

**ARIZONA SUPREME COURT**

VICTOR SANCHEZ-RAVUELTA and  
JANETTE DODGE, a married couple, on  
behalf of themselves and their minor  
children ELIJAH SANCHEZ and  
AMELIA SANCHEZ,

Plaintiffs-Appellants,

v.

YAVAPAI COUNTY; TOWN OF  
DEWEY-HUMBOLDT; STATE OF  
ARIZONA,

Defendants-Appellees.

No. CV-24-0093-PR

Court of Appeals No.  
2 CA-CV 2023-0059

Maricopa County Superior Court No.  
CV2022-015670

**STATE OF ARIZONA'S PETITION FOR REVIEW**

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## INTRODUCTION

This Court’s intervention is needed on an issue of statewide importance: whether the statutes creating the Arizona Department of Liquor Licenses and Control (the “Department”) and defining its responsibilities impose on the State of Arizona a tort duty to protect the general public with respect to the conduct of liquor licensees. This Court has made clear that duty is based either on public policy—usually found in our statutes—or on a common-law special relationship.

Purporting to follow this Court’s holdings, a majority of the court of appeals panel held that Arizona statutes creating the Department and establishing its responsibilities created a duty that the State owed to Victor Sanchez-Ravuelta and Janette Dodge (“Plaintiffs”), who were injured when a drunk driver left a bar and subsequently caused an accident. But the statutes on which the majority relied are not the type upon which this or other Courts have based the existence of a tort duty. In a nutshell, they specifically regulate liquor licensees’ conduct while vesting the Department with significant discretion in regulating the alcohol trade. And crucially, the Department is not alleged to have violated any of them. The statutes thus cannot be the source of any duty.

The majority’s holding not only contravenes this Court’s precedents, it has far-reaching implications. Beyond the Department, there are numerous other statutorily created boards, departments, and agencies that regulate industries and

professionals. Left uncorrected, the majority’s approach could impose liability on those entities—and by extension, state and local governments—simply because the public receives some protection regardless of whether there is a proper statutory basis for a duty. This Court should grant review and correct the majority’s error.

### **ISSUE PRESENTED FOR REVIEW**

Did the court of appeals improperly decide an important question of law by imposing a duty on the State, owed to the Plaintiffs and other members of the general public, based on the Department of Liquor Licenses and Control’s enabling statutes, which do not require or prohibit particular conduct on its part and which it is not alleged to have violated?

### **MATERIAL FACTS**

In April 2021, the Plaintiffs and their minor children<sup>1</sup> were injured after David Alan Browne drove drunk, failed to stop at an intersection stop sign, and caused a collision involving the Plaintiffs’ vehicle. (RA 46 at 4, ¶ 11.) Brown had been drinking at the nearby Billy Jack’s Saloon & Grille before the accident. (*Id.*)

The Plaintiffs sued the State, Yavapai County, and the Town of Dewey-Humboldt, and the case proceeded on their Third Amended Complaint. (*Id.* at 1.) As to the State, they alleged (1) that it had failed to provide warnings that the intersection was unreasonably dangerous; (2) that it had failed to “uphold[] Browne’s

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<sup>1</sup> The minor children were initially named as Plaintiffs in this suit, but they were subsequently dismissed without prejudice. (RA 107.)

suspended [driver's] license, Court Ordered Interlock, and Court Ordered incarceration” for previous extreme-DUI convictions; and (3) that the Department had negligently issued a liquor license to Billy Jack’s or had negligently failed to revoke that license. (*Id.* at 5-22.)

The State moved to dismiss, arguing in part that the Plaintiffs’ Notice of Claim was deficient and that the State had no tort duty to oversee Billy Jack’s. (RA 48 at 3-6.) The superior court agreed. (RA 96 at 6-7.) It ruled that the Notice of Claim included sufficient facts to support only the liquor-license claim, and it therefore dismissed the other claims for failure to comply with the notice-of-claim statute. (*Id.* at 6.) It dismissed the liquor-license claim, ruling that “the State had no legal duty arising from its issuance of a liquor license to protect plaintiffs from the harm caused when Browne drove drunk and caused the accident that injured them.” (*Id.* at 7.) The Plaintiffs appealed. (RA 138.)

The court of appeals panel unanimously affirmed on the notice-of-claim issue. *Sanchez-Ravuelta v. Yavapai County*, 2024 WL 1425591, at \*5, ¶ 20 (Ariz. App. Apr. 3, 2024) (App.-003-17). But in a split vote, it ruled that “under the criteria for the statutory creation of a duty articulated by our supreme court, the Department had a duty to plaintiffs in these circumstances” and reversed the dismissal of the liquor-license claim. *Id.* at \*7, ¶ 28.

Judge Eppich dissented on the duty issue. *Id.* at \*8, ¶ 33 (Eppich, J., dissenting in part). He reasoned that the Department did not owe the Plaintiffs a statutory-based public-policy duty. *Id.* ¶¶ 33-34. He opined instead that the Department’s “statutory authority here is akin to general law enforcement powers, which provide no actionable duty to protect any particular individual member of the public.” *Id.* ¶ 35.

## REASONS TO GRANT REVIEW

### **I. The Court of Appeals Incorrectly Decided an Important Question of Law by Holding that the Department Owed a Tort Duty to the Plaintiffs to Monitor Billy Jack’s.**

#### **A. Only Public Policy or Special Relationships Create a Duty of Care Owed to a Plaintiff.**

“Whether the defendant owes the plaintiff a duty of care is a threshold issue” in any negligence action. *Gipson v. Kasey*, 214 Ariz. 141, 143, ¶ 11 (2007). Plaintiffs have the burden to prove that a duty exists, and the action necessarily fails if they do not do so. *Id.* ¶¶ 9, 11. This Court has made clear that “duty in Arizona is based on either recognized common law special relationships or relationships created by public policy.” *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, 565, ¶ 14 (2018). Here, the panel majority failed to faithfully apply this Court’s precedents in their conclusion that a public-policy duty arose from the Department’s statutes, and this Court should correct their holding that the State owed a duty to the Plaintiffs in these circumstances.

**B. The Statutes Creating the Department and Regulating the Alcohol Trade Do Not Impose a Duty on the State Because They Regulate Licensees' Conduct, Not the Department's.**

The “primary source for identifying a duty based on public policy is our state statutes.” *Quiroz*, 243 Ariz. at 566, ¶ 18. A statute reflecting public policy may create a duty when a plaintiff “is within the class of persons to be protected by the statute and the harm that occurred . . . is the risk that the statute sought to protect against.” *Id.* at 565, ¶ 15 (alteration in original).

The Plaintiffs alleged that the State, through the Department, has “a duty to protect the public from establishments that regularly over-serve [their] patrons and create hazardous conditions” that it owes to “innocent victims such as Plaintiffs herein” and that it should not have not permitted Billy Jack’s to have a liquor license or should have suspended that license. (RA 46 at 19, ¶¶ 53-55.) Relying on *Quiroz*, they cited A.R.S. § 4-203(A) as the source of the State’s duty. (RA 55 at 9.) Section 4-203(A) provides that

[a] spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and . . . that the public convenience requires and that the best interest of the community will be substantially served by the issuance.

In concluding that the State owed a duty to the Plaintiffs, the panel majority ignored that section, relying instead on the following statutes:

- A.R.S. § 4-112(C), which requires the Department to establish “a separate investigations unit that has as its sole responsibility the investigation of compliance with” Title 4, which regulates the sale and distribution of alcohol (App.-021);
- A.R.S. § 4-118, which allows the Department “in enforcing the provisions of [Title 4], [to] visit during the hours in which the premises are occupied and inspect the premises of a licensee” (App.-025);
- A.R.S. § 4-210(A)(9), which provides that the Department “may suspend, revoke or refuse to renew any license” based on the licensee’s “violation] or fail[ure] to comply with” the liquor laws and departmental rules (App.-027);
- A.R.S. § 4-210.01, which allows the Department to impose fines on licensees for violations (App.-031); and
- A.R.S. § 4-244(14), which makes it unlawful for a “licensee . . . to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person” (App.-34).

*Sanchez-Ravuelta*, 2024 WL 1425591, at \*6, ¶ 27.<sup>2</sup> In relying on these statutes, the majority failed to faithfully apply *Quiroz*.

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<sup>2</sup> The statutes are reproduced in full in the State’s Appendix.

Another panel of the court of appeals has explained the principle behind *Quiroz*: “[T]he nature of the legal principle that allows a court to find a duty in a statute” is that “[b]y enacting a statute that *requires or forbids certain conduct*, the legislature articulates a public policy that may impose a duty enforceable in tort against *one who violates the statute.*” *Stair v. Maricopa County*, 245 Ariz. 357, 362, ¶ 15 (App. 2018) (emphasis added). “Under this principle, the statute the defendant allegedly violated establishes the scope of the duty.” *Id.* Thus, while statutes may reflect some public policy, they “do[] not create a duty enforceable in tort against one who did not violate any of those statutes.” *Id.*

This Court’s decisions holding that certain statutes reflect a public policy that creates a tort duty confirm *Stair*’s explanation. For example, this Court has held that a defendant who violated statutes prohibiting “the distribution of prescription drugs to persons lacking a valid prescription” owed a duty and could be held liable for an overdose death after he gave his prescription pills to someone who had no prescription. *Gipson*, 214 Ariz. at 143-44, 146, ¶¶ 4, 6, 26. It has also held that defendants who violated statutes that prohibit giving alcohol to minors owed a duty and could be held liable for injuries resulting from doing so. *Est. of Hernandez ex rel. Hernandez-Wheeler v. Ariz. Bd. of Regents*, 177 Ariz. 244, 253 (1994); *Brannigan v. Raybuck*, 136 Ariz. 513, 517 (1983). And it has held that a landowner who violated a city ordinance prohibiting the discharge of water onto

public roadways owed a duty and could be held liable for a woman's injuries after she slipped on a wet sidewalk abutting the defendant's property. *Cobb v. Salt River Valley Water Users' Ass'n*, 57 Ariz. 451, 456-57 (1941).

In ruling that the State owed the Plaintiffs a duty, the majority went far beyond the principle behind this Court's caselaw. The statutes on which the majority relied do not regulate conduct in the way that the statutes in those cases do, and the Department cannot violate the statutes, which do not require or prohibit any pertinent action on its part. *Cf. Oleszczuk v. State*, 124 Ariz. 373, 376-77 (1979) (finding a duty in statutes requiring the Motor Vehicle Department to identify drivers whose past history might make them dangerous, a duty that might be violated by issuing a driver's license to such a person).

The statutes on which the majority relied primarily establish the Department's powers, duties, and organization. *See* A.R.S. §§ 4-111, -112, -118 (App.-018, -020, -025). To the extent that they do regulate specific conduct, they regulate *licensees'* conduct, not the Department's conduct. *See* A.R.S. §§ 4-210(A)(9), -210.01, -244(14) (App.-026, -031, -034). This is also true of the only statute that the Plaintiffs cited, A.R.S. § 4-203(A), which requires the Department to issue liquor licenses only after applicants have demonstrated that they qualify. The majority recognized that the relevant statutes are aimed at licensees' conduct, noting that "[o]ur legislature designed the statutory scheme that established . . . the

Department . . . to regulate actions *of a licensee* that could harm the general public.” *Sanchez-Ravuelta*, 2024 WL 1425591, at \*6, ¶ 26 (emphasis added; parentheses and internal quotation marks omitted). The majority nonetheless held that because the statutes “expressly identified the overservice of patrons as among the risks to the general public that it sought to prevent,” they imposed on the State a duty to the general public. *Id.* at \*7, ¶ 28. But the mere fact that a public policy can be discerned is not enough to establish a duty. The statutory scheme does not fit the criteria—as recognized in *Stair*, 245 Ariz. at 362, ¶ 15—that this Court has established for finding statute-based duties.

With respect to the Department—as opposed to licensees—the pertinent portions of the statutes on which the majority relied are *permissive and discretionary*:

- “The director, the director’s agents and any peace officer *may*, in enforcing the provisions of this title, visit during the hours in which the premises are occupied and inspect the premises of a licensee.” A.R.S. § 4-118 (emphasis added) (App.-025).
- “[T]he director *may* suspend, revoke or refuse to renew any license . . . issued pursuant to this chapter for . . . [t]he licensee[’s] . . . violat[ion] or fail[ure] to comply with this title, any rule adopted pursuant to this title or

any liquor law of this state or any other state.” A.R.S. § 4-210(A)(9)  
(emphasis added) (App.-026-27).

- “[T]he director *may* impose a civil penalty . . . .” A.R.S. § 4-210.01(A)  
(emphasis added) (App.-031).

The majority did not explain how statutes that grant the Department discretion in performing its functions somehow create a tort duty under this Court’s precedents.

Section 4-112(C), on which the majority also relied, does include one requirement: that the Department “establish . . . a separate investigations unit” to investigate compliance with liquor laws. But other than mandating that unit, that section imposes no further requirements on the Department, thereby vesting it with discretion to determine whether, when, and how to conduct an investigation. And there is no allegation that the Department failed to create the necessary investigatory unit. (RA 46 at 19, ¶¶ 52-55.) *Cf. Oleszczuk*, 124 Ariz. at 375-76 (holding that a statute requiring the Motor Vehicle Department “to establish a Medical Advisory Board to advise the department on medical standards for driver licensing” could support a negligence claim based on MVD’s failure to establish the mandated board). Section 4-112(C) therefore also does not support the existence of the broad tort duty that the majority found.

The majority also curiously relied on a qualified-immunity statute. They asserted that by enacting A.R.S. § 12-820.02(A)(5), “our legislature has provided

that our state agencies, like the Department, can be sued for the ‘issuance of . . . any permit, license, certificate, approval, order or similar authorization’ provided the plaintiff can show ‘gross negligence.’” *Sanchez-Ravuelta*, 2024 WL 1425591, at \*7, ¶ 30. Far from granting a power to sue, Section 12-820.02(A)(5) establishes an immunity—an affirmative defense, *see Shepherd v. Costco Wholesale Corp.*, 250 Ariz. 511, 514, ¶ 15 (2021) —and thereby *limits* any power to sue that might otherwise exist. Unlike duty, which is a threshold element of the plaintiff’s case, *Gipson*, 214 Ariz. at 143, ¶ 9, “[t]he proponent of an affirmative defense has the burden of pleading and proving it.” *Grubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C., L.L.C.*, 213 Ariz. 83, 89, ¶ 21 (App. 2006). Hence, duty and immunity are separate issues. *Wesley v. State*, 117 Ariz. 261, 263-64 (App. 1977). By asserting that the immunity statute actually creates a duty, the majority demonstrated their confusion on this issue.

Judge Eppich’s analysis of the pertinent statutes was more accurate than the majority’s:

[M]ost of the statutes on which the majority relies generally describe the powers, duties, and organization of the Arizona Department of Liquor Licenses and Control. And to the extent it could be argued that those statutes do regulate conduct, it is not conduct relevant to the issues presented in this case. The majority points to the statute for revoking and suspending a liquor license, but the conduct being regulated there is that of the licensee or persons on the licensed premises, not the licensor. Other statutes, which are more directly linked to the harms the

plaintiffs suffered here, tend to govern the conduct of persons consuming or providing the alcohol.

*Sanchez-Ravuelta*, 2024 WL 1425591, at \*8, ¶ 33 (citations omitted). Judge Eppich’s analysis, unlike the majority’s, faithfully applies *Quiroz*, *Gipson*, and this Court’s other cases on this subject, again as recognized in *Stair*, 245 Ariz. at 362, ¶ 15.

Judge Eppich also appropriately questioned the majority’s characterization of the class of persons protected by the Department’s operating statutes. The majority asserted that “those [people] potentially harmed by an overserved patron represent the precise class of persons those statutes were designed to protect.” *Id.* at \*7, ¶ 28. Judge Eppich correctly noted that this is far from a precise class because it “is indistinguishable from the general public.” *Id.* at \*8, ¶ 35. It takes little imagination to recognize the myriad harms that can result in myriad ways from overserved patrons. Everyone is a potential victim. Hence, the majority’s holding effectively transforms the State—through the Department—into a general insurer of public safety.

This Court should grant review to rein in the majority’s unwarranted imposition of a duty on the State. At the very least, the split opinion demonstrates judicial confusion on the issue, and this Court should grant review to resolve the judges’ differences.

## CONCLUSION

For the foregoing reasons, this Court should grant review, vacate paragraphs 22-31 of the court of appeals' Opinion, and affirm the Judgment.

Respectfully submitted this 2nd day of May, 2024.

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