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11  
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 **ADVOCATES FOR INDIVIDUALS WITH**  
15 **DISABILITIES FOUNDATION, INC., a**  
charitable non-profit foundation, et. al.;

16 Plaintiffs,

17 vs.

18 Consolidated Defendants,

19 Defendants,

20 vs.

21 **STATE OF ARIZONA, *ex rel.* Mark**  
22 **Brnovich,**

23 Defendant-Intervenor.  
24  
25  
26

Case No: CV2016-090506

**STATE OF ARIZONA'S OPPOSITION  
TO MOTION FOR LEAVE TO FILE A  
SURREPLY**

(Assigned to the Hon. David M. Talamante)

1           The State of Arizona *ex rel.* Mark Brnovich, Attorney General (the “State”) submits this  
2 brief in opposition to Plaintiffs’ Motion for Leave to File a Surreply (the “Motion”).

3           The State opposes the Motion because Plaintiffs have not shown good cause why their  
4 Motion should be granted. As Plaintiffs admit, the rules make no provision for surreplies.  
5 Motion at 2. Furthermore, Plaintiffs’ sole basis for filing the Motion is the existence of one  
6 introduced legislative bill, HB 2504. *Id.* at 3. Plaintiffs contend that one of the introduced bill’s  
7 currently envisioned amendments—to add “aggrieved” to the phrase “any person”—shows the  
8 legislature’s “original intent to grant standing to the broadest scope of potential plaintiffs.” *Id.*  
9 Plaintiffs cite no authority even suggesting that the mere introduction of a bill by any legislator  
10 carries any weight in interpreting the meaning of a previously enacted statute.

11           What Plaintiffs fail to mention is that the introduced bill states that the proposed addition  
12 of “aggrieved” to A.R.S. § 41-1492.08 “is intended to *clarify* the requirements for a private  
13 litigant to bring a claim.” Motion Exh. A at 3:27-30 (emphasis added). “[A]n amendment  
14 which, in effect, construes and clarifies a prior statute will be accepted as the legislative  
15 declaration of the original act.” *State v. Sweet*, 143 Ariz. 266, 269 (1985) (quoting *City of Mesa*  
16 *v. Killingsworth*, 96 Ariz. 290, 297 (1964)). If a statute clarifies “what was intended in the first  
17 instance,” it is merely a clarification, nothing more. *See id.* at 271.

18           Therefore, to the extent that anything at all can be divined from the existence of one  
19 introduced bill that has not yet even received a committee hearing, it is that the bill’s sponsors  
20 and co-sponsors disagree with Plaintiffs’ expansive reading of A.R.S. § 41-1492, and wish to  
21 clarify the statute to ensure that future plaintiffs do not bring similarly unjustifiable claims.<sup>1</sup>

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22 <sup>1</sup> Plaintiffs cryptically contend that “if the House Bill passes, the current controversy  
23 becomes moot,” but also argue that if the Legislature does not pass HB 2504, it will “confirm”  
24 their expansive interpretation of the law. Motion at 3. These facile arguments ignore the nature  
25 of the legislative process, as well as the fact that HB 2504 not only would add “aggrieved,” but  
26 also would make other changes to the law in an effort to “deter abusive litigation tactics” related  
to the AzDA, including authorizing additional judicial sanctions. *See* Motion Exh. A at 3:6-24,  
4:3-7. More importantly, regardless of the outcome of HB 2504, Plaintiffs lack standing under  
controlling Arizona Supreme Court case law. *See* Motion to Dismiss at 3-6, 13-15.

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There is no need for further briefing at this stage of the proceedings. The Court has before it a full explication of the legal arguments and pertinent authorities.

As such, Plaintiffs' Motion for Leave to File a Surreply should be denied.

RESPECTFULLY SUBMITTED: February 13, 2017.

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1 Document electronically transmitted  
2 to the Clerk of the Court for filing using  
3 AZTurboCourt this 13th day of February, 2017.

4 **COPY** of the foregoing *e*-delivered via  
5 AZ TurboCourt this 13th day of February, 2017, to:

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20 **COPY** of the foregoing *e*-mailed to the Attorney's  
21 General's distribution list and posted to the  
22 Attorney General's website this 13th day of February,  
23 2017.

24 /s/ Sophia Descheeny