

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; and STATE OF
ARIZONA,

Defendants-Appellees.

No. CV-24-0093-PR

No. 2 CA-CV 2023-0059

Maricopa County Superior Court

No. CV2022-015670

STATE OF ARIZONA'S SUPPLEMENTAL BRIEF

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INTRODUCTION

In recent years, this Court has rightly sought to clarify Arizona law regarding duty and to protect defendants from the imposition of “limitless duties” that “expand tort liability beyond manageable bounds.” *Quiroz v. ALCOA, Inc.*, 243 Ariz. 560, 577, ¶ 80 (2018). Plaintiffs here seek to undo that work and impose on every governmental entity in Arizona a duty of care whenever the government has some general authority to license or regulate the tortfeasor. That approach would indirectly impose on government defendants the kind of no-duty rule that the Third Restatement proposed but that this Court has emphatically rejected. *See id.* at 576, ¶ 74.

This Court should reaffirm that “such a drastic change [from Arizona’s duty framework] is both unwise and unwarranted.” *See id.* Nothing in the statutes governing the Department of Liquor Licenses and Control indicates that the Legislature sought to impose on the State potential liability for just about every drunk-driving accident in Arizona. To the contrary, the statutes that the court of appeals cobbled together to find such a duty negate that conclusion. Notably too, Plaintiffs cite no case from anywhere in the country imposing on a state a duty, based on its liquor-licensing regime, to protect motorists from drunk drivers, and the State found none.

In addition, the sweeping policy implications—and therefore separation-of-powers concerns—further militate against the novel duty that the court of appeals

fashioned. If the Legislature wants to shift to the State the costs of injuries from overserved patrons, it is free to do so, but under established precedent this Court should not be the one to create that duty or impose that liability.

ARGUMENT

I. No statute establishes that the Department owes a sweeping duty to anyone whom an overserved patron of a licensee encounters.

To establish a claim for negligence, a plaintiff must first establish that the defendant owed a duty. *Gipson v. Kasey*, 214 Ariz. 141, 143, ¶ 9 (2007). “Duty is defined as an obligation, recognized by law, which requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.” *Id.* (internal quotation marks omitted). Duty is “based on either recognized common law special relationships or relationships created by public policy;” the “primary source for identifying a duty based on public policy is state statutes.” *Quiroz*, 243 Ariz. at 565-66, ¶¶ 14, 18. Absent a statutorily created duty, this Court “exercise[s] great restraint in declaring public policy.” *Id.* at 566, ¶ 19. This Court has repeatedly recognized that declaring public policy is almost exclusively a legislative function. *Id.* at 566-67, ¶ 19 (collecting cases).

Importantly, the Legislature knows how to perform that function and clearly indicate in statute its decision to make certain defendants liable in tort. *See, e.g., Alhambra Sch. Dist. v. Superior Court*, 165 Ariz. 38, 43 (1990) (statute providing that a district “shall” “establish a marked crosswalk” created a duty to “persons’

using the crosswalk”); A.R.S. § 13-3620(A) (establishing duty on a person to “immediately report” abuse). Here, though, no statute clearly imposes on the Department a duty to ensure that the patrons of licensee establishments do not leave intoxicated. To the contrary, the statutory scheme and established principles of interpretation show that the Legislature intended to limit liability for overserving injuries to licensees and their employees.

To start, the Legislature made clear that

[a] person other than a licensee or an employee of a licensee acting during the employee’s working hours or in connection with such employment is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property, which is alleged to have been caused in whole or in part by reason of the furnishing or serving of spirituous liquor to a person of the legal drinking age.

A.R.S. § 4-301. And licensees are liable only for serving an “obviously intoxicated” person or for knowingly serving someone under the legal drinking age or without requesting proof of age. *See* A.R.S. § 4-311(A)(1)-(2); A.R.S. § 4-312. In other words, the Legislature clearly circumscribed the nature and scope of liability for licensees. When the statutory scheme expressly limits the relevant duty in that way—especially in the nuanced context of alcohol sales—courts should not expand it to government actors whom the Legislature did not mention. *Cf. Avitia v. Crisis Preparation & Recovery Inc.*, 256 Ariz. 198, 203, ¶ 22 (2023) (“The statute creates a duty only when a person subject to the statute ‘reasonably believes that a minor is

or has been the victim’ of injury, abuse, or neglect that ‘appears to have been inflicted on the minor.’ That language is present and past tense, meaning that the belief pertains to existing or past circumstances, not speculation regarding the future.” [citation and emphasis omitted]).

Moreover, the Legislature’s statutory care and specificity with respect to licensees is flatly inconsistent with the court of appeals’ conclusion that the Legislature *implicitly*, through several statutes, imposed a broader and even more factually removed duty on the State. The “legislature has repeatedly demonstrated its ability to specifically mention public actors when it intends their inclusion in a list” of liable entities, and that “consistent pattern persuades ... that if the legislature had intended to include the state within its definition [of defendants owing a duty], it would have expressly done so.” *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327, ¶ 15 (2011) (holding that the Adult Protective Services Act did not include the State among the enterprises subject to an action for damages).

Because the Department owes no clear statutory duty to Plaintiffs, the superior court correctly dismissed the claims against the State.

II. The statutes that the court of appeals relied on cut against imposing a tort duty on the Department.

With no single statute clearly creating or even hinting at the Department-owed duty that Plaintiffs urge, the court of appeals cobbled together a handful of statutes

(A.R.S. §§ 4-112(C), 4-118, 4-244(14), 4-210.01, 4-210(A)(9)) to find an implicit duty. *See* Op. ¶ 27. That reasoning was flawed in several respects.

A. To create a statutory duty, a statute must regulate conduct that is the basis of the alleged breach.

First, a statute imposes a duty on a person only if it regulates that person's conduct. *See CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511, 518, ¶ 25 (2021) (“[T]he medical lien statutes do not regulate conduct, as would be necessary to establish a duty.”). The statute must require the defendant to perform an act, or refrain from performing an act, for the plaintiff's benefit. *See, e.g., Gipson*, 214 Ariz. at 147, ¶ 32 (finding a duty not to give prescription drugs to persons without a prescription based on statutes prohibiting such conduct); *Estate of Hernandez v. Ariz. Bd. of Regents*, 177 Ariz. 244, 253-56 (1994) (finding a duty not to serve alcohol to minors based on a statute prohibiting such conduct). Otherwise, it would be impossible to breach (or perform) any such duty with respect to the plaintiff.

On this point, Judge Eppich's dissent accurately describes the majority's flawed analysis. Pointing out that a statutory duty “must ... regulate conduct,” he noted that the majority had relied on provisions that regulate the conduct of the liquor licensees, not the Department. Op. ¶ 33. For example, A.R.S. § 4-210 provides that the Department “may suspend, revoke or refuse to renew any license ... issued pursuant to this chapter” *if the licensee takes or fails to take several actions*, such as “fail[ing] to take reasonable steps to protect the safety of a customer.” A.R.S. § 4-

210(A)(10). With this statute, the Legislature regulates licensees' conduct by encouraging them to take certain actions or face potential repercussions. But the Legislature has left the Department with complete discretion in what it can do it, if it chooses to act at all, when licensees fail to do so. The only statute that the court identified as imposing a duty that the Department could have violated was A.R.S. § 4-112(C), which requires it to establish "a separate investigations unit that has as its sole responsibility the investigation of compliance with" liquor laws. Op. ¶ 27. This statutory mandate might theoretically support a tort duty in a different case. *Cf. Oleszczuk v. State*, 124 Ariz. 373, 376-77 (1979) (tacitly recognizing a duty when the Motor Vehicle Department failed to comply with a statute requiring it to implement procedures to identify drivers with psychomotor disorders). But the statute is irrelevant here because Plaintiffs did not allege that the Department had failed to establish a separate investigations unit or that their injuries arose from such a failure.

Rather, Plaintiffs' claim against the Department was based on its issuance of Billy Jack's liquor license and not revoking that license. *See* Op. Br. at 23-24; Resp. to Pet. for Review at 6-7. But the licensing statutes neither forbade the Department from granting that license nor required it to revoke that license. The Legislature gave the Department tools and powers to use in its discretion, and nothing in the statutory language establishes any *requirement* that the Department could reasonably be said to have *violated*. *See Wesley v. State*, 117 Ariz. 261, 263 (App.

1971) (“The decision to suspend or revoke a license for violation of the law is quasi-judicial and is based upon the exercise of discretion.”).

By relying on statutes that regulate licensees or their patrons, the majority improperly made the Department liable for licensees’ negligence. The court also misunderstood an important limitation on the type of statute that will support a tort duty, which this Court has recognized: A statute establishes a tort duty only if it “is designed to protect the class of persons, in which the plaintiff is included, against the risk of the type of harm which has in fact occurred *as a result of its violation.*” *Gipson*, 214 Ariz. at 146, ¶ 25 (cleaned up; emphasis added). In *Gipson*, the defendant violated “statutes prohibit[ing] the distribution of prescription drugs to persons lacking a valid prescription.” *Id.* ¶ 26. Likewise, the court of appeals has rejected the notion that “a duty may arise from public policy found in a ... statute other than one the defendant is alleged to have violated.” *Stair v. Maricopa County*, 245 Ariz. 357, 362, ¶ 15 (App. 2018) (“By 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. Under this principle, the statute the defendant allegedly violated establishes the scope of the duty.”).

Although Plaintiffs have now waived any distinct theory by not raising it before this Court, the basis for a statutory duty that they urged below also fails in ways that underscore the court of appeals’ errors. *See Op. Br.* at 23-24. In addition

to A.R.S. § 4-210, Plaintiffs relied on A.R.S. § 4-203(A), which authorizes the Department to issue a liquor license after a “satisfactory showing” of certain considerations and criteria. That reliance is mistaken in two primary ways.

First, the Department is empowered to decide what constitutes a “satisfactory showing” of an applicant’s qualifications, underscoring its statutory discretion—not duty—in this area. *Cf. Wesley*, 117 Ariz. at 263. Even the Third Restatement’s no-duty rule—which this Court has rejected as creating far too much liability, *see Quiroz*, 243 Ariz. at 576-79, ¶¶ 74-89—“requires analysis of whether the challenged action involves a discretionary determination of the sort insulated from review or instead is a ministerial action that does not require deference.” Restatement (Third) of Torts: Phys. & Emot. Harm § 7 (2010), cmt. g. If Plaintiffs cannot prevail under the Third Restatement, they certainly cannot prevail under this Court’s precedent.

Second, there is again a mismatch between what the statute addresses versus Plaintiffs’ claim: the statute concerns the initial *issuance* of the license, but Plaintiffs relied on the Department’s failure to *revoke* Billy Jack’s existing license (for allegedly overserving its patrons). These issues might explain why the court of appeals ignored this statute and why Plaintiffs no longer cite it.

B. A statutory scheme that seeks to protect the general public is insufficient to impose a tort duty on the State to specific persons.

“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.” *Quiroz*, 243 Ariz. at 565, ¶ 15. But it is not enough for a statute to indicate a general legislative intent to reduce certain societal ills, like drunk driving, because there is no particular “class of persons to be protected” in such cases, only the public at large. *Cf. Del E. Webb Corp. v. Superior Court*, 151 Ariz. 164, 169 (1986) (“We believe the statutes that prohibit sale of liquor to minors and intoxicated persons also—and perhaps primarily—*were intended to protect the general public.*” (emphasis added)).

But in the majority’s view, the statutory scheme creating the Department and its regulatory authority establishes a duty because it “expressly identified the over-service of patrons as among the risks to the general public that it sought to prevent [and c]onversely, those potentially harmed by an overserved patron represent the precise class of persons those statutes were designed to protect.” *Op.* ¶ 28. It further determined that this protected class and the potential harms were sufficiently narrow to avoid rendering the State a “general insurer of safety.” *Id.* at ¶ 29. But while the Department’s enabling statutes may evince a policy generally to protect the public from the harms associated with alcohol, they do not evince a public policy of holding the State liable such harms. The breadth of the Department’s statutory authority shows that the Department has political and social responsibilities for general public safety, not that it has a specific tort duty to Plaintiffs.

It is well established that the government’s creation of a police department, for example, does not make it “a general insurer of safety [or become] absolutely liable for all harms to its citizens.” *Austin v. City of Scottsdale*, 140 Ariz. 579, 582 n.2 (1984), *superseded in part on other grounds* by A.R.S. § 12-820.02; *accord Wertheim v. Pima County*, 211 Ariz. 422, 426, ¶ 17 (App. 2005); *see also Wesley*, 117 Ariz. at 263 (“[T]he enforcement of liquor laws and regulations is not unlike law enforcement generally.”).¹ Police departments, like other entities, may owe a duty to those with whom they have established a specific relationship at the time of the injury. *See Austin*, 140 Ariz. at 582 (tacitly recognizing a duty based on emergency 911 call). But they do not have a duty to protect all potential victims against all conceivable harms. *See Stair*, 245 Ariz. at 366, ¶ 34 (holding that a county and city owed no duty “to prevent a random act of violence” when neither

¹ *Wesley* held that the Department owed no tort duty when a man was shot at a bar, based on its “failure to revoke or suspend the license of the bar when it had official information of violence taking place at the bar on various occasions prior to the shooting.” 117 Ariz. at 262. The holding was based on the since-abandoned rule that “[l]iability to an individual for damages will not arise where the public body owes a duty to the general public as a whole unless it is shown that it owes a specific duty to the individual.” *Id.* at 263 (citing *Massengill v. Yuma County*, 104 Ariz. 518, 523 (1969), *overruled by Ryan v. State*, 134 Ariz. 308, 310 (1982)). But there is significant tension between *Ryan*’s abandonment of that rule and this Court’s modern approach to duty in cases like *Quiroz* and *Gipson*. But even setting that aside, likening the Department to a police department is still sound, as is the reasoning that if the Department owed any duty, it was to the general public and did not exceed a police department’s duty. *Id.* at 263.

“agency had any information that [an individual] presented a threat to” his later victim); *Hogue v. City of Phoenix*, 240 Ariz. 277, 281, ¶ 13 (App. 2016) (rejecting the argument that the existence of a city police laboratory bureau created “a duty to protect all citizens within [the city’s] boundaries against all harms from perpetrators that may ultimately be identified through evidence analysis”).²

If police departments, which have broad authority to ensure compliance with laws to protect the public, do not owe a comprehensive duty to the general public, it follows that the Department does not have a duty arising from its broad authority to regulate compliance with the liquor laws.

This Court has recognized the Department’s broad authority and responsibility, noting that there are “many inherent evils attending the traffic [of liquor] and the abuses arising therefrom,” and that the Legislature established the Department “to create and establish state-wide control over the traffic in intoxicating liquors.” *Mayor & Common Council of Prescott v. Randall*, 67 Ariz. 369, 374-75 (1948) (internal quotation marks omitted). “The liquor laws of Arizona are plainly designed to protect the welfare, health, peace, temperance, and safety of *all the citizens* by providing for the strict regulation and control of the manufacture, sale, and

² *Austin, Stair*, and *Hogue* were special-relationship cases. *Austin*, 140 Ariz. at 582; *Stair*, 245 Ariz. at 365-66, ¶¶ 32-34; *Hogue*, 240 Ariz. at 280, ¶ 11. The issue here is different—whether there is a statutory duty. But the principle that public entities do not have a general duty to protect their citizens should be equally applicable regardless of the duty’s source.

distribution of alcoholic beverages.” *Mendelsohn v. Superior Court*, 76 Ariz. 163, 169 (1953) (emphasis added).

The Department’s broad responsibility to protect the safety of all individuals by regulating the entire liquor trade is much more akin to a police department’s broad responsibilities than to the responsibilities of other defendants that owe statutory-based duties. *See* State’s Pet. for Review at 11-12 (discussing cases holding that a defendant owes a statutory duty).

Even in contexts other than tort duty, courts have been reluctant to infer liability based on a statute that is not designed to benefit a narrow class. The analysis into whether an implied right of action exists illustrates this. To determine whether a statute creates an implied private action, courts may consider whether the plaintiff is a “member[] of the class for whose *especial* benefit the enactment was intended.” *Chavez v. Brewer*, 222 Ariz. 309, 318, ¶ 27 (App. 2009) (internal quotation marks omitted); *see Turner v. Wash. State Dep’t of Soc. & Health Servs.*, 493 P.3d 117, 131, ¶ 40 (Wash. 2021) (“An implied statutory cause of action analysis is related to the [duty question] because it similarly asks whether a statute or regulation creates an actionable duty.”). A statute enacted to protect a particular group of individuals is more likely to imply a private cause of action. In *Chavez*, for example, the court of appeals held that statutes requiring polling places to have accessible voting

machines “clearly benefit individuals with disabilities” and therefore created an implied action for disabled plaintiffs. 222 Ariz. at 318, ¶ 28.

The converse is also true. Thus, in *Lancaster v. Arizona Board of Regents*, the court held that a statute requiring the Board of Regents to send the Legislature a report on establishing equal wages did not create a private cause of action for university employees seeking equal pay because it only “define[d] a process for which the legislative assembly, rather than individuals who might benefit incidentally, constituted the class for whose *especial* benefit the statute was enacted.” 143 Ariz. 451, 457 (App. 1984) (internal quotation marks omitted).

Similarly, in *McNamara v. Citizens Protecting Tax Payers*, the court held that campaign-finance laws did not imply a private cause of action for voters who alleged violations of those laws. 236 Ariz. 192, 194-95, ¶ 8 (App. 2014). Distinguishing *Chavez*, the court explained that the laws were “intended to benefit the voting public by ... ensuring the transparency and integrity of the process,” but the voter-plaintiffs did not show “that they are members of a class of electors for whose *especial* benefit” the laws were enacted. *Id.* at 195, ¶¶ 8-9 (internal quotation marks omitted); *see also Turner*, 493 P.3d at 131, ¶¶ 40, 42 (holding that statutes giving an agency “responsibilities in providing and managing long-term care services” did not create an implied cause of action, in part because its statutory “monitoring responsibilities ... benefit the public at large rather than a specific class”).

Much like the statutes in *Lancaster* and *McNamara*, the liquor-license statutes are not designed to protect or benefit any particular class of individuals; they protect the public at large. *See Mendelsohn*, 76 Ariz. at 169. The class of people who might be harmed by an overserved person is limitless, including motorists, pedestrians, a bar's customers and staff, the person's spouse, children, or roommates, or anyone else who might encounter that person. In reality, the "purported protected class [that] consist[s] of 'those potentially harmed by the abuse of alcohol'" is "indistinguishable from the general public." Op. ¶ 35 (Eppich, J., dissenting in part). The statutory scheme therefore would not create a private cause of action and does not create a tort duty.

Other courts have similarly declined to impose liability on government entities based on licensing, inspection, or enforcement statutes. *See, e.g.,*

- *Willow Tree Learning Ctr., Inc. v. Prince George's County*, 584 A.2d 157, 160-61 (Md. Ct. Spec. App. 1991) (county did "not owe any individual duty of care merely by the enactment of a general ordinance requiring safety inspections [at daycare centers], nor by the fact that it undertook inspections for safety violations");
- *Ravenscroft v. Wash. Water Power Co.*, 969 P.2d 75, 85 (Wash. 1998) (boater-safety laws created no duty because they were "primarily aimed at

protecting the public, not just members of a particular class of the public who participate in recreational *boating*”);

- *Donohoe v. Washington*, 142 P.3d 654, 665, ¶¶ 49-50 (Wash. App. 2006) (agency’s role in “licensing and overseeing nursing homes for compliance with applicable standards” did not create a duty);

- *Brown v. Dep’t of Health & Rehab. Servs.*, 690 So. 2d 641, 644 (Fla. Dist. Ct. App. 1997) (agency owed no “duty to the plaintiffs to monitor compliance with the” condition attached to a daycare-operating license because “[i]n both permitting and enforcement, there is a general duty to the public as a whole which does not constitute a duty to a particular individual”);

The duty framework in some of these jurisdictions differs from Arizona’s,³ but the rationale for limiting government entities’ liability is transferable. If boaters, nursing-home residents, and daycare visitors are indistinguishable from the general public, then that is even more true of the broad class of people affected by other persons’ drinking. As the Washington Court of Appeals explained, “[a]s with emergency services, any member of the public can find himself or herself in need of nursing home services at almost any point in life, for varying periods of time, as a result of injury, illness, or some other debilitating condition.” *Donohoe*, 142 P.3d at

³ See *Willow Tree*, 584 A.2d at 159-60; *Donohoe*, 142 P.3d at 657, 663-64, ¶¶ 16, 19, 44; *Brown*, 690 So. 2d at 643.

662 n.13. The same is true here: at any point in time any members of the public might find themselves in an overserved patron's path. The Department's authority to license, investigate, and enforce liquor laws is far too generalized to have created the specific duty to Plaintiffs that the majority found existed.

C. Alleging gross negligence does not prove a duty.

Plaintiffs assert that the State committed gross negligence by renewing Billy Jack's liquor license; they rely on A.R.S. § 12-820.02(A)(5) to show the State's potential liability. Resp. to Pet. for Review at 7, 12-13. But merely alleging gross negligence under an immunity statute like § 12-820.02(A)(5) does not establish a duty; the statute "*additionally* requires" the plaintiff to show "gross, willful, or wanton conduct." *Noriega v. Town of Miami*, 243 Ariz. 320, 326, ¶ 23 (App. 2017) (emphasis added; internal quotation marks omitted).

Section 12-820.02(A)(5) does not alleviate the plaintiff's burden to first establish duty. It provides a qualified immunity, preventing liability for "[t]he issuance of or failure to revoke or suspend any permit, license, certificate, approval, order or similar authorization" unless the public employee "intended to cause injury or was grossly negligent." Plaintiffs equate the statute with a duty, arguing that "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." Resp. to Pet. for Review at 12-13. The court of

appeals agreed, concluding that “find[ing] no duty here ... would render that provision a nullity for those persons the Department was created to protect.” Op. ¶ 30. That understanding of qualified immunity statutes is mistaken.

For instance, the plaintiffs in *Hogue* argued that A.R.S. § 12-820.02(A)(1)—which provides a similar qualified immunity for failing either to make an arrest or to keep an arrested person in custody—imposed a duty even if no duty otherwise existed. 240 Ariz. at 281, ¶ 16. The court handily rejected that argument, correctly explaining that “the immunity statute does not affirmatively impose a duty” but rather “immunizes public entities from tort liability to which they are generally subject.” *Id.* at 282, ¶ 17. Just like the *Hogue* plaintiffs, Plaintiffs here “flip the [duty] analysis on its head by looking at [A.R.S. § 12-820.02(A)(5)] as a source of liability rather than a source of immunity.” *See* 240 Ariz. at 282, ¶ 17.

III. Policy considerations and separation of powers militate against the sweeping duty that court of appeals judicially created here.

Finally, “[j]ust as public policy may support the recognition of a duty of care, policy considerations may militate against finding a duty in certain contexts.” *Avitia*, 256 Ariz. at 203-04, ¶ 24 (cleaned up). This case illustrates that policy consequences strongly counsel that courts defer to the Legislature on this question. Indeed, announcing a duty based on the Department’s licensing scheme could have extremely broad implications—far beyond the particular circumstances presented here—all without the Legislature having said a word on the point.

The Legislature has established numerous licensing and inspection programs that regulate a variety of industries, affecting nearly everyone in Arizona. *See, e.g.*, A.R.S. § 3-607 (dairy processing); A.R.S. § 3-2081 (meat processing); A.R.S. §§ 36-405, 36-406 (healthcare); A.R.S. §§ 36-462, 36-463.02 (clinical laboratories); A.R.S. § 36-882 (childcare); A.R.S. §§ 36-2522, 36-2541(B) (controlled-substances handling); A.R.S. § 49-922 (hazardous-waste processing); A.R.S. § 28-3153 (drivers' licenses); A.R.S. § 17-331 (hunting licenses); A.R.S. § 4-205.02 (restaurant licenses); A.R.S. § 4-205.01 (hotel licenses); A.R.S. § 32-541 (salons). Accepting the majority's rationale and imposing a duty on the State here opens the door to the danger of making the State the liability insurer of not only liquor licensees but also of many other regulated industries in Arizona

Further, upholding the court of appeals' judicially created duty "would create an unintended incentive" for the Legislature to repeal and avoid comprehensive statutory schemes that protect the public, doing so in order to prevent courts from using a broad reading of such schemes to impose new and far-reaching duties and consequent financial burdens on the State. *Cf. Avitia*, 256 Ariz. at 203, ¶ 24. And if the State did not abandon that traditional and important role, the majority's rule would unreasonably burden the State with the possibility of being brought into court anytime a licensee's alleged negligence injures somebody. No Arizona case supports such a broad result.

To the contrary, Arizona courts have consistently refused to make the government a general insurer of public safety. *See, e.g., Austin*, 140 Ariz. at 582 n.2; *Vasquez v. State*, 220 Ariz. 304, 313, ¶ 31 (App. 2008) (recognizing that because “[e]verything law enforcement undertakes conceivably might have some impact on a particular family or individual,” if the law imposed a broad “duty by undertaking,” every unsolved crime could theoretically create a cause of action for victims or their families). Courts have also refused to impose on the government higher standards of liability than on private defendants. *Ryan*, 134 Ariz. at 310, *superseded by statute on other grounds as stated in Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 203, ¶ 27 (2001) (“[T]he parameters of duty owed by the state will ordinarily be coextensive with those owed by others.”). Indeed, “the government should not have the duty to do everything that might be done.” *Hogue*, 240 Ariz. at 282, ¶ 17 (internal quotation marks omitted).

The majority’s holding ignores this principle and imposes broad potential liability on the State based on statutes that do not create a duty owed to Plaintiffs. If this is to be the rule in Arizona, it should come from the Legislature, not the courts. *See CVS*, 251 Ariz. at 517, ¶ 21 (“‘[W]e exercise great restraint in declaring public policy,’ which is ordinarily the prerogative of the legislative bodies.” [quoting *Quiroz*, 243 Ariz. at 566, ¶ 19]); *see also, e.g., Lafond v. Vt. Dep’t of Soc. & Rehab. Servs.*, 708 A.2d 919, 922 (Vt. 1998) (“Nearly every resident or visitor to Vermont

has daily contact with one or more entities licensed and inspected by the state. To recognize a tort duty of care arising from a day-care licensing and inspection scheme would thus have broad fiscal and policy ramifications for state and local governments, well beyond the parameters of this particular case. The creation of such a cause of action, in our view, is a matter more properly addressed by the Legislature.”).

CONCLUSION

For the foregoing reasons, this Court should vacate paragraphs 22-31 of the court of appeals’ Opinion and should affirm the Judgment for the State in all respects.

Respectfully submitted this 13th day of January, 2025.

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