

**Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE**

Jonathan Riches (025712)
Timothy Sandefur (033670)
Parker Jackson (037844)
500 E. Coronado Rd.
Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

ARIZONA RULES OF PROCEDURE
FOR SPECIAL ACTIONS 3

Supreme Court
No.

**PETITION TO AMEND RULE
OF PROCEDURE FOR
SPECIAL ACTIONS 3**

Pursuant to [Ariz. S. Ct. R. 28](#), Jonathan Riches, Timothy Sandefur, and Parker Jackson, individually and on behalf of the Goldwater Institute, respectfully petition this Court to amend [Rule 3](#) of the Rules of Procedure for Special Actions (“RPSA”) concerning statutory special actions. The proposed amendment restores a clarification contained in [Rule 1](#) of the former, recently abrogated rules, which expressly said that the questions that may be raised in statutory special actions are not limited to those specified in the rules for other special actions derived from common law writs. The proposed language is included in attached Exhibit A.

I. Overview

The proposed amendment clarifies that the questions to be raised in statutory special actions—those created by the Legislature, rather than by common law writs—are not limited to those listed in the RPSA for other types of special actions. This will resolve confusion by restoring the proper understanding of statutory special actions outlined in the former special action rules and align [Rule 3](#) with related case law. It will also resolve confusion raised in recent litigation regarding the effect of the RPSA on the standard of review in statutory special actions.

II. Background

In 2024, this Court abrogated and replaced the RPSA.¹ See [R-23-0055](#). The new ruleset improved upon the former one by, inter alia, creating separate rules for original and appellate special actions. The new RPSA defined “statutory special actions” as those authorized by statutes other than those statutes listed in [Rule 2\(c\)](#), which had codified common law writs. [RPSA 3](#). The [2025 Comment to Rule 3](#) sought to catalog various categories of statutory special actions for convenient reference.

¹ The Goldwater Institute participated extensively in this process, with the Court-appointed Task Force and the Court itself ultimately adopting several of the Institute’s suggestions.

However, despite these laudable efforts, key provisions from the old rules regarding statutory special actions failed to make it into the revised RPSA.

This Court recently addressed one such omission with its adoption of Rule 3.1, which took effect on January 1, 2026. *See* R-25-0002. That rule clarifies that a party may not bring an original special action—*other than a statutory special action*—if an equally plain, speedy, and adequate remedy exists at law. [RPSA 3.1](#). That comports with the language of former [Rule 1\(a\)](#) (“*Except as authorized by statute*, the special action shall not be available where there is an equally plain, speedy, and adequate remedy by appeal” (emphasis added)), as well as established Arizona case law.

This petition addresses a related omission from old [Rule 1\(b\)](#): “Where a statutory special action is involved, the questions to be raised and considered are wholly unaffected by this Rule, but the provisions of this Rule as to parties, procedure, interlocutory orders and stays, and judgments shall apply.”²

This omission, which appears to be an unintentional oversight, is nonetheless problematic. That is because [Rule 4](#) appears to limit the grounds for bringing *any* special action to circumstances involving: (1) the improper exercise (or non-exercise) of discretion, (2) the failure to perform a nondiscretionary legal

² The old rules appear to use the term “this Rule” to refer to the entire abrogated ruleset.

duty, or (3) acts done in excess of jurisdiction or legal authority. These “grounds” were previously framed as “questions” that could be raised, but even those were originally meant simply to track the traditional functions of mandamus, certiorari, and prohibition, rather than to supplant statutory causes of action. *See* [State Bar Committee Note \(a\) and \(b\) to former Rule 3](#).

Although most statutory special actions may fit within the limitations of [Rule 4](#), the old rules contemplated situations where they might not.³ This makes sense considering the distribution of powers among the branches of government in the Arizona Constitution. *See generally* [Ariz. Const. art. III](#). While the old writs of mandamus, prohibition, and certiorari were judicial creations from the common law, statutory special actions are created by the Legislature when the people’s elected representatives wish to provide a cause of action with relief comparable to that available under the old writs, or where expedited treatment is warranted.

One common example involves actions to compel the production of public records. Under [A.R.S. § 39-121.02](#), “[a]ny person who has requested to examine or

³ The State Bar Committee Note to former Rule 1(a) indicated that the special action proceeding was created to both combine the three traditional writs and to address “existing confusion as to the proper lines between the[m].” The Rule itself even indicated that “designation of the proceedings as certiorari, mandamus, or prohibition is neither necessary nor proper.” [RPSA 1\(a\) \(2024\)](#). *See also* [RPSA 2\(c\) \(2025\)](#) (“Special action proceedings should no longer be designated as proceedings for certiorari, mandamus, or prohibition.”).

copy public records pursuant to this article and who has been denied access to or the right to copy such records may appeal the denial through a special action in the superior court pursuant to the rules of procedure for special actions against the officer or public body.”

Because this right of review of the denial of access to public records is created by statute, the superior court has a *nondiscretionary duty* to hear such actions. *See* Comment to old [Rule 1\(b\)](#) (statutory special actions “differ from the common law writs; they are not at all discretionary and they are not subordinate to a right of appeal—they are the right of appeal. This Rule does not in any way affect the substance of what should be determined in a statutory special action ...”). *Cf.* [Rule 2\(b\)\(1\)](#) (“With few exceptions, jurisdiction is mandatory in original special actions.”).

The primary question for the court to review in most public records cases is whether a denial of access is wrongful. [Cox Ariz. Publ’s v. Collins](#), 175 Ariz. 11, 14 (1993). But that question doesn’t cleanly fit within any one of the “grounds” listed in Rule 4 because it could implicate more than one, or maybe even all three. Moreover, additional questions might arise in public records special actions, such as whether requested records are public records at all. *E.g.*, [Griffis v. Pinal Cnty.](#), 215 Ariz. 1, 2 ¶ 1 (2007). That threshold, definitional question doesn’t neatly fall

within *any* of the provisions of [Rule 4](#), even if related or prerequisite to those questions.

The proposed amendment reinforces that statutory special actions are nondiscretionary and that the courts are required to exercise jurisdiction over them regardless of whether those cases independently satisfy the grounds for bringing a special action under [Rule 4](#). It also clarifies that the [Rule 4](#) “grounds” for bringing a special action—or, in the old framing, the questions to be raised—are not exclusive in the context of statutory special actions and do not provide a substantive limitation on the court’s review.

Judicial rules exist primarily to set forth procedures, not to substantively alter causes of action created by the Legislature. Thus, the RPSA should not purport to impose substantive restrictions on what questions can be raised and considered in statutory special actions.

The Court of Appeals recognized this important principle on more than one occasion under the previous rules. See [West Valley View, Inc. v. Maricopa Cnty. Sheriff’s Office](#), 216 Ariz. 225, 227 ¶ 7 n.3 (App. 2007); [Primary Consultants, LLC v. Maricopa Cnty. Recorder](#), 210 Ariz. 393, 395 ¶ 6 n.1 (App. 2005) (citing [Ariz. R.P. Spec. Act 1\(b\)](#)).⁴

⁴ Both of these cases involved statutory special actions brought under Arizona’s Public Records Law. See, e.g., [A.R.S. § 39-121.02\(A\)](#).

But the failure to exempt statutory special actions from the limitations of Rule 4 appears to alter or possibly even eliminate causes of action from the reach of the special action. This has already caused confusion in recent litigation. In [*Abraham v. Board of Regents*](#), 563 P.3d 632 (Ariz. App. 2025),⁵ the Court of Appeals appears to have accepted the argument that the limitations of both the prior and revised rules⁶ regarding the questions to be raised or grounds for seeking special action relief not only apply to statutory special actions under [Section 39-121.02](#), but that the limitations also set the standard of review; consequently, the court wrongly imposed abuse-of discretion review when a public body invokes an exemption to disclosure in public records cases. [*Abraham*](#), 563 P.3d at 642 ¶ 40.

It is plain, however, that the recent changes to the RPSA were not intended to instruct courts on standards of review or to otherwise change the causes of action that can be raised by special action.

This proposed amendment should therefore be adopted to avoid future confusion regarding the interaction between the RPSA and statutes authorizing

⁵ This case is currently pending before this Court, although the legal issues presented for review there are distinct from the rule clarification proposed here.

⁶ The old rules were in effect at the time [*Abraham*](#) was filed, but they were abrogated during litigation. The Court of Appeals referenced both in its opinion. 563 P.3d at 641–43 ¶¶ 37, 40, 42, 46. *See also* [R-23-0055](#) (new rules apply to pending cases unless applying a new rule would be infeasible work an injustice, in which event the relevant former rule applies).

statutory special actions. The amendment gives meaningful effect to the separation of powers and will allow citizens to fully vindicate their rights in court when the Legislature creates a cause of action for them to do so.

III. Contents of the Proposed Amendment

Clarifying language similar to that from old [Rule 1](#) can be added to current [Rule 3](#) as follows:

Rule 3. Statutory ~~Authority for Certain~~ Special Actions⁷

If any statute, other than those listed in Rule 2(c), authorizes filing a special action, or an action for a writ of certiorari, mandamus, or prohibition, that action is a special action. These special actions, known as statutory special actions, may be either original or appellate special actions. The questions that may be raised and considered in a statutory special action are not limited to the grounds specified in Rule 4. ~~They~~ Statutory special actions are otherwise governed by these rules unless the statute authorizing a particular special action contains specific procedures supplementing or contradicting these rules.

⁷ A full redlined version of Rule 3 with the proposed amendment appears at Appendix A. A full clean version of the proposed amendment appears at Appendix B.

The proposed simplification of the rule's title signals that the rule deals with statutory special actions, as they are commonly known, and removes any potential confusion regarding other statutes that merely codify the common law writs, rather than create new special actions. See [A.R.S. §§ 12-2001, 12-2021](#).

IV. Conclusion

Petitioners request that this Court amend Rule 3 as proposed herein.

Respectfully submitted January 8, 2026, by:

/s/ Jonathan Riches

Jonathan Riches (025712)

Timothy Sandefur (033670)

Parker Jackson (037844)

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Appendix A

The proposed amendment to RPSA 3 is as follows⁸:

Rule 3. Statutory ~~Authority for Certain~~ Special Actions

If any statute, other than those listed in Rule 2(c), authorizes filing a special action, or an action for a writ of certiorari, mandamus, or prohibition, that action is a special action. These special actions, known as statutory special actions, may be either original or appellate special actions. The questions that may be raised and considered in a statutory special action are not limited to the grounds specified in Rule 4. ~~They~~ Statutory special actions are otherwise governed by these rules unless the statute authorizing a particular special action contains specific procedures supplementing or contradicting these rules.

⁸ Per Supreme Court Rule 28(a)(4)(A)(iii), the text to be added is underlined and the text to be deleted is formatted with strikethrough text.

Appendix B

Rule 3. Statutory Special Actions

If any statute, other than those listed in Rule 2(c), authorizes filing a special action, or an action for a writ of certiorari, mandamus, or prohibition, that action is a special action. These special actions, known as statutory special actions, may be either original or appellate special actions. The questions that may be raised and considered in a statutory special action are not limited to the grounds specified in Rule 4. Statutory special actions are otherwise governed by these rules unless the statute authorizing a particular special action contains specific procedures supplementing or contradicting these rules.