

**Arizona Supreme Court**  
**Civil Petition for Review - Appeal**

**CV-23-0130-PR**

**MARK GILMORE, et al. v KATE GALLEGO, et al.**

**Appellate Case Information**

Case Filed: 18-May-2023  
Case Closed:

**Dept/Composition**

**En Banc**

Hon. Robert Brutinel  
Hon. Ann A. Scott Timmer  
Hon. Clint Bolick  
Hon. John R Lopez  
Hon. James P Beene  
Hon. William G Montgomery  
Hon. Kathryn H. King

**Side 1. MARK GILMORE, et al., Plaintiff/Appellant**

(Litigant Group) MARK GILMORE, et al.

- Mark Gilmore
- Mark Harder

**Attorneys for: Plaintiff/Appellant**

Jonathan Matthew Riches, Esq. (AZ Bar No. 25712)  
Timothy Sandefur, Esq. (AZ Bar No. 33670)

**Side 2. KATE GALLEGO, et al., Defendant/Appellee**

(Litigant Group) KATE GALLEGO, et al.

- Kate Gallego
- Ed Zuercher
- City of Phoenix

**Attorneys for: Defendant/Appellee**

John Alan Doran, Esq. (AZ Bar No. 12112)  
Matthew A Hesketh, Esq. (AZ Bar No. 29319)  
Carli J Simkin, Esq. (AZ Bar No. 38154)

(Litigant Group) AMERICAN FEDERATION OF STATE AND COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), LOCAL 2384

- American Federation of State County and Municipal Employees

**Attorneys for: Defendant/Appellee**

Daniel L Bonnett, Esq. (AZ Bar No. 14127)  
Jennifer L Kroll, Esq. (AZ Bar No. 19859)

**Side 3. PACIFIC LEGAL FOUNDATION, Amicus Curiae**

(Litigant Group) PACIFIC LEGAL FOUNDATION

- Pacific Legal Foundation

**Attorneys for: Amicus Curiae**

**Side 4. AMERICAN CIVIL LIBERTIES UNION OF ARIZONA, Amicus Curiae**

(Litigant Group) AMERICAN CIVIL LIBERTIES UNION OF ARIZONA

- American Civil Liberties Union Foundation of Arizona

**Attorneys for: Amicus Curiae**

**Side 5. HEIDI SHIERHOLZ, Amicus Curiae**

(Litigant Group) HEIDI SHIERHOLZ

- Heidi Shierholz

**Attorneys for: Amicus Curiae**

Gerald Barrett, Esq. (AZ Bar No. 5855)  
Leon Dayan, Esq. (AZ Bar No. leondayan)  
Joshua Segal, Esq. (AZ Bar No. joshuasegal)

**Side 6. STATE OF ARIZONA, Amicus Curiae**

(Litigant Group) STATE OF ARIZONA

- State of Arizona

**Attorneys for: Amicus Curiae**

Kristin K. Mayes, Esq. (AZ Bar No. 022584)  
Alexander W Samuels, Esq. (AZ Bar No. 28926)  
Luci Danielle Davis, Esq. (AZ Bar No. 35347)

**Side 7. THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; THE SERVICE EMPLOYEES INTERNATIONAL UNION; THE NATIONAL EDUCATION ASSOCIATION; THE AMERICAN FEDERATION OF TEACHERS, Amicus Curiae**

(Litigant Group) THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; THE SERVICE EMPLOYEES INTERNATIONAL UNION; THE NATIONAL EDUCATION ASSOCIATION; THE AMERICAN FEDERATION OF TEACHERS

- Laborers' International Union of North America
- Service Employees International Union AFL-CIO
- The National Education Association
- The American Federation of Teachers

**Attorneys for: Amicus Curiae**

Gerald Barrett, Esq. (AZ Bar No. 5855)  
Leon Dayan, Esq. (AZ Bar No. leondayan)  
Joshua Segal, Esq. (AZ Bar No. joshuasegal)  
Bruce Lerner, Esq. (DC Bar No. brucelemer)

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**Side 8. ARIZONA FREE ENTERPRISE CLUB; GRAND CANYON LEGAL CENTER, Amicus Curiae**

(Litigant Group) ARIZONA FREE ENTERPRISE CLUB; GRAND CANYON LEGAL CENTER

- Arizona Free Enterprise Club
- Grand Canyon Legal Center

**Attorneys for: Amicus Curiae**

Drew Curtis Ensign, Esq. (AZ Bar No. 25463)  
 Brennan Bowen, Esq. (AZ Bar No. 036639)

**Side 9. NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., Amicus Curiae**

(Litigant Group) NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

- National Right to Work Legal Defense Foundation Inc

**Attorneys for: Amicus Curiae**

Bernard Zamaninia, Esq. (VA Bar No. bernardzamaninia)  
 Grant H Frazier, Esq. (AZ Bar No. 35535)  
 Dustin D Romney, Esq. (AZ Bar No. 34728)

**Side 10. THE FREEDOM FOUNDATION, Amicus Curiae**

(Litigant Group) THE FREEDOM FOUNDATION

- The Freedom Foundation

**Attorneys for: Amicus Curiae**

Dennis I Wilenchik, Esq. (AZ Bar No. 5350)  
 John D Wilenchik, Esq. (AZ Bar No. 29353)  
 Garo Moughalian, Esq. (AZ Bar No. 38315)

**Side 11. THE LIBERTY JUSTICE CENTER, Amicus Curiae**

(Litigant Group) THE LIBERTY JUSTICE CENTER

- The Liberty Justice Center

**Attorneys for: Amicus Curiae**

Jacob Heubert, Esq. (AZ Bar No. 35127)

**CASE STATUS**

Feb 13, 2024....Submitted

Oct 17, 2023....At Issue

Oct 17, 2023....Oral Argument Granted

May 18, 2023....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-CV 22-0049					
↶ MAR CV2019-009033	Declaratory Judgment		Daniel G Martin, Authoring Judge of Order Comments: (none)		

**66 PROCEEDING ENTRIES**

- 18-May-2023 FILED: Plaintiff/Appellants' Petition for Review; Certificate of Service; Certificate of Compliance; Opinion (Plaintiffs/Appellants Gilmore et al.)
- 18-May-2023 FILED: Plaintiff/Appellants' Appendix to Petition for Review; Certificate of Service (Plaintiffs/Appellants Gilmore et al.)
- 22-May-2023 FILED: Unopposed Joint Motion for Procedural Order to Extend Deadlines for (1) Cross-Petitions for Review, and (2) Responses to Plaintiffs' Petition for Review (First Request); Certificate of Service (Defendants/Appellees Gallego et al./AFSCME Local 2384)
- 23-May-2023 RECEIPT No.: 2023-00513 ; \$280.00, Authorization: 8385241151652615, Applied to: MARK GILMORE, et al. - Class A Filing Fee (\$280.00) Paid for: MARK GILMORE, et al. - By nCourt LLC
- 24-May-2023 An "Unopposed Joint Motion for Procedural Order to Extend Deadlines for (1) Cross-Petitions for Review, and (2) Responses to Plaintiffs' Petition for Review (First Request)" (Appellees Gallego, et al./American Federation) having been filed on May 22, 2023, IT IS ORDERED granting a first extension of time to file the cross-petition for review on or before June 16, 2023.  
  
IT IS FURTHER ORDERED granting a first extension of time to file the response to petition for review on or before July 19, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
- 15-Jun-2023 FILED: Record From CofA: Electronic Record
- 16-Jun-2023 FILED: Defendants Appellees' Cross-Petition for Review; Certificate of Service; Certificate of Compliance (Defendants/Appellees Gallego et al.)
- 16-Jun-2023 FILED: Supplemental Appendix to Defendants Appellees Cross Petition for Review; Certificate of Service (Defendants/Appellees Gallego et al.)

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9. 16-Jun-2023 FILED: Intervening Defendant/Appellee's Joinder in Issue 2 of the Defendants/Appellees' Cross-Petition for Review; Certificate of Service; Certificate of Compliance; Opinion (Defendant/Appellee AFSCME Local 2384)
10. 23-Jun-2023 RECEIPT No.: 2023-00555 ; \$280.00 Applied to: AMERICAN FEDERATION OF STATE AND COUNTY AND MUNICI - Class A Filing Fee (\$280.00) Paid for: AMERICAN FEDERATION OF STATE AND COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2384 - By nCourt LLC (Portal) (Memo: F1955AFC-F058-4DCB-B8F6-BB7A545D17FF)
11. 17-Jul-2023 FILED: Plaintiffs/Appellants' Response to Defendants/Appellees' Cross-Petition for Review; Certificate of Service; Certificate of Compliance (Plaintiffs/Appellants Gilmore et al.)
12. 17-Jul-2023 FILED: Plaintiffs/Appellants' Supplemental Appendix; Certificate of Service (Plaintiffs/Appellants Gilmore et al.)
13. 19-Jul-2023 FILED: Defendants/Appellees' Response to Plaintiffs/Appellants' Petition for Review; Certificate of Service; Certificate of Compliance (Defendants/Appellees Gallego et al.)
14. 19-Jul-2023 FILED: Intervening Defendant/Appellee's Opposition to Plaintiffs/Appellants Mark Gilmore and Mark Harder's Petition for Review; Certificate of Service; Certificate of Compliance (Defendant/Appellee AFSCME Local 2384)
15. 8-Aug-2023 FILED: Brief Amicus Curiae of Heidi Shierholz; Certificate of Service; Certificate of Compliance (Amicus Heidi Shierholz)
16. 8-Aug-2023 FILED: Consent of All Parties Pursuant to Arizona Rule of Civil Appellate Procedure 16(B)(1)(A) to Filing of Amicus Brief (Amicus Heidi Shierholz)
17. 9-Aug-2023 FILED: Letter to [Gerald Barrett] (Verification of Pro Hac Vice Status for Leon Dayan & Joshua A. Segal)
18. 9-Aug-2023 FILED: Amicus Curiae Brief of the State of Arizona in Opposition to the Petition for Review; Certificate of Service; Certificate of Compliance (Amicus State)
19. 9-Aug-2023 FILED: State of Arizona's Statement of Allowance to File Amicus Curiae Brief, or, in the Alternative, Motion for Leave to File Amicus Curiae Brief (Amicus State)
20. 9-Aug-2023 On August 9, 2023, the State of Arizona filed a "Statement of Allowance to File Amicus Curiae Brief, or, in the Alternative, Motion for Leave to File Amicus Curiae Brief," along with the proposed brief of amicus curiae. Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(B),  
  
IT IS ORDERED the brief shall be filed as of August 9, 2023. (Tracie K. Lindeman, Clerk)
21. 15-Aug-2023 RECEIVED: Letter From Gerald Barrett Re: Pro Hac Vice Status
22. 15-Aug-2023 FILED: Motion to Associate Pro Hac Vice (Joshua A. Segal); Certificate of Service; Proposed Order (Amicus Heidi Shierholz)
23. 15-Aug-2023 FILED: Motion to Associate Counsel Pro Hac Vice (Leon Dayan); Certificate of Service; Proposed Order (Amicus Heidi Shierholz)
24. 16-Aug-2023 Gerald Barrett, having filed Motions to Associate Counsel Pro Hac Vice asking that Leon Dayan and Joshua A. Segal be allowed to appear and participate in the above-referenced matter, and the appropriate application and related materials having been submitted and found to be in compliance with Rule 39(a), Rules of the Supreme Court,  
  
IT IS ORDERED granting the Motions and authorizing Leon Dayan and Joshua A. Segal to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Kathryn H. King)
25. 28-Aug-2023 FILED: Plaintiffs/Appellants' Response to Amicus Brief of Heidi Shierholz; Certificate of Service; Certificate of Compliance (Appellants Gilmore et al.)
26. 29-Aug-2023 FILED: Plaintiff/Appellants' Response to State of Arizona's Amicus Brief; Certificate of Service; Certificate of Compliance (Appellants Gilmore et al.)

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27. 17-Oct-2023 ORDERED: Plaintiff/Appellants' Petition for Review = GRANTED as to these rephrased issues:
1. Does release time violate Petitioners' free speech, free association, and Right to Work rights?
  2. Do the challenged release time provisions violate the Gift Clause?
- FURTHER ORDERED: Defendants Appellees' Cross-Petition for Review = DENIED.
- FURTHER ORDERED: The case shall be set for oral argument.
- FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before November 22, 2023, and any responses to amicus briefs are due on or before December 12, 2023. Any amicus briefs or responses may not exceed 20 pages in length.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellants Gilmore et al.) = CONTINUED.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellees Gallego et al.) = CONTINUED.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellee American Federation) = CONTINUED.
28. 19-Oct-2023 FILED: Unopposed Motion for Procedural Order to Extend Deadline to File Supplemental Briefs; Certificate of Service (Plaintiffs/Appellants Gilmore, et al.)
29. 20-Oct-2023 NOTICE OF ORAL ARGUMENT: Set for Tuesday, January 23, 2024 at 9:30 A.M. [twenty (20) Minutes Per Side]
30. 23-Oct-2023 FILED: Notice of Acknowledgment of Oral Argument (Jonathan Riches will argue) (Plaintiffs/Appellants Gilmore, et al.)
31. 18-Oct-2023 FILED: Record from CofA: Electronic Record
32. 16-Oct-2023 FILED: Record from CofA: Electronic Record
33. 23-Oct-2023 FILED: Intervening Defendant/Appellee's Notice of Counsel's Calendar Conflict and Unopposed Motion to Reschedule Oral Argument to Later Date; Certificate of Service (Defendant/Appellee AFSCME Local 2384)
34. 26-Oct-2023 An "Unopposed Motion for Procedural Order to Extend Deadline to File Supplemental Briefs" (Appellants Gilmore, et al.) having been filed on October 19, 2023,
- IT IS ORDERED granting the motion for an extension of time to file the supplemental briefs.
- IT IS FURTHER ORDERED the parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than November 21, 2023. Any amicus briefs are now due on or before December 12, 2023, and any responses to amicus briefs are now due on or before December 27, 2023. Any amicus briefs or responses may not exceed 20 pages in length. (Hon. Robert Brutinel)
35. 26-Oct-2023 On October 23, 2023, Defendant/Appellee AFSCME Local 2384 filed "Intervening Defendant/Appellee's Notice of Counsel's Calendar Conflict and Unopposed Motion to Reschedule Oral Argument to Later Date." After consideration,
- IT IS ORDERED granting the Motion to Reschedule Oral Argument. The Oral Argument currently set for Tuesday, January 23, 2024 has been rescheduled to Tuesday, February 13, 2024, at 9:30 a.m.
- IT IS FURTHER ORDERED that the Clerk of the Court shall issue a notice with the rescheduled date and time. (Hon. Robert Brutinel)
36. 30-Oct-2023 FILED: Notice of Acknowledgment of Oral Argument (John Alan Doran will argue) (Defendants/Appellees Gallego, et al)
37. 31-Oct-2023 FILED: Notice of Acknowledgment of Oral Argument (Daniel L. Bonnett will argue) (Defendant Appellee ADSCME Local 2384)
38. 31-Oct-2023 FILED: Notice of Acknowledgment of Oral Argument (Jonathan Riches will argue) (Plaintiffs/Appellants Gilmore, et al.)
39. 21-Nov-2023 FILED: Defendants Appellees' Supplemental Brief; Certificate of Service; Certificate of Compliance (Defendants/Appellees Gallego, et a)
40. 21-Nov-2023 FILED: Plaintiffs/Appellants' Supplemental Brief; Certificate of Service; Certificate of Compliance (Plaintiffs/Appellants Gilmore, et al.)
41. 21-Nov-2023 FILED: Plaintiffs/Appellants' Second Supplemental Appendix; Certificate of Service (Plaintiffs/Appellants Gilmore, et al.)
42. 21-Nov-2023 FILED: Intervening Defendant/Appellee's Supplemental Brief; Certificate of Service; Certificate of Compliance (Defendant/Appellee AFSCME Local 2384)

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43. 12-Dec-2023 FILED: Brief Amicus Curiae of the Laborers' International Union of North America, the Service Employees International Union, the National Education Association, and the American Federation of Teachers; Certificate of Service; Certificate of Compliance; Consent of All Parties Pursuant to Arizona Rule of Civil Appellate Procedure 16(B)(1)(A) to Filing of Amicus Brief (Amicus Laborers' International, et al.)
44. 12-Dec-2023 FILED: Brief of Arizona Free Enterprise Club and Grand Canyon Legal Center as Amici Curiae; Certificate of Service; Certificate of Compliance (Amicus Arizona Free Enterprise, et al.)
45. 12-Dec-2023 FILED: Consent of all Parties (Amicus Arizona Free Enterprise, et al.)
46. 12-Dec-2023 FILED: Brief of Amicus Curiae National Right to Work Legal Defense Foundation, Inc. With Consent of All Parties; Certificate of Service; Certificate of Compliance (Amicus National Right to Work)
47. 12-Dec-2023 FILED: Consent of all Parties (Amicus National Right to Work)
48. 12-Dec-2023 FILED: Brief Amicus Curiae of Freedom Foundation in Support of Appellants; Certificate of Service; Certificate of Compliance (Amicus Freedom Foundation)
49. 12-Dec-2023 FILED: Consent of all Parties (Amicus Freedom Foundation)
50. 12-Dec-2023 FILED: Brief Amicus Curiae of Liberty Justice Center in Support of Plaintiffs/Appellants Filed With Consent of all Parties; Certificate of Service; Certificate of Compliance (Amicus Liberty Justice Center)
51. 12-Dec-2023 FILED: Consent of all Parties (Amicus Liberty Justice Center)
52. 19-Dec-2023 FILED: Plaintiffs/Appellants' Response to Amicus Brief of Laborers' International Union of North America, et al.; Certificate of Service; Certificate of Compliance (Plaintiffs/Appellants Gilmore, et al.)
53. 20-Dec-2023 FILED: Motion to Associate Counsel Pro Hac Vice; Certificate of Service; (Proposed) Order Re: Motion to Associate Counsel Pro Hac Vice (Amicus Laborers' International, et al.)
54. 21-Dec-2023 Gerald Barrett having filed a "Motion to Associate Counsel Pro Hac Vice" asking that Bruce Lerner be allowed to appear and participate in the above-referenced matter and the appropriate application and related materials having been submitted and found to be in compliance with Rule 39(a), Rules of the Supreme Court,
- IT IS ORDERED granting the Motion and authorizing Bruce Lerner to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Robert Brutinel)
55. 22-Dec-2023 FILED: Unopposed Joint Motion for Procedural Order to Extend Deadline for Responses to Amicus Briefs; Certificate of Service (Defendants/Appellees Gallego, et al.)
56. 22-Dec-2023 An "Unopposed Joint Motion for Procedural Order to Extend Deadline for Responses to Amicus Briefs" (Defendants/Appellees Gallego, et al.) having been filed on December 22, 2023,
- IT IS ORDERED granting a first extension of time to file any responses to the Amicus Briefs on or before January 3, 2024. No further extensions of time shall be granted absent extraordinary circumstances.  
Hon. Robert Brutinel
57. 26-Dec-2023 FILED: Letter to [Grant Frazier] (Verification of Pro Hac Vice Status Bernard Zamaninia)
58. 3-Jan-2024 FILED: City Defendants/Appellees' Consolidated Response to Amicus Briefs Regarding the Freedom of Speech, Freedom of Association, and Right to Work Issues on Review; Certificate of Service; Certificate of Compliance (Defendants/Appellees Gallego, et al.)
59. 3-Jan-2024 FILED: City Defendants/Appellees' Consolidated Response to Amicus Briefs Regarding the Gift Clause Issue on Review; Certificate of Service; Certificate of Compliance (Defendants/Appellees Gallego, et al.)
60. 5-Jan-2024 FILED: Unopposed Motion for Leave to File Intervening Defendant's Consolidated Response to Amici Curiae Briefs; Certificate of Service; Intervening Defendant/Appellee's Consolidated Response to Amici Curiae Briefs of the Arizona Free Enterprise Club and Grand Canyon Legal Center, the Liberty Justice Center, the Freedom Foundation and the National Right to Work Legal Defense Foundation; Exhibit B (Defendant/Appellee AFSCME Local 2384)

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61. 8-Jan-2024 On January 5, 2024, Defendant/Appellee AFSCME Local 2384, filed an "Unopposed Motion for Leave to File Intervening Defendant's Consolidated Response to Amici Curiae Briefs" and "Intervening Defendant/Appellee's Consolidated Response to Amici Curiae Briefs of the Arizona Free Enterprise Club and Grand Canyon Legal Center, the Liberty Justice Center, the Freedom Foundation and the National Right to Work Legal Defense Foundation." Pursuant to Arizona Rules of Civil Appellate Procedure 6(b), the caption of a motion for procedural order must include the words, "Motion for Procedural Order." This Court notes that the motion does not comply with this requirement. Nonetheless, under the specific circumstances in this case,
- IT IS ORDERED granting the motion.
- IT IS FURTHER ORDERED the response shall be filed as of January 5, 2024. (Hon. Robert Brutinel)
62. 8-Jan-2024 FILED: (Duplicate) Intervening Defendant/Appellee's Consolidated Response to Amici Curiae Briefs of the Arizona Free Enterprise Club and Grand Canyon Legal Center, the Liberty Justice Center, the Freedom Foundation and the National Right to Work Legal Defense Foundation; Certificate of Service; Certificate of Compliance (Defendant/Appellee AFSCME Local 2384)
63. 19-Jan-2024 FILED: Motion to Associate Counsel Pro Hac Vice (Bernard Zamaninia); Certificate of Service; Exhibits; (Proposed) Order Re: Motion to Associate Counsel Pro Hac Vice (Amicus National Right to Work)
64. 22-Jan-2024 Grant H. Frazier, having filed a "Motion to Associate Counsel Pro Hac Vice" asking that Bernard Zamaninia be allowed to appear and participate in the above-referenced matter and the appropriate application and related materials having been submitted and found to be in compliance with Rule 39(a), Rules of the Supreme Court,
- IT IS ORDERED granting the Motion and authorizing Bernard Zamaninia to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Robert Brutinel)
65. 13-Feb-2024 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Jonathan Matthew Riches, Daniel L. Bonnett, John Alan Doran)
66. 9-Apr-2024 FILED: Notice of Death of Party; Certificate of Service (Plaintiffs/Appellants Gilmore et al.)