

David L. Abney, Esq. (009001)  
**AHWATUKEE LEGAL OFFICE, P.C.**  
Post Office Box 50351, Phoenix, Arizona 85076  
(480) 734-8652, abneymaturin@aol.com  
Appellate Counsel for Plaintiffs/Appellants

Steven H. Pincus, Esq. (014604)  
Amara Edblad, Esq. (0129035)  
Ryan Lamb, Esq. (023322)  
**PINCUS LAW FIRM, PLC**  
2550 West Union Hills Drive, No. 350  
Phoenix, Arizona 85027, (623) 444-4823  
spincus@theinjuryshield.com  
aedblad@yourinjuryshield.com  
rlamb@yourinjuryshield.com  
Attorneys for Plaintiffs/Appellants

**IN THE SUPREME COURT  
STATE OF ARIZONA**

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; JOHN and JANE DOES I-X,  
ABC Corporations, XYZ Partnerships,

Defendants/Appellees.

**Case No. CV-24-0093-PR**

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

Maricopa County Superior Court  
Case No. CV 2022-051670  
(Hon. Melissa Julian)

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

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## **Introduction**

The State of Arizona has the exclusive statutory authority over commercial purveyors of alcoholic beverages to protect the public from death and injury from overservice of alcoholic beverages. The law supports existence of a duty on the part of the State. In this case, the facts prove the State both breached that duty and was grossly negligent in licensing a saloon with a notorious history of overserving its patrons and bragging about that overservice in its advertisements to the public.

## **Legal Argument**

### **1. The facts concerning the April 4, 2021 collision.**

The operative facts prove the State, through its Arizona State Department of Liquor Licenses (“Department”), committed gross negligence that contributed to causing the destructive April 4, 2021 motor-vehicle collision. The operative facts appear in the Third Amended Complaint. [\[ROA 46\]](#)

Because the case ended when the trial court filed an order [\[ROA 96\]](#) that granted the State’s Rule 12(b)(6) motion to dismiss [\[ROA 48\]](#), the Third Amended Complaint’s well-pleaded facts must be reviewed de novo, assumed to be true, and viewed in the light most favorable to the plaintiffs, with all reasonable inferences from those facts taken in their favor. *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56 ¶¶ 7, 9 (2012). Dismissal is only proper if a plaintiff is not entitled to relief as a matter of law under any interpretation of the facts susceptible of proof. *Harris v.*

*Warner*, 255 Ariz. 29, 32 ¶ 8 (2023).

On April 4, 2021, David Browne had been drinking alcoholic beverages heavily at Billy Jack’s—a notoriously freewheeling bar located at the corner of State Route 69 and Kloss Avenue in Dewey-Humboldt. [[ROA 46](#) ¶ 51, ep 18]

At about 5:45 p.m. on April 4, 2021, Browne left the saloon and drove his car out of its parking lot. He paused at a stop sign on Kloss Avenue, and then, after failing to yield the right-of-way, crashed his car into the side of the car that Jeffrey Hopkins was driving north on State Route 69. [[ROA 46](#) ¶ 11, ep 4]

Hopkins’s car spun out of control and collided with the car containing Victor Sanchez-Ravuelta, wife Janette Dodge, and their minor children, Elijah Sanchez and Amelia Sanchez. [[ROA 46](#) ¶ 11, ep 12] The trial court acknowledged that the collision significantly injured all of the occupants in the Sanchez-Ravuelta car. [[ROA 96](#), ep 2] The Court of Appeals concurred that, as a result of the collision, “the plaintiffs suffered serious physical and emotional injuries.” *Opinion* ¶ 3.

At the time of the collision, Browne’s blood-alcohol content was more than 0.30. [[ROA 46](#) ¶ 11, ep 4]; *Opinion* ¶ 3.

**2. Because of Billy Jack’s history of overserving its patrons, the State was grossly negligence when it renewed Billy Jack’s liquor license.**

Billy Jack’s offered almost unfettered liquor service. The State knew, or should have known, that Billy Jack’s had a tendency to overserve its patrons and create hazardous conditions for others by letting its overserved, intoxicated patrons

drive away from the saloon—located a couple of hundred feet from State Route 69, a busy state highway passing through Dewey-Humboldt between Interstate 17 and Prescott. [[ROA 46](#) ¶ 52, ep 19]<sup>1</sup>

The State committed gross negligence when it renewed Billy Jack’s liquor license: (1) despite its history of liquor-law infractions, (2) despite the saloon’s marketing signs advertising its tendency to overserve its customers and create hazardous conditions, and (3) despite failing to investigate the saloon in response to incidents and complaints that suggested the saloon had a regular and frequent tendency to overserve its patrons and create hazardous conditions for the public.

[[ROA 46](#) ¶ 55, ep 19] Billy Jack’s advertisements on its Facebook page included slogans such as “If you can’t be happy at least you can be drunk” and “I don’t always skip work for free pool . . . but when I do it’s tipsy Tuesday.” [[ROA 55](#), ep 9-10]

### **3. The State had a duty of care and breached it.**

The Court of Appeals observed that the State had argued “that it owed no duty to plaintiffs to prevent Billy Jack’s from creating hazardous conditions by overserving customers.” *Opinion* ¶ 4. The trial court accepted the State’s argument,

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<sup>1</sup> “Dewey-Humboldt sprawls across 18.5 miles of rolling green hills. It’s a town with no movie theater and more horses than chain restaurants. The communities of Dewey and Humboldt officially incorporated in 2004.” Corrine Purtill, *Possible Designation Splits Ariz. Town*, Arizona Republic B-1, B-2 (Aug. 20, 2007).

and “found the state owed no duty to the plaintiffs to ‘prevent drunk drivers from causing collisions.’” *Opinion* ¶ 4 [[ROA 96](#), ep 6].

Plaintiffs had also alleged that the State had committed the tort of negligence infliction of emotional distress, which, as the Court of Appeals acknowledged, also required “a showing that the state owed a duty of care.” *Opinion* ¶ 22 n.8.

The Court of Appeals noted the Third Amended Complaint had alleged, “in relevant part, that the state ‘holds non-delegable duties to the public at large to provide protection from establishments that regularly overserve their patrons and create hazardous conditions.’” *Opinion* ¶ 23 [[ROA 46](#) ¶ 57, ep 20]. The Third Amended Complaint alleged the State breached its duty of care “by failing to investigate Billy Jack’s and by renewing its license to sell liquor despite its history of infractions and evidence that the bar ‘has a regular and frequent tendency to overserve its patrons.’” *Opinion* ¶ 23 [[ROA 46](#) ¶ 55, ep 19].

The trial court, however, “granted the motion to dismiss, finding that even assuming the allegations in the [Third Amended Complaint] are true, ‘the State had no legal duty arising from its issuance of a liquor license to protect plaintiffs from harm caused when Browne drove drunk and caused the accident that injured them.’” *Opinion* ¶ 24 [[ROA 96](#) ep 7]

But the Court of Appeals reversed, finding that the State did have a duty of care. The Court of Appeals noted the legal principle that statutes do create a duty

of care “when the 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.’” *Opinion* ¶ 25. In reaching that conclusion, the Opinion:

- (1) Quoted *Gipson v. Kasey*, 214 Ariz. 141, 146 ¶ 26 (2007) (“Because [the victim] is within the class of persons to be protected by the statute and the harm that occurred here is the risk that the statute sought to protect against, these statutes create a tort duty.”).
- (2) Cited *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, 565 ¶ 15 (2018) (A statute reflecting public policy may create a duty when a plaintiff is within the class of protected persons and the harm suffered was the very risk that the statute tried to protect against.)
- (3) Cited *CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511, 517 ¶ 21 (2021) (Statutes create a duty of care when the plaintiff is within the class of persons that the Legislature passed the statutes to protect—and the harm the plaintiff suffered was the same risk the statute tried to protect against.)).

*Opinion* ¶ 25.

The Court of Appeals observed that the Legislature “designed the statutory scheme that established the Arizona Department of Liquor Licenses and Control (the ‘Department’)” in order “to regulate actions of a licensee that could harm the

general public.” *Opinion* ¶ 26 (citing A.R.S. §§ 4-111 through 4-120).

The Court of Appeals quoted this Court’s explanation that “the Department established ‘state-wide control over the traffic in intoxicating liquors’ to address ‘the many inherent evils attending the traffic [of alcohol] and the abuses arising therefrom when not regulated.’” *Opinion* ¶ 26 (quoting *Mayor & Common Council of City of Prescott v. Randall*, 67 Ariz. 369, 374-75 (1948)). Indeed, according to the Court of Appeals, the Legislature had “designed Arizona’s liquor laws, fostered and enforced by the Department, ‘to protect the welfare . . . and safety of all the citizens by providing for the strict regulation and control of the . . . distribution of alcoholic beverages.’” *Opinion* ¶ 26 (quoting *Mendelsohn v. Superior Court*, 76 Ariz. 163, 169 (1953)).

Specifically for the finding of duty in the present case, the Court of Appeals noted the Legislature had granted “express statutory authority to the Department to investigate and sanction licensees for serving obviously intoxicated persons.” *Opinion* ¶ 27.

As support for that proposition, the Court of Appeals cited a number of statutes, including:

- A.R.S. § 4-112(C), mandating the Department’s director to establish an investigation unit “that has as its sole responsibility the investigation of compliance with this title.”
- A.R.S. § 4-118, granting the power to investigate the premises of liquor licensees.

- A.R.S. § 4-244(14), making it unlawful for licensee to sell liquor to “obviously intoxicated person.”
- A.R.S. § 4-210.01, authorizing fines.
- A.R.S. § 4-210(A)(9), granting the power to suspend or revoke liquor licenses if a licensee “violates or fails to comply with . . . any liquor law of this state.”

*Opinion* ¶ 27.

The Court of Appeals explained that the statutory program that created the Department and provided its authority, had “expressly identified the overservice of patrons as among the risks to the general public that it sought to prevent.” *Opinion* ¶ 28. And of course, the persons who are “potentially harmed by an overserved patron represent the precise class of persons those statutes were designed to protect.” *Opinion* ¶ 28 (citing *Del E. Webb Corp. v. Superior Court*, 151 Ariz. 164, 169 (1986) (Statutes that prohibit the sale of alcohol to intoxicated persons are “perhaps primarily . . . intended to protect the general public.”)).

The Court of Appeals concluded 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.” *Opinion* ¶ 28 (citing *Gipson*, 214 Ariz. at 146 ¶ 26 and *Quiroz*, 243 Ariz. at 565 ¶ 15). That was, in the final analysis, the State’s duty of care. After all, the State’s “primary object” in regulating the sale of intoxicating liquors is eliminating the excessive use of intoxicants.” *Chee Lee v.*

*Superior Court*, 81 Ariz. 142, 147 (1956).

The Court of Appeals emphasized that the Legislature had “created the Department to oversee only a specific and far more narrow group of actors than the general public: the state’s liquor licensees.” *Opinion* ¶ 29. The Court of Appeals further explained that: (1) the potential harms the statutory scheme addressed are also specifically limited to those caused by the abuse of alcohol that can be mitigated by the licensees; and (2) the statutory scheme sought to protect a specific class of persons, namely those potentially harmed by the abuse of alcohol. *Opinion* ¶ 29 (citing *Mayor & Common Council*, 67 Ariz. at 374-75 and *Mendelsohn*, 75 Ariz. at 169).

The Court of Appeals noted that the State has no immunity from lawsuits arising from the “issuance of . . . any permit, license, certificate, approval, order or similar authorization” as long as the plaintiff can show that the State had committed “gross negligence.” *Opinion* ¶ 30 (quoting A.R.S. § 12-820.02(A)(5)). The Court of Appeals concluded that, if it found no duty here, that would nullify the qualified immunity provided in A.R.S. § 12-820.02(A)(5) against lawsuits against the State based on wrongful licensing “for those persons” that the Legislature had created the Department to protect. *Opinion* ¶ 30.

That is, with the statutory power and obligation to regulate liquor licenses comes the duty to ensure that the State does not commit negligence in issuing

licenses to irresponsible liquor purveyors such as Billy Jack's. Protecting the State against the consequences of improper licensure is necessarily the reason why the Arizona Legislature enacted A.R.S. § 12-820.02(A)(5), which can, under proper circumstances, provide qualified immunity to the State for the "issuance of . . . any permit, license, certificate, approval, order, or similar authorization." There would be no reason to pass this statute if the State had no duty to refrain from negligent issuance of a license. The statute provides limited protection for the State when the State violates its duty of care by issuing a license when doing that constitutes gross negligence on its part.

Based on the foregoing analysis, the Court of Appeals reasonably reversed the superior "court's judgment with respect to the plaintiffs' claim for negligent issuance of a liquor license." *Opinion* ¶ 31. We ask this Court to refrain from granting the petition and overturning that reasonable result.

**4. The petition does not satisfy the essential criteria for granting a petition.**

This sort of case is undeniably a matter of statewide interest and great importance. But the Court of Appeals correctly and reasonably concluded that the State had a duty of care because: (1) the plaintiffs were within the class of persons that the Legislature sought to project through its liquor licensing, control, and supervision statutes, and (2) the harm that occurred was within the risk that the statutory scheme sought to protect against. Cases directly supporting that principle

include *Gipson v. Kasey*, 214 Ariz. 141, 146 ¶ 26 (2007); *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, 565 ¶ 15 (2018); and *CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511, 517 ¶ 21 (2021).

Indeed, those three relatively recent opinions control the duty points of law in question in this matter and should neither be overruled nor qualified. Ariz. R. Civ. App. Proc. 23(d)(3). In addition, the Court of Appeals has filed no conflicting decisions and, as noted, the Court of Appeals has correctly decided this matter's issues of law. Ariz. R. Civ. App. Proc. 23(d)(3).

This is one of those rare recent Opinions where there is no genuine debate about duty. The State had a duty of care. Moreover, accepting the Third Amended Complaints' alleged facts as true and viewing them and the reasonable inferences from them in the light most favorable to the Plaintiffs, reasonable jurors could conclude that the State breached its duty of care and proximately contributed to causing the April 4, 2021 collision.

### **Conclusion**

Based on the foregoing, Plaintiffs ask the Court to decline to grant the petition for review. Plaintiffs also respectfully ask the Court to award to them the reasonable costs they incurred in having to respond to the petition for review, in accordance with A.R.S. §§ 12-331, 12-332, 12-341, 12-342, and Ariz. R. Civ. App. Proc. 21.

**DATED** this 3rd day of June, 2024.

**AHWATUKEE LEGAL OFFICE, P.C.**

/s/ David L. Abney, Esq.  
David L. Abney  
Attorney for Plaintiffs/Appellants

**Certificate of Compliance**

This document: (1) uses Times New Roman 14-point proportionately spaced typeface for text *and* footnotes; (2) contains 2,412 words (by computer count); and (3) averages less than 280 words per page, including footnotes and quotations.

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- Kathleen L. Wieneke, Esq., Laura Van Buren, Esq., **WIENEKE LAW GROUP, PLC**, 1225 West. Washington Street, Suite 313, Tempe, Arizona 85288, kwieneke@wienekelawgroup.com, lvanburen@wienekelawgroup.com, (602) 715-1868, Attnys for Defendant Yavapai County.
- William H. Doyle, Esq. and Brandon D. Millam, Esq., **DOYLE HERNANDEZ MILLAM**, 11811 North Tatum Boulevard, Suite 2900, Phoenix, Arizona 85028, wdoyle@doylelawgroup.com, bmillam@doylelawgroup.com, (602) 240-6711, Attnys for Town of Dewey-Humboldt.
- Claudia Acosta Collings, Esq., **OFFICE OF THE ARIZONA ATTORNEY GENERAL**, 416 West Congress, 2nd Floor, Tucson, Arizona 85701-1315, claudia.collings@azag.gov, (520) 638-2815, Attorney for Defendant State of Arizona.
- Rebecca A. Banes, Esq., Daniel P. Schaack, Esq., **OFFICE OF THE ARIZONA ATTORNEY GENERAL**, 2005 N. Central Avenue, Phoenix, Arizona 85007, daniel.schaack@azag.gov, rebecca.banes@azag.gov, (602) 542-9346, Attnys for Def. State of Arizona.

/s/ David L. Abney, Esq.  
David L. Abney