IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

ARIZONA CREDITORS BAR ASSOCIATION, INC., et al.,
Plaintiffs/Appellants/Cross-Appellees,

v.

STATE OF ARIZONA, *Defendant/Appellee/Cross-Appellant*.

ARIZONANS FED UP WITH RISING HEALTHCARE, et al.,
Intervenors/Appellees/Cross-Appellants.

No. 1 CA-CV 22-0765
FILED 4-30-2024

Appeal from the Superior Court in Maricopa County
No. CV2022-015921
The Honorable John L. Blanchard, Judge

AFFIRMED

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OPINION

Judge Maria Elena Cruz delivered the opinion of the Court, in which Presiding Judge David D. Weinzweig and Judge Michael S. Catlett joined.

C R U Z, Judge:

¶1 Arizona Creditors Bar Association, Inc., Protect Our Arizona PAC, Absolute Resolutions Investments, LLC, Hameroff Law Group, P.C., Desert Ridge Community Association, Augusta Ranch Community Master Association, Bauhinia, LLC, and Cash Time Title Loans, Inc. (collectively "Judgment Creditors"), appeal from the superior court's denial of their request for permanent injunction or declaratory relief. The State of Arizona ("State") and Arizonans Fed Up with Rising Healthcare (Healthcare Rising AZ) ("Sponsoring Organization") cross-appeal from the superior court's denial of their respective motions to dismiss for lack of standing. We affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Arizona voters approved Proposition 209, also known as the "Predatory Debt Collection Act" ("the Act"), in November 2022. The new law amended Arizona Revised Statutes ("A.R.S.") sections 12-1598.10, 33-1101, 33-1123, 33-1125, 33-1126, 33-1131, and 44-1201. It lowered the interest rate cap on medical debt, increased the amount of the homestead exemption, increased the dollar value of personal property and assets exempt from creditor claims, and increased the amount of exempt earnings in garnishment actions.

¶3 The Act includes a provision—labeled a "Saving Clause"—to address when the Act applies. The Saving Clause states that, "[t]his act applies prospectively only." It then lists three things "it does not affect": (1) "rights and duties that matured" before its effective date; (2) "contracts entered into" before its effective date; and (3) "the interest rate on judgments that are based on a written agreement entered into" before its effective date.

¶4 The Judgment Creditors are businesses involved in various facets of debt enforcement who filed a complaint and motion for temporary restraining order challenging the Act's constitutionality, more specifically alleging its Saving Clause was vague and unintelligible.

¶5 The Judgment Creditors argued the Saving Clause fails because it does not spell out whether it applies when a judgment pre-dates the Act but a wage garnishment proceeding to enforce that judgment post-dates the Act. And they argued that, because the Saving Clause is unconstitutional, the whole Act must fail. If their constitutional claims failed, they alternatively asked the superior court for a declaratory judgment explaining how the Act applies, if at all, to a post-Act garnishment proceeding to enforce a pre-Act judgment.

¶6 The State and the Sponsoring Organization alleged the Judgment Creditors lacked standing to raise their constitutional challenges. The superior court ultimately found the Act's Saving Clause constitutional and denied the Judgment Creditors' request for a permanent injunction or declaratory relief.

¶7 The Judgment Creditors timely appealed. The State and the Sponsoring Organization timely cross-appealed. We have jurisdiction pursuant to A.R.S. §§ 12-2101(A)(1) and -2101(A)(5)(b).

DISCUSSION

¶8 Questions of standing and ripeness are reviewed de novo. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 279, ¶ 34 (2019). Similarly, we review the constitutionality of statutes de novo. *State v. Burke*, 238 Ariz. 322, 325, ¶ 4 (App. 2015). We review a denial of injunctive relief for an abuse of discretion. *Cnty. of Cochise v. Faria*, 221 Ariz. 619, 621, ¶ 6 (App. 2009). The hearing on a preliminary injunction may be consolidated with the hearing on the merits. Ariz. R. Civ. P. 65(a)(2)(A). "We defer to the court's findings of fact unless clearly erroneous, but we review de novo its legal conclusions." *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 47, ¶ 9 (App. 2007).

¶9 The Arizona Constitution provides that "[t]he judicial power shall be vested in an integrated judicial department[.]" Ariz. Const. art. 6, § 1. As a component of the judicial department, the superior court has jurisdiction over "[c]ases and proceedings" and only when jurisdiction is not vested elsewhere. Ariz. Const. art. 6, § 14(1). The Arizona Constitution prohibits the judicial department from exercising the powers vested in the legislative and executive branches and vice versa. Ariz. Const. art. 3.

I. Standing and Ripeness

¶10 The State and the Sponsoring Organization cross-appeal the superior court's denial of their motions to dismiss for lack of standing and ripeness. They argue the Judgment Creditors' challenge to the Act's constitutionality relies on hypothetical scenarios and that any alleged harm is speculative.

¶11 Standing is a tool courts use to ensure they exercise only "the judicial power"—that they act like courts. Standing ordinarily requires a plaintiff to "allege a distinct and palpable injury." *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998). "An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing." *Id.*

¶12 The Judgment Creditors have asserted claims under the Uniform Declaratory Judgments Act ("UDJA"). That statute says that any party "whose rights, status or other legal relations are affected by a statute" may bring an action to determine the statute's "validity." A.R.S. § 12-1832. While broad, that language does not permit courts to act as legislators by setting policy or issuing advisory opinions—standing is still required. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423, ¶ 25 (2022). Our supreme court, however, has broadened the standing requirement for a

declaratory judgment. To have standing under the UDJA, there must instead "be an actual controversy ripe for adjudication" and "parties with a real interest in the questions to be resolved." *Bd. of Supervisors of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978); *see also Mills*, 253 Ariz. at 423-24, ¶ 25. Unlike in federal court, actual injury is not required. *Mills*, 253 Ariz. at 424, ¶ 29 ("Mills is not required to suffer an actual injury before his [declaratory judgment] claims become justiciable."). "[D]eclaratory relief should be based on an existing state of facts, not those which may or may not arise in the future." *Land Dep't v. O'Toole*, 154 Ariz. 43, 47 (App. 1987). But if actual injury is missing, standing for a declaratory judgment still exists if "an actual controversy exists between the parties." *Mills*, 253 Ariz. at 424, ¶ 29.

A. Constitutional Claims

¶13 In their verified complaint, the Judgment Creditors alleged they are in the business of debt collection and have engaged in and plan to continue to engage in conduct proscribed by the Act. They alleged they are unable to comply with the new law and that they face monetary harm and risk of penalties under federal law. And they alleged that they have had to divert current resources to clear confusion and educate their membership on the exposure the Act creates. These allegations, even when admitted into evidence, did not establish that the Judgment Creditors suffered a distinct and palpable injury *due to the Saving Clause*.

¶14 The Judgment Creditors are in the debt collection business, yet none established[1] they were garnishing wages under the Act based on a pre-Act judgment or that they would soon do so. Put differently, none of the Judgment Creditors had engaged in conduct impacted by the vagueness or unintelligibility *of the Saving Clause*. Conceding this hole in their argument, the Judgment Creditors asserted there was standing because if they take a wrong step under the Act, they could face future liability under the federal Fair Debt Collection Practices Act ("FDCPA"). But even if potential future liability under a separate statute passed by a different sovereign (here, the federal government) can suffice to establish actual injury, the Judgment Creditors did not establish that any of them had been threatened with an FDCPA claim, let alone that such a claim had been filed or successfully litigated against them because of the constitutional infirmities they claim with the Saving Clause. Any future liability based on

[1] The superior court consolidated the preliminary injunction hearing with the trial on the merits. *See* Ariz. R. Civ. P. 65(a)(2)(A). The Judgment Creditors were required to prove standing, not just allege it.

the FDCPA, therefore, was too far removed and too speculative for standing based on injury. *See Klein v. Ronstadt*, 149 Ariz. 123, 124 (App. 1986) (explaining that the plaintiff must demonstrate an "actual, concrete harm" that is not "merely some speculative fear."). Similarly, the Judgment Creditors' allegation that they diverted resources to educate members about the Act did not establish actual injury. *See Ariz. Sch. Bds. Ass'n v. State*, 252 Ariz. 219, 224, ¶ 18 (2022) (rejecting the superior court's conclusion "that an organization has standing to challenge the constitutionality of a statute if it demonstrates merely that the contested statute drained its resources and frustrated its mission.").

¶15 The State argues the Judgment Creditors' lack of actual injury ends the standing inquiry. While that would be true in federal court, it is not true in state court, because the standing threshold under the UDJA is broader. For example, the State, in its briefing and at oral argument, relied on *Susan B. Anthony List v. Driehaus*, which the U.S. Supreme Court described as a "case concern[ing] the injury-in-fact requirement." 573 U.S. 149, 158 (2014). The State also relies on other cases discussing the injury-in-fact requirement in the United States Constitution. Here in state court, though, the Judgment Creditors' lack of actual injury did not doom their standing. Again, our supreme court has taken a broader view of standing for declaratory relief and has required only an actual controversy between interested parties—actual injury is not required. *See Mills*, 253 Ariz. at 423-24, ¶¶ 25, 29.

¶16 An actual controversy existed as to the Judgment Creditors' declaratory judgment claims that the Act is facially unconstitutional based on vagueness and unintelligibility. The Judgment Creditors are regulated parties—the Act is in effect, so the Judgment Creditors must comply with it. The Act makes it more difficult for the Judgment Creditors to collect on judgments—the amount they may garnish is less than before. One of the Judgment Creditors "purchases and manages debt for recovery" and "currently owns money judgments in Arizona." Two of the Judgment Creditors, both homeowners' associations, "routinely collect[] unpaid dues from [their] homeowners through the courts and [have] current garnishment proceedings pending." As the Sponsoring Organization admits, the Judgment Creditors "are squarely in the group of businesses impacted by" the Act.

¶17 Although the Judgment Creditors challenge only the Saving Clause, they asked the superior court to enjoin the Act in its entirety, arguing that the Saving Clause is not severable from the rest of the Act. *See Gherna v. State*, 16 Ariz. 344, 358 (1915) ("Unless a person's rights are

directly involved, [constitutional] questions must necessarily be postponed, until they are met with upon the highway of adjudication, *unless the unconstitutional feature, if it exists, is of such a character as to render the entire act void*." (emphasis added)). The State and the Sponsoring Organization had an interest in defending against that requested remedy and the arguments underlying it. *Cf. Maryland v. King*, 567 U.S. 1301, 1303 (Roberts, Circuit Justice 2012) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."). All parties—the Judgment Creditors, the State, and the Sponsoring Organization alike—were sufficiently interested in the outcome of the Judgment Creditors' constitutional claims.

¶18 The State, relying almost exclusively on a now-reversed federal district court opinion, argues that the Judgment Creditors could not bring a pre-enforcement facial challenge because the Act's Saving Clause does not impact constitutional interests. Even assuming standing for a pre-enforcement challenge in state court must implicate a constitutional interest, the State's argument gives short shrift to the interests at stake here. A prime reason for the Saving Clause was to ensure the Act did not impair existing contracts. The United States and Arizona Constitutions contain protections against any law doing so. *See* U.S. Const. art. I, § 10, cl. 1 ("No state shall . . . pass any . . . Law impairing the Obligation of Contracts."); Ariz. Const. art. 2, § 25 ("No . . . law impairing the obligation of a contract, shall ever be enacted."). Those protections are important—no less important than other express constitutional rights and protections. *Merrill v. Gordon*, 15 Ariz. 521, 531 (1914) ("Freedom of contract and freedom in the use and disposition of one's own are no less sacred than freedom of speech."); *Sveen v. Melin*, 584 U.S. 811, 828 (2018) (Gorsuch, J., dissenting) (explaining that the framers believed "that treating existing contracts as 'inviolable' would benefit society by ensuring that all persons could count on the ability to enforce promises lawfully made to them . . .").

¶19 So, even if the purported vagueness of the Saving Clause has not yet caused the Judgment Creditors any distinct and palpable injury, the Judgment Creditors' challenge presents an actual controversy between interested parties as to the constitutionality of the Act, which is all that is required for standing to seek a declaratory judgment. *See Mills*, 253 Ariz. at 424-25, ¶ 30; *Fann v. State*, 251 Ariz. 425, 432, ¶ 14 (2021); *Ariz. Sch. Bd. Assoc.*, 252 Ariz. at 225, ¶ 20 (finding standing to bring a constitutional challenge under the UDJA when "[t]hree plaintiffs, including a trade association with members living and working in Pima County, were affected by the bill's alleged impediments to the county's 'ability to exercise local control to protect its residents.'"); *State v. Direct Sellers Ass'n*, 108 Ariz. 165, 167 (1972)

(finding that "a trade association, some of whose members conduct home sales solicitation" had standing to challenge the constitutionality of a home solicitation law).

B. Statutory Interpretation and Application

¶20 On the other hand, the Judgment Creditors lacked standing to ask for a declaration explaining whether and how the Act applies when a pre-Act judgment is used to initiate a post-Act garnishment proceeding. The Judgment Creditors present various scenarios which they argue lead to conflicting applications of the Act. But all these scenarios are hypothetical. There is no actual controversy between interested parties alleging existing facts to support a declaratory judgment. As explained, none of the Judgment Creditors had sought to enforce a pre-Act judgment through a post-Act garnishment proceeding (and none alleged they would soon be doing so). Thus, unlike with their facial challenge asking that the Act be struck down in its entirety, the Judgment Creditors' interests would not have been sufficiently affected by the narrower request for declaratory relief. *See Mills*, 253 Ariz. at 425, ¶ 31 ("[B]ecause the Board has not initiated formal proceedings, Mills is not affected by the Board's adjudicative processes, and an actual controversy does not exist . . . ."); *see also Land Dep't*, 154 Ariz. at 47 (explaining that a declaratory judgment "should be based on an existing state of facts, not those which may or may not arise in the future.").

¶21 Similarly, neither the State nor the Sponsoring Organization had a cognizable interest in how the Act impacts individual garnishment proceedings. The Judgment Creditors did not establish that either of the appellees was a judgment debtor or a garnishee impacted by the Act, and it is not clear how granting or denying the requested declaratory relief would have otherwise advantaged or disadvantaged the State or the Sponsoring Organization.

¶22 It is the immediate impact of a court's judgment that matters, not the downstream effects of the reasoning used to produce it. Arizona courts should exercise the judicial power only to bind interested parties with an actual controversy to a judgment. An opinion that is advisory is no less so because it will bind or guide future courts. Put differently, standing otherwise lacking does not arise merely because courts in future proceedings might feel compelled to apply the resulting advisory opinion. *See Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) ("It is a federal court's judgment, not its opinion, that remedies an injury . . . . The individual petitioners can hope for nothing more than an opinion, so they cannot

satisfy Article III."); *United States v. Texas*, 599 U.S. 670, 691 (2023) (Gorsuch, J., concurring) ("Nor do we measure redressability by asking whether a court's legal reasoning may inspire or shame others into acting differently."). Here, the Judgment Creditors request an advisory opinion about how the Saving Clause works in a particular situation neither they nor the Defendants face.

II. The Act's Constitutionality

¶23 Turning to the merits of the Judgment Creditors' constitutional challenge based on vagueness, the challenge fails. The Judgment Creditors seek orders to permanently enjoin the Act or, in the alternative to have a declaratory judgment issued specifically delineating its reach. The Judgment Creditors argue the Act's Saving Clause is so vague and unintelligible as to be rendered unconstitutional in its entirety. Their facial vagueness challenge fails for various reasons.

¶24 The Saving Clause states:

> 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.

¶25 A statute is void for vagueness "when it does not give persons of ordinary intelligence a reasonable opportunity to learn what it prohibits and does not provide explicit standards for those who will apply it." *SAL Leasing, Inc. v. State ex rel. Napolitano*, 198 Ariz. 434, 442, ¶ 34 (2000) (citation and internal quotation marks omitted). However, a statute is not vague "merely because it is susceptible to more than one interpretation." *Id.* (citation and internal quotation marks omitted). Nor is a statute "unconstitutionally vague because one of its terms is not explicitly defined." *State v. Takacs*, 169 Ariz. 392, 395 (1991). In analyzing a void for vagueness challenge, we will also look to the settled common law meaning of the words used, to possible technical meanings, and to judicial decisions. *Sal Leasing*, 198 Ariz. at 442, ¶ 35.

¶26 The Judgment Creditors assert a *facial* challenge to the Saving Clause. They were, consequently, required to show the Saving Clause is unconstitutional in all applications. *Fann*, 251 Ariz. at 433, ¶ 18 ("A facial challenge to the constitutionality of a statute requires a showing that no set of circumstances exists under which the statute would be valid."). The Act

impacts wage garnishments; homestead, motor vehicle, and personal property exemptions; execution on funds held in bank accounts; and interest charged on medical debt and judgments. Yet the Judgment Creditors challenged only the Saving Clause's application to wage garnishments. And they challenged only the Saving Clause's application to particular wage garnishments—those where the judgment being enforced was obtained pre-Act but the garnishment proceeding is initiated post-Act. Further, the Judgment Creditors challenged only the Saving Clause's application to a narrow subset of pre-Act judgments—those stemming from contracts formed prior to the Act's effective date. Because the Judgment Creditors did not establish that the Saving Clause is unconstitutional as to all or most garnishment proceedings, their facial vagueness challenge fails. *See United States v. Salerno*, 481 U.S. 739, 745 (1987) ("The fact that [a statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid . . . ."); *State v. Wein*, 244 Ariz. 22, 31, ¶ 34 (2018) (applying *Salerno*'s standard for facial challenges).

¶27 Even if a challenge to the impact of the Act on only a subset of wage garnishment proceedings was sufficient to sustain a facial challenge to the constitutionality of the Act, the superior court was correct to reject the Judgment Creditors' vagueness challenge. The United States Supreme Court long ago recognized that vagueness challenges fail when a statute "employ[s] words or phrases having . . . a well-settled common-law meaning, notwithstanding an element of degree in the definition as to which estimates might differ." *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926). Our supreme court has also used that formulation: "Such definiteness may be produced by . . . words which have an established meaning at common law through decisions." *Hernandez v. Frohmiller*, 68 Ariz. 242, 251 (1949) (quoting *Vallat v. Radium Dial Co.*, 196 N.E. 485, 487 (Ill. 1935)); *see also United States v. Nason*, 269 F.3d 10, 22 (1st Cir. 2001) (rejecting a vagueness challenge where "[b]oth the federal and state statutes framing this dispute draw upon legal constructs . . . with rich, well-developed common law lineages.").

¶28 Courts are well-versed in applying statutes prospectively only. The presumption against retroactivity "is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994); *see also Dash v. Van Kleeck*, 7 Johns. 477, 503 (N.Y. 1811) ("It is a principle of the English common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect.") (Kent, C.J.). "Any test of retroactivity will leave room for disagreement in hard cases,"

but "retroactivity is a matter on which judges tend to have sound instincts, . . . and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance." *Landgraf*, 511 U.S. at 270 (citation and internal quotation marks omitted).

¶29 Applying statutes "prospectively only" has deep roots in Arizona too. The first state legislature in 1913 passed a civil code providing that "[n]o statute or law is retroactive unless expressly so declared therein." Ariz. Civ. Code 1913, § 5550. That statute, although renumbered, has remained virtually the same. It now reads: "No statute is retroactive unless expressly declared therein." A.R.S. § 1-244. Given the statute's long existence, it's no surprise that Arizona courts have developed a rich body of case law implementing its limitation on lawmaking. That case law directs that unless a statute expressly says otherwise, it will not be applied retroactively. *State v. Superior Court (Mauro)*, 139 Ariz. 422, 427 (1984). But "a statute is not retroactive in application simply because it may relate to antecedent facts." *Aranda v. Indus. Comm'n*, 198 Ariz. 467, 472, ¶ 24 (2000) (citation and internal quotation marks omitted). When a statute is procedural in nature, it may be applied even where antecedent conduct is involved. *Id.* at 470, ¶ 11. Where, on the other hand, a statute regulates primary conduct and where a vested right is involved, it may not be applied retroactively. *Id.* "[A] right vests only when it is actually assertable as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust." *Hall v. A.N.R. Freight Sys., Inc.*, 149 Ariz. 130, 140 (1986).

¶30 The Saving Clause closely tracks that framework, which would apply if the Saving Clause were deemed unconstitutional but severable. The Saving Clause's opening sentence states that the Act "applies prospectively only," thereby eliminating any chance the Act will be interpreted to expressly allow retroactivity. If the Saving Clause stopped there, the ordinary judicial framework for the prospective application of laws would apply, and the Judgment Creditors' vagueness challenge would undoubtedly lack merit.

¶31 But the Saving Clause goes further and provides three examples of when the Act does not apply. The question, therefore, is whether any of those three examples is so far afield from the ordinary retroactivity framework to render the Saving Clause untenably vague. The primary example here challenged is that having to do with "rights and duties that matured before the effective date of the act." The Judgment Creditors have not established that this example is materially different from the ordinary framework. *See Aranda*, 198 Ariz. at 470, ¶ 11. Instead, the

phrase "rights and duties" preserves substantive, and not procedural, rights and duties. *See Nat'l R.R. Passenger Corp. v. Se. Pa. Transp. Auth.*, 393 F. Supp. 3d 1, 4 (D.D.C. 2019) (agreeing that Congress intended to preserve substantive rights when it used the phrase "rights and duties that matured"). The Saving Clause uses the word "matured" rather than "vested" because the rights the Act is most likely to impact are understood to mature, not vest. The Act primarily regulates the right to obtain, and duty to make, repayment of debt. And rights and duties related to debt are commonly understood to mature, not vest. *See Fisher v. First Citizens Bank*, 14 P.3d 1228, 1232, ¶ 18 (Mont. 2000) ("[J]ust as the Bank's 'rights' to collect the funds from Fisher owed under the note and to contact Fisher regarding his delinquent obligation had matured prior to the effective date of the statutory amendment, Fisher's 'duty' to pay had also matured prior to the effective date of the statute in question.").

¶32 There will undoubtedly be difficult questions about prospective application of the Act, including those involving wage garnishment proceedings. In answering those questions, courts will apply the framework set forth in the Saving Clause—a framework not materially different from what courts apply to any new statute. Courts will occasionally be asked to decide when a particular right or duty matured under the Act—indeed, this court has already been asked to do so. *See HJ Ventures, LLC v. Candelario*, 1 CA-CV 23-0331, 2024 WL 449970, at *2, ¶¶ 13-14 (Ariz. App. Feb. 6, 2024) (mem. decision) (applying the Act to a post-Act garnishment proceeding because that "proceeding was a separate action even though it was based on a 2016 judgment."). Courts may struggle with or disagree about how that framework plays out in specific scenarios, including where more than one of the Saving Clause's three examples are simultaneously implicated. *See Landgraf*, 511 U.S. at 270. But the prudent course is to allow courts to work through the meaning and application of the Saving Clause in the context of as-applied disputes involving concrete factual scenarios. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (rejecting a facial challenge because "courts have had no occasion to construe the law in the context of actual disputes arising from the electoral context, or to accord the law a limiting construction to avoid constitutional questions.").

¶33 The Saving Clause provides a framework and examples consistent with how Arizona courts have long ensured prospective application of the law. Thus, the Saving Clause is not unconstitutionally vague on its face.

¶34 For the reasons already stated, the Saving Clause also is not unintelligible. The Judgment Creditors analogize the Act to the statute held unintelligible in *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239 (2020). In *City of Phoenix*, our supreme court found unintelligible a bond provision requiring the local government to "post a bond equal to the amount of state shared revenue paid to the local government." 249 Ariz. at 247-48, ¶¶ 32, 37. That provision was found to be unintelligible because "[n]either the statutory language nor legislative history reveal[ed] the bond's purpose or the conditions on which it [was] based," nor could the Court divine how to implement it. *Id.* at 248, ¶ 36. "[S]tatutory language must be sufficiently definite so that those who are to execute the law may do so in a rational and reasoned manner." *Cohen v. State of Arizona*, 121 Ariz. 6, 9 (1978). Unlike the bond provision in *City of Phoenix*, the purpose of the Saving Clause is clearly stated and provides direction for when the Act should be applied. The Act is to be applied prospectively only.

III. Attorneys' Fees

¶35 The Judgment Creditors request an award of costs and attorneys' fees pursuant to ARCAP 21, A.R.S. §§ 12-341, -348, -1840, -2030, and the private attorney general doctrine. The Judgment Creditors are not the prevailing parties in this action. As such, we deny their request. *See Assyia v. State Farm Mut. Auto. Ins. Co.*, 229 Ariz. 219, 223, ¶ 32 (App. 2012) ("[a] cost award is mandatory in favor of the successful party.") (citation and internal quotation marks omitted); A.R.S § 12-2030(A).

CONCLUSION

¶36 We affirm.

AMY M. WOOD • Clerk of the Court
FILED: AA