Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-011729 10/10/2025

HONORABLE MICHAEL VALENZUELA

CLERK OF THE COURT
A. Villela
Deputy

LIVING UNITED FOR CHANGE IN ARIZONA, et al.

JAMES E BARTON II

v.

STATE OF ARIZONA

ALEXANDER WESTBROOK SAMUELS

THOMAS J. BASILE
JUDGE VALENZUELA

MINUTE ENTRY

The Court has received and reviewed Defendant *State of Arizona's Motion to Dismiss Plaintiffs' Complaint*, filed June 10, 2025; Intervenor-Defendants' *Motion to Dismiss*, filed June 10, 2025; Plaintiffs' *Consolidated Response to State of Arizona's Motion to Dismiss and Intervenor Defendants' Motion to Dismiss*, filed July 14, 2025; *State of Arizona's Reply in Support of Its Motion to Dismiss Plaintiffs' Complaint*, filed August 11, 2025; and *Intervenor-Defendants' Reply in Support of Motion to Dismiss*, filed August 11, 2025. No party has asked for oral argument. For the reasons discussed below, the Court grants Defendant *State of Arizona's Motion to Dismiss Plaintiffs' Complaint* as well as Intervenor-Defendants' *Motion to Dismiss*.

I. Background.

This case involves a challenge to the Secure the Border Act ("the Act"). *See* H.C.R. 2060, 56th Leg., 2 Reg. Session (2024). This Act was designated Proposition 314 on the November 2024 general election ballot. At that time, the Act was approved by the voters and became effective on November 25, 2024.

The Act seeks to establish a web of laws addressing legislative concerns about the security of Arizona's borders. In doing so, the Act established the following relevant provisions:

- **The SAVE Provision**: The Act created A.R.S. § 1-504(A), which requires state and local agencies to use the Systemic Alien Verification for Entitlements Program (SAVE), maintained by the U.S. Citizenship and Immigration Services (USCIS), to verify the immigration status of individuals seeking public benefits.
- **The Transportation Provision**: The Act created A.R.S. § 13-4295.03(C) & (D), which requires state and local law enforcement to transport a person to a port of entry upon an order requiring the person to return to the foreign nation from which the person entered or attempted to enter the United States.
- **The Probable Cause Provision:** The Act created A.R.S. § 13-4295.01(C), which states that "[a] person may not be arrested for a violation of this section without probable cause, which shall be established by any of the following … [a] law enforcement officer who witnesses the violation … [a] technological recording of the violation … [or] [a]ny other constitutionally sufficient indicia of probable cause."
- **The Custody Provision:** The Act created A.R.S. § 13-4295.06, which states that "if a county or local law enforcement agency does not have the capacity to hold a person who is incarcerated or convicted of an offense included in this article, the director of the state department of corrections shall accept arrested or convicted persons who are charged with or convicted of an offense included in this article at any facility in this state that has available capacity."

Collectively, the Transportation Provision, Probable Cause Provision, and Custody Provision are parts of a larger amendment to Title 13, Chapter 38, Article 35 that seeks to establish an Arizona set of laws to govern illegal entry into the State of Arizona ("Illegal Entry Scheme"). Although the Act became effective November 25, 2024, the Legislature did not make the Illegal Entry Scheme immediately enforceable. Rather, Title 13, Chapter 38, Article 35—the Illegal Entry Scheme—"may not be enforced in any manner until any part of section 2 of S.B. 4, 88th leg., 4th called sess. (2023) that was enacted in the state of Texas, or any other law of any other state similar thereto, has been in effect for a period of sixty consecutive days at any time on or after the effective date of this article" ("Trigger Provision"). A.R.S. § 13-4295.04.

On April 1, 2025, Plaintiffs Living United for Change in Arizona and Arizona Center for Empowerment ("Organizational Plaintiffs") and Martin Hernandez and Arnold Montiel Jr. ("Individual Plaintiffs") filed a *Complaint* challenging portions of the Act. In Count 1, Plaintiffs contend that the SAVE Provision and Illegal Entry Scheme, particularly the Transportation Provision, violate Arizona's Revenue Resource Rule. In Count 2, Plaintiffs contend that the Probable Cause Provision violates Arizona's Separation of Powers Cause by usurping a judicial

function. Finally, in Count 3, Plaintiffs contend that the "Trigger Provision" constitutes an unlawful delegation of legislative power. For each of these counts, Plaintiffs seek a declaration that the challenged portions of the Act are unlawful and an order permanently enjoining their implementation or enforcement. Defendant State of Arizona and Intervenor-Defendants Steve Montenegro and Warren Petersen seek to dismiss the *Complaint* based on arguments of standing, ripeness, and failure to state a claim.

II. Ripeness.

Defendant State of Arizona first argues that the portion of Count 1 challenging the Transportation Provision and Count 2 challenging the Probable Cause Provision are not ripe for review.

Arizona Revised Statutes Section 12-1832 defines the requirements for a party to seek declaratory judgment. It provides that "[a]ny person … whose rights, status or other legal relations are affected by a statute … may have determined any question of construction or validity arising under the … statute … and obtain a declaration of rights, status or other legal relations thereunder." A.R.S. § 12-1832. "The word 'person' wherever used in this article shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever." A.R.S. § 12-1843

"The Arizona Supreme Court has held that A.R.S. § 12–1831 *et seq.*, requires a 'justiciable controversy' between the parties in order for there to be a basis for a declaratory judgment." *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO, Council 97 v. Lewis*, 165 Ariz. 149, 152 (App. 1990). "No proceeding lies under the declaratory judgment acts to obtain a judgment which is merely advisory or which merely answers a moot or abstract question." *Moore v. Bolin,* 70 Ariz. 354, 356 (1950). A taxpayer may not seek declaratory judgment "without showing a direct expenditure of funds generated by taxation or a transaction resulting in a pecuniary loss." *Lewis*, 165 Ariz. at 152.

Here, the Court finds that Plaintiffs' challenge to the Illegal Entry Scheme (including the Transportation Provision and Probable Cause Provision) is not ripe because Plaintiffs face no injury—and may never suffer injury. Put simply, these provisions are currently not enforceable. Under the Trigger Provision, they will not become enforceable until "any part of section 2 of S.B. 4, 88th Leg., 4th Called Sess. (2023) that was enacted in the state of Texas, or any other law of any other state similar thereto, has been in effect for a period of 60 days." This has not yet occurred because the Texas law is currently enjoined in federal court. These provisions never become enforceable if that injunction is upheld. They are dormant. Ultimately, declaratory relief must be based on the facts as they exist and not what may occur in the future. *Merritt-Chapman & Scott Corp. v. Frazier*, 92 Ariz. 136, 139 (1962) ("It is well established that a declaration will not be

made as to future rights in anticipation of an event which may never happen."); *Land Dep't v. O'Toole*, 154 Ariz. 43, 47 (App. 1987) ("[D]eclaratory relief should be based on an existing state of facts, not those which may or may not arise in the future.").

Plaintiffs argue that their claims became ripe after the Act passed. This may typically be the case, but this case presents unique circumstances given that the Illegal Entry Scheme will not become enforceable until a date in the future. Plaintiffs also point to the fact that other jurisdictions consider challenges to proposed legislation in pre-election manners. But as Plaintiffs also recognize, such is not the law in Arizona.

At bottom, the Court is faced with provisions of the Act that are not currently enforceable and may never become so. Ruling on the merits of those provisions given that they may never become enforceable runs directly contrary to the rationales underpinning the ripeness doctrine.

THE COURT THEREFORE FINDS that the portion of Count 1 challenging the Transportation Provision/Illegal Entry Scheme and Count 2 challenging the Probable Cause Provision are not ripe for review.

IT IS THEREFORE ORDERED granting Defendant State of Arizona's *Motion to Dismiss* as to the portion of Count 1 challenging the Transportation Provision/ Illegal Entry Scheme and Count 2.

III. Standing.

Defendant State of Arizona next argues that Plaintiffs lack standing as to their challenges to Counts 2 and 3.

Unlike the United States Constitution, Arizona's Constitution does not have a case or controversy requirement. As a result, "[u]nder Arizona's Constitution, standing is not jurisdictional, but instead is a prudential doctrine requiring 'a litigant seeking relief in the Arizona courts [to] first establish standing to sue.'" *Dobson v. State ex rel., Comm'n on App. Ct. Appointments*, 233 Ariz. 119, 122, ¶ 9 (2013) (citing *Bennett v. Napolitano*, 206 Ariz. 520, 525 ¶ 19 (2003)). Generally, to establish standing, a plaintiff must allege "a distinct and palpable injury" that goes beyond an "allegation of generalized harm that is shared alike by all or a large class of citizens." *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998).

Our appellate courts have recognized that A.R.S. § 12-1832 contains broad language opening the door for challenges to the validity of statutes. Still, that broad language "does not permit courts to act as legislators by setting policy or issuing advisory opinions—standing is still required." *Arizona Creditors Bar Ass'n, Inc. v. State*, 257 Ariz. 406, 410, ¶ 12 (App. 2024). For

there to be standing when bringing a challenge under § 12-1832, there must "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).

Here, the State argues that Organizational Plaintiffs have not pleaded an actual controversy between the interested parties. Plaintiffs in their *Response* do not dispute the State's argument. The Court thus deems the issue conceded by Plaintiffs.

THE COURT THEREFORE FINDS that Plaintiffs Martin Hernandez and Arnold Montiel Jr. do not have standing under Counts 2 and 3.

IT IS ORDERED granting Defendant State of Arizona's *Motion to Dismiss* as to Counts 2 and 3 and as to Plaintiffs Martin Hernandez and Arnold Montiel Jr.

The State also contends that the Organizational Plaintiffs lack direct standing and organizational standing under Counts 2 and 3. Plaintiffs in their *Response* do not argue that they have direct standing but do contest that they have organizational standing.

As noted above, Arizona's Constitution does not have a case or controversy requirement. In the federal context, the United States Supreme Court has held that an association has standing to sue on behalf of its members when (a) its members would have standing to sue in their own right; (b) the interests which the association seeks to protect are relevant to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members. *Warth v. Seldin,* 422 U.S. 490 (1975). Arizona has recognized the factors set forth in *Warth* as informative but not necessarily binding on the question of whether an organization has standing to sue on behalf of its members. *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 148 Ariz. 1, 6 (1985) (stating "the question of standing in Arizona cases such as this need not be determined by rigid adherence to the three-prong test of *Warth,* although those factors may be considered").

Rather, when an entity asserts standing in a representative capacity, the Court must determine "whether, given all the circumstances in the case, the association has a legitimate interest in an actual controversy involving its members and whether judicial economy and administration will be promoted by allowing representational appearance." *Home Builders Ass'n of Cent. Arizona v. Kard*, 219 Ariz. 374, 377, ¶ 10 (App. 2008). "Facts pleaded in a complaint must therefore 'show a present existing controversy which permits the court to adjudicate any present rights,' and not merely allege 'an intent to do certain things in the future all of which are dependent upon future events and contingencies within control of the [plaintiff].'" *Mills v. Arizona Bd. of Tech. Registration*, 253 Ariz. 415, 424, ¶ 25 (2022) (citing *Moore*, 70 Ariz. at 358).

Here, the Court finds that there is no present, existing, and actual controversy as to Count 2. As explained above, the Illegal Entry Scheme, including the Probable Cause Provision, is not yet enforceable. It may never become enforceable. Rather, this case presents the situation contemplated by *Mills* in which Plaintiffs' claims were merely contingent upon future events.

THE COURT THEREFORE FINDS that Plaintiffs Living United for Change in Arizona and Arizona Center for Empowerment lack standing as to Count 2.

As to Count 3, Plaintiffs argue that the Trigger Provision constitutes an unlawful delegation of legislative power. The Court finds that the Organizational Plaintiffs have standing to bring Count 3. Plaintiffs' claim stands on the premise that the power to make laws for the State of Arizona should fall with the Arizona Legislature, who are duly elected by the residents of Arizona. The Organizational Plaintiffs are based in Arizona and represent members of the Arizona community, which reasonably can be inferred to cover residents of Arizona. *See Complaint*, at ¶¶ 9, 10. The Organizational Plaintiffs therefore have a legitimate interest in bringing their claim. In addition, the motions under consideration show that the parties are adversarial to each other. There is an actual controversy because the Trigger Provision is effective and "active" in the sense that it is the mechanism determining when the Illegal Entry Scheme become enforceable. Finally, the Court finds that representational appearance promotes judicial economy and administration. This is so because a determination of whether the trigger provision constitutes an unlawful delegation of legislative power does not depend on the individual characterizations of members within the organization. *Cf. Kard*, 219 Ariz. at 377, ¶ 14 (finding that the organizational plaintiffs lacked standing because its members would be affected by the challenged ordinance differently, which would then require individualized calculations of damages for each member).

THE COURT THEREFORE FINDS that Plaintiffs Living United for Change in Arizona and Arizona Center for Empowerment have standing as to Count 3.

IT IS THEREFORE ORDERED denying Defendant State of Arizona's *Motion to Dismiss* as to Count 3 and as to Plaintiffs Living United for Change in Arizona and Arizona Center for Empowerment.

IV. Failure to State a Claim.

Finally, Defendant State of Arizona and Intervenor-Defendants argue that Plaintiffs have failed to state a claim on all counts. The Court has found that a portion of Count 1, relating to the Transportation Provisions, and Count 2 are not ripe for review. The Court has also found that Plaintiffs lack standing on Count 2. Consistent with the policies of restraint unpinning the ripeness and standing doctrines, the Court will not address the potential merits of these counts. As discussed

below, the Court finds that Plaintiffs have failed to state a claim on Count 1's challenge to the SAVE Provision and on Count 3.

A. Applicable Standard.

In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). The Court will grant the motion only if the plaintiff is not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway,* 226 Ariz. 287, 289, ¶ 5 (App. 2010) (citing *Mohave Disposal, Inc. v. City of Kingman,* 186 Ariz. 343, 346 (1996)). The Court will not "speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen,* 218 Ariz. at 420. Nor will the Court "accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

B. Count 1 – the SAVE Provision.

In Count 1, Plaintiffs contend that the SAVE Provision violates Arizona's Revenue Source Rule. This is so because (1) the act orders "every state agency administering benefits [to] register and submit to SAVE," (2) "SAVE requires several payments from each agency that will use the system, including a monthly registration fee each month the agency uses the system, and a fee for reach verification requested by the agency," and (3) the Act "fails to provide a source of funding for this mandated expense." *Complaint,* at ¶¶ 67–69.

"The Revenue Source Rule was referred to voters by the legislature and passed in the November 2004 election." *Arizona Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 536, ¶ 5 (2017). It provides:

> A. An initiative or referendum measure that proposes a mandatory expenditure of state revenues for any purpose, establishes a fund for any specific purpose or allocates funding for any specific purpose must also provide for an increased source of revenues sufficient to cover the entire immediate and future costs of the proposal. The increased revenues may not be derived from the state general fund or reduce or cause a reduction in general fund revenues.
>
> B. If the identified revenue source provided pursuant to subsection A in any fiscal year fails to fund the entire mandated expenditure for that fiscal year, the legislature

> may reduce the expenditure of state revenues for that purpose in that fiscal year to the amount of funding supplied by the identified revenue source.

Ariz. Const. art. 9, § 23. The Arizona Supreme Court has explained that the Revenue Source Rule applies whenever an initiative (1) "itself affirmatively requires an expenditure of state revenues" or (2) "expressly requires state action that inherently requires a non-discretionary expenditure of state revenues." *Kiley*, 242 Ariz. at 537, ¶ 11.

Here, Plaintiffs in their *Complaint* do not allege that SAVE Provision "itself affirmatively requires an expenditure of state revenues." Rather, Plaintiffs claims rests on an argument that the SAVE Provision "expressly requires state action that inherently requires a non-discretionary expenditure of state revenues." To that point, all parties agree that the Court can take judicial notice of the USCIS website outlining the charges associated with using the SAVE system. A review of the website shows that there is no cost for state, local, tribal, and territorial government agencies to use SAVE. https://www.uscis.gov/save/about-save/transaction-charges. Although there is a $25.00 monthly charge for federal agencies to use the system, that charge is not applicable to non-federal agencies. *Id*. Consequently, the SAVE Provision does not require a non-discretionary expenditure of state revenues. In the absence of the type of "unfunded mandate the Revenue Source Rule sought to remedy," *Kiley*, 242 Ariz. 538, the *Complaint* has not stated a claim on which relief can be granted.

THE COURT THEREFROE FINDS that Count 1 fails to state a claim on which relief can be granted.

IT IS THEREFORE ORDERED granting dismissal of Count 1.

C. Count 3 – the "Trigger" Provision.

In Count 3, Plaintiffs contend that the Trigger Provision constitutes an unlawful delegation of legislative power. This is allegedly so because the Act "delegates enforcement of portions of the measure 'relating to illegal entry in any manner until any part of Section 2 of S.B. 4, 88th Legislature, 4th Called Session (2023) of the State of Texas, or any other law of any other state similar thereto, has been in effect for a period of 60 consecutive days at any time on or affect the effective date'" of the Act.

"The legislature may not delegate its power to make laws." *3613 Ltd. v. Dep't of Liquor Licenses & Control*, 194 Ariz. 178, 183, ¶ 21 (App. 1999). The non-delegation principle has been described as follows:

> One of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

Tillotson v. Frohmiller, 34 Ariz. 394, 407 (1928). Our appellate courts have recognized that the Legislature does not necessarily delegate its power to make laws by including contingencies within a law. *See State v. Birmingham*, 95 Ariz. 310, 314 (1964) ("[T]he Legislature may make the application of a statute contingent or dependent upon the exercise or occurrence of certain conditions."). This is a recognition that the legislature may determine the conditions under which a statute may operate. *Id*. To that end, the Arizona Supreme Court has looked at the completeness of a law in assessing whether there has been an improper delegation of legislative power. *Id.* at 105 ("When it leaves the Legislature a law must be complete in all its terms, and it must be definite and certain enough to enable every person, by reading the law, to know what his rights and obligations are and how the law will operate when put into execution.") (citing *Vallat v. Radium Dial Co.*, 196 N.E. 485, 487 (Ill. 1935)).

Here, there are two primary reasons why the Trigger Provision does not constitute an improper delegation of legislative power.

First, the Act constitutes a complete law. The Act does not simply identify principals for other entities to enact. Rather, the Act sets forth provisions that apply within Arizona and the subjects that it seeks to control by legislation. The Act leaves no incomplete provisions that require further defining by another other entity. As signified in the thorough allegations of the *Complaint,* a person can read the law, know his or her rights, and know their obligations.

Second, the provision that is being challenged is not a legislative act. A legislative act is one that makes or enacts a law or attempts to control something by legislation. *See Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna*, 238 Ariz. 296, 300, ¶ 15 (App. 2015) (citing Black's Law Dictionary 1037–38 (10th ed. 2009)). Plaintiffs here challenge the fact that the Act has identified a condition that must occur before the Illegal Entry Scheme will be enforceable. As noted above, the Legislature may properly make the applicability of a law contingent on another circumstance. While the circumstance that must occur here is the survival of another state law, the circumstance does not equate to a legislative act because it does not leave for another entity to create Arizona law or provide authority to another entity to control Arizona

through legislation. To that end, the Trigger Provision is self-executing: no entity must carry out a legislative act for the Trigger Provision to fulfill its purpose. At most, the Trigger Provision is dependent upon a "judicial act" by way of a determination of the federalism questions inherent in both the Texas law and the Act.

There is no question that the Trigger Provision is unique. But Plaintiffs have pointed to no case showing that the unique condition implemented here constitutes a legislative act or delegation of such act. If anything, case law outside of Arizona supports a finding that the Trigger Provision does not constitute improper delegation of a legislative act. *See Phoenix Ins. Co. of N.Y. v. Welsch*, 29 Kas. 672, 678 (1883); *Gibson Products Co. of Tulsa v. Murphy*, 100 P.2d 453 (Okla 1940). While not controlling, these cases are consistent with the Court's finding under controlling Arizona principles that the Trigger Provision does not constitute an unlawful delegation of legislative power.

For these reasons,

THE COURT FINDS that Count 3 fails to state a claim on which relief can be granted.

IT IS THEREFORE ORDERED granting dismissal of Count 3.

V. Conclusion.

The Court has found infirmities in all counts raised in the *Complaint*. Count 1's allegations challenging the SAVE Provision fail to state a claim on which relief can be granted. Count 1's allegations challenging the Transportation Provision/Illegal Entry Scheme are not ripe for review. Count 2 is not ripe for review and both sets of plaintiffs lack standing to bring the claim. Lastly, as to Count 3, Individual Plaintiffs lack standing to bring their claim and the claim otherwise fails to state a claim on which relief can be granted.

Accordingly,

IT IS ORDERED dismissing Plaintiffs' *Complaint* with prejudice.

No further matters remain pending, and this is a final order entered under Rule 54(c), Arizona Rules of Civil Procedure.