COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ARIZONA CREDITORS BAR ASSOCIATION INC., an Arizona corporation, et al., Plaintiffs/Appellants/Cross-Appellees, v. STATE OF ARIZONA, Defendant/Appellee/Cross-Appellant, ARIZONANS FED UP WITH FAILING HEALTHCARE (HEALTHCARE RISING AZ), Intervenor-Defendant/Appellee/ Cross-Appellant.	No. CA-CV-22-0765 Maricopa County Superior Court No. CV 2022-015921

BRIEF AMICI CURIAE OF GOLDWATER INSTITUTE, GREATER FLAGSTAFF CHAMBER OF COMMERCE, BRUCE ASH, AND MARK AND VIRGINIA BLOSSER IN SUPPORT OF PLAINTIFFS/APPELLANTS WITH CONSENT OF ALL PARTIES

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

The Goldwater Institute was established in 1988 as a nonpartisan public policy foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections. Headquartered in Phoenix, GI is well known to Arizona courts as an advocate for these principles. *See, e.g.,* *Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 524 P.3d 1141, 1149 ¶ 28 (2023). Through its Scharf-Norton Center for Constitutional Litigation, GI litigates cases and files amicus briefs when its or its clients' objectives are directly implicated, and it has appeared in this and other courts representing parties, *see, e.g.,* *Gilmore v. Gallego*, 529 P.3d 562 (Ariz. App. 2023); *Neptune Swimming Found. v. City of Scottsdale*, No. 1 CA-CV 21-0053, 2023 WL 2418546 (Ariz. App. Mar. 9, 2023), and as an amicus. *See, e.g.,* *State v. McNeill*, No. 1 CA-CR 18-0911, 2019 WL 4793121 (Ariz. App. Oct. 1, 2019), as amended (Oct. 3, 2019). Among GI's priorities are the defense of economic liberty and the enforcement of state constitutional provisions, including the Contracts and Gift Clauses, that protect that liberty.

[1] Amici's counsel authored this brief in its entirety. Neither a party, a party's counsel, nor any other person—except the Amici, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.

The Greater Flagstaff Chamber of Commerce (GFC) was founded in 1891 as the Board of Trade, and formally incorporated as an official chamber of commerce in 1949. It is an independent, nonprofit organization supported by its members to promote the Flagstaff community and economy and advocate on behalf of local businesses. The vast majority of GFC's 1,100 members are small businesses employing fewer than 10 people. GFC opposes Prop. 209 because it will lead to lenders tightening credit lines in an inflationary economy, further limiting access to credit, destroying businesses, and exacerbating the housing affordability crisis. *See* *Greater Phoenix Chamber Opposes Predatory Debt Collection Protection Act*, Phoenixchamber.com (July 6, 2022).

Bruce Ash is President and CEO of Paul Ash Management Company, LLC, (Ash), an Arizona-based, locally owned family business which does capital development, acquisitions and property management. Ash operates or owns approximately two million square feet of commercial, industrial, and retail properties in Arizona and in four other states. As described more fully below, Prop. 209 reduces or eliminates Ash's ability to collect judgement amounts from debtors, which means Ash will be forced to be more aggressive in rent collections, and will be less likely to be willing to work out payment plans, and will be forced to evict sooner than Ash has in the past. The Act will also force Ash to alter its

employment criteria with respect to people with collections in their credit history—to the detriment of prospective employees.

Mark and Virginia Blosser are a semi-retired couple living in Elgin, Arizona, who own and rent out 14 residential properties in Cochise County. They have self-managed these properties for about three years. As described in more detail below, they are currently suffering the impact of Prop. 209, which reveals the importance of resolving this case as rapidly as possible. The Blossers have experienced serious property damage at the hands of irresponsible tenants—and have been denied redress as a consequence of Prop. 209, which has effectively removed a landlord's civil protections and rendered debts uncollectable.

INTRODUCTION AND SUMMARY OF ARGUMENT

Proposition 209 (Prop 209 or Act) institutes sweeping changes to debt collection in Arizona that will have devastating effects on the state's businesses, borrowers, and economy. 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 personal property exemptions, so as to leave Arizona's businesses, landlords, and judgment creditors without legal recourse for unpaid debts. Making it harder for lenders to collect when borrowers fail to pay back their debts will decrease the availability of credit and increase its cost, making it especially difficult for low-income earners to get

loans, exacerbating the state's housing affordability problem. *Greater Phoenix Chamber Opposes Predatory Debt Collection Protection Act*, *supra*.

Perhaps more troubling are the Act's vague, undefined, and incomprehensible terms, which raise significant constitutional concerns under not only the Due Process Clause, as Plaintiffs/Appellants contend, but also under the Contracts and Gift Clauses, Ariz. Const. art. IX §§ 7, 25. These Clauses both bar the state from arbitrarily changing the terms of existing contractual obligations. But the Gift Clause in particular forbids the state from giving things of value to, or eliminating the liabilities of, any private party, without obtaining some proportional benefit in return.

That is important, among other reasons, because one significant difference between the Contracts and Gift Clauses is that while the Contracts Clause only bars the state from impairing the obligation of *existing* contracts, the Gift Clause is forward-looking: it forbids the state from "ever" giving gratuitous economic benefits to private recipients, *including into the indefinite future*. Thus, even if (depending on what its unintelligibly vague terms might mean) Prop. 209 does not violate the Due Process Clause, it may still violate the Gift Clause if it eliminates private liabilities *prospectively*.

ARGUMENT

I. Constitutional considerations here involve the Gift and Contracts Clauses.

A. The Constitution forbids the state from eliminating the obligation to pay a debt.

As Plaintiffs/Appellants note, Prop. 209's "Savings Clause" was evidently a clumsy effort to avoid violating the Contracts Clause, which prohibits the state from abrogating a party's existing right to collect for breach of contract. Of course, since *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827), it has been hornbook law that states can pass laws altering the rights of contracting parties to recover for breaches of contracts made after the enactment of such laws. So, absent a provision that grandfathers in existing obligations, Prop. 209 would be facially unconstitutional under the Contracts Clause. Central to this case is whether the Savings Clause manages to avoid that consequence, or whether, due to its unintelligibly vague terms and especially its failure to define the word "mature," it fails to accomplish that.

But another constitutional provision is also relevant here: the Gift Clause, Ariz. Const. art. IX § 7, which forbids the state from "ever giv[ing] or loan[ing] its credit in the aid of, or mak[ing] any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." This forbids not just gratuitous payments to private parties, but also actions that accord "other valuable

advantages" to private recipients, *Indus. Dev. Auth. of Pinal Cnty. v. Nelson*, 109 Ariz. 368, 372 (1973), without obtaining an equivalent value in exchange. That means the Gift Clause forbids laws that effectively eliminate liabilities or debts.

In *Rowlands v. State Loan Board*, 24 Ariz. 116 (1922), for example, the state adopted a law that forgave interest due on mortgages held by the state, as a means of assisting people who suffered damages resulting from a breach of the Lyman Reservoir dam. *Id.* at 119–20. The court found this to be a violation of the Gift Clause, for the simple reason that eliminating a liability is the equivalent of giving an asset, and since the challenged legislation "forgives the interest for no other reason than the inability of the mortgagor to pay it," it was "a donation, a pure and simple gratuity, unsupported by any consideration." *Id.* at 123. That made it an unconstitutional gift.

Similarly, in *Puterbaugh v. Gila Cnty.*, 45 Ariz. 557 (1935), a public official spent money from his per diem account on ineligible items, and was therefore obligated to repay the state for those expenditures. *Id.* at 559. But then the legislature passed a law barring the state from instituting or maintaining any action to recover those moneys. *Id.* at 560. The court found *that* to be unconstitutional, too, because it was an attempt "to release the parties from the debt," which "is clearly a donation of the amount of his indebtedness to such individual," and therefore a gift. *Id.* at 564.

Similar reasoning underlay both *Maricopa Cnty. v. State*, 187 Ariz. 275, 279–81 (App. 1996), and *Pimalco, Inc. v. Maricopa Cnty.*, 188 Ariz. 550, 559–60 (App. 1997), in which courts held that legislation eliminating tax debts was subject to analysis under the Gift Clause. In *Maricopa County*, the legislature adopted a law that allowed taxpayers whose property had been denied an "agricultural property" tax classification to retroactively obtain such a classification, thereby reducing the amount of their tax liability. 187 Ariz. at 278. The court found that laws "annul[ing] closed taxing transactions in order to confer tax benefits retroactively" must satisfy the Gift Clause's requirements. *Id.* at 280. (The court found, however, that because the state obtained sufficient consideration in return, this law was not unconstitutional.)

Pimalco involved a statute that exempted from taxation any possessory interest in land held in trust for an Indian tribe. 188 Ariz. at 552. The court again found that the elimination of an existing tax obligation triggered the Gift Clause, although that court also found that the law in question satisfied the applicable scrutiny. Arizona courts are not alone in finding that laws that eliminate existing liabilities without obtaining an equivalent value for the state in return violate the Gift Clause. Courts in California, New Hampshire, Oklahoma, and elsewhere, have reached the same conclusion, under their gift clauses (which are substantially less strict than Arizona's). *See, e.g., City of Ojai v. Chaffee*, 140 P.2d 116 (Cal.

App. 1943); *Eyers Woolen Co. v. Town of Gilsum*, 146 A. 511, 515–16 (N.H. 1929); *Ward v. Oklahoma Tax Comm'n*, 322 P.2d 172, 176 (Okla. 1957); *see also* *City of Bayonne v. Palmer*, 217 A.2d 141, 160–61 (N.J. Ch. Div. 1966) (citing cases).

Not only do laws eliminating *present* indebtedness violate the Gift Clause, but the Clause also prohibits the state from prospectively eliminating future liabilities.

Arizona's Gift Clause was copied word for word from Montana's 1889 Constitution, which makes that state's legal precedents helpful in understanding the Arizona Clause.[2] In 1916 (only four years after Arizona's statehood), Montana's Supreme Court found that the Clause was violated by a ballot initiative that subsidized struggling farmers by making county governments guarantors of special mortgage loans extended to these farmers. *State v. Stewart*, 161 P. 309 (Mont. 1916). The result of that law was that "[i]f the borrower fail[ed] to pay principal or interest [in the future], the county [was] ultimately liable for the loss or deficiency." *Id.* at 314. That was unconstitutional because "to liquidate the debt of a private individual" constituted a gift to private parties. *Id.* at 315.

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[2] In 1973, Montana adopted a new constitution, which omitted the Clause.

B. The Gift Clause, unlike the Contracts Clause, is not limited to retrospectivity.

As *Stewart* indicates, the Gift Clause, unlike the Contracts Clause, is not confined to situations involving the alteration of *existing* debts. The *Contracts* Clause is focused on laws that impair "existing contracts," *Hawk v. PC Village Ass'n,* 233 Ariz. 94, 98 ¶ 14 (App. 2013), and it consequently allows the state to prospectively alter the remedies for parties who form contracts in the future. *See* *Foltz v. Noon*, 16 Ariz. 410, 416 (1915) (referring to "the familiar distinction between a law which enlarges, abridges, or modifies the obligation of a contract, and a law which merely modifies the remedy, by changing the time or the method in which the remedy shall be pursued, without substantial interference with the obligation of the contract itself." (citation omitted)). But the *Gift* Clause, to the contrary, bars the state from prospective actions: that is, it forbids the state from "ever" making any "grant" or "donation," "by subsidy or otherwise,"[3] to a private party. Ariz. Const. art. IX § 7. Thus even where the Contracts Clause is not violated, the Gift Clause may be.

The reason is common sense: if the state were to pass a law paying off every car loan in Arizona with taxpayer funds, that would not violate the *Contracts*

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[3] This emphatic, catch-all phrase, "by subsidy or otherwise," appears in no other state Constitution, and was designed expressly to forbid *any* form of public aid to private parties. *See generally* Timothy Sandefur, *The Origins of the Arizona Gift Clause*, 36 Regent U. L. Rev. __ (forthcoming, 2024).

Clause (because car dealers would still get their money) but it would violate the *Gift* Clause, because it would spend money for the recipients' private benefit and acquire no consideration in return. Likewise, if the state were to pass a law promising to reimburse people for their *future* payments to some private party—or simply exempting them from making future payments—that would violate the Gift Clause, because it would be a "valuable advantage[]" gratuitously given by the state to the private party, *Nelson*, 109 Ariz. 372—even though it would not violate the Contracts Clause (because it would not impair any existing contract). The Gift Clause, therefore, is violated not only when the state exempts people from paying an existing debt, as *Rowlands*, *Puterbaugh*, and other cases have held, but also when it promises to eliminate their obligation to pay debts not yet incurred.

In *Texas & New Orleans Railroad Co. v. Galveston County*, 161 S.W.2d 530, 532 (Tex. Civ. App. 1942), a county promised to indemnify a railroad against any liability for negligence for the next 999 years. The court found that this was an unconstitutional subsidy in violation of the state's Gift Clause. "[T]he effect of the agreement," said the court, was "to create a 'debt' against the County, thereby making all taxable property within it potentially, at least, liable for its repayment," which "ran afoul" of that state's Gift Clause. *Id.* Similarly, in *Town of Adel v. Woodall*, 50 S.E. 481 (Ga. 1905), the Georgia Supreme Court found it to be an unconstitutional gift when the legislature promised to reimburse citizens for their

donations to a private company. *See id.* at 482–83. And in *State v. City of Austin*, 331 S.W.2d 737, 746 (Tex. 1960), the Texas Supreme Court adopted a narrowing construction of a statute that promised to reimburse utilities for relocation costs caused by highway construction; it did so because a broad interpretation would mean the statute would be pledging to "buy[] for the utility that which it would [otherwise] be required to take under the power of eminent domain," and that "would be an unconstitutional gift." *Id.*[4]

The bottom line is that a government promise to pay a private party's future indebtedness, or to forgive or refuse to enforce such debts, would violate the Gift Clause even though it would not violate the Contracts Clause, due to its not being retrospective.

II. The lack of a definition of "mature" renders Prop. 209 unconstitutionally vague.

A. Prop. 209 violates the Gift Clause if it impairs "vested" but "immature" rights.

These considerations make it all the more crucial for Prop. 209 to specify what it does and doesn't apply to. Yet the Savings Clause just says that it "applies

[4] *Maricopa County* and *Pimalco* held that only exemptions of *existing* tax liabilities, but not exemption from future tax liabilities, violate the Gift Clause. But that conclusion was based on a policy concern that the state must be free to reduce future taxes if it so chooses—a concern that does not apply to a situation like this case, in which the future liabilities at issue are between private parties.

prospectively only," and does not apply to "contracts"[5] that are "entered into" before the effective date, or to "rights and duties that matured before the effective date." This latter phrase implies that Prop. 209 does apply to rights or duties that mature after the effective date, and yet it lacks a definition of "mature."

Arizona courts appear not to have defined "mature," but presumably it isn't synonymous with "vesting" or "accrual," both of which they have defined. *Vesting* means the moment "when [a claim] 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). *Accrual* means something very different: the moment the plaintiff knows or should know the facts giving rise to the cause of action. *Thompson v. Pima Cnty.*, 226 Ariz. 42, 46 ¶ 12 (App. 2010).

In various other contexts, "mature" often means situations in which a right is initially incomplete or inchoate until some event renders it "mature." A promissory note, for example, "matures upon the date the entire principal balance becomes due and owing, not upon the date the first installment payment becomes due." *In re Laurel Hill Paper Co.*, 393 B.R. 372, 391 (Bankr. M.D.N.C. 2008). An employee's pension plan "'matures' when the employee is entitled to receive the

[5] This term appears to exclude (at least) tort, *quantum meruit* or quasi-contract liability.

benefits which he has earned through the years and is eligible to retire." *Copeland v. Copeland*, 575 P.2d 99, 102 (N.M. 1978). And in the case of a contract for ongoing services, "where it is continuous, indivisible, and provides for some payments to be made at stated intervals or in installments," the "total debt" of the contracting party "matures when the contract has been completed according to its terms or when services are terminated." *City & Cnty. of Dallas Levee Improvement Dist. v. Halsey, Stuart & Co.*, 202 S.W.2d 957, 961 (Tex. Civ. App. 1947). But as Plaintiff/Appellants show (Opening Brief at 11–13), a creditor's right to recover might vest without becoming mature in this sense—assuming this sense is applicable—because some step is still required before a creditor can actually collect.

The distinctions between these words are important, because while the Contracts Clause does not bar the state from altering the rights of creditors going forward, it does bar the state from altering them in a way that entirely eliminates or even substantially impairs contract rights. That means that even laws that merely limit a creditor's recovery rights still violate the Contracts Clause if they amount to impairment. *See Kresos v. White*, 47 Ariz. 175, 177–79 (1936) (law limiting creditor's ability to collect deficiency judgments violated the Contracts Clause); *Bontag v. McCurdy*, 48 Ariz. 168, 171 (1936) (same). Although the government may impair rights that are not vested—meaning something that is "'a mere

expectation based upon an anticipated continuance of the existing law,'" *Brown Wholesale Electric Co. v. H.S. Lastar Co.*, 152 Ariz. 90, 95 (App. 1986) (quoting *People ex rel. Eitel v. Lindheimer*, 21 N.E.2d 318, 321 (Ill. 1939))—it may not change a right of recovery in such a way that "defeat[s]" a "vested" right of recovery. *Id.* at 94. But can it alter the law in ways that defeat rights that are vested, but not "matured"? Without a definition, nobody knows.

If Prop. 209's authors meant "vest," they would have said so. *Cf. Hall*, 149 Ariz. at 137 ("If the legislature had intended for the Act to apply only to actions accruing rather than filed after its effective date, it would have so provided."). Instead, they used the undefined word "mature." It seems likely that the term was meant to distinguish between debts due as a consequence of some incident that occurs before the Effective Date, and the kind of judgment and garnishment proceedings Plaintiff/Appellants describe (Opening Brief at 6–9) and which might occur long afterwards. If so, Prop. 209 likely violates the Contracts Clause by substantially impairing creditors' vested (but "immature") rights to recovery.

B. If Prop 209 gratuitously eliminates a debtor's responsibility to repay, it violates the Gift Clause.

But even if not, the Savings Clause cannot shield Prop. 209 from the Gift Clause. A law violates the Gift Clause if it gives a private recipient a gratuitous benefit, regardless of whether it deprives any contracting party of contractual rights. Likewise, even if the term "mature" is synonymous with "vest," a law that

drastically reduces the ability of lenders to recover what they are owed by people who do not pay their debts can qualify as an unconstitutional gift. Thus the Intervenor-Defendants' reassurance that "the Savings Clause makes clear that Proposition 209 is intended to apply prospectively only," Intervenor's Answering Brief and Opening Brief on Cross-Appeal at 34, therefore does nothing to resolve the Act's constitutional flaws. A law that said "persons falling within the specified class will not have to repay debts incurred one year from today" would be prospective, and therefore would not violate the Contracts Clause, but it would obviously be a subsidy and would therefore obviously violate the Gift Clause. *Galveston Cnty.*, 161 S.W.2d at 532; *Woodall*, 50 S.E. at 482–83.

III. The Act is currently inflicting harms on property and business owners throughout the state.

More than two thousand years ago, the Roman statesman Cicero put the point simply. Laws that eliminated debts or otherwise allowed tenants to use or damage property without payment, he wrote, were a specious form of compassion that actually violated private property rights and set the interests of citizens against each other: "[W]hat else is that but to rob one man of what belongs to him and to give to another what does not belong to him? And what is the meaning of an abolition of debts, except that you buy a farm with my money; that you have the farm, and I have not my money?" Cicero, *De Officiis*, bk. 2, § 23, 261 (Walter Miller trans., 1921). Although proposals to eliminate debts are ancient, the

consequences have always been the same: to dry up credit, to punish creditors for lending, and thus to shift the costs of default from the defaulters onto innocent borrowers or would-be borrowers. The speciousness of such compassion is what led James Madison to refer to laws that abolish debts as "improper [and] wicked." *The Federalist* No. 10 at 65 (J. Cooke ed., 1961).

These are not abstract questions or historical curiosities. The Blosser family exemplifies the way Prop. 209 is harming innocent property owners now—and increasing the cost of living for the less well-off.

As landlords, the Blossers' biggest challenge is tenants who damage or destroy the homes belonging to the Blossers. In the past two years, the Blossers have experienced three such destructive tenants, who inflicted a total of over $30,000 in damage to their Cochise County properties. This is a significant percentage of their income. Naturally, they have sued these tenants, and have obtained judgments. Such proceedings, however, cost a great deal of money for legal representation, causes stress and aggravation, and take time. In their experience it is virtually impossible to persuade law enforcement to pursue criminal charges against tenants for vandalizing homes. Thus a property owner's sole recourse is a civil court action for damages. Yet the generous exemptions included in Prop. 209 effectively remove this option, thereby severely curtailing landlords' right to a remedy by rendering debts uncollectible.

The Blossers have been forced to take steps to protect their property rights and financial interests in the wake of the Act. First, they have been forced to raise rents and security deposits. Just as Walmart's or CVS's prices are higher than they would otherwise be because people steal things, rents must be increased to make up for the costly vandalism of a few tenants. They have also been forced to collect 1.5 months' security deposit, instead of one month's worth, as before. These changes make it harder for new tenants to afford to move in, and are not fair to good tenants—but the Blossers have no alternative, and there is no reason to believe their response to the increased financial liability Prop. 209 imposes is unusual.

These steps, however, are not enough to prevent the financial losses caused by vandal tenants.[6] Thus the Blossers have been forced to seek tenants through

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[6] For example, the Act's limits on a creditor's right to recover are based on the income of individual *debtors*, not the income of that debtor's *household*. *See* A.R.S. § 33-1131(B). As a consequence, the formulae in Section 33-1131(B) mean that a couple in which both parties earn as much as $1,000 per week—equivalent to about $100,000 annual household income—are *collection proof*. The reason is that for an *individual* earning less than $52,000, the formulae in Section 33-1131(B) (i.e., 60 times the minimum wage, etc.,) yield a negative figure. Doubling that for a two-income household means that a couple who earns about $100,000 per year are shielded from collections. The median household income in Maricopa County is about $73,000, and in Pima, about $47,000.

Even where a vandal renter could be pursued, the Act—by reducing the amount that is collectable to 10 percent from 25 percent—means a landlord who seeks to recover the value of her vandalized property must now pursue for more than twice as long as she would previously have had to. Given the burden of doing

organizations that place tenants, guarantee rents, and provide damage waivers to repay landlords in the event of vandalism. This reduces risk, but it also removes properties from what is already a very thin local rental market, which makes it harder for locals to find a place to live. Some companies, such as Zillow, offer forms of insurance, including the aforementioned waivers, but such insurance is expensive, is limited in ways that make it hard to obtain, and even when they can be obtained, they do not make the landlord whole.

The Blossers are now seriously considering selling their rental properties and abandoning the landlord business. By eliminating their ability to seek compensation for catastrophic damages inflicted by vandal tenants, Prop. 209 is proving to be the catalyst for them to cease providing rental properties to those who need them. And there is no reason to believe their situation is unique.

Bruce Ash's company is likewise harmed by Prop. 209 in ways that also injure Arizonans generally. Ash Management Company operates or owns approximately two million square feet of commercial, industrial, and retail properties in Arizona and four other states. Many of Ash's retail and industrial users are small "mom and pop" operations. Prop. 209 eliminates Ash's ability to collect judgement amounts from any of these users if their family income is less

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so, such collections swiftly become commercially unreasonable—thereby creating an incentive for property owners to get out of the business.

than $51,000. As a result, Ash has been forced to be far more aggressive in rent collections and less willing to work out payment plans, which it formerly prided itself on doing. In short, Prop. 209 forces landowners like Ash to proceed with eviction sooner than it formerly did.

What's more, the Act affects how Ash relates to employees on garnishee proceedings. In the past, Ash prided itself on giving new employees who might have bad credit histories a "fresh start." But the Act has changed Ash's perspective because it increases the financial risk of taking on new employees who have collections in their credit history. Ash has had to alter its employment criteria accordingly, which makes it harder for would-be employees seeking a fresh start to find such an opportunity.

There is nothing "speculative," State's Cross-Reply Brief at 20, or "hypothetical," Intervenor's Reply Brief on Cross-Appeal at 8, about the consequences the Act is having for business and property owners in Arizona. It is urgent that this Court take action to enforce the Constitution, including its prohibitions on vague laws and subsidies to private parties.

CONCLUSION

The decision should be *reversed.*

Respectfully submitted August 7, 2023 by:

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