Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-015921 12/20/2022

HONORABLE JOHN L. BLANCHARD

CLERK OF THE COURT
S. Ortega
Deputy

ARIZONA CREDITORS BAR ASSOCIATION INC, et al.

BRETT W JOHNSON

v.

STATE OF ARIZONA

BRIAN M BERGIN

JAMES E BARTON II
TRACY A OLSON
RYAN P HOGAN
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE BLANCHARD

Verdict

The Court has reviewed and considered (1) Plaintiffs' December 5, 2022 *Verified Special Action Complaint* and *Motion for Temporary Restraining Order and Preliminary Injunction*; (2) the December 12, 2022 Intervenor Committee's *Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and Moton to Dismiss*; (3) the December 12, 2022 Defendant *State of Arizona's Response to Application for Permanent Injunction and Declaratory Relief and Motion to Dismiss*; and (4) the December 14, 2022 *Plaintiffs' Reply in Support of Their Motion for Temporary Restraining Order and Preliminary Injunction*.

The parties stipulated to combine the hearing on Plaintiffs' Motion for Preliminary Injunction with the final trial on the merits of Plaintiffs' Verified Complaint. The Court has reviewed and considered all evidence and arguments presented at both the Temporary Orders hearing, and the December 16, 2022 trial on the merits.

Plaintiffs challenge the constitutionality of an initiative titled "Arizona Protection from Predatory Debt Collection Act." The initiative is referred to by the parties and herein as "Prop 209." Prop 209 was approved by voters on November 8, 2022, with an effective date of December 5, 2022. The initiative amends Sections 12-1598.10, 33-1101, 33-1123, 33-1126, 33-1131 and 44-1201 of the Arizona Revised Statutes. The new law impacts several aspects of debt collection law: (a) lowering the interest rate cap on medical debt; (b) increasing the amount of the homestead exemption; (c) increasing the dollar value of personal property and assets exempt from creditor claims; and (d) increasing the amount of exempt earnings in garnishment actions.

Motions to Dismiss Regarding Standing and Ripeness

Although the Arizona Constitution does not require that Plaintiffs allege an actual case or controversy, as a matter of sound jurisprudence Plaintiffs must establish standing to sue. *See, e.g., Bennett v. Napolitano,* 206 Ariz. 520, 525 (2003). In addressing the question of standing, the Court is "confronted only with questions of prudential or judicial restraint" imposed to ensure that the Court does not issue an advisory opinion, that the case is not moot, and that the issues will be fully developed by true adversaries. *Armory Park Neighborhood Ass'n v. Episcopal Comm. Servs. in Ariz.,* 148 Ariz. 1, 6 (1985). "[T]hese considerations require at a minimum that each party possess an interest in the outcome." *Id.*

"The concept of justiciability requires a court to decline to hear a case if a dispute is so lacking and/or the parties are so situated that the court's determination would be merely advisory. Courts should not render advisory opinions anticipative of troubles which do not exist; may never exist; and the precise form of which, should they ever arise, we cannot predict." *Citibank (Ariz.) v. Miller & Schroeder Fin., Inc.,* 168 Ariz. 178, 182 (App. 1990), *quoting Velasco v. Mallory,* 5 Ariz. App. 406, 410-11 (1967).

Defendant and Intervenor moved to dismiss Plaintiffs' Verified Complaint. Their Motions argue that Plaintiffs lack standing and the action is not yet ripe. They contend that Plaintiffs have only described hypothetical and speculative harm flowing from the allegedly differing interpretations of the new law. Plaintiffs' Verified Complaint alleges that they have been harmed—and will be harmed—by the uncertainty and confusion arising out of the new statutory scheme. For example, Plaintiffs allege that they have diverted resources to address legal exposure generated by the confusion and lack of direction. Verified Complaint, ¶ 11. *See also* ¶ 63 (AOC workgroup has issued conflicting directions, causing confusion). Plaintiffs contend that they are now unable to comply with the new law, which is causing them current monetary harm and exposing them to risk of penalties and other damages.

When reviewing a motion to dismiss, allegations in the complaint that are well-pled are taken as admitted. *Aldabbagh v. Arizona Department of Liquor Licenses & Control*, 162 Ariz.

415, 417 (App. 1989). In addition to well-pled facts, the Court is entitled to consider all reasonable interpretations of such facts. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 420 (2008). The Court finds that Plaintiffs have "standing to bring a vagueness challenge" to Prop 209 by virtue of their allegations that the "terms within [Prop 209] are subject to varying interpretations and/or meanings" and that Prop 209 "does not reasonably define exactly what conduct is prohibited." *State v. Mutschler*, 204 Ariz. 520, 523 (App. 2003).

The Motions to Dismiss are therefore DENIED.

Plaintiffs' Application for Injunctive and Declaratory Relief

This Court must presume that a statute is constitutional. *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 268 (App. 2011). *See also SAL Leasing, Inc. v. State ex rel. Napolitano*, 198 Ariz. 434, 442 (App. 2000) ("To succeed on this challenge, appellees must overcome a strong presumption that the law is constitutional"). A statute is unconstitutionally vague only when "it does not give persons of ordinarily intelligence a reasonable opportunity to learn what it prohibits and does not provide explicit standards for those who will apply it. *SAL Leasing*, 198 Ariz. at 442. "Due process does not require that a statute be drafted with absolute precision." *Id.* When analyzing a vagueness challenge, "courts look to judicial decisions, to settled common law meanings of the words used, and to the technical meanings of those words." *Id.* (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499–501, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982)). In determining whether a law is facially invalid, [courts] must be careful not to go beyond the statutes' facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449-50 (2008).

Plaintiffs allege that Prop 209 has a wide and complex scope, described as major changes on earnings garnishment actions. "Prop 209's new provisions have breathtaking breath and reach every type of debt." Verified Complaint, ¶ 46. Plaintiffs' challenge to Prop 209, however, is narrow. Plaintiffs' action turns on the language of the initiative's Savings clause (section 10), which reads:

> "This act applies prospectively only. Accordingly, it does not affect rights and duties that matured before the effective date of this act, contracts entered into before the effective date of this act or the interest rate on judgments that are based on a written agreement entered into before the effective date of this act."

Prop 209, pg. 6 (section 10) (exhibit 2).

The present dispute is even narrower than that. At the hearing on Plaintiffs' request for a Temporary Restraining Order, the parties confirmed that they only disagree as to the meaning and application of the words: "it does not affect rights and duties that matured before the effective date of this act." According to Plaintiffs, these words have been interpreted in different ways by various creditor-debtor stakeholders. Plaintiffs contend that "it is unclear when in this [garnishment] process the right to garnishment would 'mature' under Prop 209." Plaintiffs allege that this confusion is leading courts, lawyers, and collection experts to arrive at conflicting interpretations regarding the scope and application of the new law. This confusion, they argue, has led to actual harm and could lead to future legal liability, sanctions, and irreparable harm to the Plaintiffs.

Prop 209 is not unconstitutionally vague. While the scope of the law is wide-ranging and impacts important and long-standing processes for collecting debts, the language at issue is neither vague nor unintelligible. In the Court's view, Plaintiffs' arguments are more akin to reasons why Arizona voters should reject the initiative. That time, however, has passed. The voters approved Prop 209.

Prop 209's Savings clause uses commonly used language that appears in several current Arizona and federal statutes. Prop 209's Savings clause plainly notes that it "does not affect rights and duties that matured before the effective date of this act." *See, e.g.,* Intervenor Opposition, at pgs. 8-9 (summarizing several examples of Arizona and federal laws using the language "rights and duties that matured"). Indeed, the 1986 amendments to the garnishment statutes used a similar savings clause: "This act applies to all writs of garnishment issued on or after the effective date of this act. This act does not affect the ***rights and duties that matured or proceedings that were begun before the effective date of this act***." Laws 1986, Ch. 4, § 29(A) (emphasis added). This is the same language that Plaintiffs complain is causing confusion and chaos.

To be sure, Prop 209 is complex. Thus, a savings clause that provides for only prospective application that does not impact rights and duties that matured prior to the effective date is bound to require thought and work to implement. And that hard work currently is underway. As described by Plaintiffs, Prop 209 "imposes major changes on earnings garnishment actions …" Verified Complaint, ¶ 29. Plaintiffs identified in detail the several inter-related sections of Arizona law that are impacted by Prop 209, together with the significant financial impact of the new law on the Plaintiffs and creditors generally. Some element of uncertainty and confusion is to be expected following the enactment of such a comprehensive change to an established statutory process. And that is especially true where, as here, there is significant opposition to the enactment of Prop 209. Opposition and generalized confusion regarding a new and complex re-work to Arizona garnishment and collection laws does not make that legislation unconstitutionally vague. Legislation is not vague simply because it is new and untested.

Persons prosecuting garnishment actions are bound to have differing interpretations of the new law as these issues work their way through the Courts. But Prop 209 does not violate due process merely "because it is susceptible to more than one interpretation." *SAL Leasing*, 198 Ariz. at 442. *See also State Bd. Of Tech. Registration v. McDaniel*, 84 Ariz. 223, 232 (1958) ("statute is not invalid merely because it is difficult to interpret."); *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239, 247 (2020) (a law is unenforceable as indefinite or unintelligible only if it is "so incomplete or unintelligible that we cannot divine its purpose and intent, or how to implement it …").

Finally, the Court declines to award Plaintiffs the requested declaratory relief. In essence, Plaintiffs request that the Court rewrite Prop 209 to limit its scope through a more restrictive interpretation of the Savings clause. In essence, Plaintiffs' request for declaratory relief is asking the Court to change the words of the law to confirm a more favorable interpretation of Prop 209. "It is not the function of the courts to rewrite statutes." *Lewis v. Debord*, 238 Ariz. 28, 31-32 (2015).

For the foregoing reasons, and good cause appearing,

THE COURT FINDS that Prop 209 should be permitted to take effect, without guidance or restriction from the Court. The language in the legislation, and in particular the Savings clause, is susceptible to common understanding (and actually mirrors the language of several existing laws) and therefore is not facially unconstitutional.

IT IS ORDERED denying all relief sought in Plaintiffs' *Verified Special Action Complaint* and *Motion for Temporary Restraining Order and Preliminary Injunction*, both filed December 5, 2022.

IT IS FURTHER ORDERED vacating the Court's December 7, 2022 Temporary Restraining Order.

IT IS FURTHER ORDERED entering judgment in favor of Defendant and Intervenor and against Plaintiffs. Each party shall bear its own attorneys' fees, costs and expenses. This is a final judgment entered pursuant to Rule 54(c), *Arizona Rules of Civil Procedure,* and Rule 6, *Arizona Special Action Rules of Procedure,* because no further matters remain pending.

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Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. *See McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

/s/ HONORABLE JOHN L. BLANCHARD

HONORABLE JOHN L. BLANCHARD
JUDICIAL OFFICER OF THE SUPERIOR COURT