extended equal protection and due process rights to all individuals, and ensured the right to vote without racial discrimination. While the Reconstruction Amendments employ language that appears race-neutral, their origin lies in the necessity of securing these rights for Black people who had been systematically denied them. Among the Reconstruction Amendments, the Fourteenth Amendment possesses the widest scope. It mandates, among other things, that no state shall curtail the privileges or immunities of United States citizens, nor deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws. The Fourteenth Amendment, like the other Reconstruction Amendments, confers upon Congress the authority to enforce its provisions. Through this authority, Congress has enacted pivotal civil rights statutes such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

¹ See *New Jersey v. T. L. O.*, 468 U.S. 1214, 1215 (1984) (remarking that “the Court has acquired a voracious appetite for judicial activism in its Fourth Amendment jurisprudence, at least when it comes to restricting the constitutional rights of the citizen.”) (Stevens, J., dissenting).

Another crucial manifestation of Congress's enforcement power under the Reconstruction Amendments is the civil cause of action outlined in Section 1983 of Title 42 of the United States Code. Section 1983 establishes a mechanism for private individuals to sue state and local officials, as well as local government entities (and those in collaboration with them), for violating federal constitutional and statutory protections under the guise of state law. The significance of this private right of action in realizing the rights granted by the Reconstruction Amendments cannot be overstated. Congress initially introduced the precursor to Section 1983 as Section 1 of the Ku Klux Klan Act of 1871,² just one year after the ratification of the final Reconstruction Amendment. Since then, Section 1983 has been employed to uphold a wide range of federal rights, including in several landmark civil rights decisions by this Court. The primary purpose of the Reconstruction Amendments was to ensure the equal citizenship of Black individuals in both the United States and the states where they resided. Congress utilized the Enforcement Clauses within these Amendments to enact various statutes, including the initial version of Section 1983, aimed at transforming the constitutional promises of the Reconstruction era into tangible rights for formerly enslaved people, particularly in resistant states, mainly in the South.

To counter federal policies, legislatures in these states enacted "Black Codes," laws that denied political rights and legal equality to Black individuals. These laws imposed mandatory labor contracts, coercive apprenticeships, and criminal penalties for contract breaches on Black citizens. Concurrently, there was a rise in systemic private violence against Black individuals, fueled in part by the emergence of the Ku Klux Klan as a formidable paramilitary force intent on undermining the progress of the Reconstruction era. In the lead-up to the 1868 presidential election, the Ku Klux Klan unleashed a campaign of terror to intimidate Black individuals from voting and impede the exercise of their federal rights. Subsequently, the Klan systematically and ruthlessly carried out various atrocities such as beatings, whippings, lynchings, shootings, rapes, and torture. Victims of Klan violence found little recourse from local officials, who were often unwilling or unable to enforce the law against the Klan, and sometimes even colluded with its members.

² Pub. L. No. 42-22, 17 Stat. 13.

Congress sought to address this situation by enacting the Ku Klux Klan Act of 1871, which included the provision now codified as 42 U.S.C. § 1983. The bill that eventually became Section 1983 was specifically drafted in response to the Klan's atrocities and the Southern states' failure to protect their citizens' constitutional rights under the recently ratified Reconstruction Amendments. On March 28, 1871, Representative Shellabarger introduced House Bill 320, describing it as a measure that impacted the very foundations of the government, reaching every part of it and touching the liberties and rights of all people. During congressional debate, supporters of the bill denounced the inaction and complicity of Southern states. It was evident that H.B. 320 directly targeted state officials who, in the view of Congress, had betrayed the trust of their people by failing to safeguard their constitutional rights. Congress expressed particular concern over the absence of remedies in state courts for aggrieved citizens. Representatives highlighted the complicity of sheriffs, judges, witnesses, grand and petit juries, and the general administration of justice, which often evaded its responsibilities. The bill aimed to address the fact that the courts, in many instances, were under the control of those opposed to the impartial administration of law and equity.

Proponents of the bill emphasized that Section 1983 was necessary because state officials, including state courts, could not be solely relied upon as protectors of federal rights. Some opponents of the bill raised objections on the same grounds, asserting that it would allow individuals to summon state officials, including state judges, to federal court. Despite the opposition, the proponents of the bill prevailed. On April 20, 1871, President Grant signed H.B. 320 into law as the Ku Klux Klan Act of 1871, also known as "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes." Through the enactment of Section 1 of the Ku Klux Klan Act, Congress aimed to grant broad access to federal courts for claims based on violations of federal rights. This Court consistently interprets Section 1983 with the intent of its extensive remedial purpose in mind.

The original text of Section 1 of the Ku Klux Klan Act explicitly states that any person who, under the color of state law, deprives an individual within the jurisdiction of the United States of their constitutionally-secured rights, shall be held liable to the injured party in any appropriate legal action or proceeding, regardless of any contrary state laws. The plain language of Section 1983 was intentionally comprehensive. Congress sought to establish a civil cause of action for all violations of federal rights under the guise of state law, effectively displacing any

state laws that condone such unlawful conduct, in line with the Supremacy Clause. Given this transformative purpose, it is not surprising that this Court has consistently advocated for a liberal interpretation of Section 1983.

Section 1983 was part of a significant transformation that sought to position federal courts as protectors of the people's federal rights, serving as a barrier between the states and the people. It aimed to safeguard individuals from unconstitutional actions carried out under the color of state law, regardless of whether those actions were executive, legislative, or judicial in nature. The Congress that enacted Section 1983 intended to provide a broad remedy for violations of federally protected civil rights, recognizing that state authorities might be unable or unwilling to safeguard constitutional rights or hold violators accountable.

The intent of Section 1983 was to provide a remedy that is broadly construed against all forms of official violations of federally protected rights. Accordingly, the U.S. Supreme Court emphasizes, and has repeatedly held, that “a broad construction of § 1983 is compelled by the statutory language, which speaks of deprivations of ‘any rights, privileges, or immunities secured by the Constitution and laws.’”³ In essence, Section 1983 assigns a paramount role to federal courts in safeguarding constitutional rights by creating a unique federal remedy against encroachments on rights secured by the Constitution and national laws.

The majority of litigation aimed at enforcing federal civil rights is initiated by private parties in federal court. Section 1983 serves as the primary legal basis for these litigants. In the case of *Monroe v. Pape*,⁴ which played a pivotal role in revitalizing the Civil Rights Act of 1871, Justice William O. Douglas, speaking for the Court, asserted that Section 1983 should be interpreted in light of the principles of tort liability. It comes as no surprise that many of the Supreme Court's landmark decisions, which have advanced and protected constitutional rights, have resulted from successful challenges under Section 1983. Notable examples include *Myers v.*

³ *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (emphasis in original); *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 105 (1989) (“[T]he coverage of [§ 1983] must be broadly construed.”); *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 684 (1978) (the legislative history of the section stresses that as a remedial statute, it should be “liberally and beneficently construed.”) (quoting Rep. Shellabarger, Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871)).

⁴ 365 U.S. 167 (1961).

Anderson,⁵ addressing grandfather-clause exemptions to literacy tests, *Buchanan v. Warley*,⁶ dealing with city ordinances enforcing racial segregation in residential areas, *Shelley v. Kraemer*,⁷ ruling that judicial enforcement of racially discriminatory property covenants constitutes state action violating the Equal Protection Clause, *Brown v. Board of Education*,⁸ overturning racial segregation in schools, and *Obergefell v. Hodges*,⁹ recognizing same-sex marriage.

Nevertheless, it is hardly a secret that the Supreme Court has, for decades now, been undermining Section 1983.

B. The Supreme Court Second-Guesses Congress to Create Immunities

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...¹⁰

At first glance Section 1983 appears unequivocal in establishing those who are subject to its reach: *every person*. Indeed, Supreme Court jurisprudence dealing with construing statutory language liabilities and immunities dating all the way back to 1815 held that where the language of a provision “is so precise, and so entirely free from all ambiguity, that it is difficult for any course of reasoning to shed light upon its meaning.”¹¹ “The task of a court, in construing a federal statute, is to interpret the statute as best as it can, not to second-guess the wisdom of the

⁵ 238 U.S. 368 (1915).

⁶ 245 U.S. 60 (1917).

⁷ 334 U.S. 1 (1948).

⁸ 347 U.S. 483 (1954).

⁹ 576 U.S. 644 (2015).

¹⁰ 42 U.S.C. § 1983.

¹¹ See *Evans v. Jordan & Morehead*, 13 U.S. (9 Cranch) 199, 202 (1815) (holding that language “no person who may have heretofore paid the said Oliver Evans for license to use the said improvements, shall be obliged to renew said license, or be subject to damages for not renewing the same; and, provided also, that no person who shall have used the said improvements, or have erected the same for use, before the issuing of the said patent, shall be liable to damages therefor” was “too plain to bear an argument.”).

congressional policy choice ... and to ignore much of the legislative history.”¹² This is not however the case with Section 1983—the Supreme Court has “read into” Section 1983 immunities that not only directly conflict with the statute’s plain language, but also ignore *all* of its legislative history.

In the 1967 case of *Pierson v. Ray*,¹³ the Supreme Court *created* the doctrine of qualified immunity, allowing officials who acted in “good faith” and committed constitutional or statutory violations to assert it as a defense against civil claims.¹⁴ This justification for qualified immunity relied on both statutory and pragmatic grounds. Regarding the statutory basis, the Court considered the incorporation of common law doctrines of official immunity into Section 1983.¹⁵ It acknowledged the long-standing principle that judges enjoyed immunity from damages for acts within their judicial jurisdiction under common law.¹⁶ The Court argued that the legislative record did not clearly indicate Congress’s intent to abolish all common-law immunities when enacting Section 1983.¹⁷ Qualified immunity was thus extended to officials acting in good faith, based only upon *the assumption that such immunity existed under common law*.¹⁸ Turning to the pragmatic rationale, the Court in *Pierson* considered the impact on risk-averse officials who might hesitate to fulfill their duties if they were constantly exposed to civil liability for actions

¹² *Mansell v. Mansell*, 490 U.S. 581, 583 (1989) (“Although literal reading of the Uniformed Services Former Spouses Protection Act (10 USCS 1408) may possibly inflict economic harm on many former spouses of members of the military, the United States Supreme Court will not misread the Act in order to reach a sympathetic result where such a reading would require the court to do violence to the plain language of the statute and to ignore much of the legislative history.”).

Apparently the Supreme Court is sufficiently sympathetic toward police and prosecutors to “do violence to the plain language” of 42 U.S.C. § 1983.

¹³ 386 U.S. 547 (1967).

¹⁴ *Id.* at 548.

¹⁵ *Id.* at 556-57, quoting *Monroe*, 365 at 188.

¹⁶ *Id.* at 548.

¹⁷ *Id.* at 554.

¹⁸ *Id.* at 565 n.5.

Historical analysis reveals that there was no good-faith defense in common law, as numerous scholars have demonstrated. *See, e.g.*, Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 STAN. L.REV. 1337 (2021); Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO Inst. (Sept. 14, 2020), <https://www.cato.org/sites/cato.org/files/2020-09/pa-901-update.pdf>.

taken in good faith. Chief Justice Earl Warren expressed the concern that police officers, for instance, should not face charges of dereliction of duty if they chose not to arrest with probable cause, nor should they be burdened with damages if they did arrest.¹⁹

Critically, during the time of the *Pierson* decision, the Court was recognizing new constitutional rights.²⁰ At the time of *Pierson*, a valid question existed of whether well-intentioned officials, who may have made mistakes, should endure the burdens of discovery and trial and potentially face personal financial repercussions if they failed to anticipate the evolving landscape of criminal procedures.²¹ Unfortunately, the second-guessing of Congress in *Pierson* would mark the beginning of a judicial activism crusade by the Court against Section 1983, which has now rendered this important law largely impotent.

C. *Qualified Immunity: From Bad, to Worse, to Just Plain Psychotic*²²

In decades that followed *Pierson*, the Supreme Court would make numerous changes to qualified immunity. In the 1982 case of *Harlow v. Fitzgerald*,²³ the Court removed the requirement established in *Pierson* that officials must have acted in good faith and it introduced the concept that government officials are immune from liability unless their conduct violated “clearly established statutory or constitutional rights of which a reasonable person would have known.”²⁴ This interpretation implies that unless there was a previous case with very similar circumstances to the officer's actions, the officer could not be held accountable, regardless of the

¹⁹ *Pierson*, 386 U.S. at 555, 87 S. Ct. 1213, 1218 (1967)

²⁰ See, e.g., *Miranda v. Arizona*, 384 U.S. 436 (1966) (extending Fifth Amendment privilege against self-incrimination); *Cohen v. California*, 403 U.S. 15 (1971) (broadening First Amendment speech protection to include “vulgar language” not amounting to “fighting words”); *NAACP v. Button*, 371 U.S. 415 (1963) (clarifying that a state may not ignore First Amendment right to associate under the guise of prohibiting professional misconduct).

²¹ *Pierson*, 386 U.S. at 556 (observing that *Monroe* “presented no question of immunity, however, and none was decided.”).

²² “Psychosis refers to a collection of symptoms that affect the mind, where there has been some loss of contact with reality.” See National Institutes of Health, *Understanding Psychosis*, NIH Publication No. 23-MH-8110 (available from <https://www.nimh.nih.gov/health/publications/understanding-psychosis>).

²³ 457 U.S. 800 (1982).

²⁴ *Id.* at 802.

severity of their misconduct.²⁵ Three years later in *Mitchell v. Forsyth*,²⁶ the Court held that a qualified immunity defense is separate from the merits of the action and therefore government officials possessed a unique right to appeal decisions by trial courts that denied them qualified immunity prior to the trial.²⁷

The Court's decision in the 2009 case of *Pearson v. Callahan*,²⁸ which held that when making a qualified immunity determination, courts were not obligated to determine whether officials had violated the law,²⁹ arguably signaled the de facto end of Section § 1983's relevance. In *Pearson*, the Court dispensed with the notion of a mandatory two-step analysis: (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right; and (2) if so, whether that right was "clearly established" at the time of the defendant's alleged misconduct.³⁰ Instead, the Court held that judges were granted the authority to exercise their "sound discretion" in determining which prong of the qualified immunity analysis takes precedence.³¹ As a result, the hallowed halls of the Supreme Court, accompanied by compliant lower courts, hastily leapfrog over the crucial "merits" question—whether the challenged conduct genuinely violates the Constitution—and eagerly plunge into the realm of the "clearly-established" prong. This bewildering approach has ensnared plaintiffs in a nightmarish Catch-22, forcing them into a desperate search for a perfectly aligned case that establishes constitutional standards, while essentially “freezing” clearly established law: How can new law become “clearly established” when courts can now altogether pass on the issue of whether or not the *specific conduct* violated a plaintiff's rights, because the law governing the specific conduct at issue isn't clearly established? Such is the absurdity thrust upon those seeking justice.³²

²⁵ *Id.* at 818 (“If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments...”).

²⁶ 472 U.S. 511 (1985).

²⁷ *Id.* at 530.

²⁸ 555 U.S. 223 (2009).

²⁹ *Id.*

³⁰ *See, e.g., Saucier v. Katz*, 533 U.S. 194 (2001).

³¹ *Pearson*, 555 U.S. at 223.

³² For discussions of this ‘constitutional catch 22,’ see Albert W. Alschuler, *Herring v. United States: A Minnow or a Shark?*, 7 OHIO ST. J. CRIM. L. 463, 502-06 (2009); Jack M. Beermann, *Qualified*

Over the years, the Court, despite much *well-deserved* criticism from legal scholars,³³ has continued to expand the scope of qualified immunity through various other decisions.³⁴ Transforming what was once a powerful, groundbreaking civil rights law, into something equal parts Orwellian and Kafkaesque.

Absolute Immunity: Subsidizing Public Corruption at its Very Worst

Government accountability is an inherent feature of the Constitution's structure and finds expression in various constitutional provisions. Chief Justice John Marshall articulated this principle in *Marbury v. Madison*,³⁵ recognizing that the Constitution's fundamental purpose is to

Immunity and Constitutional Avoidance, 2009 SUP. CT. REV. 139, 149; John C. Jeffries, Jr., *Reversing the Order of Battle in Constitutional Torts*, 2009 SUP. CT. REV. 115, 120; James E. Pfander, *Resolving the Qualified Immunity Dilemma: Constitutional Tort Claims for Nominal Damages*, 111 COLUM. L. REV. 1601, 1605-06 (2011).

³³ See, e.g. Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018) (arguing that qualified immunity: has no basis in common law, does not achieve its intended goals; and renders the constitution hollow); William Baude, *Is Qualified Immunity Unlawful?*, 106 CAL. L. REV. 45 (2018) (arguing that “each of the[] justifications [for qualified immunity] falls apart for a mix of historical, conceptual, and doctrinal reasons. There was no such defense; there was no such mistake; lenity ought not apply. Furthermore, even if these things were otherwise, the doctrine of qualified immunity would not be the best response.”); Kit Kinports, *The Supreme Court's Quiet Expansion of Qualified Immunity*, 100 MINN. L. REV. HEADNOTES 62, 64 (2016) (observing that “[i]n a number of recent rulings, the Court has engaged in a pattern of covertly broadening the defense, describing it in increasingly generous terms and inexplicably adding qualifiers to precedent that then take on a life of their own.”).

³⁴ See, e.g., *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083 (2011) (deviating from *Anderson* and holding that that qualified immunity protects government officials unless the law is “‘sufficiently clear’ that *every* ‘reasonable official would have understood that what he is doing violates that right.’”) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (holding that the relevant question is whether the law is “sufficiently clear that *a* reasonable official would understand that what he is doing violates that right.”)) (emphases added); *Saucier v. Katz*, 533 U. S. 194, 202, (2001) (holding that the “clearly established” standard also requires that the legal principle clearly prohibit the officer’s conduct in the particular circumstances before him. The rule’s contours must be so well defined that it is “clear to a reasonable officer that his conduct was unlawful in the situation he confronted.”); *Mullenix v. Luna*, 577 U.S. 7, 13 (2015) (*per curiam*) (holding that the “clearly established” rule’s contours require a high “degree of specificity.”); see also *City of Tahlequah v. Bond*, 142 S. Ct. 9, 10 (2021) (reversing denial of qualified immunity in excessive force case because neither appellate court panel majority nor respondent “had identified a single precedent finding a Fourth Amendment violation under similar circumstances” finding that “[t]he officers were thus entitled to qualified immunity.”); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 6 (2021) (reversing denial of qualified immunity “because neither the arrestee nor the court of appeals identified any U.S. Supreme Court case that addressed facts like the ones at issue”).

³⁵ 5 U.S. (1 Cranch) 137 (1803).

restrain the actions of government and its officers.³⁶ Put simply, the government must answer for its actions. In *Marbury*, the Court underscored the importance of accountability and redress by declaring that civil liberty inherently entails the right of every individual to seek the protection of the laws when they suffer an injury.³⁷ Chief Justice Marshall proclaimed that the United States government is rightly characterized as a government of laws, not of individuals.³⁸

To that end, fully one-fourth of the Bill of Rights “guarantees” certain protections to persons suspected or accused of committing crimes. Among these are: **(1)** the right to be free from arbitrary searches or arrest;³⁹ **(2)** the right to be free from prosecution without probable cause;⁴⁰ **(3)** the right to be free from compelled self-incrimination;⁴¹ **(4)** the right to a speedy trial;⁴² **(5)** the right to a trial by jury;⁴³ **(6)** the right to confront one’s accusers and to have a compulsory process to secure witnesses;⁴⁴ **(7)** the right to have the assistance of defense counsel;⁴⁵ and **(8)** and the right to be free from excessive bail.⁴⁶ Accordingly, where a person has suffered the deprivation of a right secured under the U.S. Constitution due to the actions of a prosecutor acting under color of state law, the plain language of Section 1983 should provide a remedy. This is not the case.

In 1976, the Supreme Court, in *Imbler v. Pachtman*,⁴⁷ established that prosecutors enjoy absolute immunity and cannot be sued for misconduct related to their courtroom advocacy.⁴⁸ In

³⁶*Marbury*, 5 U.S. at 166.

³⁷ *Id.* at 153.

³⁸ *Id.* at 163.

³⁹ U.S. CONST., Amend. IV.

⁴⁰ U.S. CONST., Amend. V.

⁴¹ *Id.*

⁴² U.S. CONST., Amend. VI.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ U.S. CONST., Amend. VIII.

⁴⁷ 424 U.S. 409 (1976).

⁴⁸ *Imbler*, 424 U.S. at 410.

doing so, the Court expressed concern that subjecting prosecutors to lawsuits for their decisions might lead to self-doubt and hinder their duty: "[It is] better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation."⁴⁹

In subsequent decisions both the Supreme Court and federal appellate courts, applying Supreme Court jurisprudence, have made clear that this absolute immunity is not limited to acts of mere "dishonesty." In *Burns v. Reed*,⁵⁰ the Supreme Court held that absolutely immunity applied to a prosecutor in an attempted murder case who lied about the suspect's alleged confession, failed to disclose that the suspect had consistently professed her innocence, and failed to disclose to the trial court that the only incriminating statements made by the suspect were made while she was under hypnosis.⁵¹ In *Cousin v. Small*,⁵² the prosecutor in a murder case intentionally suppressed evidence undermining the key witness's identification of the defendant, and the court dismissed the case based on absolute immunity.⁵³ In *Dory v. Ryan*,⁵⁴ the prosecutor conspired with a police officer to coerce a witness to testify falsely against the defendant, and the court dismissed all claims against the prosecutor based on absolute immunity.⁵⁵

Even intentional acts comprising obvious public corruption entitle prosecutors to absolute immunity. In *Bernard v. County of Suffolk*,⁵⁶ prosecutors were found to be entitled to absolute immunity for prosecuting town officials where the prosecution was driven solely by illegitimate

⁴⁹ *Id.* at 428 (quotation omitted).

⁵⁰ 500 U.S. 478 (1991).

⁵¹ *Id.* at 481.

⁵² 325 F.3d 627 (5th Cir. 2003).

⁵³ *Id.*

⁵⁴ 25 F.3d 81 (2d Cir. 1994).

⁵⁵ *Id.*

⁵⁶ 356 F.3d 495 (2d Cir. 2004).

political motives.⁵⁷ In *Kulwicki v. Dawson*,⁵⁸ a prosecutor brought a case against a former political rival based on personal motives but was protected from suit by absolute immunity.⁵⁹

Furthermore, not only do individual prosecutors enjoy absolute immunity, but the Supreme Court, in *Connick v. Thompson*,⁶⁰ ruled that a district attorney's office cannot be sued for failing to train prosecutors on their duty to disclose exculpatory evidence. In the case of John Thompson, who spent 18 years wrongfully incarcerated, including 14 on death row, despite the prosecutors having a report that contradicted his guilt,⁶¹ the jury found that the DA's office had failed to adequately train its prosecutors on their constitutional obligation.⁶² Thompson sought damages for the 18 years he spent unjustly imprisoned, but the Supreme Court reversed the award and eliminated another avenue for holding prosecutors accountable.⁶³

These examples highlight the concerning ramifications of absolute immunity for prosecutors, allowing them to engage in misconduct without fear of legal consequences.⁶⁴

II. ARIZONA'S COMMON LAW AND STATUTORY IMMUNITIES

A. *The Arizona Supreme Court Abolished Common Law Immunities*

“On the morning of September 27, 1955, Ernest Stone, his wife and two children were traveling east out of Tucson toward Benson, Arizona, along U. S. Highway 80, an interstate and much-traveled highway. As they approached Mountain View, Arizona, they came to a point at the crest of a hill where the newly built portion of the highway intersects with the old road. Certain markings and signs located at that spot directing traffic to turn left on a curve in the old road had not been removed. Actually, the new road had no such curve. Mr. Stone was misled by

⁵⁷ *Id.*

⁵⁸ 969 F.2d 1454 (3d Cir. 1992).

⁵⁹ *Id.*

⁶⁰ 563 U.S. 51 (2011).

⁶¹ *Connick*, 563 U.S. at 55.

⁶² *Id.* at 57.

⁶³ *Id.* at 72.

⁶⁴ See also *Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson*, INNOCENCE PROJECT (Mar. 29, 2016), <https://www.innocenceproject.org/prosecutorialoversight-national-dialogue-wake-connick-v-thompson/>

those markings into turning left into the path of an oncoming car which could not be seen as it was approaching from the east over the rise of the hill. The two vehicles collided, causing the death of Mrs. Stone and various injuries to Mr. Stone and the two children.”⁶⁵

Mr. Stone then filed suit against the Arizona Highway Commission, claiming that the defendants had failed to keep the highway at that place in a safe and proper condition for travel by failing to maintain and provide any warning to drivers of automobiles of the dangerous nature of the highway and by not removing markings and signs on the highway, which were misleading to a driver.⁶⁶ He also claimed that the defendants had actual knowledge, or in the exercise of reasonable precautions should have known of this condition as it had existed for several months prior to the happening of the accident.⁶⁷ Thereafter, the trial court dismissed the suit against the Highway Commission and its employees because they were state employees, exempt under the doctrine of governmental immunity from tort liability.⁶⁸

On appeal the Arizona Supreme Court reversed and remanded on the issue of government immunity, but this was not the end of it:

“Because this rule is so deeply entrenched in our case law, we feel it is important and necessary to herein set out its evolution from its medieval English background to our present day Arizona law. Sovereign or governmental immunity began with the personal prerogatives of the King of England upon the theory that ‘the King can do no wrong,’ and *even though at a very early date in American history we overthrew the reign of the English King the doctrine somehow became entrenched in our judicial code.* ... Its survival for such a great period of time in this country, where the royal prerogative is unknown, has perhaps been even more remarkable, considering it has been universally criticized as an anachronism without rational basis. Most writers and cases considering this fact have claimed that its only basis of survival has been on grounds of antiquity and inertia.”⁶⁹

“The rule of sovereign immunity had its judicial genesis in the case of *Russell v. Men of Devon*, 100 Eng.Rep. 359, 2 T.R. 667 (1788). That case involved a suit against all the male inhabitants of the County of Devon for

⁶⁵ *Stone v. Ariz. Highway Comm'n*, 93 Ariz. 384 (1963).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Stone*, 93 Ariz. at 388 (emphasis added).

damages occurring to Russell's wagon by reason of a bridge being out of repair. The court disallowed the action mainly on the grounds that there was no fund out of which any judgment could be paid and *'it is better that an individual should sustain an injury than that the public should suffer an inconvenience.'*"⁷⁰

In apparent persistence to ensure the thorough conveyance of its message, the Court proceeded with fervor to critique this deeply un-American doctrine:

"There is perhaps no doctrine more firmly established than the principle that liability follows tortious wrongdoing; that where negligence is the proximate cause of injury, the rule is liability and immunity is the exception ... Many inequalities are created through the application of the sovereign immunity doctrine ... It has been urged by the adherents of the sovereign immunity rule that the principle has become so firmly fixed that any change must come from the legislature. In previous decisions ... this court concurred in this reasoning. Upon reconsideration we realize that the doctrine of sovereign immunity was originally judicially created. We are now convinced that a court-made rule, when unjust or outmoded, does not necessarily become with age invulnerable to judicial attack. This doctrine having been engrafted upon Arizona law by judicial enunciation may properly be changed or abrogated by the same process."⁷¹

As anticipated by attentive readers up to this point, the Court proceeded to assert with unequivocal clarity that "[t]he substantive defense of governmental immunity is now abolished." Going further, the Court added its decision applied "not only for the instant case, but for all other pending cases, those not yet filed which are not barred by the statute of limitations and all future causes of action. All previous decisions to the contrary are specifically overruled."⁷²

In the later case of *Ryan v. State*,⁷³ the Arizona Supreme Court overturned the decision of the intermediate appellate court which held that governmental immunity should continue in those instances where the services provided are uniquely governmental in nature. In doing so, the Arizona Supreme Court noted a gradual backslide had been taking place since its decision in *Stone*, and reemphasized that "*the rule is liability and immunity is the exception.*"⁷⁴ Finding that

⁷⁰ *Id.* at 388-89 (emphasis added).

⁷¹ *Id.* at 393.

⁷² *Id.* at 392.

⁷³ 134 Ariz. 308 (1982).

⁷⁴ *Ryan*, 134 Ariz. at 309 (emphasis in original).

the prior doctrine set forth under *Stone* pertaining to the extent of duty owed by the State and its employees to individuals had been disregarded, the Court again made clear that governmental immunity should only be invoked as a defense when its application was necessary to prevent substantial hindrance to governmental functions or to preserve established public policy:

“This is the old proprietary-governmental distinction in a bright new word-package. It is not within the spirit of *Stone*. We are also told that not only will the public treasury suffer but government will come to a standstill because its agents will be afraid to act. We can't but recall the dire predictions attendant to the publication of the *Stone* decision. Arizona survived!”⁷⁵

The Court judiciously underscored that public office or employment should not serve as a refuge shielding negligent public officials from being held accountable for their wrongful actions during the discharge of their official duties.⁷⁶ Nonetheless, the Court unambiguously expressed that when choosing to subject the state to legal proceedings on a similar footing as private litigants, certain realms of immunity must endure. Among the most apparent instances of such immunities are legislative immunity, judicial immunity, and high-level executive immunity.⁷⁷ Importantly, it merits attention that the *Ryan* court conspicuously omitted any mention of prosecutorial immunity, let alone affirming its indispensability as an area of immunity to be preserved.

In a valiant effort to shed light on the matter, the Court then invited the legislature to intervene and bring forth much-needed clarity.⁷⁸

⁷⁵ *Id.*

⁷⁶ *Id.* (citation omitted).

⁷⁷ *Id.* at 310 (“In electing to treat the state like a private litigant ... ***certain areas of immunity must remain.*** The more obvious of such immunities are *legislative immunity, judicial immunity, and high-level executive immunity.*”) (emphasis added).

⁷⁸ *See Ryan*, 134 Ariz. at 310 (“We do not recoil from the thought that the legislature may in its wisdom wish to intervene in some aspects of this development.”).

B. *The Arizona Legislature Intervenes*

In 1984, the Arizona legislature passed the Actions Against Public Entities or Public Employees Act,⁷⁹ establishing clear parameters for governmental entities and public employees to enjoy immunity from tort liability, ensuring a fair and balanced legal framework. In doing so, the legislature stated its purpose and intent as follows:

“The legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand, the legislature recognizes that, while a private entrepreneur may readily be held liable for negligence within the chosen scope of his activity, the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done. Consequently, it is hereby declared to be the public policy of this state that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state...”⁸⁰

To address the unique legal considerations surrounding claims against public entities and public employees, the legislature astutely acknowledged the need for diligent attention. As a result, they enacted a comprehensive statutory scheme specifically designed to effectively handle these matters. This proactive approach ensures that the legal system can adequately address the complexities associated with claims involving public entities and public employees, thereby safeguarding the rights and interests of all parties involved. Within these provisions, a comprehensive framework is outlined, delineating the necessary procedures that claimants must follow before commencing a lawsuit against a public entity. The statute mandates that claims against a public entity must be filed within 180 days after the cause of action accrues.⁸¹ Moreover, it specifies the precise information that must be included in the notice of claim.⁸² The claim must provide sufficient facts for the public entity to comprehend the basis of its potential liability, state a specific demand, and furnish relevant information or supporting documentation

⁷⁹ A.R.S. §§ 12-820 to 12-826.

⁸⁰ Historical and Statutory Notes, 1984 Ariz. Sess. Laws ch. 285, § 1. *See also City of Tucson v. Fahringer*, 164 Ariz. 599, 600 n. 4 (1990).

⁸¹ A.R.S. § 12-821.01(A).

⁸² *Id.*

regarding the claimed damages,⁸³ and if no response is received within 60 days of filing, the claim is deemed denied.⁸⁴ Finally, all actions against any public entity or public employee must be initiated within one year from the accrual of the cause of action.⁸⁵

C. Statutory Immunities

Arizona's absolute immunity provision is extremely narrow.

As relevant here, under Arizona's absolute immunity provisions, a public entity is not liable for acts and omissions of its employees constituting either the "exercise of a judicial or legislative function" or the "exercise of an administrative function involving the determination of fundamental governmental policy."⁸⁶ Crucially, this provision establishes immunities *only* for public entities, defined as "this state and any political subdivision of this state"⁸⁷ and includes "any state agency, board, commission or department."⁸⁸ Therefore, no *employee* is afforded absolute immunity under this provision.⁸⁹ Moreover, since county attorneys and their deputies do not "exercise ... a judicial function," Arizona's absolute immunity provisions do not apply thereto.⁹⁰ To further support this argument, the Arizona Supreme Court has never issued a ruling

⁸³ *Id.*

⁸⁴ A.R.S. § 12-821.01(E).

⁸⁵ A.R.S. § 12-821.

⁸⁶ A.R.S. § 12-820.01.

⁸⁷ A.R.S. § 12-820(7).

⁸⁸ A.R.S. § 12-820(8).

⁸⁹ See A.R.S. § 12-820(1) ("Employee' includes an officer, director, employee or servant, whether or not compensated or part time, who is authorized to perform any act or service, except that employee does not include an independent contractor. Employee includes noncompensated members of advisory boards appointed as provided by law and leased employees.").

⁹⁰ The Arizona Constitution sets forth that "[t]he powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others." ARIZ. CONST. art. 3. "The executive department ... consist[s] of the governor, lieutenant governor, secretary of state, [and] **attorney general**," ARIZ. CONST. art. 5, §1 (emphasis added), and "[t]he powers and duties of [the] attorney general ... [are] as prescribed by law." ARIZ. CONST. art. 5, § 9.

Under the Arizona Revised Statutes "the department of law [is] composed of the attorney general and the subdivisions of the department [and] ... [e]xercise[s] supervisory powers over *county attorneys* of the several counties in matters pertaining to that office." A.R.S. § 41-193(A) (emphasis added) (the attorney

that grants prosecutors protection under this provision. Moreover, when examining the published decisions of Arizona appellate courts affirming absolute immunity for prosecutors, it becomes evident that each of these cases relied upon the jurisprudence established by the U.S. Supreme Court regarding Section 1983 claims.⁹¹

Arizona places strict limits on qualified immunity.

Recognizing moreover that certain activities of public entities should receive immunity even if they do not involve the determination of a fundamental governmental policy or the exercise of discretion, the legislature enacted a qualified immunities provision.⁹² These qualified immunities protect public entities from liability arising from the failure to uncover violations of any law during property inspections,⁹³ excluding property owned by the public entity.⁹⁴ They also safeguard public entities from liability arising from the issuance, non-revocation, or non-suspension of permits, licenses, or certificates.⁹⁵ Furthermore, the qualified immunity shields public entities from liability stemming from the failure to make an arrest,⁹⁶ the failure to return an arrested person to custody,⁹⁷ or injuries caused by released prisoners⁹⁸ or individuals on probation.⁹⁹

general moreover *shall* “if deemed necessary, assist[s] the county attorney of any county in the discharge of the county attorney's duties[.]”.

⁹¹ See, e.g. *State v. Superior Court*, 186 Ariz. 294, 297 (Ct. App. 1996) (“Prosecutors are generally immune from civil liability for actions taken in their official capacities.”) (citing *Imbler v. Pachtman*, 424 U.S. 409 (1976)); *Challenge, Inc. v. State*, 138 Ariz. 200, 204 (Ct. App. 1983) (“[T]he same considerations of public policy that underlie the common-law rule likewise countenance absolute immunity under § 1983 ... a prosecutor enjoys absolute immunity where his or her activities are ‘intimately associated’ with the judicial process.”) (citing *Imbler*); *Mulligan v. Grace*, 136 Ariz. 483 (Ct. App. 1983) (same).

⁹² See A.R.S. §12-820.02.

⁹³ A.R.S. § 12-820.02(6).

⁹⁴ *Id.*

⁹⁵ A.R.S. § 12-820.02(5).

⁹⁶ A.R.S. § 12-820.02(1).

⁹⁷ *Id.*

⁹⁸ A.R.S. § 12-820.02(3).

⁹⁹ *Id.*

Arizona’s “other immunities” provision does not immunize police or prosecutors.

Arizona’s other immunities provision makes clear that “[e]xcept as specifically provided in this article, this article does not affect, alter or otherwise modify any other rules of tort immunity regarding public entities and public officers as developed at common law and as established under the statutes and the constitution of this state.”¹⁰⁰ Furthermore, it should be emphasized that the law explicitly states that a public entity cannot be held responsible for losses resulting from an act or omission deemed by a court to be a criminal felony committed by a public employee, unless the public entity had prior knowledge of the employee's inclination towards such actions.¹⁰¹ However, it is important to note that this provision does not apply to acts or omissions arising from the operation or use of a motor vehicle.¹⁰² Additionally, the law makes it clear that a public entity cannot be held liable for damages arising from injuries caused by a public officer who provides emergency care gratuitously and in good faith.¹⁰³ Similarly, the public entity cannot be held liable for any failure to provide or arrange further medical treatment or care for the injured person, unless the public officer, while providing emergency care, acts with gross negligence.¹⁰⁴

III. THE ARIZONA PARENTS’ BILL OF RIGHTS ACT

A. ‘Children are not Mere Creatures of the State’¹⁰⁵

It is crucial that loving and competent parents be the ultimate decision-makers when it comes to their children for several reasons. First and foremost, parents have a unique and deep bond with their children. They have a profound understanding of their child's needs, desires, and

¹⁰⁰ A.R.S. § 12-820.05(A). Given this clear and unequivocal language, the only absolute or qualified immunities available to a public entity or employee are those as set forth under the relevant statutory provisions.

¹⁰¹ A.R.S. § 12-820.05(B).

¹⁰² *Id.*

¹⁰³ A.R.S. § 12-820.05(C).

¹⁰⁴ *Id.*

¹⁰⁵ *See Troxel*, 530 U.S. at 79 (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations”).

overall well-being. Parental decisions are often based on a combination of love, care, and knowledge of their child's individual characteristics, strengths, and vulnerabilities. This intimate connection allows parents to make decisions that are tailored to the specific needs of their child, promoting their growth, development, and happiness.

Secondly, parents have a vested interest in their child's success and happiness. They are emotionally invested in their child's future and have a lifelong commitment to their well-being. As such, they are motivated to make decisions that are in the best interest of their child, taking into account their values, cultural background, and personal beliefs. This parental involvement helps shape a child's identity, instills important values, and fosters a sense of security and stability.

Furthermore, parents are typically the individuals who know their child best and have the most comprehensive knowledge of their unique circumstances. They have the ability to provide guidance, support, and nurturing that is tailored to their child's specific needs. This intimate knowledge allows parents to make informed decisions that consider their child's physical, emotional, and intellectual development. Parents have the right to raise their children according to their own values, beliefs, and philosophies. They are in the best position to determine what educational, religious, and extracurricular activities are suitable for their child. Respecting parental authority acknowledges the importance of individual freedom and the diversity of parenting styles and approaches.

Lastly, recognizing parents as the ultimate decision-makers acknowledges the fundamental rights and responsibilities that come with parenthood. It upholds the principle that parents have a natural right to raise and nurture their children, protected by constitutional and legal frameworks. By entrusting parents with the authority to make decisions for their children, we affirm the value of the family unit and the essential role parents play in a child's life. It is important that loving and competent parents have the ultimate decision-making authority when it comes to their children because of the unique bond, vested interest, comprehensive knowledge, promotion of individual autonomy, and fundamental rights and responsibilities they possess. Recognizing and respecting parental authority helps ensure the well-being and flourishing of children while upholding the principles of family, freedom, and personal autonomy.

In Arizona, there is a steadfast belief in the fundamental right of parents to direct the upbringing, education, and healthcare of their children. To safeguard and uphold these rights, the state has enacted strong laws that offer robust protection and support. Moreover, in cases where these rights are disregarded, parents are now provided with powerful means to seek recourse and to defend their authority against actions that usurp or interfere with these fundamental rights.

B. The Arizona Parent's Bill of Rights: Putting the Family First

In acknowledgment of the imperative to safeguard parental rights under state law, the Arizona Legislature, in its wisdom, enacted the Parents' Bill of Rights in 2010. This *groundbreaking* statute enshrined a sweeping Fourteenth Amendment principle: "The liberty of parents to direct the upbringing, education, health care, and mental health of their children is a fundamental right"¹⁰⁶ This conscientiously crafted standard ensures the protection of children from abusive circumstances while steadfastly preserving the rights of parents from overreach by government officials who might presumptuously deem themselves wiser than a discerning parent.¹⁰⁷

The Act firmly upholds the rights of parents, recognizing their fundamental liberty interest to:

- Determine their child's education, including the right to review all educational records.¹⁰⁸
- Shape their child's upbringing.¹⁰⁹
- Guide their child's moral or religious instruction.¹¹⁰
- Make all healthcare decisions for their child.¹¹¹
- Request and examine all medical records, whether written or electronic, pertaining to their child.¹¹²

¹⁰⁶ A.R.S. § 1-601(A).

¹⁰⁷ A.R.S. § 1-602(B).

¹⁰⁸ A.R.S. § 1-602(A)(1).

¹⁰⁹ A.R.S. § 1-602(A)(3).

¹¹⁰ A.R.S. § 1-602(A)(4).

¹¹¹ A.R.S. § 1-602(A)(5).

- Grant written consent before subjecting their child to a biometric scan.¹¹³
- Provide written authorization before any blood or DNA samples are taken, stored, or shared regarding their child.¹¹⁴
- Give written consent before any video or voice recordings are made of their child, with certain exceptions (e.g., school property security or surveillance).¹¹⁵
- Receive prompt notification if there are suspicions of criminal offenses committed against their child.¹¹⁶
- Obtain information regarding any Department of Child Safety investigations involving both the parent and the child.¹¹⁷

Nevertheless, it is *crucial* to understand that these rights extend beyond the specific provisions outlined in the Act. In fact, the Act explicitly declares that unless these rights have been lawfully waived or terminated, parents possess inherent and comprehensive rights that surpass those delineated in this section.¹¹⁸ It is vital to emphasize that this chapter does not exhaustively dictate all the rights of parents, nor does it preempt or preclude any claims or remedies that may arise in defense of parental rights as guaranteed by the constitution, statutes, or common law.¹¹⁹ This resolute acknowledgment underscores the enduring and expansive nature of parents' rights, ensuring that they are rightfully protected and robustly supported.

Furthermore, the Act staunchly forbids any attempts by the government or its personnel to manipulate or pressure a minor child into concealing information from their own parent. Such actions are explicitly deemed unacceptable and can result in disciplinary measures against employees of the state, political subdivisions, or any other governmental entity, excluding law

¹¹² A.R.S. § 1-602(A)(6).

¹¹³ A.R.S. § 1-602(A)(7).

¹¹⁴ A.R.S. § 1-602(A)(8).

¹¹⁵ A.R.S. § 1-602(A)(9).

¹¹⁶ A.R.S. § 1-602(A)(10).

¹¹⁷ A.R.S. § 1-602(A)(11).

¹¹⁸ A.R.S. § 1-602(D).

¹¹⁹ *Id.*

enforcement personnel.¹²⁰ This resolute provision serves as a powerful deterrent, safeguarding the sacred bond between parent and child and reinforcing the fundamental principle that parents have an indisputable right to be fully informed and involved in their child's life.

C. The Act Gets Teeth

In 2022, the Arizona Legislature demonstrated its recognition of the imperative to not only affirm parental rights within the legal framework but also to establish a means of redress for parents in the event of government infringement upon these rights. Subsequently, the law now unequivocally prohibits the government and its officials from impeding the rights of parents to direct the upbringing, education, health care, and mental well-being of their children, while concurrently providing a private right of action. Parents are empowered to file lawsuits against the government in a court of law when their parental rights have been violated.¹²¹

Within the realm of parental rights lawsuits, the government is subject to a strict scrutiny standard. It bears the burden of demonstrating two essential factors: Firstly, that the interference with parental rights was “essential to accomplish a compelling government interest of the highest order[.]”¹²² Secondly, it must establish “that the method of interference ... is narrowly tailored and is not otherwise served by a less restrictive means.”¹²³

Courts now possess the authority to award parents not only declaratory and injunctive relief, which clarifies that a particular action was wrongful and requires the cessation of such action, but also compensatory damages, which serve to provide monetary compensation for the injury and loss experienced by the parents.¹²⁴ Additionally, courts can award attorney's fees, ensuring that parents are not burdened with the financial costs of litigating for the protection of their parental rights.¹²⁵ As I discuss in the following section, the Act, in light of longstanding Arizona jurisprudence, may be much more than meets the eye.

¹²⁰ A.R.S. § 1-602(C).

¹²¹ A.R.S. § 1-602(E).

¹²² A.R.S. § 1-602(F).

¹²³ *Id.*

¹²⁴ A.R.S. § 1-602(G).

¹²⁵ *Id.*

IV. THE ACT IS ASTONISHINGLY-BROAD AND THE LEGISLATURE’S PREROGATIVE

The Arizona Constitution mandates that the legislative, executive, and judicial departments "shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others." Ariz. Const. art. III.¹²⁶ "Nowhere in the United States is this system of structured liberty [of separation of powers] more explicitly and firmly expressed than in Arizona."¹²⁷ Accordingly, the legislature has "the *exclusive power* to declare what the law shall be,"¹²⁸ and has plenary power to consider any subject within the scope of government unless the provisions of the Constitution restrain it.¹²⁹

A. *The Act’s Plain Language is Clear and Unambiguous*

Arizona courts interpret statutes "to give effect to the legislature's intent."¹³⁰ A statute's plain language best indicates legislative intent, and when the language is clear, courts are bound to apply it unless an absurd or unconstitutional result would follow.¹³¹ When the language of a statute is clear and unambiguous, courts need not look further to determine the statute's meaning and apply its terms as written.¹³² It is only if the language is unclear or ambiguous that courts may employ principles of statutory construction to determine the legislature's intent.¹³³

¹²⁶ See *Mesnard v. Campagnolo*, 251 Ariz. 244, 254 (2021) (noting that the Arizona Constitution "so greatly values separation of powers that it devotes an entire article to it...").

¹²⁷ *Mecham v. Gordon*, 156 Ariz. 297, 300 (1988).

¹²⁸ *State v. Prentiss*, 163 Ariz. 81, 85 (1990) (emphasis added). In contrast, the executive branch's duty is to carry out the policies and purposes declared by the Legislature. See *Pioneer Trust Co. v. Pima County*, 168 Ariz. 61, 65 (1991) (citation omitted).

¹²⁹ See *Giss v. Jordan*, 82 Ariz. 152, 159 (1957).

¹³⁰ *Parrot v. DaimlerChrysler Corp.*, 212 Ariz. 255, 257 (2006); *In re Estate of Winn*, 214 Ariz. 149, ¶ 8 (2007) ("Our primary task in interpreting statutes is to give effect to the intent of the legislature.").

¹³¹ See, e.g., *Sell v. Gama*, 231 Ariz. 323, 327 (2013); *State v. Streck*, 221 Ariz. 306, ¶ 7 (App. 2009) (the best indicator of legislative intent is the statute's plain language); *State v. Jones*, 222 Ariz. 555, ¶ 14 (App. 2009) ("We interpret a statute according to the ordinary meaning of its terms 'unless a specific definition is given or the context clearly indicates that a special meaning was intended.'" (quoting *Trustmark Ins. Co. v. Bank One, Ariz., NA*, 202 Ariz. 535, ¶ 27 (App. 2002))).

¹³² *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 6 (App. 2008).

¹³³ *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, ¶ 3 (App. 2007) (employing principles of construction and considering statute's context, language, spirit, any stated or implicit purpose, and historical background).

The plain language of the Act leaves absolutely no doubt as to the Arizona legislature's intent:

“The liberty of parents to direct the upbringing, education, health care and mental health of their children *is a fundamental right.*”¹³⁴

“This state, *any* political subdivision of this state or *any* other governmental entity ***shall not infringe on these rights*** without demonstrating that the compelling governmental interest as applied to the child involved is of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means.”¹³⁵

“*All* parental rights are ***exclusively reserved to a parent*** of a minor child *without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution...*”¹³⁶

“Unless those rights have been legally waived or legally terminated, *parents have inalienable rights* that are *more comprehensive than those listed in this section.*”¹³⁷

“This chapter does not prescribe all rights of parents or preempt or foreclose claims or remedies in support of parental rights that are available under the constitution, statutes or common law of this state.”¹³⁸

“Unless otherwise ***required by law***, the rights of parents of minor children *shall not be limited or denied.*”¹³⁹

“[T]his state, a political subdivision of this state or *any* other governmental entity, or *any* official of this state, a political subdivision of this state or *any* other governmental entity acting under color of law, ***shall not interfere with or usurp*** the fundamental right of parents to direct the upbringing, education, health care and mental health of their children.”¹⁴⁰

“A parent may bring suit against *a governmental entity or official described in this subsection*¹⁴¹ based on ***any violation*** of the statutory rights set forth

¹³⁴ A.R.S. § 1-601(A) (emphasis added).

¹³⁵ A.R.S. § 1-601(B) (emphasis added).

¹³⁶ A.R.S. § 1-602(A) (emphasis added).

¹³⁷ A.R.S. § 1-602(D).

¹³⁸ *Id.*

¹³⁹ A.R.S. § 1-602(D).

¹⁴⁰ A.R.S. § 1-602(E).

¹⁴¹ *See Id.* (“[T]his state, a political subdivision of this state or *any* other governmental entity, or *any* official of this state, a political subdivision of this state or *any* other governmental entity acting under color of law...”).

in this chapter or any other action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children in the superior court in the county in which the violation or other action occurs or in federal court, if authorized by federal law.”¹⁴²

“A parent may raise a violation of this chapter as a claim or a defense.”¹⁴³

“In any action under [§ 1-602(E)], the governmental entity or official described in [§ 1-602(E)] *has the burden of proof* to demonstrate that ... [t]he interference or usurpation is **essential** to accomplish a *compelling government interest of the highest order*, as long recognized in the history and traditions of this state in the operation of its regulatory powers [and] [t]hat the method of interference or usurpation used by the government is narrowly tailored and is *not otherwise served by a less restrictive means*.”¹⁴⁴

“A governmental entity or official described in [§ 1-602(E)] may *interfere with or usurp* the fundamental right of parents to direct the upbringing, education, health care and mental health of their children **only** if the governmental entity or official successfully demonstrates both elements described in [§ 1-602(F)]. If the governmental entity or official is unsuccessful, the court **shall** grant appropriate relief, such as declaratory or injunctive relief, **compensatory damages and attorney fees**, based on the facts of the case and the law as applied to the facts.”¹⁴⁵

Ambiguity arises *only* when the language is reasonably susceptible to differing interpretations¹⁴⁶ and there is nothing even remotely ambiguous about the plain language given here.¹⁴⁷ Neither does—or even could—the plain language reach an absurd or unconstitutional result.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ A.R.S. § 1-602(F).

¹⁴⁵ A.R.S. § 1-602(G).

¹⁴⁶ *Lewis v. Debord*, 238 Ariz. 28, 30-31 (2015).

¹⁴⁷ Arguably, one would be hard-pressed to find *any* provision of law *anywhere* where the plain language more clearly and unequivocally evinced a legislature’s intent with regard to a fundamental right under the Federal Constitution.

B. A Remedial Statute is Broadly Read to Effect its Purpose

Remedial statutes, such as the Act, aim to address existing grievances and establish regulations that serve the public good;¹⁴⁸ it is indisputable that the Act falls under this category. The Arizona Supreme Court “construe[s] [] remedial statutes broadly to effectuate the legislature's purpose in enacting them,”¹⁴⁹ and “[u]nless the course of action the legislature selects is unconstitutional or illegal, we must defer to it.”¹⁵⁰ When the statute's language is “clear and unequivocal, it is determinative of the statute's construction,”¹⁵¹ and the courts must therefore apply the clear language of a statute unless such an application will lead to absurd or impossible results.¹⁵² A result is absurd when “it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.”¹⁵³ As discussed in the following section, this is not the case here. Indeed, “too narrow a construction would thwart the legislature's goal of protecting” parents’ rights.¹⁵⁴

¹⁴⁸ *Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573, 576 (1974).

¹⁴⁹ See *Special Fund Div. v. Indus. Comm'n*, 191 Ariz. 149, 152 (1998). *Estate of Winn v. Plaza Healthcare, Inc. (In re Estate of Winn)*, 214 Ariz. 149, 150 (2007).

¹⁵⁰ *Martin v. Reinstein*, 195 Ariz. 293, 316 (Ct. App. 1999) (“We may not substitute our views as to whether it is the best course for resolving the problem.”).

¹⁵¹ *Janson v. Christensen*, 167 Ariz. 470, 471 (1991).

¹⁵² *City of Phoenix v. Harnish*, 214 Ariz. 158, 161 (App. 2006); *Grubaugh v. Blomo*, 238 Ariz. 264, 266 (Ct. App. 2015).

¹⁵³ See *State v. Estrada*, 201 Ariz. 247, 251 (2001).

¹⁵⁴ See, e.g., *Estate of McGill v. Albrecht*, 203 Ariz. 525, 529 (2002) (citing A.R.S. § 1-211(B)), *overruled on other grounds by Delgado v. Manor Care of Tucson AZ, Ltd. Liab. Co.*, 242 Ariz. 309, 311, (2017).

C. An 'Absurd Result' can Never be Reached under the Act

It is declared that the public policy of this state is to promote strong families and strong family values. It is also the declared public policy of this state that, absent evidence to the contrary, it is in a child's best interest to have substantial, frequent, meaningful and continuing parenting time with both parents and to have both parents participate in decision-making about the child.¹⁵⁵

When a statute's plain language is "clear and unequivocal" courts must apply such language of a statute unless such an application lead to an absurd result.¹⁵⁶ A result is absurd when "it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion,"¹⁵⁷ A result is "absurd 'if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.'"¹⁵⁸ Examples of absurd results under Arizona law abound:

In *Wheeler v. Yuma Sch. Dist. No. One*,¹⁵⁹ the Arizona Supreme Court found that limiting the statutory term "classroom performance" to a teacher's conduct in the classroom would produce the irrational result that a teacher who mistreats students on the playground would not be entitled to the same notice and opportunity to cure as a teacher whose misconduct takes place in the classroom. In *State v. Estrada*,¹⁶⁰ the Arizona Supreme Court found that statutorily-mandatory probation provisions for drug possession, but which did not apply to possession of drug paraphernalia as it was not specified in the statute, reached an absurd result.¹⁶¹ In *Leon v. Marner*,¹⁶² the Arizona Court of Appeals found that a conviction for driving under the

¹⁵⁵ A.R.S. § 25-103; *see generally*, A.R.S., Title 25 ("Marital and Domestic Relations").

¹⁵⁶ *City of Phoenix v. Harnish*, 214 Ariz. 158, 161 (App. 2006); *Grubaugh v. Blomo*, 238 Ariz. 264, 266 (Ct. App. 2015).

¹⁵⁷ *See State v. Estrada*, 201 Ariz. 247, 251 (2001).

¹⁵⁸ *Perini Land Dev. Co. v. Pima County*, 170 Ariz. 380, 383 (1992).

¹⁵⁹ 156 Ariz. 102, 107 (1988).

¹⁶⁰ 201 Ariz. 247, 248 (2001).

¹⁶¹ *See also State v. Rodriguez*, 153 Ariz. 182, 186-87 (1987) (finding it "inconceivable" that the legislature could have intended the result that greater punishments attend less serious crimes).

¹⁶² 244 Ariz. 465, 467 (Ct. App. 2018)

influence for the presence of a non-impairing metabolite of cocaine, notwithstanding the plain language of the statute, reached an absurd result.

Given Arizona's declared public policy as it relates to families¹⁶³ there is *no* reading of the Act that could reach an absurd result. This fact become even more apparent in light of the strict scrutiny requirement attached to suits brought under § 1-602(E), which prima facie forecloses any such absurd result. A reading of the Act cannot reach an absurd result where the state fails to show that its "interference or usurpation is essential to accomplish a compelling government interest of the highest order, as long recognized in the history and traditions of this state in the operation of its regulatory powers" and that "the method of interference or usurpation used by the government is narrowly tailored and is not otherwise served by a less restrictive means."¹⁶⁴ The presence of strict scrutiny is a "failsafe" against the plain language reaching an absurd result.

The Act expressly waives Arizona's Eleventh Amendment immunity.

The language of the Eleventh Amendment in the United States Constitution leaves no room for ambiguity, as it explicitly declares that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or Citizens or Subjects of any Foreign State."¹⁶⁵ Consequently, this amendment establishes the principle that an unconsenting state enjoys immunity from legal actions filed in federal courts by its own citizens and citizens of other states.¹⁶⁶ However, it is important to note that this immunity is not absolute, as states have the ability to consent to suit in federal court.¹⁶⁷

¹⁶³ See A.R.S. § 25-103.

¹⁶⁴ See A.R.S. 1-602(F).

¹⁶⁵ U.S. CONST., Amend. XI.

¹⁶⁶ *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 100 (1984); *Employees v. Missouri Dept. of Public Health and Welfare*, 411 U.S. 279, 280 (1973).

¹⁶⁷ See, e.g., *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 241 (1985); *Clark v. Barnard*, 108 U.S. 436, 447 (1883). A state may also "waive its ... sovereign immunity without waiving its Eleventh Amendment immunity," *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 306 (1990), thereby consenting to being sued in its own courts while still retaining Eleventh Amendment immunity from suit in federal court. See, e.g., *Fla. Dep't of Health and Rehabilitative Servs. v. Fla. Nursing Home Ass'n.*, 450

Nonetheless, the U.S. Supreme Court, recognizing the significance of maintaining the constitutional balance between the Federal Government and the States, has established a stringent standard for waiving Eleventh Amendment immunity.¹⁶⁸ The Court has held that a state's waiver of immunity must be explicitly stated or implied so unequivocally from the text that no other reasonable interpretation can be made.¹⁶⁹ In such cases, any waiver of the government's sovereign immunity is strictly construed in favor of the sovereign, considering the scope of the waiver.¹⁷⁰

An illustrative example can be found in the 1990 case of *Port Auth. Trans-Hudson Corp. v. Feeney*,¹⁷¹ where the Supreme Court ruled that the Eleventh Amendment immunity of the Port Authority of New York was waived due to a New Jersey statutory venue provision. The provision explicitly specified that the venue shall be established within a county or judicial district situated wholly or partially within the Port of New York District, as established by one of said States or by the United States.¹⁷² This clear and express language regarding venue led to the conclusion that Eleventh Amendment immunity was waived in this particular instance.

Here, the waiver of Eleventh Amendment immunity under the Act is beyond doubt: The Act allows a parent to initiate legal proceedings in federal court when there is any action that hinders or encroaches upon the fundamental right of parents to direct the upbringing, education,

U.S. 147, 150 (1981) (state's general waiver of sovereign immunity did not constitute a waiver by the state of its Eleventh Amendment immunity). Regardless, Arizona has in fact waived both immunities as to suits brought under A.R.S. § 1-602(E).

¹⁶⁸ *Dellmuth v. Muth*, 491 U.S. 223, 227 (1989) (quoting *Atascadero*, 473 U.S., at 238)

¹⁶⁹ *Id.* at 239-240 (quoting *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (internal quotation omitted)).

¹⁷⁰ *Lane v. Pena*, 518 U.S. 187, 192 (1996); see also Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 146-50 (2010) (describing the long history of the canon requiring a clear statement before interpreting a law to override sovereign immunity).

¹⁷¹ 495 U.S. 299, 306 (1990).

¹⁷² *Id.* at 307 (citing N.J. Stat. Ann. § 32:1-162).

Cf. Micomonaco v. Washington, 45 F.3d 316, 320 (9th Cir. 1995) (holding that Washington did not waive its Eleventh Amendment immunity where the statute in question set forth that “[t]he state consents to suits against the department by seamen for injuries occurring upon vessels of the department in accordance with the provisions of section 688, title 46, of the United States code. The venue of such actions may be in the superior court for Thurston county or the county where the injury occurred.”) (quoting Wash. Rev. Code § 47.60.210).

healthcare, and mental health of their children.¹⁷³ This waiver is articulated with the utmost clarity and is supported by such compelling implications from the text that no alternative interpretation can be reasonably entertained. It represents an unequivocal indication that Arizona has consented to be sued under § 1-602(E) in federal court.

Here, the Eleventh Amendment waiver under the Act is unquestionable: A parent may bring suit based on any action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children in federal court.¹⁷⁴ It is “stated by the most express language” and “by such overwhelming implication from the text as [will] leave no room for any other reasonable construction,”¹⁷⁵ and is an “unequivocal indication” that Arizona consents to suit under the Act in federal court.¹⁷⁶

The qualified and absolute immunities under Section 1983 do not exist in suits under § 1-602(E).

The elements of, and the defenses to, a federal cause of action are defined by federal law¹⁷⁷ and a state “may not, by statute or common law, create a cause of action **under § 1983** against an entity whom Congress has not subjected to liability,”¹⁷⁸ An example relevant here is that the U.S. Supreme Court has construed the word “person” in Section 1983 to exclude states, and neither a federal court or a state court may entertain such an action against a state.¹⁷⁹ However, “when state law creates a cause of action, the State is free to define the defenses to that

¹⁷³ A.R.S. § 1-602(E) (“A parent may bring suit against a governmental entity or official ... based on any violation of the statutory rights set forth in this chapter or any other action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children ... in federal court, if authorized by federal law...”).

¹⁷⁴ A.R.S. § 1-602(E).

¹⁷⁵ *See Dellmuth*, 491 U.S. at 227, 239-240.

¹⁷⁶ *Charley's Taxi Radio Dispatch Corp. v. SIDA of Hawaii, Inc.*, 810 F.2d 869, 873 (9th Cir. 1987).

¹⁷⁷ *See, e. g., Monessen Southwestern R. Co. v. Morgan*, 486 U.S. 330, 335 (1988); *Chesapeake & Ohio R. Co. v. Kuhn*, 284 U.S. 44, 46-47 (1931).

¹⁷⁸ *Howlett v. Rose*, 496 U.S. 356, 376 (1990) (citing *Moor v. County of Alameda*, 411 U.S. 693, 698-710 (1973) (emphasis added)).

¹⁷⁹ *Id.*

claim, including the defense of immunity, unless, of course, the state rule is in conflict with federal law.”¹⁸⁰

Here, there is no conflict between Arizona’s statutory waiver of immunities under § 1-602(E), because the cause of action arises *under § 1-602(E), not Section 1983*. So, while “[a] prosecutor, acting within the scope of his duties in initiating and prosecuting a case, has the same absolute immunity from liability for damages under [§] 1983 for alleged violation of another’s constitutional rights that a prosecutor enjoys at common law,”¹⁸¹ suits brought in federal court under the Arizona Parents’ Bill of Rights Act suffer from no such archaic disability.

V. CAUSES OF ACTION UNDER § 1-602(E) IN FEDERAL COURT

A. Federal Court Jurisdiction is Unquestionable

"The district courts shall have original jurisdiction of *any civil action authorized by law* to be commenced by any person ... [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States..."¹⁸²

One of the fundamental objectives underlying section 1983 is to establish a federal right of action in cases involving the violation of any right, privilege, or immunity protected by the United States Constitution. This federal right of action is “*supplementary* to any remedy any state might have.”¹⁸³ Therefore, although § 1343 does not itself create a cause of action in civil rights cases, it confers original jurisdiction upon federal courts to adjudicate such cases as long as they are brought under a statutory cause of action. This can include causes of action arising under § 1983 or those arising under state laws. As long as the cause of action is "authorized by law" and asserts a claim for the deprivation of a constitutional right under the guise of state

¹⁸⁰ *Martinez v. California*, 444 U.S. 277, 282 n. 5 (1980) (“[W]hen state law creates a cause of action, the State is free to define the defenses to that claim, including the defense of immunity, unless, of course, the state rule is in conflict with federal law.”)

¹⁸¹ *See Imbler*, 424 U.S. at 410.

¹⁸² 28 U.S.C. § 1343(a)(3) (emphasis added).

¹⁸³ *See Damico v. California*, 389 U.S. 416, 416 (1967) (emphasis added).

authority, there is no doubt that § 1343(a)(3) is applicable.¹⁸⁴ It provides the necessary jurisdiction for federal courts to address these important matters.

B. Potential Applications

A parent may bring suit against a governmental entity or official described in this subsection based on any violation of the statutory rights set forth in this chapter ***or any other action that interferes with*** or usurps ***the fundamental right of parents to direct the upbringing, education, health care and mental health of their children*** ... in federal court, if authorized by federal law...¹⁸⁵

Given that § 1-602(E) *contains no state of mind requirement*, all a plaintiff need demonstrate is that a government entity or official did *something to interfere with* a parent's fundamental right to direct the upbringing, education, health care and mental health of their children,¹⁸⁶ and then strict scrutiny is triggered.¹⁸⁷ And where this 'something' was the direct or proximate cause of the violation of any right secured under the federal constitution, a cause of action otherwise essentially indistinguishable Section § 1983 is thereby created. The only difference of course being that justice under § 1-602(E) wouldn't be illusory. The possibilities here appear to be limited only by one's imagination and creativity in finding ways to apply § 1-602(E) with 28 U.S.C. § 1343 in light of the guarantees under the federal constitution. The following are just a few of these potential applications:

¹⁸⁴ As matter of statutory construction, phrase "authorized by law" is restricted by dependent clause limiting jurisdiction to actions for redress of rights secured by federal constitution or act of Congress; federal courts do not have jurisdiction under 28 USCS § 1343 to redress grievances based upon violations of state statutes. *Liles v. Reagan*, 625 F. Supp. 1470, 1986 U.S. Dist. LEXIS 30538 (D. Neb.), *aff'd*, 804 F.2d 493, 1986 U.S. App. LEXIS 33039 (8th Cir. 1986).

Where the cause of action arises under state law to secure rights which are *prima facie* secured by the federal constitution, and *especially* where the cause of action expressly permits the suit to be filed in federal court "if authorized by federal law," see A.R.S. § 1-602(E), there simply is no rational argument that § 1343(a)(3) does not supply the requisite jurisdiction.

¹⁸⁵ A.R.S. § 1-602(E) (emphasis added).

¹⁸⁶ *See Id.*

¹⁸⁷ *See* A.R.S. § 1-602(F).

Unlawful Arrest or Detention:

If a parent is unlawfully arrested or detained by a police officer without lawful cause, it can disrupt their ability to fulfill their parental responsibilities and make decisions regarding their children's upbringing and well-being. This fact becomes especially salient when an arrest results in pre-trial detention.

Excessive Use of Force:

If a police officer employs excessive force during an arrest or other interaction, resulting in physical harm or injury to a parent, it can impede their ability to care for and make decisions for their children: Damages for hospitalization and medical expenses, temporary or permanent physical or psychological disabilities, and lost employment, are but a few examples of how parent-victims of police brutality might obtain relief.

Unwarranted Intrusions into the Home:

The Fourth Amendment protects against unreasonable searches and seizures. If a police officer conducts a warrantless search of a parent's home without proper justification, it can interfere with their privacy and disrupt their ability to create an environment for their children where the children feel safe.

Violation of Due Process Rights:

If a parent's due process rights are violated during legal proceedings by a prosecutor or in collaboration with the police, it can adversely affect their ability to exercise their parental rights and make decisions about their children's upbringing. This is especially true in the context of child custody proceedings.

Retaliation or Intimidation:

If a police officer or prosecutor engages in retaliatory actions or intimidation tactics against a parent, such as harassment or threats, it can create an atmosphere of fear and restrict the parent's ability to freely exercise their parental rights.

False Convictions:

If a parent suffers a wrongful conviction from prosecutorial misconduct, he or she would have a viable claim for damages against the prosecutor.

Denial of Access to Children:

If a police officer or prosecutor wrongfully denies a parent access to their children without legal justification, it can significantly interfere with the parent's ability to fulfill their parental role and make decisions regarding their children's well-being.

Improper Charging Decisions:

If a prosecutor brings unfounded or unjustified charges against a parent, it can lead to legal proceedings that consume time, resources, and energy, which could otherwise be dedicated to fulfilling parental responsibilities.

Unfair Plea Bargaining:

If a prosecutor coerces or manipulates a parent into accepting an unfair or unjust plea bargain, it can result in consequences that limit the parent's rights and ability to make decisions regarding their children's upbringing.

Violation of Due Process Rights:

If a prosecutor disregards a parent's due process rights, such as failing to provide adequate notice or an opportunity to be heard during legal proceedings, it can impede the parent's ability to exercise their parental rights and participate fully in decisions concerning their children.

Abuse of Prosecutorial Discretion:

Prosecutors have broad discretion in deciding which cases to pursue and how to allocate resources. If a prosecutor selectively targets a parent based on improper considerations such as race, gender, or personal bias, it can lead to an unjust interference with the parent's fundamental rights.

Intimidation or Threats:

If a prosecutor engages in intimidating or coercive tactics against a parent, such as making threats of severe consequences or using their position to intimidate or harass the parent, it can create an atmosphere of fear and restrict the parent's ability to freely exercise their parental rights.

Withholding Exculpatory Evidence:

Prosecutors have a legal and ethical obligation to disclose exculpatory evidence to the defense. If a prosecutor fails to disclose such evidence that could have a significant impact on the outcome of the case, it may result in unjust convictions or protracted legal battles that disrupt a parent's ability to care for their children.

C. Bail Determinations

One area of criminal law where the Act is likely to have the most immediate impact is bail determinations in pre-trial detention. It's important to note that bail determinations should be based on factors such as flight risk and public safety concerns, rather than financial circumstances. When bail determinations disproportionately impact a parent's ability to exercise their fundamental rights in relation to their children, it may raise concerns regarding fairness and due process. Here are a few examples of how bail determinations can affect parental rights:

Separation from Children:

If a parent is denied bail or given unreasonably high bail, they may be detained in jail for an extended period, leading to separation from their children. This separation can disrupt the parent-child relationship and impede their ability to fulfill their parental responsibilities.

Inability to Provide Care:

Being detained due to unaffordable bail can result in a parent being unable to provide care for their children, including meeting their basic needs, ensuring their safety, and participating in their education and upbringing.

Custody and Visitation Issues:

Bail determinations can also impact child custody and visitation arrangements. If a parent is detained, it may affect their ability to exercise custody or visitation rights, causing a temporary or prolonged disruption in the parent-child relationship.

Financial and Emotional Stress:

If a parent is unable to secure reasonable bail, it can lead to financial strain and emotional distress. The stress of the situation can hinder their capacity to focus on parenting and make informed decisions regarding their children's well-being.

Stigmatization and Reputation:

Prolonged detention or inability to afford bail can lead to stigmatization and harm a parent's reputation within their community. This can have indirect effects on their ability to engage fully in their children's lives and exercise their parental rights.

VI. ONLY THE CORRUPT FEAR ACCOUNTABILITY

Holding government officials and employees accountable for their violations of citizens' rights is crucial for several reasons.

A. Upholding the Rule of Law

Accountability ensures that no one, regardless of their position, is above the law. It reinforces the principle that government officials must act within the boundaries of the law and respect the rights of citizens. When violations occur, holding individuals accountable sends a powerful message that abuses of power will not be tolerated.

B. Protection of Civil Liberties

Accountability safeguards the fundamental rights and civil liberties of citizens. When government officials are held accountable for rights violations, it acts as a deterrent, discouraging future misconduct and creating a more rights-respecting environment. It helps to prevent abuses and protects individuals from unwarranted infringements on their freedoms.

C. Restoring Trust and Confidence

Accountability plays a crucial role in maintaining public trust and confidence in government institutions. When officials are held accountable, it demonstrates that the government is committed to transparency, fairness, and justice. It allows citizens to have faith in the system and encourages their active participation in democratic processes.

D. Correcting Systemic Issues

Holding government officials accountable helps identify and address systemic issues within institutions or agencies. By investigating and addressing individual cases of misconduct, patterns and underlying problems can be identified, leading to systemic reforms and improvements. This contributes to a more effective and responsible government that better serves the needs of its citizens.

E. Remediating Injustice and Providing Redress

Accountability provides a means for victims of rights violations to seek justice and obtain redress for the harm they have suffered. It allows individuals to have their grievances heard and ensures that appropriate remedies, such as compensation or corrective actions, are provided. This not only helps victims heal but also sends a message that justice can be pursued and achieved.

F. Maintaining Checks and Balances

Holding government officials accountable is an essential component of the checks and balances system in a democratic society. It reinforces the oversight role of the judiciary, legislative bodies, and independent agencies, ensuring that they have the authority and ability to scrutinize and take action against abuses of power. This helps prevent the concentration of authority and promotes a healthy balance of power. Overall, accountability for government officials and employees is vital to protect individual rights, maintain public trust, correct systemic issues, and ensure a just and democratic society. It reinforces the principles of equality, fairness, and respect for the rule of law.

VII. CONCLUSION

In conclusion, the article has presented a compelling argument for the potential power of the revised Arizona Parents' Bill of Rights Act in holding state actors accountable for violations of constitutional rights. By providing parents with a means to bypass qualified immunity for

police officers and absolute immunity for prosecutors, the Act opens up a new legal avenue for seeking justice and redress.

Throughout the article, the historical context of Section 1983 and the immunities in Arizona has been discussed, highlighting the need for an alternative approach to address constitutional rights violations. The Act's statutory language has been carefully analyzed, emphasizing its broad application and the intention of the Arizona legislature to provide a strong tool for parents. Furthermore, the article has explored the implications of the Act's provisions in federal court suits, emphasizing the importance of accountability for police officers and prosecutors in today's society. It is clear that the remedies available under the Act are extensive, ranging from instances of police brutality to prosecutorial misconduct, encompassing critical issues that affect not only Arizona parents but all citizens.

The potential for justice that the Act holds extends far beyond its immediate beneficiaries. By establishing a framework that challenges the immunities traditionally afforded to government officials, the Act sets a precedent for increased accountability and a renewed commitment to safeguarding constitutional rights. Its provisions offer hope for a new era of police and prosecutor accountability, where violations are not shielded by legal protections but are met with the full force of the law. The revised Arizona Parents' Bill of Rights Act represents a significant step forward in the pursuit of justice and accountability. It empowers individuals to confront state actors who disregard constitutional rights, providing a formidable tool that bypasses immunities. This article has shed light on the transformative potential of the Act, emphasizing its relevance and impact not only for Arizona parents but for all those who seek a fair and just society. It is a beacon of hope that stands to benefit not only the present generation but also future generations, as it strengthens the foundation of constitutional protections and ensures that no one is above the law.