Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-009335 08/16/2022

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
L. Gilbert
Deputy

PROTECT OUR ARIZONA

THOMAS J. BASILE

v.

KATIE HOBBS, et al.

AMY BELL CHAN

JAMES E BARTON II
JOSHUA D BENDOR
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MOSKOWITZ

**UNDER ADVISEMENT RULING**

Plaintiff's Objections challenging the legal sufficiency of the subject initiative is under advisement following the evidentiary hearing and oral argument held on August 10, 2022. In addition to the evidence and arguments of counsel heard by the Court at the hearing and oral argument, the Court has reviewed and considered the following:

**Filed by Plaintiff**

A. Plaintiff's Amended Verified Complaint;
B. Plaintiff's Pre-Hearing Memorandum;
C. Plaintiff's Response to Real Party in Interest's Pre-Hearing Memorandum;
D. Joint Stipulations of the Plaintiff and Secretary of State; and
E. Notice of Withdrawal of Objections 2 through 5(a) as Moot.

**Filed by the Real Party in Interest**

F. Arizonans Fed Up with Failing Healthcare's Hearing Brief; and
G. Arizonans Fed Up with Failing Healthcare's Response to Plaintiff's Pre-Hearing Memorandum.

**Filed by the Secretary of State**

H. Arizona Secretary of State's Notice Regarding Circulator Registration Portal; and
I. Arizona Secretary of State's Notice Regarding Final Judgment.

**Filed by Amici Curiae**

J. Brief of RMAI, *Amicus Curiae*, In Support of Plaintiff's Complaint Challenging the Legal Sufficiency of Initiative Petition Pursuant to A.R.S. §§ 19-122(C), 19-118 (F);
K. Brief of Amicus Curiae of Goldwater Institute In Support of Injunction; and
L. Brief of Amici Curiae Center for Responsible Lending and Southwest Center for Economic Integrity in Support of Real Party in Interest.

**THE COURT FINDS AS FOLLOWS:**

## GENERAL OVERVIEW

1. The Plaintiff challenges the legal sufficiency of an initiative entitled "The Predatory Debt Collection Protection Act" ("the Act").

2. The Plaintiff essentially put forward five (5) Objections to the legal sufficiency of the Act.

3. After the hearing, the Plaintiff filed its Notice withdrawing Objections 2 through 5(a) as moot, but confirming that Objections 1 and 5(b) remain at issue.

4. Objection 1 is that the last sentence of the 98-word summary "communicates objectively false or misleading information" about the Act.

5. Plaintiff makes clear that it is not challenging the summary for improperly excluding any principal provision of the Act.

6. The 98-word summary at issue states:

> Caps interest rate on "medical debt," as defined in the Act; applies this cap to judgments on medical debt incurred. Increases the value of assets – a homestead, certain household possessions, a motor vehicle, funds in a single bank, and disposable earnings – protected from certain legal processes to collect debt. Annually adjusts these amended exemptions for inflation beginning 2024. Allows courts to further reduce the amount of disposable earnings subject to garnishment in some cases of extreme hardships. Does not affect existing contracts. Does not change existing law regarding secured debt.

7. Objection 5(b) is that certain registered circulators failed to submit new or updated affidavits with their registration applications filed in connection with the Act.

**OBJECTION 1**

8. In resolving challenges to initiative petition summaries, courts should "consider the meaning a reasonable person would ascribe to the description." *Arizona Chapter of the Associated General Contractors of America v. City of Phoenix*, 247 Ariz. 45, 48 (2019). These summaries should not be read in isolation, but rather read in context of other summary provisions. *Id*. at 49.

9. Arizona law "does not require the description to be impartial. But to comply, the description must describe the principal provisions to accurately communicate their general objectives." *Molera v. Hobbs*, 250 Ariz. 13, 19 (2020).

10. "Reasonable people can differ about the best way to describe a principal provision, but a court should not enmesh itself in such quarrels. If the chosen language would alert a reasonable person to the principal provisions' general objectives, that is sufficient. Applying this reasonable person standard, the trial judge should ordinarily decide the sufficiency of a description without expert witness evidence." *Id*. at 20.

11. Courts should also consider what a "term is commonly understood to mean . . . ." *Id*. at 22 (looking first to the Webster's Third New International Dictionary (3d ed. 2002) for the definition of the term "surcharge").

12. Here, the Court finds that the term "secured debt" is commonly understood to mean *voluntarily* secured debt. *See Secured Debt*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/secured-debt ("[A] debt or debts that include ***an agreement*** for the lender to take particular assets from the borrower if the money is not paid back") (Emphasis added).

13. Objection 1 only applies if the term "secured debt" is commonly understood to also mean *involuntarily* secured debt (e.g., a judgment lien).

14. Thus, to the extent the term "secured debt" is commonly understood to only mean *voluntarily* secured debt, Objection 1 is not well-taken and the summary is not "objectively false or misleading."

15. But even *assuming* that the term "secured debt" is commonly understood to also mean *involuntarily* secured debt, the Court still finds that the summary, when read as whole, is not "objectively false or misleading."

16. Plaintiff's objection is that the Act "directly amends no fewer than five statutes ***governing the collection of involuntarily*** secured debts – to wit, A.R.S. § 33-1101 (homestead exemption), A.R.S. § 33-1123 (furnishings and certain devices), A.R.S. § 33-1125 (personal effects), A.R.S. § 33-1126 (depository accounts), and A.R.S. § 12-1131 (garnishments)." [*See* Plaintiff's Response to Real Party in Interest's Pre-Hearing Memorandum, at p. 5, lines 5-10 (emphasis in original omitted, emphasis added); *see also* Plaintiff's Pre-Hearing Memorandum, at p. 2, lines 19-21 ("Contrary to the summary's categorical assurance that measure '[d]oes not change existing law regarding secured debt,' the Act would directly and substantially ***amend law governing the collection of involuntarily*** secured debt.") (Emphasis added).

17. The Court finds a meaningful distinction between the language "existing law regarding secured debt" and "existing law regarding the ***collection of involuntarily*** secured debt."

18. The Act does not change existing law regarding secured debt. The law remains the same with regard to how secured transactions are attached and perfected. The law remains the same with regard to the existence of judgment liens, mechanic's liens, and other statutory liens. The law even remains the same with regard to the

homestead and personal property exemption statutes that subject *voluntaril*y secured debt to execution (e.g., home and car loans).

19. At best, the Act only changes existing law regarding ***the collection of involuntarily*** secured debt (e.g., the collection of a judgment lien).

20. Plaintiff cites to the affected laws – ***homestead exemption, furnishings and certain devices, personal effects, depository accounts, and garnishments***. (*See* paragraph 16 above)

21. The summary addresses these changes, including any distinction about the collection of *involuntarily* secured debt, when it says:

> Increases the value of assets – ***a homestead, certain household possessions, a motor vehicle, funds in a single bank, and disposable earnings*** – protected from ***certain legal processes to collect debt***. . . . Allows courts to further reduce the amount of disposable earnings subject to ***garnishment*** in some cases of extreme hardships." (Emphasis added).

22. Thus, even if "reasonable people can differ about the best way to describe" the principal provision at issue in this case, this Court "will not enmesh itself in such quarrels." *See Molera*, 250 Ariz. at 20.

23. In summary, the Court finds "the chosen language would alert a reasonable person to the principal provisions' general objectives, [and] that is sufficient." *See id*.

**OBJECTION 5(b)**

24. A.R.S. § 19-102.01(A) makes clear that "Constitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements."

25. Thus, the issue before the Court is whether A.R.S. § 19-118, when strictly construed, requires the filing of more than one affidavit.

26. Here, the Court strictly construes A.R.S. § 19-118 as not requiring the submission of more than one affidavit.

27. Section 19-118(B) simply calls for an "[a]n affidavit" as a requirement of "[t]he circulator registration application required by subsection A of this section."

28. Section 19-118(A) merely provides that "[a]ll circulators who are not residents of this state and all paid circulators must register as circulators with the secretary of state before circulating petitions pursuant to this title."

29. Section 19-118(C) then provides "[w]ithin five business days after submission and review of a complete and correct circulator registration application that complies with this section, the secretary of state shall register and assign a circulator registration number to the circulator."

30. If the Legislature intended that all non-Arizona resident and all paid circulators must register more than one time and submit registration applications and affidavits each time, it could have said so expressly in the statute, but it did not do so.

31. The fact that the Secretary of State accepts more than one registration application from registered circulators, and with regard to certain eligible registered circulators, accepts more than one affidavit, is not because of any requirement in § 19-118. Rather, it is because of the administrative authority vested in the Secretary by § 19-118(A) and/or the newly enacted legislation, § 19-205.01, which deals with recall petitions.

32. Also, to the extent there is false information contained in any affidavit or registration application, or the applicant registers in violation of the statute, the remedy is the same. *See* § 19-118(H).

33. Here, there are no allegations that the affidavits that are the subject of Objection 5 contain false information or that any of the applicants registered in violation of the statute, *i.e*., had civil or criminal penalties imposed within the immediately preceding five years, had been convicted of treason or a felony and their rights had not been restored, or had been convicted of any crime involving fraud, forgery, or identify theft. *See* § 19-118(D).

34. And, although moot, the Plaintiff also had the opportunity to challenge any false or incorrect information contained in the subject registration applications.

**IT IS THEREFORE ORDERED** denying as moot Plaintiff's Objections 2 through 5(a).

**IT IS FURTHER ORDERED** denying Plaintiff's Objections 1 and 5(b).

**IT IS FURTHER ORDERED** that the Act qualifies to appear on the general election ballot.

**IT IS FURTHER ORDERED** that no further matters remain pending and judgment is entered under Rule 54(c) of the Arizona Rules of Civil Procedure.

Dated this 16th day of August, 2022.

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Hon. Frank W. Moskowitz
Maricopa County Superior Court