

Justin Pryzby  
15 West Cedar #B  
Flagstaff, AZ 86001

Defendant, Pro Per

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

**IN AND FOR THE COUNTY OF COCONINO**

State of Arizona	)	
Plaintiff/APPELLEE	)	No: CV 2010-00162
	)	
vs.	)	Motion to Reconsider
	)	
Justin Pryzby,	)	
Defendant/APPELLANT	)	
_____	)	

Defendant/APPELLANT, hereby moves this Court to Reconsider its opinion of March 18, 2010, for the following reasons:

**INTRODUCTION**

The Court opined that "A.R.S. 28-812 places upon bicyclists the same rights and duties as a driver of a **motor** vehicle unless there are specific exceptions from those duties applicable to bicyclists." This is factually incorrect on its face. A.R.S. 28-812 does not use the word "motor" and reads:

28-812. Applicability of traffic laws to bicycle riders

A person riding a bicycle on a roadway or on a shoulder adjoining a roadway is granted all of the rights and is subject to all of the duties applicable to the **driver of a vehicle** by this chapter and chapters 4 and 5 of this title, except special rules in this article and except provisions of this chapter and chapters 4 and 5 of this title that by their nature can have no application.

**I**

**A.R.S. 28-704A applies to Drivers of Motor Vehicle and does not apply to Riders of Bicycles**

A.R.S. 28-704A specifically and expressly uses the phrase "motor vehicle" unlike A.R.S. 18-704C which uses the phrase "Vehicle." Arizona has a long history of cases that suggest legislative statutory language be deemed correct on its face.

*Cundiff v. State Farm Mutual Automobile Insurance Co.*, 174 P.3d 270, 217 Ariz. 358 (Ariz. 01/10/2008)

[24] ¶8 This case requires us to construe the language of the UMA. When the language of a statute is clear and unambiguous, a court should not look beyond the language, but rather "simply 'apply it without using other means of construction,' assuming that the legislature has said what it means." *Hughes v. Jorgenson*, 203 Ariz. 71, 73 ¶ 11, 50 P.3d 821, 823 (2002) (quoting *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 330 ¶ 12, 26 P.3d 510, 513 (2001)).

A "motor vehicle" and a "vehicle" in the State of Arizona are different. While both exclude human powered devices, the primary difference is the obvious: some vehicles have an engine or "motor" attached that propels them and others do not.

A.R.S. 28-101 defines "Motor Vehicles" and "Vehicles" and "Bicycles" as follows:

A.R.S. 28-101

6. "Bicycle" means a **device**, including a racing wheelchair, that is propelled by human power and on which a person may ride and ...

33. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

[Note that while "Motor Vehicle" does not expressly exclude human powered devices, neither is there any language that could be construed to include human powered devices when there is no motor attached. Motor Vehicles are "self propelled." Bicycles do not propel themselves.]

57. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, **excluding devices moved by human power** or used exclusively on stationary rails or tracks.

There are sub categories of motor vehicles such as trucks with engines in them, motor cycles with an engine and automobiles with engines.

There are subcategories of non-motorized vehicles such as trailers that are pulled, horse-drawn carriages, etc.

Because a bicycle is not a motor vehicle and also not even a vehicle in the State of Arizona by express exception in the Legislative statutes, A.R.S. 28-812 is necessary to make applicable some of the laws governing roadway use when a person chooses to ride a bicycle. That statute, 812, expressly identifies the "vehicle" (not necessarily motorized) statutes as applicable and does not use the phrase "motor vehicle." Most likely because a bicycle does not have an engine on it and is in the category of non-motorized roadway users. Nothing in the statute appears to change the bicycle to the category of a motorized roadway user.

A.R.S. 28-812 clearly omitted the word "Motor," for reasons that make good sense and provide for safety of non-motorized traffic on Arizona's roadways.

Attached as **exhibit A** is a diagram of the various roadway users that are defined in or regulated in the Arizona Transportation Code, section 28 of the Arizona Revised Statutes. Some roadway users are specially regulated and at the same time, fall under a broader class of regulations, such as Motor Vehicles. Motor Vehicles are specially regulated with motor vehicle statutes and also must comply with the broader class of vehicle statutes one level up on the chart. Horizontal compliance does not appear to be present in the Arizona Revised Statutes. The obvious example is that both motor vehicles and horse-drawn carriages are types of vehicles but statutes specific to horse-drawn carriages are not specific to motor vehicles and vice versa.

The enabling statute for Bicycles, A.R.S. 28-812, has the effect of moving bicycles used on roadways from the "device" portion of roadway users to the "vehicle" type of roadway users. It does not move bicycles as a sub category of Motor Vehicles.

## II

**Reading into A.R.S. 28-812 the word "motor" and changing the status of non-motorized road users to that of motorized road users erroneously homogenizes two distinct categories of roadway users that the legislators have expressly separated.**

A.R.S. 28-701A applies to slow moving "motor vehicles" while 704C applies to slow moving "vehicles." Each has a different criteria.

A.R.S. 28-704A requires the "motor vehicle" not to impede even a single vehicle behind unless it was for safe operation or in compliance with law or, in the case of motorized farm equipment, if the flow of traffic exceeds the safe speed of the husbandry.

A.R.S. 28-704C applies to all vehicles (with motors and without) but only on 2 lane roads (one in each direction) and then only when 5 or more vehicles have

accumulated behind. In the 704C situation, the "vehicle" is required to vacate the roadway entirely when a safe area is located by the driver. This is a standard that is different from A.R.S. 28-815A that only requires cyclists to ride to the right. Under the 704C scenario, the cyclist must vacate the roadway when 5 or more vehicles are behind and when it is safe to do so.

Clearly the legislators distinguished between "motor vehicles" and "vehicles" when they defined them differently under A.R.S. 28-101.

Further, when writing two distinct procedures to be followed, such as 704A and 704C, both of which are sensible when taking into account the roadway and type of roadway user, the legislators followed a well-reasoned and long-standing scheme of roadway use. For over 100 years, cyclists and motorists have shared the road. If the legislators wanted motorized and non-motorized vehicle to be treated the same, there would be no distinction between the two and no difference in procedures. Indeed, if the legislature wanted motor vehicles and vehicles to be treated the same, they would have written so.

However, the legislature did define the two types of roadway users differently and did distinguish the statutes to apply to one or the other. Therefore, the Court's Order should be corrected to reflect what the legislature enacted.

### III

#### **Reading into A.R.S. 28-812 the word "motor" and changing the status of non-motorized road users takes away from the expectation of safety that all non-motorized users (bicyclists) expect.**

Cyclists, like any roadway user, have an expectation of safety. When a procedure is adopted that requires the cyclist to jump out of the way any time a single vehicle overtakes them, and even when that vehicle has an open lane to the left to use for passing, a safety issue arises. Is the cyclist aware of the approaching motor vehicle and is there time and location for a safe pull out? Does the driver of that vehicle analyze the obvious conflict between demanding that the cyclist "get out of the way" thereby asserting this fictional right-of-way and the driver's duties under A.R.S. 28-701A to avoid a collision or A.R.S. 28-730 to maintain a safe distance behind, or A.R.S. 28-735 to leave at least 3 feet when passing?

Requiring the cyclist to immediately vacate the roadway or ride into a construction zone where it is (in the instant case) present and unsafe and illegal to drive in, sends conflicting messages. Arizona laws are meant to be consistent and predictable. Were it so that riders of bicycles must comply with "motor vehicle" law such as 704A, an approaching driver who is behind at a safe distance and encounters a cyclist that does not immediately yield the roadway may be compelled to pull closer, tailgate, honk a horn with decibel levels that are dangerous to the unprotected human ear, or even yell threatening words, etc. This is also known as Felony Endangerment and Felony Assault.

Cyclists who must deal with rude drivers who "know that the cyclist must get out of the way" may lose control of the bicycle when honked at or when

concentrating behind them instead of in front of them. In front of the cyclist are glass and potholes and minute roadway conditions that are meaningless to motor vehicle drivers but catastrophic to non-motorized users. The cyclist must see and avoid these and not be overly concerned that each approaching motorist is going to demand that they get out of the way.

The Federal Government has taken steps to ensure the safety of non-motorized traffic on the roadways by prohibiting the Department of Transportation directors from taking away from non-motorized safety:

23 U.S.C. 109(m)

(m) Protection of Nonmotorized Transportation Traffic. --The Secretary shall not approve any project or take any regulatory action under this title that will result in the severance of an existing major route or have significant adverse impact on the safety for nonmotorized transportation traffic and light motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route exists.

Therefore, A.R.S. 28-704A correctly is applicable to "motor vehicles" and A.R.S. 28-812 correctly makes applicable only "vehicle" laws and not "motor vehicle" laws to bicycles as a matter of roadway safety.

#### IV

### **Reading into A.R.S. 28-812 the word "motor" and changing the status of non-motorized road users to that of motorized road users eviscerates A.R.S. 28-812**

If A.R.S. 28-812 were to make a bicycle into a motor vehicle, as the Court has opined, then there would be only one known situation where a cyclist could ride on a roadway when there is motor traffic and that is if the cyclist was able to ride as fast as the flow of traffic. This is rarely the case and even Husbandry (motorized farm equipment) is not required to exceed a safe speed. Rarely will a cyclist be able to keep up with the sustained speeds of motor vehicles.

No law could ever be construed to suggest that a person drive a vehicle (or device) at speeds greater than safe and prudent. Indeed, A.R.S. 28-701A requires reasonable and prudent speeds and for cyclists, these speeds are often below the speed of the flow of traffic. Cyclists must gauge their equipment and ability to operate in a crosswind where the wind has the effect of blowing the front wheel out of control at higher speeds. Cyclists also have to slow for potholes, oil, glass, sticks, and construction debris. Cyclists, most notably, have to keep their human powered legs and body at sustainable speeds with some reserve to sprint if necessary. That means riding at speeds less than they are capable of. Thus there will almost always be overtaking traffic.

The Arizona legislature clearly wanted cyclists to be able to use the roadway. In some areas (such as parts of Flagstaff) it is illegal to ride on the sidewalk. Even

when riding on the sidewalk is allowed, it's considered more dangerous to ride outside the normal flow of traffic. Thus reading into A.R.S. 28-812 the word "motor," a cyclist would have to give up their Constitutional right to travel any time a car approached.

### CONCLUSION

Motor Vehicle laws cannot apply to cyclists because the legislature did not make them applicable. Motor vehicle laws mostly have to do with registration, ignition interlock devices, horsepower, display of power, criminal speeding, etc. (As opposed to vehicle laws that are behavioral in nature and define behaviors such as stopping, turning, signaling, etc.) To make applicable "motor vehicle" laws when A.R.S. 28-812 clearly only made applicable "vehicle" laws, the entire Transportation code would have to be rewritten to clarify which rules were meant to apply to bicycles and which were not. It is easier and clearer to simply define two or more classes of roadway users and then write the statutes that apply to that class and not intermix them - unless the statute is clear that intermixing is appropriate and intended.

Therefore, undersigned asks that Court reconsider its Order of March 18, 2010, and issue a new order *non pro tunc*.

In the alternative, if the Court holds that bicycles are now to be changed to the status of a motor vehicle and are to obey the laws that apply to motor vehicles, undersigned believes that there is still an exception because a) reduced speed is necessary for safe operation, b) operation of law in that riding in construction areas is illegal and riding on the roadway is legal pursuant to A.R.S. 28-812, and c) the flow of traffic exceeds the sustainable speed of the cyclist and bicycles should be given at least as much protection as implements of husbandry.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 2010.

Justin Pryzby

---

Defendant, Pro Per

The Original of the foregoing hand delivered  
this \_\_\_\_ day of \_\_\_\_\_, 2010 to:

Clerk of the Court  
Coconino County

By: \_\_\_\_\_

Exhibit A  
LEVEL 1

