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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

PROTECT OUR ARIZONA, a political
committee,

Plaintiff,

v.

KATIE HOBBS, in her capacity as the
Secretary of State of Arizona,

Defendant,

and

ARIZONANS FED UP WITH FAILING
HEALTHCARE (HEALTHCARE RISING
AZ), a political committee,

Real Party in Interest.

No. CV2022-009335

**BRIEF AMICUS CURIAE OF
GOLDWATER INSTITUTE IN SUPPORT
OF INJUNCTION**

(Assigned to Hon. Frank Moskowitz)

INTRODUCTION¹

The Arizona Protection from Predatory Debt Collection Act would institute sweeping changes to debt collection in Arizona that extend far beyond the measure’s purported purpose of limiting the interest rate on medical debt. The Act is breathtakingly wide in scope: severely restricting garnishments, raising the amount of home equity protected from unpaid businesses and creditors, and drastically increasing a host of other personal property exemptions, so as to leave businesses, landlords, and judgment creditors without legal recourse for unpaid debts. If the Act were to become law, the enormous losses it would inflict on lenders and judgment creditors would have a devastating effect on the ability of Arizonans to obtain loans or to afford housing.

Especially in this economy, it is imperative that Arizonans be made fully (and accurately) aware of what measures such as the Act will actually do, so that they can properly weigh their decisions. But the summary included on the caption is patently false and misleading. Plaintiff’s request for relief should therefore be granted, and the initiative disqualified from the ballot.

I. The initiative’s false and misleading description is especially problematic given current economic conditions.

Arizona courts must “disqualify an initiative from the ballot whenever the 100-word description either communicates objectively false or misleading information or obscures the principal provisions’ basic thrust” based on “the meaning a reasonable person would ascribe to the description.” *Molera v. Hobbs*, 250 Ariz. 13, 20 ¶ 13 (2020) (quotations and citation omitted).

The description here says that the initiative “Caps interest rate on ‘medical debt,’” and “applies this cap to judgments on medical debt as well as to medical debt incurred.” It then describes how the measure protects certain assets and exempts certain property from “certain legal processes to collect debt,” leaving the reader to presume that those

¹ The identity and interest of amicus is set forth in the accompanying motion for leave to file.

1 provisions pertain *solely* to medical debt, or at least creating uncertainty and confusion
2 over the scope of their application. This is misleading.

3 The description’s final sentence, which claims that the initiative “[d]oes not change
4 existing law regarding secured debt,” is more than misleading—it is patently false. The
5 “reasonable person” understands that “secured debt” is debt wherein property is subject to
6 being taken by a creditor to repay in the event of default. The reasonable person would
7 thus be led by the description to believe that the proposed measure does not affect those
8 arrangements. But the description ignores the fact that the term “secured debt” includes
9 *both* voluntarily *and involuntarily* secured debt: it is “[a] creditor’s claim that is secured
10 by a lien of some type in a debtor’s property either by the debtor’s own agreement *or*
11 *involuntarily with a court judgment or taxes.*”² While this initiative may have little effect
12 on *voluntarily* secured debt (such as mortgages), it does make profound changes to laws
13 governing *involuntarily* secured debt (such as judgment liens). And these changes would
14 prevent some secured creditors from collecting from some debtors assets they otherwise
15 would have been entitled to collect against.

16 This is more than a mere technicality. To tell Arizonans that the Act would not
17 affect secured debt, when in fact it would, is a significant misconstruction of “principal
18 provisions” of the initiative, *Molera*, 250 Ariz. at 19 ¶ 10, because it misinforms the
19 public about the types of debt that would be affected—and thus downplays the initiative’s
20 sweeping reach and extraordinarily dangerous consequences at a time when economic
21 issues are of top concern to voters.

22 Recent polling shows that the economy is “extremely important” to 7 in 10 voters,
23 with similar numbers expressing the same about inflation. Ariel Edwards-Levy, *CNN*
24 *Poll: Most voters say neither Republican nor Democratic congressional candidates have*
25 *the right priorities*, CNN.com (July 19, 2022).³

26 _____
27 ² Legal Information Institute Legal Encyclopedia, available at
https://www.law.cornell.edu/wex/secured_debt.

28 ³ <https://www.cnn.com/2022/07/19/politics/cnn-poll-midterms/index.html>.

1 Making it harder for lenders to collect when borrowers fail to pay back their debts
2 will increase the cost and availability of credit. (Who will lend, if the state will simply
3 deprive lenders of their right to repayment?) And that will make it especially difficult for
4 low-income earners to get loans. It will also exacerbate the state’s housing affordability
5 problem. *Greater Phoenix Chamber Opposes Predatory Debt Collection Protection Act*,
6 *Phoenixchamber.com* (July 6, 2022).⁴ At a time when the cost of loans is rapidly
7 increasing, *see* Jonathan Ponciano, *New Mortgages, Student Loans, Credit Cards: Here’s*
8 *Everything That Will Cost More As Fed Raises Interest Rates*, *Forbes* (July 27, 2022),⁵ it
9 is critical to ensure that the initiative’s sponsors are not permitted to “engage in a ‘bait and
10 switch’ in which the summary attracts signers but misrepresents or omits key provisions.”
11 *Molera*, 250 Ariz. at 20 ¶ 13.

12 **II. The Arizona Constitution necessitates the careful scrutiny of initiatives with**
13 **far-reaching economic consequences.**

14 Arizona’s Voter Protection Act (VPA) deprives the legislature of “the power to
15 repeal an initiative measure” or even “amend an initiative measure ... unless the
16 amending legislation furthers the purposes of such measure.” Ariz. Const. art. IV pt. 1 §
17 1(6). And while amendments that do “further the purpose” of the initiative are permitted,
18 they must be approved by 3/4 of the members of the legislature—an extremely high
19 number that is virtually impossible to attain, even if trying to remove unintended
20 consequences or remedy technical errors.

21 Thus, because “legislation enacted by the voters is even more consequential” with
22 the existence of the VPA, the Arizona Supreme Court has cautioned the judiciary to
23 strictly enforce the “regulation[s] of the initiative process.” *Molera v. Reagan*, 245 Ariz.

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26 ⁴ <https://phoenixchamber.com/2022/07/06/greater-phoenix-chamber-opposes-predatory-debt-collection-protection-act/>.

27 ⁵ <https://www.forbes.com/sites/jonathanponciano/2022/07/27/new-mortgages-student-loans-credit-cards-heres-everything-that-will-cost-more-as-fed-raises-interest-rates/?sh=5f26b4cd347e>.

1 291, 294 ¶¶ 9-10 (2018). An initiative that bears such extreme economic consequences as
2 this one is *precisely* the type of initiative that the *Reagan* court warned about.

3 Moreover, close scrutiny of this initiative’s description is especially warranted
4 because the initiative is ambiguous as to whether it would diminish the state’s ability to
5 recover debts *owed to the state*, and thus could have a substantial effect on state revenue.
6 That ambiguity alone is misleading and confusing, and if the answer is yes, the Act is
7 contrary to the constitutionally expressed public policy of Arizona. For example, in order
8 to prevent “a reduction in general fund revenues,” Arizona Constitution art. IX § 23(A),
9 caused by “unfunded mandate[s],” *Arizona Chamber of Commerce & Industry v. Kiley*,
10 242 Ariz. 533, 538 ¶ 13 (2017), our Constitution requires initiatives and referenda that
11 mandate expenditures or appropriations to “provide for an increased source of revenues
12 sufficient to cover the entire immediate and future costs of the proposal.” Ariz. Const. art.
13 IX § 23(A). The Constitution also specifically exempts the people’s ability to refer to the
14 ballot laws “for the support and maintenance of the departments of the state government
15 and state institutions,” *id.* art. IV pt. 1 § 1(3), because “[t]he functioning of government
16 can be as effectively damaged by the inability to acquire funds as by the inability to spend
17 them.” *Wade v. Greenlee Cnty.*, 173 Ariz. 462, 464 (App. 1992). The Constitution also
18 forbids the state from contracting away its power to tax, Arizona Constitution art. 9 § 1;
19 requires a balanced budget, *id.* §5; prohibits the transfer of property for purpose of
20 evading taxes, *id.* § 2(12); and outlaws gifts, subsidies or other forms of transfer of public
21 resources to private ends. *Id.* § 7. Together, these provisions reflect the state’s public
22 policy against legislation that would deprive the state of legal revenue or increase the
23 state’s debts.

24 This initiative could contradict that policy by depriving the state of the ability to
25 recover against debtors who fail to pay what they owe. Arizonans should be fully
26 informed of this fact—and the description here fails to accomplish that.

27 This Court should not allow a measure whose description misrepresents its
28 application and scope to qualify for the ballot.

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CONCLUSION

The Plaintiffs’ request for relief should be granted.

DATED this 8th day of August, 2022.

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1 **CERTIFICATE OF SERVICE**

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