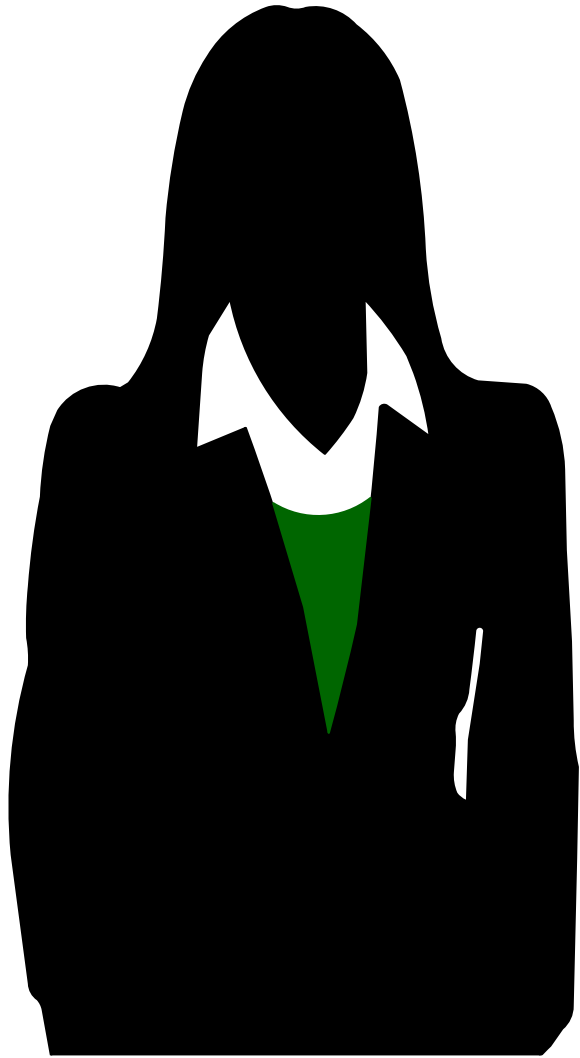




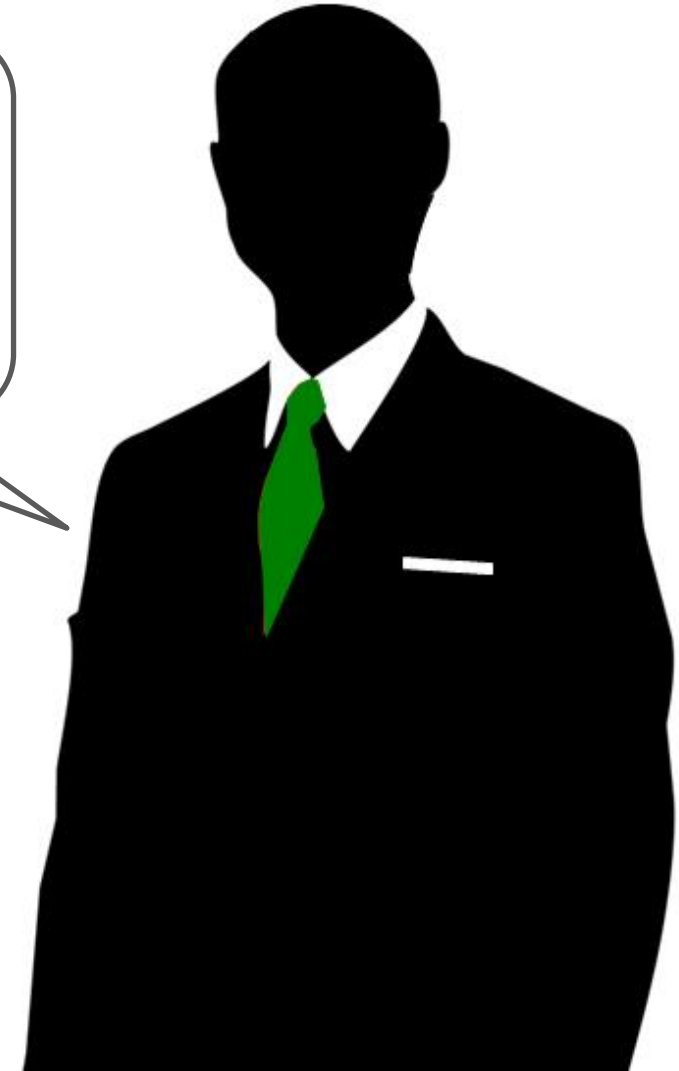
# Law Office of James R. Vaughan, P.C.

Arizona, Nevada, and Washington Collection Attorneys

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WE  
FIND  
MONEY



**Proposition 209: An Update  
and Considerations for  
Post-Judgment Collection**

January 19, 2024

By:

Eric Logvin, Managing Partner  
Tina M. Ziegler, ACP

# The Spectrum of Voter Initiatives

“If the legislature won’t listen, *let the voters initiate.*”

- **Constitutional Amendment:** Change the State’s Constitution
- **Statutory Initiative:** Write a Statute or Change a Current Law
- **Referendum:** Veto All or Part of a Law
- **Sub-Categories, depending on the state:**
  - **Direct Process:** Proposals that qualify go directly on the ballot.
  - **Indirect:** Proposal is submitted to the legislature for approval and if approved, will become law. Unapproved initiatives are generally sent to the ballot.

# Voter Initiatives: The Arizona Constitution

## ART. III -- DISTRIBUTION OF POWERS

The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial...

## ART. IV, §1(1) – LEGISLATIVE DEPARTMENT

The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature ....

## ART. IV, §1(2) – INITIATIVE POWER

The first of these reserved powers is the initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the constitution.

# Mechanics of a Voter Initiative

## Arizona Signature Requirements

Constitutional Amendment: 356,467

Initiated Statute: **237,645**

Referendum: 118,823

## Approximate Signature Survival

Success Rate: 45-62%

## Actual Signature Goal

425,000 (56%)

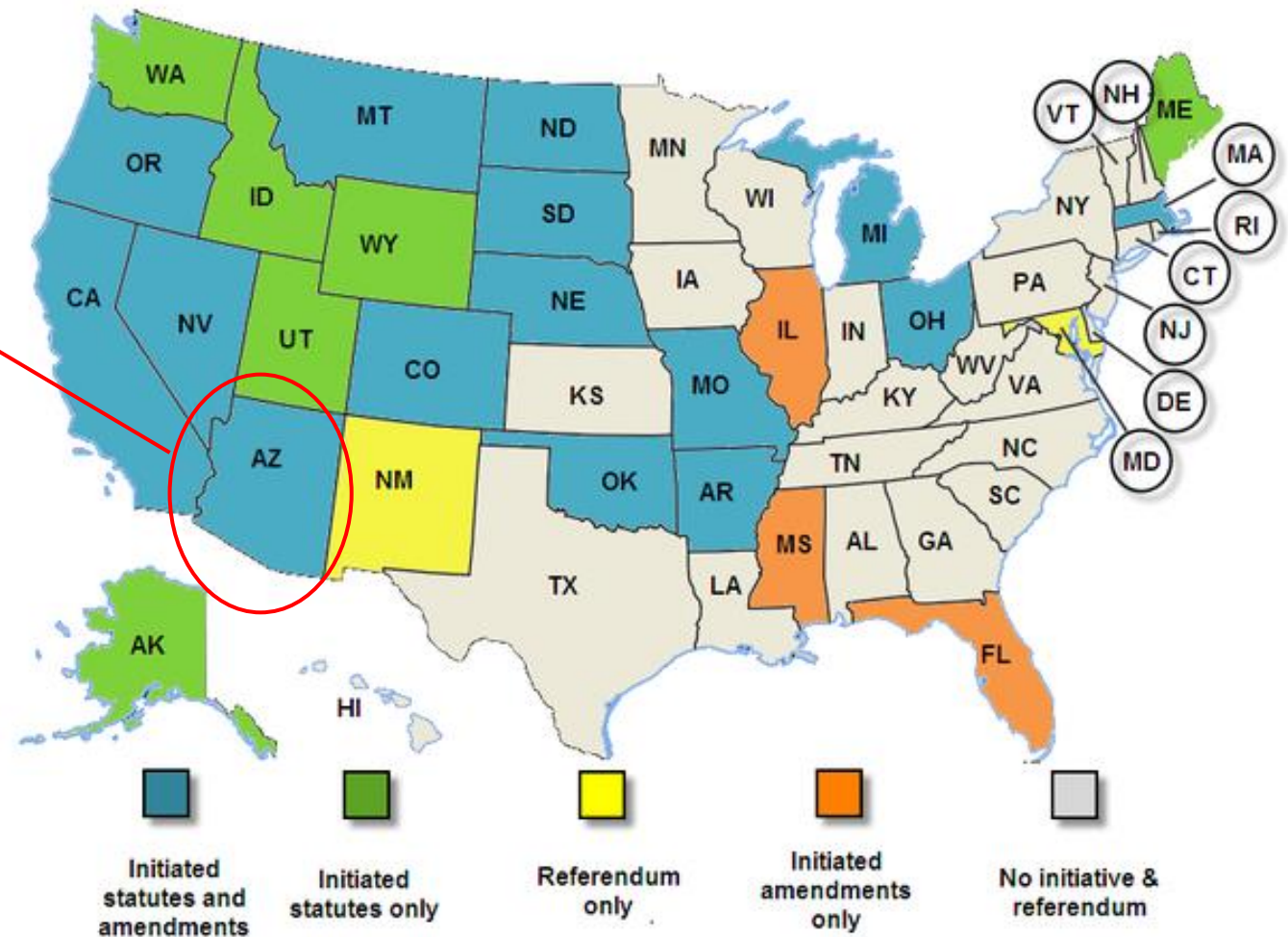
## Approximate Cost Per Signature

\$18/ea. - Cost is variable through the gathering season

## True Cost To Make the Ballot

\$4MM-8MM

If enough signatures are gathered in Arizona, an **Initiative** becomes a **Proposition**



# Voter Initiatives: Arizona is Now Unique!

- **1996: Arizona voters by 2-1 margin legalize medical marijuana:**
  - "Drug Medicalization, Prevention and Control Act"
  - Main Sponsor: John Sperling, University of Phoenix founder
  - Sperling used marijuana to combat pain caused by the cancer he fought during the 1960s
  - Allowed physicians to prescribe cannabis or recommend Schedule I drugs for certain debilitating or terminal illnesses and requiring probation rather than jail for nonviolent personal drug users.
- **1997: Arizona Legislature amends the medical marijuana law, effectively gutting it.**
  - "The voters may have been confused as to what they were voting for." – Our Legislature
- **1998: Arizona voters enact the **Voter Protection Act****
  - Amended the constitution to limit the Legislature's authority over laws passed by initiative power.

# Protections Granted by the Voter Protection Act

---

- Governor's veto power does not extend to initiative measures
- Legislature does not have power to repeal initiative measures
- Legislature cannot amend an initiative measure or divert funds allocated to a specific purpose unless:
  - The amendment furtheres the purposes of the measure, AND
  - Passes with at least three-fourths of the members of each house

# What If An Initiative Comes At Your World?

## Remember:

- You cannot change it as written. The language filed with the SOS is final.
- You cannot negotiate with anyone. There is no one to negotiate with!
- You cannot lobby Arizona legislators. They have no input.
- You cannot legislate around it later once it becomes law.
  
- You can work to suppress signatures and prevent it from making the ballot.
- You might be able to challenge it in court to prevent it from making the ballot.
- You might be able to challenge it in court after the election, on constitutional grounds.



# Who Came to Arizona for Prop 209?

---

- Service Employees International Union – United Healthcare Workers West (**SEIU-UHW**) began working on the Initiative in April of 2021
- This California-based union funded a political activist group called **Arizonans Fed Up with Failing Healthcare**, found here: *HealthcareRisingAZ.org*
- From drafting the language through to Election Day 2022, Healthcare Rising Arizona raised and spent in excess of **\$10,000,000**.



# Early Prop 209 Advertising

“Nobody  
should go  
bankrupt  
because of  
medical debt.”

Take action to stop predatory debt collection

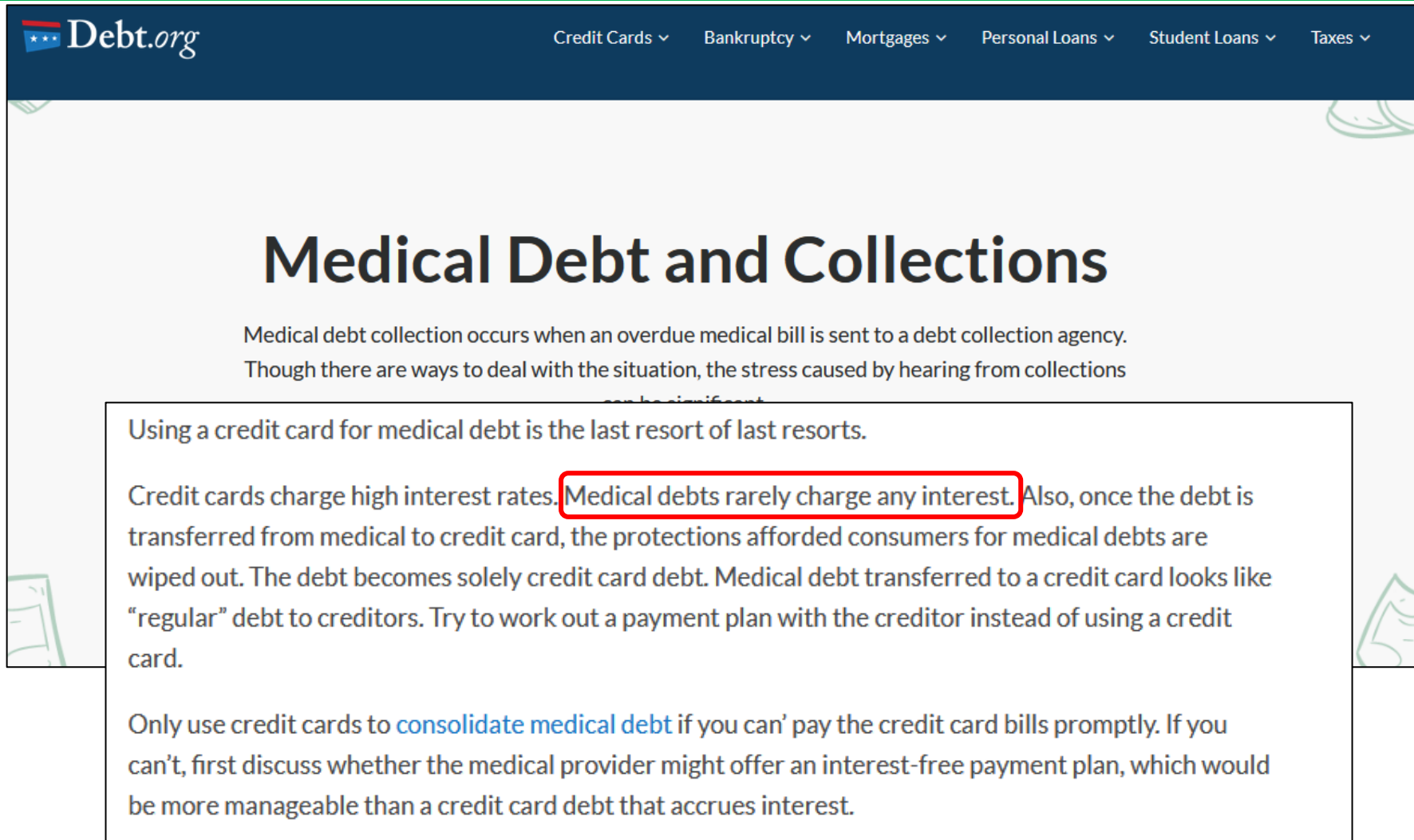
FIND AN EVENT

## PROTECT ARIZONANS FROM PREDATORY DEBT COLLECTION

The Predatory Debt Collection Protection Act helps Arizonans by protecting more assets from being sold to pay off debt collectors, ensuring hard-working Arizonans keep more of their bank accounts and wages, and limiting the outrageous interest rates that trap families in an unending cycle of debt.

WATCH THE VIDEO >

# About Those Outrageous Interest Rates...



The image is a screenshot of the Debt.org website. At the top, there is a dark blue navigation bar with the Debt.org logo on the left and several menu items: Credit Cards, Bankruptcy, Mortgages, Personal Loans, Student Loans, and Taxes, each with a downward arrow. Below the navigation bar is a light green header area with the title "Medical Debt and Collections" in a large, bold, black font. Underneath the title is a short paragraph of text. The main content area is white and contains three paragraphs of text. The second paragraph has a red box highlighting the sentence "Medical debts rarely charge any interest." The third paragraph contains a link to "consolidate medical debt".

Debt.org

Credit Cards ▾ Bankruptcy ▾ Mortgages ▾ Personal Loans ▾ Student Loans ▾ Taxes ▾

## Medical Debt and Collections

Medical debt collection occurs when an overdue medical bill is sent to a debt collection agency. Though there are ways to deal with the situation, the stress caused by hearing from collections can be significant.

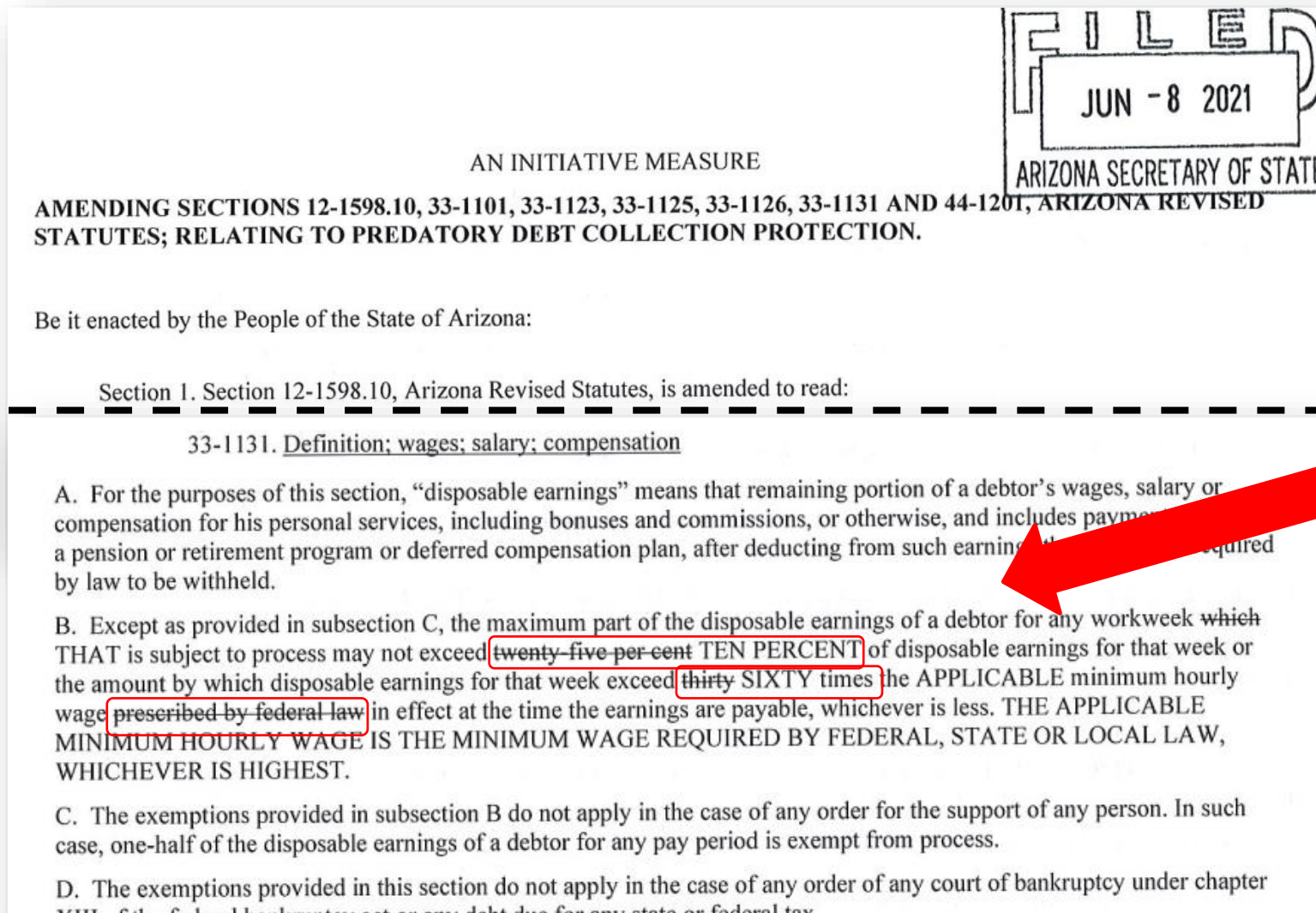
Using a credit card for medical debt is the last resort of last resorts.

Credit cards charge high interest rates. **Medical debts rarely charge any interest.** Also, once the debt is transferred from medical to credit card, the protections afforded consumers for medical debts are wiped out. The debt becomes solely credit card debt. Medical debt transferred to a credit card looks like "regular" debt to creditors. Try to work out a payment plan with the creditor instead of using a credit card.

Only use credit cards to [consolidate medical debt](#) if you can't pay the credit card bills promptly. If you can't, first discuss whether the medical provider might offer an interest-free payment plan, which would be more manageable than a credit card debt that accrues interest.

# Prop 209: Let's Just Read the Thing!

Don't worry, it is only 8 pages...



The edits to  
AZ laws are  
SURGICAL

# Where Did the Language Come From?

Model  
NCLC  
Language!



## Model Family Financial Protection Act

By Robert J. Hobbs, April Kuehnhoff,  
and Chi Chi Wu

National Consumer Law Center®

Revised October 2021

### Section 2-106. Earnings Exempt

(a) All earnings of a debtor who receives any means-tested public assistance benefits, unemployment compensation benefits, federal earned income tax credit or [insert name of similar state program providing earned income tax credit], disability benefits, or workers' compensation are exempt from garnishment.

(b) A debtor's garnishable earnings for any week that are less than \$1000 are exempt and not subject to garnishment. This exemption shall be adjusted pro rata for any pay period longer than weekly.

(c) If the debtor's garnishable earnings exceed the amount provided by the preceding subsection, no more than 10% of garnishable earnings in excess of the amount exempt under the preceding subsection shall be subject to garnishment unless the weekly garnishable earnings of the debtor exceed \$1200, in which case no more than 15% of the amount in excess of amount provided by subsection (b) is subject to garnishment. The amount not subject to garnishment is exempt.

# What Does It Do to Creditor's Rights?

Actual Effects Arizona's Laws

## Wage Garnishments:

- Reduces amount that can be garnished from 25% to 10% of Non-Exempt Funds.
- Raises exemption from 30 times the Federal Minimum Wage to 60 times the highest of Federal, State, or Local minimum wage.
- Gives anyone earning \$51k or less *total protection from garnishment* on any debt.
- *Result: half of Arizona workers are ungarnishable.*

## Bank Garnishments:

- Raises the exemption protected from creditors from \$300 per person to **\$5,000** per person on any debt.
- *Result: elimination of most bank garnishments as a judgment recovery strategy.*

## Homestead Exemption:

- Raises amount of *equity* protected from creditors **from \$250,000 to \$400,000** on any debt.
- *Result: elimination of most payoffs from escrow transactions when a consumer sells their home.*

## Less Impactful Changes:

- Raises some personal property exemptions by about 250%.
- Caps interest on medical debts at 3%.

Household Impact:  
\$100k earnings  
+ \$10k in the bank  
+ 400k home equity  
= Judgment Proof

# Signature Due Date: July 7, 2022

## Healthcare Rising Arizona Collects Record Number of Signatures – Over 500,000 – for Measure Fighting Predatory Debt Collection

07/07/2022



**SHARE THIS ARTICLE:**

Share

Tweet

[BACK TO](#)

(PHOENIX) — This morning, Healthcare Rising Arizona collected more than a half million signatures supporting its plan to provide Arizona relief from predatory debt collection to the Arizona Secretary of State’s office. The law requires 237,645 signatures. The ballot measure would protect Arizonans by shielding more of our assets and belongings from debt collectors and limiting the interest rate on medical debt to three percent per year.

# The Ballot Challenge

8/2/2022



649 North Fourth Avenue, First Floor  
Phoenix, Arizona 85003  
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722  
[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)

Thomas Basile, Ariz. Bar No. 031150  
[tom@statecraftlaw.com](mailto:tom@statecraftlaw.com)

*Attorneys for Plaintiff*

IN THE SUPERIOR COURT FOR 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

**AMENDED VERIFIED  
COMPLAINT**

(Challenge to Legal Sufficiency of  
Initiative Petition Pursuant to A.R.S. §§  
19-122(C), 19-118(F))

Plaintiff Protect Our Arizona hereby amends its Verified Complaint pursuant to Ariz.

Expedited Appeal

8/24/2022

SUPREME COURT OF ARIZONA

PROTECT OUR ARIZONA, a political )  
committee, )

Plaintiff/Appellant, )

v. )

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

Defendant/Appellee, )

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

Real Party in Interest/Appellee. )

FILED 08/24/2022

**DECISION ORDER**

Before the Court is an expedited election appeal regarding

“The Court unanimously finds that A.R.S. § 19-118 **does** require each circulator to submit a separate affidavit as one of five required items in each registration application submitted for each petition he or she circulates.

But any circulators’ lack of compliance with § 19-118 does not invalidate the signatures gathered by these circulators on the record and circumstances before us.”

# General Election Messaging

## Helping Arizona Families with Medical Debt



## Proposition 209: What you need to know about the Predatory Debt Collection Protection Act

No Arizona family should lose their home or car due to medical emergencies or accidents, or be trapped into unending debt by unfair interest rates on medical care. Prop 209 protects consumers from predatory debt collection by:

- Increasing the protected value of people's primary home to better match Arizona's median home value
- Increasing the allowed value of protected household goods and bank accounts
- Increasing the protected value of vehicles
- Limiting wage garnishment for debt to no more than 10% of disposable earnings
- Limiting the interest rate on medical debt to no more than 3%



# Election Day: November 8, 2022

**MARKETPLACE**  
Search For & Place Classifieds

**azcentral.**

Local Sports Things To Do Business eNewspaper Politics Advertise Obituaries Legals

## Proposition 209: Arizona voters back lowering maximum interest rates on medical debt

 **Stephanie Innes**  
Arizona Republic

Published 5:00 a.m. MT Nov. 8, 2022 | Updated 9:46 a.m. MT Nov. 11, 2022

Arizona voters on Tuesday passed Proposition 209, the Predatory Debt Collection Act.

The measure has been touted as a way to protect Arizonans with medical debt from bankruptcy and poverty. Opponents from the business community say it's too broad and will have the unintended consequence of making it more difficult for working Arizonans to get loans.

The Associated Press called the race late Tuesday.

"While vote counting will not be finished for several more days, these returns demonstrate that Prop 209 will become law in January," supporters from the group Healthcare Rising said in a statement.

## Election results

Arizona Proposition 209		
Result	Votes	Percentage
✔ Yes	1,747,363	72.01%
No	679,089	27.99%

# Ok, But Application? Built-In Conflicts!

---

## **Sec. 10 Savings Clause**

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.

# Ok, But Application? Built-In Conflicts!

## Sec. 10 Savings Clause (broken down)

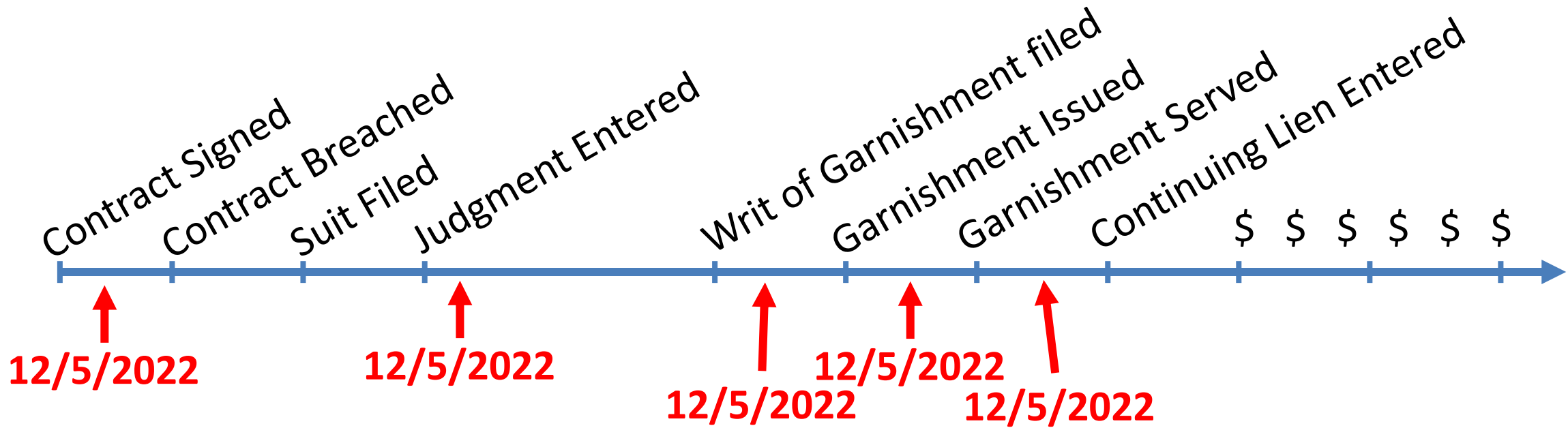
This act applies **prospectively** only.

**Looking forward; contemplating the future.** Applicable only to cases which shall arise after its enactment.

Accordingly, it does not affect:

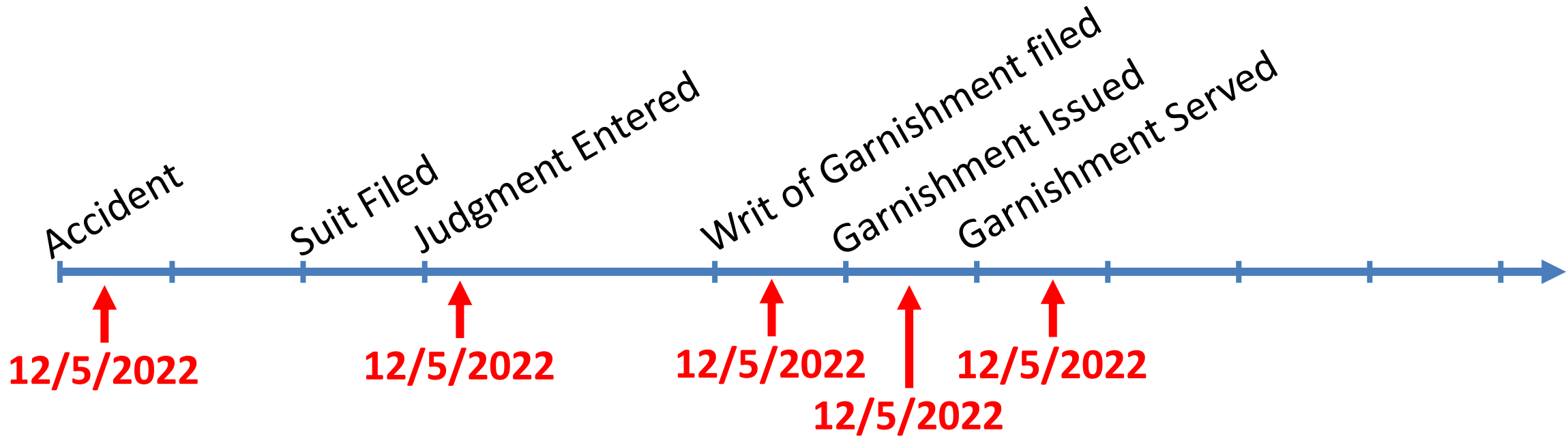
- **rights and duties that matured before** the effective date of this act,
- **contracts entered into before** the effective date of this act, or
- the interest rate on judgments that are based on a written agreement entered into before the effective date of this act.

# A Quick Primer On The Creditor's Timeline



Question: if I have a **signed contract**, that led to a **judgment**, that led to a writ of garnishment being **filed**, **issued**, and **served**, when does Prop 209 apply?

# A Quick Primer On The Creditor's Timeline



Question: What if it is just a judgment?

# The Constitutional Challenge

12/05/2022 Complaint Filed

1 Brett W. Johnson (#021527)  
2 Benjamin W. Reeves (#025708)  
3 Tracy A. Olson (#034616)  
4 Ryan Hogan (#036169)  
5 Charlene A. Warner (#037169)  
6 SNELL & WILMER L.L.P.  
7 One East Washington Street  
8 Suite 2700  
9 Phoenix, Arizona 85004-2202  
10 Telephone: 602.382.6000  
11 bwjohnson@swlaw.com  
12 breeves@swlaw.com  
13 tolson@swlaw.com  
14 rhogan@swlaw.com  
15 cwarner@swlaw.com

16 Attorneys for Plaintiffs Arizona Creditors  
17 Bar Association Inc., et. al.

18 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
19 IN AND FOR THE COUNTY OF MARICOPA

20 ARIZONA CREDITORS BAR  
21 ASSOCIATION INC., an Arizona  
22 corporation; PROTECT OUR ARIZONA  
23 PAC, an Arizona political action  
24 committee; ABSOLUTE RESOLUTIONS  
25 INVESTMENTS, LLC, an Arizona limited  
26 liability company; HAMEROFF LAW  
27 GROUP, P.C., an Arizona corporation;  
28 DESERT RIDGE COMMUNITY  
ASSOCIATION, an Arizona non-profit  
corporation; AUGUSTA RANCH  
COMMUNITY MASTER  
ASSOCIATION, an Arizona non-profit  
corporation; BAUHINIA, LLC, a South  
Dakota limited liability company; and  
CASH TIME TITLE LOANS, INC., an  
Arizona corporation,

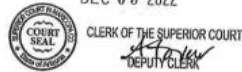
Plaintiffs,

v.

STATE OF ARIZONA,  
Defendant.

COPY

DEC 05 2022



CLERK OF THE SUPERIOR COURT  
DEPUTY CLERK

## Challenge:

- 1) Unconstitutionally Vague
- 2) Contradictory language (savings clause)
- 3) If it isn't vague, tell us how to interpret it.

No.CV 2022-015921

VERIFIED SPECIAL ACTION  
COMPLAINT

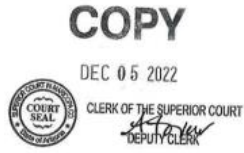
(Special Action Petition for Declarative  
and Injunctive Relief Enjoining  
Implementation and Enforcement of  
Amended A.R.S. §§ 12-1598.10, 33-  
1101, 33-1123, 33-1125, 33-1126, 33-  
1131, and 44-1201)

Visit [JRV.LAW](http://JRV.LAW) to request a copy of all pleadings and briefs.

# The Constitutional Challenge

12/05/2022 Complaint Filed

1 Brett W. Johnson (#021527)  
2 Benjamin W. Reeves (#025708)  
3 Tracy A. Olson (#034616)  
4 Ryan Hogan (#036169)  
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13 tolson@swlaw.com  
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15 cwarner@swlaw.com  
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17 Bar Association Inc., et al.



11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
12 IN AND FOR THE COUNTY OF MARICOPA

13 ARIZONA CREDITORS BAR  
14 ASSOCIATION INC., an Arizona  
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17 committee; ABSOLUTE RESOLUTIONS  
18 INVESTMENTS, L.L.C., an Arizona limited  
19 liability company; HAMEROFF LAW  
20 GROUP, P.C., an Arizona corporation;  
21 DESERT RIDGE COMMUNITY  
22 ASSOCIATION, an Arizona non-profit  
23 corporation; AUGUSTA RANCH  
24 COMMUNITY MASTER  
25 ASSOCIATION, an Arizona non-profit  
26 corporation; BAUHINIA, LLC, a South  
27 Dakota limited liability company; and  
28 CASH TIME TITLE LOANS, INC., an  
Arizona corporation,  
  
Plaintiffs,  
  
v.  
  
STATE OF ARIZONA,  
  
Defendant.

No.CV 2022-015921  
**VERIFIED SPECIAL ACTION  
COMPLAINT**  
  
(Special Action Petition for Declarative  
and Injunctive Relief Enjoining  
Implementation and Enforcement of  
Amended A.R.S. §§ 12-1598.10, 33-  
1101, 33-1123, 33-1125, 33-1126, 33-  
1131, and 44-1201)

TRO + Trial

Clerk of the Superior Court  
\*\*\* Filed \*\*\*  
12/22/2022 8:00 AM

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-015921 12/20/2022

HONORABLE JOHN L. BLANCHARD CLERK OF THE COURT  
S. Ortega  
Deputy

ARIZONA CREDITORS BAR ASSOCIATION INC, et al. BRETT W JOHNSON

v.  
STATE OF ARIZONA BRIAN M BERGIN

JAMES E BARTON II  
TRACY A OLSON  
RYAN P HOGAN  
COURT ADMIN-CIVIL-ARB DESK  
DOCKET CV TX  
JUDGE BLANCHARD

Verdict

The Court reviewed and considered (1) Plaintiffs' December 5, 2022 *Verified Special Action Complaint and Motion for Temporary Restraining Order and Preliminary Injunction*; (2) the December 12, 2022 Intervenor Committee's *Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and Motion to Dismiss*; (3) the December 12, 2022 Defendant State of Arizona's *Response to Application for Permanent Injunction and Declaratory Relief and Motion to Dismiss*; and (4) the December 14, 2022 Plaintiffs' *Reply in Support of Their Motion for Temporary Restraining Order and Preliminary Injunction*.

The parties stipulated to combine the hearing on Plaintiffs' Motion for Preliminary Injunction with the final trial on the merits of Plaintiffs' Verified Complaint. The Court has reviewed and considered all evidence and arguments presented at both the Temporary Orders hearing, and the December 16, 2022 trial on the merits.

12/22/2022 Verdict

**THE COURT FINDS** that Prop 209 should be permitted to take effect, without guidance or restriction from the Court. The language in the legislation, and in particular the Savings clause, is susceptible to common understanding (and actually mirrors the language of several existing laws) and therefore is not facially unconstitutional.

**IT IS ORDERED** denying all relief sought in Plaintiffs' *Verified Special Action Complaint and Motion for Temporary Restraining Order and Preliminary Injunction*, both filed December 5, 2022.

**IT IS FURTHER ORDERED** vacating the Court's December 7, 2022 Temporary Restraining Order.

**IT IS FURTHER ORDERED** entering judgment in favor of Defendant and Intervenor and against Plaintiffs. Each party shall bear its own attorneys' fees, costs and expenses. This is a final judgment entered pursuant to Rule 54(c), *Arizona Rules of Civil Procedure*, and Rule 6, *Arizona Special Action Rules of Procedure*, because no further matters remain pending.

January 2023: Case is immediately appealed.

# 2023: When does Prop 209 Apply to a Garnishment?



MARICOPA COUNTY JUSTICE COURTS  
BEST PRACTICES

SUBJECT: Garnishments and Proposition 209

EFFECTIVE: 12/23/2022; amended 2/27/2023

2.0 ISSUE: On December 5, 2022, Proposition 209 went into effect, increasing exemptions from all debt collection for certain personal assets (including a debtor's home, household items, motor vehicle, and bank account) and reducing the percentage of wages that may be garnished to pay off judgments. Previously, the maximum earnings that could be garnished was 25% per A.R.S. § 33-1131(B) (which could be reduced to 15% per A.R.S. § 12-1598.10(F)). Effective December 5, 2022, maximum earnings that can be garnished is now 10% (which can be lowered to 5%). **Due to a lack of clarity in language resulting from Proposition 209, there has been differing opinions regarding which date should be considered when determining whether the garnishment is subject to a maximum of 25% or 10% (i.e., the date on which the underlying contract was entering or the date on which the writ of garnishment was filed).** Additionally, due to this change, Plaintiffs/Judgment Creditors might be less willing to stipulate when Defendants/Judgment Debtors request a reduction based on extreme economic hardship, resulting in more garnishment objection hearings. A trial court held Proposition 209 was constitutional. *Ariz. Creditors Bar Ass'n v. State*, CV2022-105921 (Maricopa County, Dec. 23, 2022).

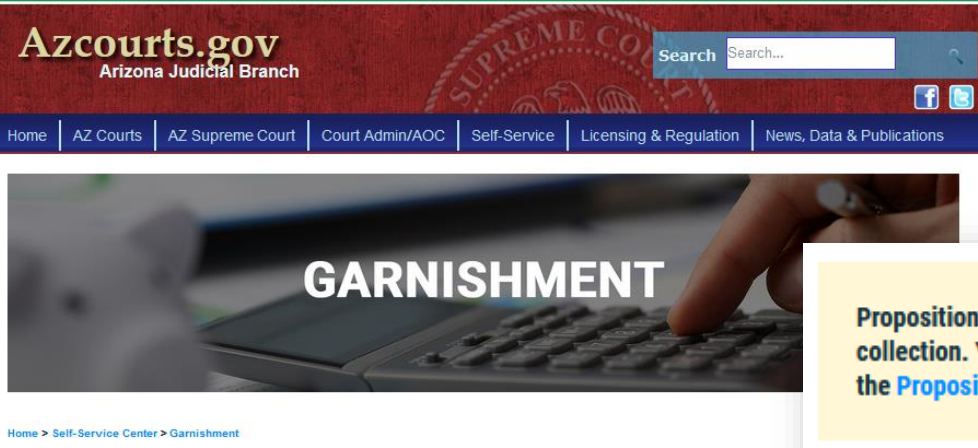
3.0 BEST PRACTICE: A judge should apply garnishment law based on the date the plaintiff filed the Writ of Garnishment ("Writ") and include a copy of the most recent "Additional Information on Writs of Garnishment" attachment.

## Across thousands of cases:

- **Maricopa County Superior Court:** Writ Serve Date
- **Maricopa County Justice Court:** Writ File Date
  - Best Practice Memo Issued
- **Southern Arizona Courts:** Judgment Date
- **One Pima Superior Court Judge:** Only applies to medical debt?
- **Random Statewide Courts:** Contract Date to Writ Issue Date
- **Paychex:** All garnishments are reduced to 10%, here you go.
- **ADP:** Our software can't figure it out so we're stopping.
- **At least One State Bar CLE:** It is obviously the judgment date  
...and there is no current challenge to Prop 209.



# No Problem, Just Check the Self-Help Center



Proposition 209 was approved by voters in November 2022 and went into effect on December 5, 2022. It amends several statutes regarding debt collection. You will find below a summary of the different earning amounts that are subject to garnishment and garnishment exemption amounts. Review the [Proposition 209 Information Sheet](#) for important details before you use the garnishment forms.

Just says before and after  
Prop 209 Changes



I guess you can choose  
how to apply it!



EARNINGS SUBJECT TO GARNISHMENT	
Law Prior to Passage of Proposition 209	Changes Made by Proposition 209
Portion of debtor's disposable earnings subject to collections: 25% or 30 times the federal minimum wage	Portion of debtor's disposable earnings subject to collections: 10% or 60 times the highest applicable federal, state or local minimum wage
<b>Minimum percentage of debtor's disposable earnings subject to collections if a 25% garnishment would cause extreme economic hardship: 15%</b>	<b>Minimum percentage of debtor's disposable earnings subject to collections if a 10% garnishment would cause extreme economic hardship: 5%</b>

# No Problem, Just Use The Forms

## Form 12 Official Version Non-Exempt Earnings Statement

### WITHHOLDING WORKSHEET

Judgment debtor's gross earnings (pre-tax) for this pay period (12) \$ \_\_\_\_\_

Judgment debtor's disposable earnings (gross minus deductions required by law) (13) \$ \_\_\_\_\_

\_\_\_\_% of line (13) (percentage ordered to be withheld) (14) \$ \_\_\_\_\_

Judgment debtor's pay period: (15) (Check one.)

Weekly (factor\* =  30 or  60)

Biweekly (factor\* =  60 or  120)

Semimonthly (factor\* =  65 or  130)

Monthly (factor\* =  130 or  260)

\*The applicable factor is dependent upon whether the pertinent changes made by Prop 209 apply to this garnishment.

Current federal, state, or local minimum wage. List whichever is highest: (16) \$ \_\_\_\_\_ / hour.

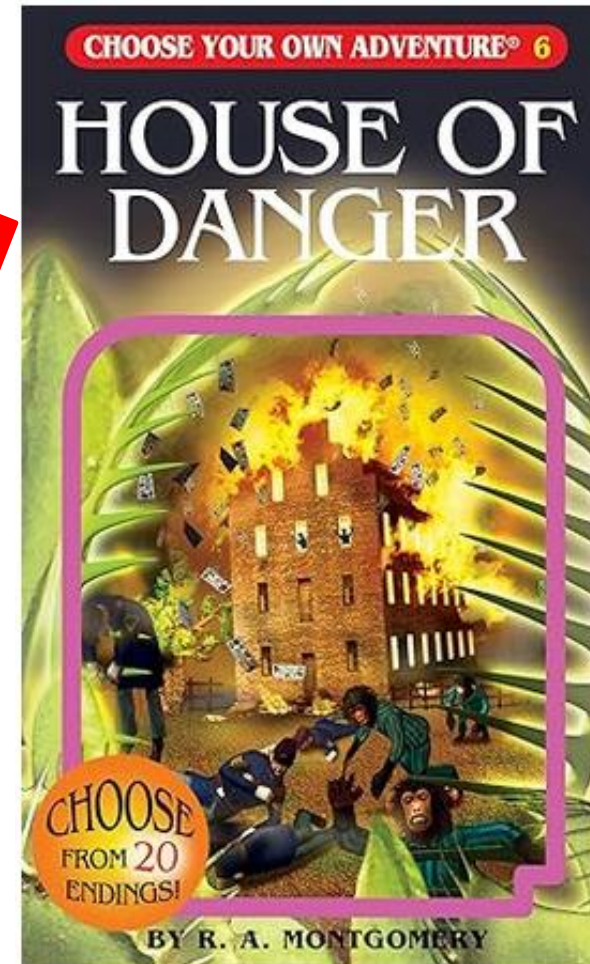
Line (16) multiplied by factor selected in (15) (17) \$ \_\_\_\_\_

Line (13) minus line (17) (18) \$ \_\_\_\_\_

Amount from line (14) or line (18), whichever is smaller (19) \$ \_\_\_\_\_

Amount withheld for other court-ordered assignment for support of a person or other garnishment or levy for collection of taxes (20) \$ \_\_\_\_\_

Line (19) minus line (20), this is the amount withheld (21) \$ \_\_\_\_\_



# Current Realities for Creditors

- We can't advise clients how to truly apply Prop 209.
- Many local and regional creditors have now paused/changed their lending models.
- Access to credit is a real and permanent issue.
- Many clients have put significant limitations or a halt on new post-judgment work.
- Creditor's Rights Attorneys are exiting the business/state.



Contract Date?

Judgment Date?

Writ File Date?

Writ Issue Date?

Writ Serve Date?

# Prop 209 Appeal: Current Status

- Oral Arguments took place October 25, 2023

## Hot Bench Hammertime!

**Appellants**  
Creditor Groups

Standing



**Appellees**  
State of AZ / Healthcare Rising

Application & Savings Clause

- Opinion is likely to be published between March 2024 and December 2024
- Likely headed to the Supreme Court.

# Using the Courts to Collect

## Writs of Earnings and Non-Earnings: Complicated, But...

- Are form-based and automation-heavy, thereby driving efficiency
- Can be systematized
  - By a law firm or creditor
  - By a vendor (process server)
  - By a court clerk
  - By a Garnishee
- Require fixed 3<sup>rd</sup> party costs that can be reliably predicted
- Include the ability to charge attorney's fees
- Have results can be reasonably predicted (by everyone)

# Using the Courts to Collect

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## **Alternative Methods of Collection:**

- Discovery: Subpoenas and Judgment Debtor Exams
- Writ of Special/General Execution
  - Executing on Real Property
  - Taking vehicles or “stuff”
- Replevin – a judgment for the recovery of specific known items
- Non-Earnings Writs that result in Safe Deposit Box Drill-Outs
- Other Provisional Remedies

# Using the Courts to Collect

## Considerations with Alternative Methods of Collection:

- Have forms/pleadings that require manual work
- Much more difficult to systematize
- Require 3<sup>rd</sup> party costs that cannot be reliably predicted
- Usually don't allow for awards of attorney's fees
- Many variables can impact success, such as:
  - Timing of the execution – *Who knows!?*
  - Interactions between parties can impact the execution
  - Presence/quality of the assets

# Limitations to a Debt Collector's Behavior

## Fair Debt Collection Practices Act (FDCPA):

- The main federal law that governs debt collection practices.
- Covers the collection of debts that are primarily for personal, family, or household purposes.
- Collectors from using abusive, unfair, or deceptive practices to collect debts.
- Under the FDCPA, “debt collectors” *may* include collection agencies, debt buyers, and lawyers.
- The FDCPA doesn't cover those collecting business debts.

## Other Concerns:

- Lawyers' ethical obligations. How can I tell a client what the law is?
- Client's willingness allow for some activities that may be wrong or not successful.
- Client's willingness to pay for some activities that may be wrong or not successful.
- Billing considerations: Contingency vs. Hourly
- People, Technology, Insurance, Profit! Law Firms are businesses!

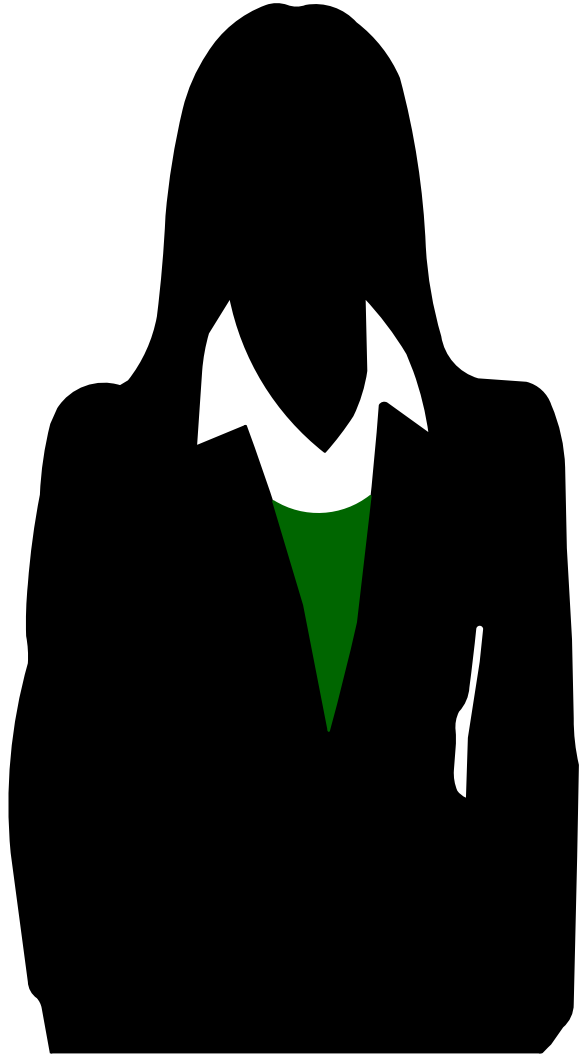




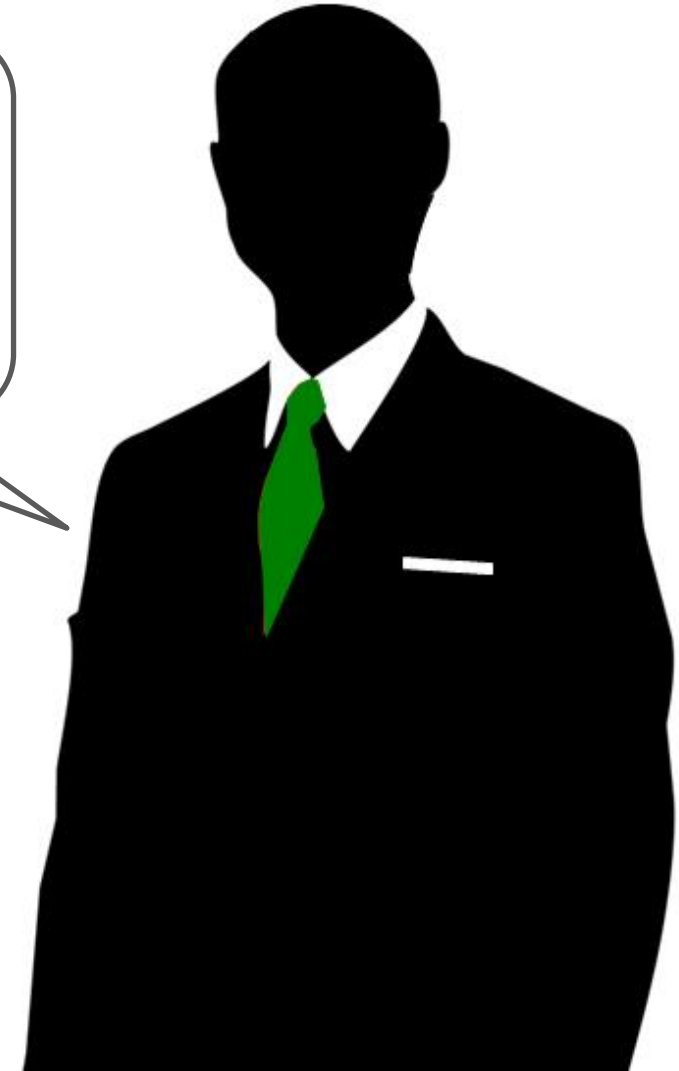
# Law Office of James R. Vaughan, P.C.

Arizona, Nevada, and Washington Collection Attorneys

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**Proposition 209: An Update  
and Considerations for  
Post-Judgment Collection**

January 19, 2024

By:

Eric Logvin, Managing Partner  
Tina M. Ziegler, ACP