ARIZONA COURT OF APPEALS

DIVISION ONE

ARIZONA WELLNESS CENTER SPRINGERVILLE LLC, et al., Plaintiffs/Appellants, v. ARIZONA DEPARTMENT OF HEALTH SERVICES, et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-CV 26-0017 Maricopa County Superior Court No. CV2025-006909

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INTRODUCTION

This is a case about a stranger trying to undo someone else's regulatory license. Arizona Wellness has no connection to Sherri Dunn's establishment license, no connection to the settlement agreement between Sherri Dunn and the Arizona Department of Health Services, and no connection to the years of contested litigation that preceded that settlement. Arizona Wellness was never eligible for the same license, never competed for it, and never will. It is, in every meaningful sense, a stranger to the proceedings it seeks to unravel.

The superior court correctly dismissed Arizona Wellness's complaint for failure to state a claim. The court correctly found that Arizona Wellness lacked standing because it had no real, actual, personal stake and no alleged concrete harm. In the alternative, the court correctly found that the gift clause does not apply to a regulatory license and that the issuance of Sherri Dunn's establishment license served a valid public purpose with adequate consideration. The court further correctly found that Arizona does not recognize a freestanding "ultra vires" cause of action.

This Court should affirm.

STATEMENT OF FACTS AND CASE

I. Sherri Dunn's establishment license.

This case arises from Defendant/Appellee Arizona Department of Health Service's awarding an establishment license under A.R.S. § 36-2854(A)(1)(d) to Defendant/Appellee Sherri Dunn, and Plaintiffs/Appellants Arizona Wellness Center Springerville and Mason Cave (together, "Arizona Wellness")'s attempt to undo that award through this litigation. The Department awarded Sherri Dunn an establishment license through a settlement agreement, putting to bed eight years of litigation—none of which involved Arizona Wellness.

A. Dispensary registration certificate litigation (2016–2021).

In 2016, Sherri Dunn was one of three applicants for a dispensary registration certificate ("DRC") in La Paz County. [IR-32 at 2 (APP247).][1] The Department denied all three DRC applicants, on the basis that the controlling statutes and regulations did not require it to issue a DRC for La Paz County. [*Id.*]

[1] Arizona Wellness attached sixteen exhibits to its Second Amended Complaint. [*See* IR-26 to IR-42 (APP144-APP309).]

One of the three applicants challenged the decision, culminating in an appeal before the Arizona Supreme Court. *See Saguaro Healing LLC v. State*, 249 Ariz. 362 (2020). The Supreme Court concluded that the controlling statutes required the Department "to issue at least one medical marijuana dispensary registration certificate in each county with a qualified applicant" and remanded the case to superior court. *Id.* at 366, ¶ 23.

In 2021, on remand, the superior court ordered the Department to consider the three applications previously submitted in 2016, including Sherri Dunn's. [IR-32 at 2 (APP248).] Based on the statutes and rules in effect on October 6, 2016, the Department awarded the La Paz DRC to Sherri Dunn on December 28, 2021—five years after it would have received its DRC but for the Department's legal error. [*Id.*; IR-33 at 2, ¶ F (APP261).]

B. Sherri Dunn's establishment license litigation (2022–2024).

In 2020, during the DRC litigation, Arizona voters enacted the Safe and Smart Arizona Act via Proposition 207, which legalized the sale of adult use marijuana. *See* A.R.S. § 36-2802 *et seq*. The Act required the Department to process marijuana establishment license applications from "early applicants" between January 19, 2021 through March 9, 2021 and issue establishment licenses to all those qualified. A.R.S. § 36-2854(A)(1)(d).

Relevant here, an "early applicant" includes a "nonprofit medical marijuana dispensary that is registered and in good standing with the department." A.R.S. § 36-2850(10)(b).

On January 3, 2022, shortly after Sherri Dunn gained its December 21, 2021 DRC, Sherri Dunn applied for an establishment license under A.R.S. § 36-2854(A)(1)(d); Sherri Dunn aimed to become a "dual license" holder, which is "an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license," A.R.S. § 36-2850(9). [*See* IR-32 at 2 (APP247); IR-33 at 2, ¶ I (APP261).] The next day, Sherri Dunn applied to move its DRC from La Paz County. [*See* IR-32 at 2 (APP247).]

Sherri Dunn would have qualified for an establishment license from January 19, 2021 through March 9, 2021 under A.R.S. § 36-2854(A)(1)(d) through its status as a DRC holder. But the Department's legal error prevented Sherri Dunn from applying until after (1) the Supreme Court issued the *Saguaro Healing* decision and mandate, (2) the superior court entered judgment on remand, and (3) the Department selected Sherri Dunn for the 2016 DRC. [*See* IR-33 at 3, ¶ 6 (APP262).] In short, by the time Sherri Dunn could possibly apply for an establishment license under A.R.S. § 36-

2854(A)(1)(d), the statutory time had passed because of a Department legal error that took Supreme Court intervention to correct.

C. Sherri Dunn settles with the Department and receives its establishment license (2024).

The Department denied Sherri Dunn's application for an establishment license and to move its DRC out of La Paz County. [IR-28 (APP184).] The parties litigated the issue through the superior court. [*See generally* IR-32 (APP245).] The superior court affirmed the Department's decision not to award Sherri Dunn an establishment license under A.R.S. § 36-2854(A)(1)(d).

Sherri Dunn appealed the superior court's decision to this Court. In February 2024, the parties settled their dispute. [IR-33 at 2, ¶ K (APP261).] In their settlement, the parties agreed that "Sherri Dunn's January 3, 2022 application for a Dual License is deemed to have been complete and in compliance with the applicable statutes and rules, including as an 'early applicant' under A.R.S. §§ 36-2850(10) and 36-2854(A)(1)(d), and no further action is required of Sherri Dunn on that application." [*Id.* at 3, ¶ 4 (APP262).] Accordingly, the Department awarded Sherri Dunn an establishment license under A.R.S. § 36-2854(A)(1)(d), recognizing that

Sherri Dunn would have qualified if its DRC had been properly awarded when it applied in 2016. [IR-27 at 4, ¶ 34 (APP182); IR-33 at 3, ¶ 6 (APP262) ("the DRC would have been issued on October 6, 2016 and the Establishment License would have been issued on account of the DRC").]

II. Arizona Wellness's separate disputes with the Department.

Arizona Wellness was incorporated in 2022 and received a DRC for Apache County on March 10, 2023. [IR-26, ¶¶ 13, 17 (APP150).] Having been incorporated in 2022, Arizona Wellness was incorporated outside the A.R.S. § 36-2854(A)(1)(d) application window, which ran from January 19, 2021 through March 9, 2021.

Nonetheless, Arizona Wellness "submitted an application to the Department for an establishment license pursuant to A.R.S. § 36-2854(A)(1)(d)." [IR-26, ¶ 22 (APP151).] Arizona Wellness asserted it did so because Sherri Dunn gained its establishment license under that statute after the deadline. [*Id.*] The Department returned Arizona Wellness's late application. [*Id.* ¶ 19.]

In a separate action, the superior court found Arizona Wellness's DRC certificate was invalid as of September 10, 2024. [IR-46 at 1 (APP350).] Division Two of this Court affirmed, further finding that "Arizona Wellness

has not demonstrated that it would have been eligible to apply for a dual license during an open application window." *See Ariz. Wellness Ctr. v. Ariz. Dep't of Health Servs.*, 2026 WL 801285, ¶ 35 (Ariz. App. Mar. 23, 2026). Responding to Arizona Wellness's argument that it "should be afforded the 'same considerations as Sherri Dunn'" with respect to an establishment license, the Court explained that "the factual circumstances are different," and restated Sherri Dunn's path to licensure that followed the *Saguaro Healing* decision. *Id.*, ¶¶ 34-35.

III. Arizona Wellness seeks to void Sherri Dunn's establishment license.

Arizona Wellness was not a party to the *Saguaro Healing* litigation or Sherri Dunn's establishment-license litigation. Arizona Wellness sued in this case on February 24, 2025, culminating in its second amended complaint that named Sherri Dunn, the State and Arizona Department of Health *et al.*, and Governor Katie Hobbs and her Chief of Staff Chad Campbell, as defendants. [IR-26 (APP144).] Arizona Wellness brought two claims against all defendants: (1) violation of the gift clause (*Id.* ¶¶ 111-138 (APP167-72)) and (2) "Ultra Vires Claim for Violating a Court Order" (*Id.* ¶¶ 139-153 (APP172-74)). Arizona Wellness sought a declaration that the Sherri Dunn establishment license violated the gift clause, an order for the Department to

revoke Sherri Dunn's establishment license, and a declaration that the award of the license was ultra vires. [*Id.* at 30 ¶¶ A-C (APP174).] Arizona Wellness did not seek either an award of a DRC or an establishment license for itself.

Each defendant separately moved to dismiss. [IR-45 (APP329), IR-46 (APP350), IR-57 (APP513) (Department's motion and reply); IR-50 (APP374), IR-58 (APP488) (Governor's motion and reply); IR-52 (APP421), IR-59 (APP500) (Sherri Dunn's motion and reply).] The defendants argued that Arizona Wellness lacked standing to undo the license award or have it declared a "gift"; that the gift clause did not apply to regulatory licenses such as Sherri Dunn's establishment license, but if it did apply, the license award served a public purpose and the Department received adequate consideration; and there was no such action as an ultra vires claim, but that the actions of the parties were not ultra vires anyway. [IR-45 (APP329); IR-46 (APP350); IR-50 (APP513); IR-52 (APP421); IR-57 (APP513); IR-58 (APP488); IR-59 APP500).]

The superior court dismissed all claims against all defendants with prejudice. [10/14/2025 Tr. 53:11-57:24 (APP120-24).] The court explained its reasoning on the record at the oral argument, concluding that it "agree[d] with the Defendant[s]' arguments down the line." [Tr. 53:23 (APP120).]

Standing. The superior court concluded that Arizona Wellness lacked standing, specifically that it "[didn't] have a real, actual, personal stake and have an alleged concrete harm." [*Id.* 54:4-6 (APP121).] Arizona Wellness had argued that the award of Sherri Dunn's establishment license had "robbed Plaintiffs of an opportunity to obtain an Establishment License, as there is one less Establishment License available." [IR-53 at 3 (APP438).] The superior court, however, did not think that Arizona Wellness was "ever in a position to receive the license that Sherri Dunn received" or "that there will be another license available." [*Id.* 54:8-12 (APP121).] The superior court also rejected Arizona Wellness's "speculation as it relates to money coming in from licenses" (*Id.* 54:18-22 (APP121)), as well as a taxpayer-standing argument founded on the notion that Arizona Wellness's principal, Mason Cave, "is a recipient and beneficiary" of the Smart and Safe Arizona Fund through his personal marijuana purchases (*Id.* 11:4-15 (APP078)).

Gift clause. The superior court concluded that "if we had standing, I don't think you get there under the Gift Clause," specifically that, as a "regulatory license" the establishment license is "just not a gift as contemplated by the Gift Clause." [*Id.* 55:18-22 (APP122).] The superior court noted that in issuing Sherri Dunn the establishment license, "[t]he

Department didn't give up anything. And so that basic core principle, from my perspective, I just don't see the Gift Clause route." [*Id.* 30:17-19 (APP097).]

But even applying the gift-clause analysis, the court concluded the establishment license served a public purpose and provided the Department with adequate consideration. [*Id.* 56:7-11 (APP123).] The court had earlier stated that there was a public purpose in issuing the establishment license, namely that "[i]t's carrying out the public purpose that's set forth in the SSAA. And from my perspective, there's public value, the regulation of marijuana sales and the resolution of the [Sherri Dunn] litigation." [*Id.* 31:11-14 (APP098).] The superior court reincorporated this reasoning in its conclusion that the license served a public purpose under the gift clause. [*Id.* 56:14-16 (APP123) ("It's the Plaintiff's burden to establish the Gift Clause violation for the reasons that were previously set forth.").] Likewise, the superior court agreed with the defendants that the statutorily mandated $25,000 license fee Sherri Dunn paid was adequate consideration. [*See Id.* 56:7-11 (APP123).]

Ultra vires. The defendants had argued that "Plaintiff fail[ed] to show that Arizona courts recognize ultra vires claims in the first place," and that

"Plaintiffs offer[ed] no authority for the proposition that a non-party to agency proceedings can intervene to undo a settlement the agency enters." [IR-59 at 9 (APP509).] The superior court agreed, concluding that "there's not an ultra vires claim." [Tr. 56:17-18 (APP123).] Even assuming there could be, the court stated it didn't "think the Superior Court's ruling in the previous [Sherri Dunn establishment license] litigation is such that there's a failure to follow it" (*Id.* 50:24-25 (APP117)), and that settling a case is not a violation of a court order and thus not an ultra vires act (*Id.* 51:15-52:1 (APP118-19)).

Accordingly, the superior court dismissed all claims against all defendants with prejudice and entered final judgment. [IR-70 (APP062).] Arizona Wellness appealed from the resulting final judgment. [IR-71.]

STATEMENT OF THE ISSUES

1. Does Arizona Wellness lack standing?

2a. Do regulatory licenses like an establishment license fall outside the gift clause?

2b. If the gift clause does apply to establishment licenses, does Sherri Dunn's establishment license serve a public purpose and provide the Department with adequate consideration?

3. Did the superior court correctly determine that Arizona does not recognize a stand-alone claim of an ultra vires act, and that Arizona Wellness failed to adequately allege such a claim even if one exists?

STANDARD OF REVIEW

"Dismissal of a complaint under Rule 12(b)(6) is reviewed de novo." *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). "A complaint's exhibits, or public records regarding matters referenced in a complaint, are not 'outside the pleading,' and courts may consider such documents without converting a Rule 12(b)(6) motion into a summary judgment motion." *Id.* at 356, ¶ 9 (citation omitted).

"Standing is a question of law [this Court] review[s] *de novo*." *Karbal v. Ariz. Dept. of Revenue*, 215 Ariz. 114, 116, ¶ 6 (App. 2007). The Court reviews the "interpretation and application" of the gift clause de novo. *Neptune Swimming Found. v. City of Scottsdale*, 256 Ariz. 551, 559, ¶ 23 (2024).

ARGUMENT SUMMARY

The superior court correctly dismissed. This Court should affirm.

First, Arizona Wellness lacks standing. To establish standing under Arizona law, a plaintiff must demonstrate a distinct, palpable, and particularized injury that is traceable to the defendant's conduct and

redressable by the requested relief. Arizona Wellness fails every element. It was never eligible for the establishment license the Department awarded to Sherri Dunn because it did not hold a DRC during the statutory application window. It therefore suffered no cognizable injury. (Argument § I.A.) Arizona Wellness's competitor-standing theory relies on *Center Bay Gardens*, which did not recognize competitor standing and rested solely on particularized harm to an adjacent property owner. (Argument § I.B.) Its taxpayer-standing theory fails because issuing a regulatory license is not an expenditure of public funds, and Arizona Wellness does not contribute to the fund that finances marijuana regulation. (Argument § I.C.) Its purported "direct and substantial interest in the outcome" does not substitute for standing. (Argument § I.D.)

Second, the gift clause does not reach a regulatory license, and even if it did, Sherri Dunn's establishment license would satisfy the gift-clause test. The gift clause prohibits the government from giving away something it owns—credit, property, or funds. A regulatory license is none of these things; it is an exercise of the state's police power, not a disposition of public resources. Every Arizona case applying gift-clause scrutiny has involved the expenditure of public funds, the transfer of public property, or the extension

of public credit. (Argument § II.A.) Even under the two-element test, Sherri Dunn's license serves the public purpose the voters declared in enacting Proposition 207, and the Department received the only consideration the statute permits: the maximum application fee. (Argument § II.B.)

Third, Arizona does not recognize a freestanding "ultra vires" cause of action, Arizona Wellness did not plead a declaratory-judgment claim, and the complaint does not allege facts that would support one. The cases Arizona Wellness relies on—*Pawn 1st II* and *Arkules*—involved statutory causes of action that Arizona Wellness does not have. Moreover, even if the complaint could be read to seek declaratory relief, it fails because Arizona Wellness lacks a definite interest in voiding another entity's license and the underlying facts do not establish that the Department acted without authority. (Argument § III.)

ARGUMENT

I. The superior court correctly concluded that Arizona Wellness lacked standing.

The superior court correctly dismissed for lack of standing. [Tr. 54:3-55:19 (APP121-22).] Arizona Wellness lacks an actual, traceable, redressable injury because it was never eligible for the establishment license the

Department awarded to Sherri Dunn and cannot identify any concrete harm from that award. Its competitor-standing theory fails because Arizona courts have never recognized such a doctrine, and even if they had, Arizona Wellness was never a competitor for the same license. Its taxpayer-standing theory likewise fails because issuing a regulatory license is not an expenditure of public funds, Arizona Wellness does not contribute to the relevant fund, and its lost-revenue theory is speculative. Finally, a generalized interest in the outcome of litigation does not substitute for the particularized injury Arizona law requires. Because Arizona Wellness cannot satisfy any recognized basis for standing, the superior court's dismissal should be affirmed on this ground alone.

A. Arizona Wellness lacks an actual, traceable, redressable, injury.

Arizona Wellness never could have benefited from the same establishment license the Department awarded Sherri Dunn. *See* A.R.S. § 36-2854(A)(1)(d). It could not have received it in 2021, when the application window was open, and it cannot receive it now. The Department's actions in awarding Sherri Dunn an establishment license never injured Arizona

Wellness, and so Arizona Wellness lack standing to bring either its gift clause or "ultra vires" claims.

"[S]tanding generally requires an injury in fact, economic or otherwise, caused by the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the controversy's outcome." *Karbal*, 215 Ariz. at 116, ¶ 7. The alleged injury must be "distinct and palpable." *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005) (citation omitted). The alleged injury must also be "particularized" to the party seeking relief, *Bennett v. Brownlow*, 211 Ariz. 193, 196, ¶ 17 (2005), and "fairly traceable" to the conduct of the defendants, *Fernandez*, 210 Ariz. at 140, ¶ 7. Finally, standing requires the alleged injury be "redressed by the requested relief." *Horne v. Hobbs*, 576 P.3d 108, 114, ¶ 19 (Ariz. App. 2025) (citation omitted), *review denied* (Jan. 6, 2026). In sum, standing is a "rigorous" requirement. *Fernandez*, 210 Ariz. at 140, ¶ 6.

The superior court correctly concluded that Arizona Wellness lacked standing because it does not "have a real, actual, personal stake and have an alleged concrete harm." [Tr. 54:3-55:19 (APP121-22).] As a matter of law, Arizona Wellness never could have obtained the establishment license ultimately awarded to Sherri Dunn because Arizona Wellness was not

eligible to apply for one during the A.R.S. § 36-2854(A)(1)(d) statutory window.

A.R.S. § 36-2854(A)(1)(d) required the Department to process marijuana establishment license applications from "early applicants" between January 19, 2021 and March 9, 2021 and issue establishment licenses to all those qualified. An "early applicant" includes a "nonprofit medical marijuana dispensary that is registered and in good standing with the department"—a DRC holder. A.R.S. § 36-2850(10)(b).

In order to qualify for the establishment license the Department awarded Sherri Dunn, therefore, Arizona Wellness would have had to have secured a DRC by March 9, 2021. There is no dispute that Arizona Wellness would not have qualified. Arizona Wellness alleges that it did not receive a DRC until March 2023, more than two years after the A.R.S. § 36-2854(A)(1)(d) statutory window closed. [IR-26 at 4, ¶ 1 (APP148).] In fact, Arizona Wellness was not even incorporated until 2022, a year after the window closed. [*Id.* ¶¶ 13, 17 (APP150).] Accordingly, it was not and could not have been a "qualified early applicant" under A.R.S. § 36-2854(A)(1)(d) because it was not a "nonprofit medical marijuana dispensary that is registered and in good standing with the department" during the 2021

statutory application window. A.R.S. § 36-2850(10)(b). The statutory scheme precluded and continues to preclude Arizona Wellness from obtaining an establishment license under A.R.S. § 36-2854(A)(1)(d). Division Two recently recognized that obstacle in Arizona Wellness's separate case against the Department. *See Ariz. Wellness Ctr.*, 2026 WL 801285, ¶ 35 ("Unlike in the Sherri Dunn matter, Arizona Wellness has not demonstrated that it would have been eligible to apply for a dual license during an open application window. It points to no evidence that such a window was ever open[.]"). Indeed, Arizona Wellness does not currently have a valid DRC, and has not had one since September 10, 2024; consequently even if the if the application window could be reopened, it cannot get a license. [IR-46 at 1 (APP350).]

With no avenue for an establishment license, Arizona Wellness suffered no cognizable injury when the Department awarded an establishment license to Sherri Dunn. Arizona Wellness was never in the position to get one through A.R.S. § 36-2854(A)(1)(d). The superior court therefore correctly held that the plaintiffs did not "establish[] that they were ever in a position to receive the license that Sherri Dunn received." [Tr. 54:8-10 (APP 121).]

Arizona Wellness's allegations lack traceability and redressability as well. Sherri Dunn's licensure did not cost Arizona Wellness an establishment license. Again, Arizona Wellness could not have received an establishment license through § 36-2854(A)(1)(d) at the time the Department awarded Sherri Dunn its license. Sherri Dunn was in a unique position where only it could qualify due to the Supreme Court's *Saguaro Healing* decision and the subsequent DRC award. Arizona Wellness was never competing over the same establishment license because it never qualified under § 36-2854(A)(1)(d). Sherri Dunn's establishment license is not linked to Arizona Wellness's failure to maintain a DRC or apply for an establishment license. Thus, the Department's rejection of Arizona Wellness's application was not "fairly traceable" to the Sherri Dunn's establishment licensure. *Fernandez*, 210 Ariz. at 140, ¶ 7.

As for redressability, Arizona Wellness's request to void Sherri Dunn's license cannot lead to licensure for Arizona Wellness. *See Horne*, 576 P.3d at 114, ¶ 19. Arizona Wellness asked the superior court to "revoke the Establishment License issued to Sherri Dunn, LLC[.]" [IR-26 at 30, ¶ B (APP 174).] But the request for relief doesn't match the alleged injury: that Arizona Wellness did not get an establishment license through its late application to

the Department. Sherri Dunn's establishment license award had, and continues to have, no bearing on Arizona Wellness's lack of licensure. Taking away Sherri Dunn's establishment license doesn't grant Arizona Wellness one. Redressability is therefore absent. Arizona Wellness cannot satisfy any of the three standing elements.

Finally, Arizona Wellness cannot establish standing because of its purported interest in "whether the Appellees exceeded their statutory authority rendering the Establishment License void." Opening Br. at 20. In making that argument, Arizona Wellness concedes that it cannot "show a particularized injury to [it]sel[f]." *Bennett*, 211 Ariz. at 196, ¶ 17. A "general desire to enforce the law" regarding Sherri Dunn's licensure does not confer standing on a party. *See Dail v. City of Phx.*, 128 Ariz. 199, 202 (App. 1980) (affirming dismissal for lack of standing).

The superior court properly applied Arizona's settled framework for standing and correctly found that Arizona Wellness lacked standing.

B. The superior court correctly rejected Arizona Wellness's competitor-standing theory, which is unrecognized and unavailable.

To try to establish standing, Arizona Wellness contends (at 16) that "similarly situated competitors subject to unequal regulatory treatment have standing." Not so.

1. Arizona Wellness has not established that Arizona courts recognize competitor standing.

To support its competitor-standing theory, Arizona Wellness relies on one case: *Center Bay Gardens, LLC v. City of Tempe City Council*, 214 Ariz. 353 (App. 2007). But *Center Bay* does not recognize competitor standing, and does not support standing for "similarly situated competitors subject to unequal regulatory treatment," as Arizona Wellness contends (at 16).

Center Bay involved a zoning decision. Consistent with longstanding Arizona law, *Center Bay* held that to have standing to challenge a zoning decision, the "plaintiff must allege 'particularized harm' resulting from the decision." *Id.* at 358, ¶ 20. The plaintiff in *Center Bay* owned property immediately across the street from the subject property, and "alleged that aesthetically their property would be less pleasing because of the obstruction of view and having a five-story structure (as contrasted with a three-story structure), with no landscaping setback, immediately across the street from

them." *Id.* at 359, ¶ 21. The Court emphasized that for zoning decisions, Arizona recognizes standing for properties "close in proximity" that "because of the greatly increased traffic" and other factors such as noise and light. *Id.*, ¶¶ 22-24. The Court found these factors supported standing because they would harm the plaintiff's use of the property.

None of *Center Bay*'s standing discussion (¶¶ 20-26) mentions competitors or competition. It relies solely on Arizona's particularized-injury requirement. The allegations of harm to the adjacent property supported standing because they harmed the plaintiff's use of the property *as a property owner*, not as a competitor. Similarly, none of *Center Bay*'s standing discussion (¶¶ 20-26) mentions anything about unequal regulatory treatment. For example, the building height and lack of landscaping setbacks in *Center Bay* supported standing not because of unequal regulatory treatment, but because they would cause the plaintiff's property to be "aesthetically … less pleasing because of the obstruction of view." *Id.*, ¶ 21.

To try to manufacture a "competitor standing" doctrine, Arizona Wellness relies on irrelevant portions of the decision. First, Arizona Wellness opens its discussion (at 16) by quoting, "Arizona case law reflects a long-standing policy to promote competition that we do not seek to inhibit."

(Quoting *Center Bay*, 214 Ariz. at 361, ¶ 31). That portion of the decision (¶¶ 30-31), however, did not rely on competition to establish standing. Instead, it responded to the defendant's argument that the plaintiff was really "objecti[ng] to increased competition." 214 Ariz. at 360, ¶ 30. In response to that argument, the Court (in dicta) reiterated Arizona's commitment to competition, but declared its irrelevance to the standing issue: "This policy [i.e., favoring competition] may be considered below *in a decision on the merits*. The issue before us, however, is *not* whether there will be increased or decreased competition, but whether Center Bay has made allegations of 'particularized harm' sufficient to confer standing." *Id.* at 361, ¶ 31 (emphases added). In other words, competition did not factor into the Court's *standing* analysis.

Arizona Wellness argues (at 17) that the plaintiff in *Center Bay* alleged that it "would be economically disadvantaged since it was not afforded the same variances and entitlements granted to UMHP." Arizona Wellness cites ¶ 11 of *Center Bay*, which merely summarizes the plaintiff's allegations. But the Court did not rely on that allegation to find standing, and the standing discussion (¶¶ 20-26) does not even mention it. The mention of unequal regulatory treatment, therefore, is not even a dictum.

Center Bay does not support competitor standing, and Arizona Wellness cites no other decision regarding competitor standing. The superior court therefore did not err in not relying on a competitor-standing doctrine that Arizona has never recognized. *See also Republican Nat'l Comm. v. Fontes*, 2025 WL 3511098, at *5 (Ariz. App. Dec. 5, 2025) ("RNC directs us to no decision in which our supreme court has recognized competitive standing[.]").

2. Arizona Wellness would not qualify for competitor standing even if Arizona recognized it.

Even if Arizona did recognize competitor standing, the superior court correctly identified that Arizona Wellness never competed, and never could have competed, for the establishment license awarded to Sherri Dunn. [Tr. 10:13-14 (APP077) (Arizona Wellness was not "a viable competitor at the time, whether we go back to the 2021 time frame, the early window.").]

Sherri Dunn's establishment license resulted from its unique status as a holder of a 2016-era DRC whose late application was the result of the Department's own prior legal error. By contrast, Arizona Wellness did not receive a DRC until 2023 (two years after the statutory application window closed). Arizona Wellness had no 2016-era DRC, and no legal vehicle to seek

the relief Sherri Dunn pursued—"the factual circumstances are different." *Ariz. Wellness Ctr.*, 2026 WL 801285, ¶ 35. In short, Arizona Wellness and Sherri Dunn were never "competitors" for the same license.

Arizona Wellness's theory of competitive harm is also impermissibly "speculative." *Horne*, 576 P.3d at 114, ¶ 23. Its theory rests entirely on a chain of speculation: that had the Department never issued the establishment license to Sherri Dunn, the Department would have opened an application window; that had such a window opened, Arizona Wellness might have applied; and that had Arizona Wellness applied, it might have been awarded a license. Every link in that chain is contingent, speculative, and unpled.

Arizona Wellness did not allege, and does not argue, that it was competing in the same local market as Sherri Dunn, or that the Department's (supposedly illegal) actions hampered Arizona Wellness's ability to compete in that market. To the contrary, any inability to compete stems instead from (1) Arizona Wellness's not being eligible for an establishment license at the time of the A.R.S. § 36-2854(A)(1)(d) application window, and (2) Arizona Wellness's letting its DRC lapse for noncompliance. [IR-46 at 1 (APP350).] Neither of those can be traced to Sherri Dunn or other defendants.

C. The superior court correctly rejected Arizona Wellness's taxpayer-standing theory because the dispute involves no expenditures.

1. Taxpayer standing is limited to expenditures of public funds.

Arizona Wellness next relies (at 20-25) on the "taxpayer standing" doctrine. But taxpayer standing is limited to challenges involving the expenditure or misappropriation of public funds. The superior court correctly held that this dispute does not involve "a common sense expenditure of funds." [Tr. 54:16-17 (APP121).]

Taxpayer standing in Arizona "is based upon the taxpayers' equitable ownership of [public] funds and their liability to replenish the public treasury for the deficiency which would be caused by the misappropriation." *Ethington v. Wright*, 66 Ariz. 382, 386 (Ariz. 1948). Taxpayer standing has a "preoccupation with expenditures"—they are the singular focus of the doctrine. *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 525, ¶ 21 (2021).

"When there is no expenditure of funds raised by taxation, the rationale for permitting standing does not exist, and the Arizona courts have denied standing." *Dail*, 128 Ariz. at 202. For instance, a party cannot rely on taxpayer standing to challenge a self-funded scheme. *See id.* ("Although

money has been expended in the purchase and operation of this water system, the expenditures have always been made from revenue generated by the operation of the water system, not from funds raised by taxation of Phoenix taxpayers.").

Even if a case involves an expenditure, a plaintiff must still be a contributor to that fund to establish standing. "For a taxpayer to maintain an action to restrain an allegedly illegal expenditure of public funds, he must be a contributor to the particular fund to be expended." *Smith v. Graham Cnty. Cmty. Coll. Dist.*, 123 Ariz. 431, 433 (App. 1979). This is a "common-law taxpayer standing requirement." *Grant v. Bd. of Regents of Univs. & St. Colls. of Ariz.*, 133 Ariz. 527, 529 (1982). Taxpayer standing does not exist unless the plaintiff is subject to "liability to replenish the public treasury for the deficiency which would be caused by the misappropriation." *Ethington*, 66 Ariz. at 386.

"[I]ncidental costs" to the taxpayer, however, do "not suffice for standing." *Welch*, 251 Ariz. at 524, ¶ 17 ("[I]t is difficult to imagine a government action lacking at least some impact on taxpayer funds."). Nor is a "general desire to enforce the law" enough to confer taxpayer standing. *Dail*, 128 Ariz. at 202.

2. Issuing a license is not an expenditure of public funds.

Arizona Wellness cannot establish taxpayer standing because it does not challenge an expenditure of public funds. Arizona Wellness argues (at 21-22) that "the Department made an illegal expenditure by both accepting Sherri Dunn, LLC's application and awarding it an Establishment License in violation of the law."

But Arizona Wellness does not even attempt to explain how issuing a license (or accepting an application for that license) could be an expenditure of public funds. A regulatory license is an authorization to engage in a lawful activity under specified conditions. It does not transfer money from the public treasury, draw down a government account, or disburse taxpayer-funded resources. As the trial court correctly found, "there is just simply not a common sense expenditure of funds." [Tr. 54:16-17 (APP121).]

This conclusion follows directly from the controlling caselaw. *Ethington* emphasized the connection between taxpayer standing and the expenditure of "municipal funds." 66 Ariz. at 386. *Dail* rejected taxpayer standing where the challenged action did not involve "a direct expenditure of funds generated by taxation." 128 Ariz. at 202. *Welch* rejected taxpayer standing when an allegedly illegal appointment did not "increase[] the

post's compensation, or otherwise added to taxpayers' liabilities[.]" 251 Ariz. at 525, ¶ 19. Simply put, "[w]hen there is no expenditure of funds raised by taxation, the rationale for permitting standing does not exist, and the Arizona courts have denied standing." *Dail*, 128 Ariz. at 202.

Issuing an establishment license falls outside these parameters. When granting a license to Sherri Dunn, the Department did not spend money, disburse public funds, or take any action that depleted the public treasury. It granted a regulatory license. If issuing a regulatory license qualified as a public "expenditure" sufficient to confer taxpayer standing, then any citizen could challenge any license, permit, or registration issued by any state agency. A disgruntled motorist could challenge the Motor Vehicle Division's decision to issue someone else's driver's license. A doctor could sue the Medical Board over its decision granting a medical license to her classmate. The superior court correctly recognized the boundless nature of Arizona Wellness's theory: "you start letting people come in, whether it's a third party or an aggrieved competitor to get a regulatory license. Then where do you draw the line?" [Tr. 13:4-7 (APP080.)] Arizona law does not permit such boundless standing, and for good reason.

The same goes for Arizona Wellness's theory (at 22) that by issuing a license the government "will be required to make expenditures in overseeing Sherri Dunn, LLC's Establishment License." Routine regulatory oversight costs are not the kind of "illegal expenditure" that supports taxpayer standing under Arizona law. Every regulatory license the state issues, from a barber's license to a driver's license, triggers some downstream oversight cost. This type of downstream effect "is too remote to support taxpayer standing," just like an appointee's compensation is too remote to support standing to challenge the appointment itself. *Welch*, 251 Ariz. at 525, ¶ 19.

And to top it off, Arizona Wellness does not challenge the Department's oversight expenditures, nor could it. Oversight expenditures are lawful, and Arizona Wellness does not contend otherwise. The real challenge is to the Department's issuing the license in the first place. The oversight costs are merely incidental to the licensing decision. But taxpayer standing does not permit a plaintiff to repackage a disagreement with a regulatory decision as a challenge to the routine costs of administering that decision. Otherwise, again, a driver could challenge another driver's license because law enforcement incurs costs to supervise driving.

3. The plaintiffs do not contribute to the fund.

"For a taxpayer to maintain an action to restrain an allegedly illegal expenditure of public funds, he must be a contributor to the particular fund to be expended." *Smith*, 123 Ariz. at 433. To show taxpayer standing, a plaintiff must be liable "to replenish the public treasury for the deficiencies caused by the misappropriation." *Id.* at 433-34. "Expenditures made under a contract from funds other than those raised by taxation do not confer upon taxpayers the right to challenge the contract." *Dail*, 128 Ariz. at 202.

Here, even if issuing a regulatory license were an expenditure, neither Arizona Wellness nor its principal, Mason Cave, contributes "to the particular fund to be expended." *Smith*, 123 Ariz. at 433.

The regulation of DRC and establishment license holders comes from the Smart and Safe Arizona Fund. A.R.S. § 36-2856(B)(1) ("All monies in the smart and safe Arizona fund must first be spent … to pay … [t]he actual reasonable costs incurred by the department to implement, carry out and enforce this chapter and rules adopted pursuant to this chapter."). Money for the fund comes from license application fees and taxes paid by license holders. A.R.S. § 36-2856(A) (citing A.R.S. §§ 36-2854 and 42-5452); *see also*

A.R.S. § 36-2854(I). The fund is not supported by general taxation, other than a tax on marijuana sales. A.R.S. § 42-5452. A general taxpayer does not contribute to the fund.

Thus, the money in this system is a closed system, like in *Dail*. There, the plaintiffs lacked standing because "[a]lthough money has been expended in the purchase and operation of this water system, the expenditures have always been made from *revenue generated by the operation of the water system*, not from funds raised by taxation of Phoenix taxpayers." 128 Ariz. at 202 (emphasis added). The revenue for the fund comes from license fees and taxation on marijuana businesses, not the general taxpayer.

But Arizona Wellness stands outside the closed system. It has not contributed at any relevant time. It was not yet incorporated when the A.R.S. § 36-2854(A)(1)(d) application window opened in 2021. It was not operating a dispensary (and therefore did not contribute to the Smart and Safe Arizona Fund) when the Department awarded an establishment license to Sherri Dunn. [IR-46 at 1 (APP350).] It does not have a DRC (and therefore does not currently contribute to the fund) because its certificate was invalid as of 2024. [*Id.*] In short, Arizona Wellness is not charged with replenishing the fund or contributing to the fund. There is no taxpayer standing.

Mason Cave's individual rationale also fails. He alleges that he "utilizes the municipal police departments, municipal fire departments, fire districts, county sheriffs, and Arizona highways, which are funded by application fees from Establishment License applications." [IR-26, ¶ 2 (APP148).] But *using* services funded by others does not confer taxpayer standing. Holding otherwise would mean anyone who uses a public service in Arizona would have taxpayer standing. That is why a plaintiff "must be a *contributor* to the particular fund to be expended." *Smith*, 123 Ariz. at 433 (emphasis added). *Dail* rejected this type of theory, where the plaintiff "base[d] this argument on the possibility that at some future date his water rates may increase or the supply of water to his residence may be reduced[.]" 128 Ariz. at 203.

4. Arizona Wellness's lost-revenue theory lacks legal or factual support.

Unable to identify a public expenditure, Arizona Wellness contends (at 22-23) that it has standing because the government lost potential revenue by not opening an application window that could have generated revenue from application fees.

Foregone potential revenue is not an "illegal expenditure of [public] funds" that triggers taxpayer standing under Arizona law. *Ethington*, 66 Ariz. at 386. The taxpayer standing doctrine is premised on a taxpayer's "equitable ownership" of funds already in the public treasury. It does not extend to hypothetical revenue the government might have collected under different circumstances. To hold otherwise would open the floodgates to uncountable "foregone revenue" cases, such as a city's decision not to install revenue-generating parking meters.

In sum, the superior court correctly held that Arizona Wellness failed to allege facts sufficient to establish taxpayer standing.

D. Arizona Wellness's purported "direct and substantial interest in the outcome" does not substitute for standing.

Arizona Wellness alternatively contends (at 18-20) that it has standing simply because it "possesses an interest in the outcome of the litigation," relying on *Alliance Marana v. Groseclose*, 191 Ariz. 289 (App. 1997), and *Citibank (Arizona) v. Miller & Schroeder Financial, Inc.*, 168 Ariz. 178 (App. 1990). Neither case supports standing; both reinforce the standing requirements that Arizona Wellness cannot satisfy.

Alliance Marana affirmed dismissal for lack of standing when a non-resident of Marana attempted to sue the town for rejecting his referendum petition. 191 Ariz. at 299. Here, likewise, Arizona Wellness had no role in the Sherri Dunn licensing proceedings, no role in the settlement agreement, and no role in the accompanying litigation.

Arizona Wellness's purported interest in whether the government actors followed the law about another entity's license is a generalized interest in enforcing the law. Arizona law consistently rejects such generalized interests as a basis for standing. "An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing." *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998). Standing requires an "interest beyond a general desire to enforce the law." *Dail*, 128 Ariz. at 202. "A contrary approach would inevitably open the door to multiple actions asserting all manner of claims against the government." *Bennett v. Napolitano*, 206 Ariz. 520, 524, ¶ 16 (2003).

Citibank similarly does not help Arizona Wellness. There, the Court found standing because the plaintiff-trustee had a concrete, legally enforceable duty under a trust indenture to safeguard and properly distribute funds that had been fraudulently diverted. 168 Ariz. at 183-85. The

Court found a present, justiciable controversy because money was actually missing from the trust, not because the plaintiff had a generalized interest in how the law might develop. *Id.* at 183.

Arizona Wellness references (at 12-13) the notion that standing is prudential in Arizona. To the extent Arizona Wellness asks the Court to waive standing, the Court should decline. Arizona courts have not waived the standing requirement in decades, and did so then only in a case of "great public importance." *Sears*, 192 Ariz. at 71, ¶¶ 24-25; *see also id.* ("The paucity of cases in which we have waived the standing requirement demonstrates both our reluctance to do so and the narrowness of this exception."); *accord Bennett*, 211 Ariz. at 195, ¶ 15 ("We are thus reluctant to waive the standing requirement and have done so only on rare occasions.").

The general principles of standing—injury, traceability, redressability—apply here. This case offers no reason to depart from those settled principles and give Arizona Wellness special treatment. Because Arizona Wellness alleged no redressable, traceable injury, the superior court correctly dismissed for lack of standing.

II. In the alternative, the superior court correctly dismissed the gift-clause claim.

Even if Arizona Wellness had standing, the superior court correctly dismissed the gift-clause claim on the merits. The gift clause (Ariz. Const., art. 9, § 7) does not apply to a regulatory license such as an establishment license because a license is not public property, public funds, or public credit; it is an exercise of the state's regulatory authority. Every Arizona case applying gift-clause scrutiny has involved the disposition of something the government owned, and no court has ever extended the clause to a regulatory license. Arizona Wellness's attempts to stretch *Neptune Swimming*, the "or otherwise" language, and the "grant of exemption" theory all fail to bridge this gap.

In the alternative, even if the gift clause applied, Sherri Dunn's establishment license would satisfy the two-element test: it serves the public purpose the voters declared in enacting the Smart and Safe Arizona Act, and the Department received adequate consideration in the form of the maximum statutory application fee and nonpecuniary benefits including tax revenue and the resolution of contested litigation.

A. The superior court correctly ruled that the gift clause does not apply to a regulatory license such as an establishment license.

1. Regulatory licenses do not trigger the gift clause.

The superior court held that "this is a regulatory license, and it's just not a gift as contemplated by the Gift Clause." [Tr. 55:20-22 (APP122.)] The superior court was correct. Issuing a regulatory license does not fall within the scope of the gift clause.

The gift clause applies to a "donation or grant, by subsidy or otherwise":

> Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

Ariz. Const., art. 9, § 7.

Every category of prohibited conduct in this text involves the government parting with something it owns: giving or loaning its *credit*, making a *donation or grant* by *subsidy* or otherwise, becoming a *subscriber*, *shareholder*, or *joint owner*. The common thread is the disposition of public

resources—money, credit, property, or an ownership interest—to benefit a private party. A regulatory license is none of these things.

"This constitutional provision was historically intended to protect against the 'extravagant dissipation of public funds' by government in subsidizing private enterprises such as railroad and canal building in the guise of 'public interest.'" *Kotterman v. Killian*, 193 Ariz. 273, 288, ¶ 52 (1999) (quoting *State v. Nw. Mut. Ins. Co.*, 86 Ariz. 50, 53 (1959)). "In a nutshell, the evil to be avoided was the depletion of the public treasury or inflation of public debt by a public entity engaging in non-public enterprises or by giving advantages to special interests." *Schires v. Carlat*, 250 Ariz. 371, 374, ¶ 6 (2021) (cleaned up; citations omitted).

The foundational principle is straightforward: "One cannot make a gift of something that one does not own." *Kotterman*, 193 Ariz. at 284, ¶ 52. In *Kotterman*, the Supreme Court held that a tax credit did not violate the gift clause because the state never owned the forgone tax revenue—the funds remained the taxpayer's property until the final amount owed was calculated and collected. *See id.* Because the state had no ownership interest in the funds, it could not "gift" them.

Likewise here, the superior court correctly held that the gift clause does not apply because a regulatory license does not involve the disposition of public resources. Issuing a regulatory license such as the establishment license is an exercise of the state's regulatory authority. It is an instrument of the state's police power, not an asset of the state. A license does not fall within any of the terms of article 9, § 7 as interpreted by Arizona's appellate courts.

Under longstanding and settled law, a license is not property at all. "As between the state and the licensee, a liquor license is not a property right or contract; it is a privilege to engage in a business subject to the regulation of the state." *Ariz. State Liquor Bd. v. Poulos*, 112 Ariz. 119, 121 (1975). The Department does not "own" an establishment license any more than a state licensing board "owns" a medical license, a contractor's license, or a liquor license. The Department creates and issues licenses as a regulatory function; it does not hold them as property that it can give away or withhold for consideration.

Every case in which Arizona courts have applied gift clause scrutiny has involved the expenditure of public funds, the transfer or relinquishment of public property, or the extension of public credit. In *Schires*, 250 Ariz. 371,

373, ¶¶ 3-4, the Court examined direct cash payments from a city to a private university and a private landlord. In *Turken v. Gordon*, 223 Ariz. 342, 350, ¶ 36 (2010), the Court evaluated city payments for parking spaces. In *Rowlands v. State Loan Board of Arizona*, 24 Ariz. 116, 123 (1922), the Court struck down the forgiveness of mortgage interest obligations owed to the state. In *Arizona Center for Law in the Public Interest v. Hassell*, 172 Ariz. 356, 371 (App. 1991), the court invalidated legislation that relinquished the state's property interest in riverbed lands. And in *Neptune Swimming*, the Court analyzed a license granting a private entity exclusive use of *city-owned property*—the city's public aquatic center. 256 Ariz. at 555, ¶ 1. In every instance, the government action at issue involved the disposition, expenditure, or relinquishment of something the government possessed or owned. No Arizona court has ever extended the gift clause to a purely regulatory license that does not involve public property or public funds.

2. Arizona Wellness's arguments stretch prior cases and the constitutional text.

To argue that the gift clause covers regulatory licenses, Arizona Wellness stretches prior gift-clause caselaw and the text of the clause itself.

a. Arizona Wellness relies (at 34-37) on *Neptune Swimming* for the proposition that a license can trigger gift-clause scrutiny. But *Neptune Swimming* does not support the proposition that a *regulatory* license of any kind falls within the gift clause's scope. *Neptune Swimming* did not address a regulatory license. The license in that case involved an operating agreement that conferred *exclusive possession* and use of *city-owned real property* (the city's public aquatic centers). 256 Ariz. at 555, ¶¶ 1-5. "[T]he City *own[ed] the property access rights*[.]" *Id.* at 560, ¶ 29 (emphasis added). Scottsdale *owned* the aquatic centers, could *use* them as it wished, and could transfer the right to use them to another—a gift or grant.

Neptune Swimming explained that "[g]ranting a private enterprise exclusive use of City-owned property, even absent a monetary cost to the City, constitutes an expenditure for Gift Clause purposes." *Id.* at 560, ¶ 28. This holding turned on the city's ownership of the property being conferred. That makes sense for the same reason that the government's letting a business occupy a government-owned building rent-free, or giving someone a free 100-year lease to live on government-owned Camelback Mountain, may implicate the gift clause.

Arizona Wellness attempts to bridge this gap by arguing (at 35) that the Department exercises "exclusive control over the creation and allocation" of establishment licenses, and arguing that this control is analogous to the city's ownership of its aquatic center in *Neptune Swimming*. But regulatory control is not the same as property ownership. Every licensing authority in the state, from the Department of Liquor Licenses and Control to the Registrar of Contractors, exercises exclusive control over creating and allocating the licenses within its jurisdiction. If that were sufficient to trigger gift clause scrutiny, then practically every licensing decision would fall within the gift clause's scope.

Neptune Swimming does not sweep this far. It does not apply here because unlike in that case, an establishment license does not involve public property within the meaning of the gift clause.

Arizona Wellness's other cases follow the same principle that one cannot gift what one cannot own. *Hassell*, 172 Ariz. at 360-61, 368, involved the state's relinquishing interest in public trust land. *Industrial Development Authority of Pinal County v. Nelson*, 109 Ariz. 368, 372 (1973), concerned public revenue bonds—a government expenditure. *Pimalco, Inc. v. Maricopa County*, 188 Ariz. 550, 559 (App. 1997), involved a gift-clause analysis of retroactive

tax refunds—monies already owned by the state. None of these cases supports extending the gift clause to encompass a regulatory license.

b. Arizona Wellness argues (at 37-38) that the establishment license is a "grant of exemption" because it relieves its holder from criminal liability that would otherwise attach to the sale of marijuana. But that characterization describes practically every regulatory license. A bar card exempts a lawyer from penalties for the unauthorized practice of law. A pharmacy license exempts its holder from criminal penalties for dispensing controlled substances. A liquor license exempts its holder from criminal penalties for selling alcohol without a license. A driver's license exempts its holder from the prohibition on operating a motor vehicle on public roads. The gift clause does not cover every license authorizing legal permission to engage in an otherwise-restricted activity.

In connection with this argument, Arizona Wellness cites *Rowlands*, 24 Ariz. 116. But there, the state forgave mortgage interest payments that *it* was entitled to receive. *Id.* at 123. Again, this was a gift of public property owned by the state, not regulatory licensure.

c. Arizona Wellness's arguments (at 38) about the "realities of the transaction" do not transform a license into a gift. (Citing *Turken*, 223 Ariz.

at 345, ¶ 8.) The notion that Sherri Dunn reaps benefits from its establishment license "does not create an illegal expenditure." *Town of Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545, 550 (1971). People benefit from having a driver's license or a pharmacy license, too.

d. Arizona Wellness argues (at 39) that the phrase "or otherwise" brings a regulatory license within the gift clause's scope. Under the *ejusdem generis* canon of construction, "general words which follow the enumeration of particular classes of persons or things should be interpreted as applicable only to persons or things of the same general nature or class." *State v. Barnett*, 142 Ariz. 592, 596 (1984). Similarly, "*noscitur a sociis*—a canon closely related to *ejusdem generis*—dictates that a statutory term is interpreted in context of the accompanying words." *Est. of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 326, ¶ 13 (2011).

The text of the gift clause enumerates certain forbidden gifts: "giv[ing] or loan[ing] [the government's] credit in the aid of" a private party, and "mak[ing] any donation or grant, by subsidy or otherwise" to a private party. Ariz. Const., art. 9, § 7. The text's placement of "or otherwise" therefore refers to gifts like those other categories. It does not expand the scope to include regulatory licenses.

* * *

In sum, the gift clause does not apply to a regulatory license such as the establishment license. The superior court correctly held that "this is a regulatory license, and it's just not a gift as contemplated by the Gift Clause." [Tr. 55:20-22 (APP122).]

B. Even if the gift clause applied, Sherri Dunn's establishment license does not violate it.

Courts evaluate gift-clause challenges under a two-element test that puts the burden of proof on the plaintiff. "First, a court asks whether the challenged expenditure serves a public purpose. If not, the expenditure violates the Gift Clause, and the inquiry ends." *Schires*, 250 Ariz. at 374-75, ¶ 7. Next, "[i]f a public purpose exists, the court secondarily asks whether the value to be received by the public is far exceeded by the consideration being paid by the public. If so, the public entity violates the Gift Clause by providing a subsidy to the private entity." *Id.* (citations and quotation marks omitted).

As a threshold matter, this test is a poor fit for a regulatory license like the establishment license at issue here. That mismatch further confirms that the gift clause does not apply. But even if it applied, Sherri Dunn's

establishment license satisfies both elements of this test. Issuing a license serves a public purpose, consistent with the Department's regulatory scheme enacted by the voters through Proposition 207. The Department received adequate consideration because Sherri Dunn paid the statutorily set fee for its establishment license.

1. The establishment license serves a public purpose.

The first element "asks whether the challenged expenditure serves a public purpose." *Schires*, 250 Ariz. at 374-75, ¶ 7. "In general … a public purpose promotes the public welfare or enjoyment." *Id.* at 375, ¶ 8. This is why "courts take 'a broad view of permissible public purposes' and give significant deference to the judgment of elected officials, who are tasked with identifying and furthering such purposes." *Id.* ¶ 9 (quoting *Turken*, 223 Ariz. at 346, ¶ 28). Here, the superior court correctly held that the license "served a public purpose[.]" [Tr. 56:9 (APP123).]

In Arizona, the people have a direct say in what promotes the public welfare or enjoyment. *See* Ariz. Const. art. 4, pt. 1, § 1(1) (reserving the initiative power to the people); *id.* art. 2, § 2 ("All political power is inherent in the people, and governments derive their just powers from the consent of the governed[.]").

Here, the voters enacted the Smart and Safe Arizona Act "[i]n the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom." Laws 2020, Proposition 207, § 2(1). The voters declared that "responsible adult use of marijuana should be legal," and that, "[i]n the interest of the health and public safety of our citizenry, the legal adult use of marijuana should be regulated so that … [l]egitimate, taxpaying business people, and not criminal actors, conduct sales of marijuana." *Id.*, § 2(1), (2)(a).

The Act's regulatory framework exists to bring the sale of recreational marijuana into a licensed, regulated, and taxed market. An establishment license issued under the Act advances that purpose by authorizing a licensed establishment to operate within the regulatory framework the voters created, generating tax revenue, ensuring regulatory compliance, and expanding lawful access to a product Arizona voters chose to legalize.

Consequently, issuing an establishment license to Sherri Dunn served a valid public purpose. Through its establishment license, Sherri Dunn operates within a statutory and legal framework that the voters enacted by approving Proposition 207. *See* A.R.S. § 36-2854(A)(1)(d) (allowing "early applicant" licensure); *id.* § 36-2854(A) ("The department shall adopt rules to

implement and enforce this chapter and regulate marijuana, marijuana products, marijuana establishments and marijuana testing facilities."); A.R.S. § 36-2858 ("Lawful operation of marijuana establishments and marijuana testing facilities"). Proposition 207, and its resulting statutes, reflect this public purpose.

The settlement agreement between Sherri Dunn and the Department, and Sherri Dunn's licensure, also serves this public purpose. [*See* IR-33 at 3 ¶ 3 (APP262) ("Sherri Dunn shall, at all times, comply with the AMMA, AMMA Rules, SASAA, and SASAA Rules."); *accord* A.R.S. § 36-2858 ("Lawful operation of marijuana establishments and marijuana testing facilities").] Through the establishment license, Sherri Dunn paid an application fee under that framework, (IR-26 at 8, ¶ 30 (APP152)), and pays taxes into the Smart and Safe Arizona Fund, A.R.S. § 36-2854(A); A.R.S. § 42-5452. The establishment license furthers the public purpose to regulate adult-use marijuana.

In fact, refusing to issue an establishment license to Sherri Dunn (or voiding the license through this action) would contravene the public purpose declared by the voters, which prohibits the Department from "adopt[ing] any rule that [p]rohibits the operation of marijuana

establishments, either expressly or through requirements that make the operation of a marijuana establishment unduly burdensome." A.R.S. § 36-2854(G)(1). Nor can the Department adopt a rule that "[p]rohibits or interferes with the ability of a dual licensee to operate a marijuana establishment and a nonprofit medical marijuana dispensary at shared locations." A.R.S. § 36-2854(G)(2). The Department would have contravened that public purpose if it had ignored *Saguaro Healing*, refused to honor Sherri Dunn's DRC that should have been awarded, and barred Sherri Dunn's corresponding eligibility for an establishment license.

Arizona Wellness does not seriously dispute that awarding a license serves a valid public purpose. Instead, it focuses (at 41) on the Department's supposedly awarding the license "outside the statutory bounds" to claim no public purpose exists. This argument rests on a category error. It conflates two distinct legal questions: (1) whether the government action complied with the statutes, and (2) whether the government action serves a public purpose under the gift-clause inquiry. The two are not the same.

A government action can serve a valid public purpose even if the challenger believes the action was unauthorized. For example, issuing a driver's license to someone who failed a driving test may violate a statute,

but it would not violate the gift clause. Not every alleged legal error has constitutional significance.

Arizona Wellness's opening brief confirms the thrust of its argument. It explains (at 44) that "if the Establishment License were awarded in compliance with the Smart and Safe Arizona Act, then of course the Gift Clause would not apply." But the gift clause asks whether the *nature* of the government action serves the public interest, not whether every procedural prerequisite was satisfied. Licensing a marijuana establishment to operate within Arizona's regulated market serves the public purposes the voters identified when they enacted the Smart and Safe Arizona Act.

Neptune Swimming illustrates this principle. There, Neptune alleged that the city violated its own procurement code by canceling an RFP process and instead extending an existing operating license to a competitor. 256 Ariz. at 556-57, ¶¶ 7-14. Despite those challenges to the procedures the government used, the Supreme Court held that the license served a valid public purpose because "dedicating parts of the City's aquatic centers for competitive youth swimming enriches the lives of the City's youth and their families, and it generates tourism dollars for local businesses." *Id.* at 559-60, ¶ 26. The Court affirmed summary judgment on the gift-clause claim while

separately remanding the procurement-code claim for further proceedings, confirming that alleged procedural deficiencies do not defeat the public-purpose element of the gift-clause analysis. *Id.* at 567, ¶ 55. Likewise here, allegations that issuing the license violated the statutes does not undermine the public purpose in issuing a license.

Arizona Wellness argues (at 41) the Department undermined the Act's revenue-enhancing purpose by forgoing an open application window that would have generated more revenue. But the public-purpose inquiry asks whether the government action "serves a public purpose," *Schires*, 250 Ariz. at 374-75, ¶ 7, not whether the government maximized revenue.[2] Even if the Department's action resulted in less application-fee revenue, that does not negate the public purposes the license itself serves. And in any event, the premise of this argument is wrong. The Department could not have opened another application window under A.R.S. § 36-854(A)(1)(d). Arizona Wellness cites A.R.S. § 36-854(A)(1)(e), but that provision applies only "[a]fter [the Department] issu[es] marijuana establishment licenses to

[2] As explained below, even the gift clause's consideration element "does not require public entities to maximize profit at the cost of other considerations." *Neptune Swimming*, 256 Ariz. at 561, ¶ 35.

qualified early applicants" under A.R.S. § 36-854(A)(1)(d)—the provision under which Sherri Dunn was granted its establishment license. Sherri Dunn was uniquely qualified under A.R.S. § 36-854(A)(1)(d) through its DRC, but that provision does not require a "random selection application window," as Arizona Wellness contends (at 41).

2. The government received adequate consideration through the only consideration possible: the statutory license fee.

The second element of the gift-clause analysis "asks whether 'the value to be received by the public is far exceeded by the consideration being paid by the public."' *Schires*, 250 Ariz. at 375, ¶ 7 (citation omitted). This consideration element fails only where the value of what the public body "give[s]" is "grossly disproportionate" to what it "get[s]" in return. *Neptune Swimming*, 256 Ariz. at 561, ¶ 37 (citation omitted).

The "analysis of adequacy of consideration for Gift Clause purposes focuses … on the objective fair market value of what the private party has promised to provide in return for the public entity's payment." *Turken*, 223 Ariz. at 350, ¶ 33; *accord Schires*, 250 Ariz. at 376, ¶ 14.

Here, the superior court correctly held that "the value to be received by the public far exceeded the consideration paid by the public." [Tr. 56:10-

11 (APP123).] The public received adequate consideration in the form of Sherri Dunn's license fee, a statutorily mandated fee for an establishment license. The Department could not have demanded more. Moreover, there is no fair market value of the Sherri Dunn establishment license because there is no open market for it.

(a) The Department received adequate consideration in the form of Sherri Dunn's application fee and non-pecuniary benefits.

Application fees for establishment licenses cannot exceed "five times the fees prescribed by the department to register or renew a nonprofit medical marijuana dispensary." A.R.S. § 36-854(A)(2). The cost of registering a nonprofit medical marijuana dispensary "may not exceed $5,000." A.R.S. § 36-2803(A)(5)(b). The Department set the establishment license application fee at the highest number it could—$25,000. *See* Ariz. Admin. Code R9-18-102(A)(4)(a).

There is no dispute that Sherri Dunn paid this fee in applying for its establishment license. [IR-26 at 8, ¶ 30 (APP152).] By law, the Department could not have received more, and the establishment license could not be subject to bidding or a procurement process. The statutory scheme confirms that the application fee is not "grossly disproportionate" in value to what

Sherri Dunn received. *See Neptune Swimming*, 256 Ariz. at 561, ¶ 37. That regulatory license fee is adequate consideration by itself. There can be no other amount that the Department could have received.

Nonetheless, the public received nonpecuniary benefits that further demonstrate adequate consideration. "[N]onpecuniary benefits also count as consideration." *Id.* ¶ 34 (citing *Kromko v. Ariz. Bd. of Regents*, 149 Ariz. 319, 322 (1986)). Here, the public received benefits in the form of ongoing regulatory oversight, tax revenue from a newly operating licensed establishment, and resolving contested litigation that would have consumed additional public resources to prosecute. As the superior court put it, "there's public value, the regulation of marijuana sales and the resolution of the litigation." [Tr. 31:12-14 (APP098).]

In sum, the Department received adequate consideration through the license fee and non-pecuniary benefits.

(b) The establishment license has no fair market value.

Fair market value is "that 'amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.'" *Bus. Realty of Ariz., Inc. v. Maricopa Cnty.*, 181 Ariz. 551, 553

(1995) (citation omitted); *accord Neptune Swimming*, 256 Ariz. at 561, ¶ 33 (applying fair market value to determine adequate consideration).

The fee for the establishment license is fixed by statute and regulation. A.R.S. § 36-854(A)(2); Ariz. Admin. Code R9-18-102(A)(4)(a). And Sherri Dunn cannot "separately transfer or assign the dispensary registration certificate or the marijuana establishment license." Ariz. Admin. Code R9-18-305(A). It cannot be subject to fair-market-value analysis because there is no possible market for it.

Arizona Wellness' allegation (at 43) that the license is "worth at least ten million ($10,000,000) dollars" does not apply to the adequate-consideration analysis because the Department cannot have charged more than the statutory application fee.

Moreover, "the Gift Clause does not require public entities to maximize profit at the cost of other considerations," *Neptune Swimming*, 256 Ariz. at 561, ¶ 35, and the Department has no authority to accept bids on the license, *see* A.R.S. § 36-854(A)(1)(d). Nor could the Department have obtained more revenue through more application fees. In February 2024, only one party could have applied for, qualified for, and gained an establishment license under A.R.S. § 36-854(A)(1)(d): Sherri Dunn.

Arizona Wellness re-urges (at 44) a "foregone revenue" theory, "where every hundred applications would generate $2,500,000 for the Fund." But *Kotterman* forecloses the argument that hypothetical, unrealized revenue constitutes public property subject to gift-clause scrutiny. 193 Ariz. at 284. The "give" in the *Schires* analysis must be measured by what the public actually parted with, not by what a challenger speculates the public might have received under a different set of circumstances that never materialized.

Arizona Wellness cannot satisfy its burden of establishing the "gross disproportionality" required for its claim. *Schires*, 250 Ariz. at 376, ¶ 13. The superior court properly held that "the value to be received by the public far exceeded the consideration paid by the public." [Tr. 56:10-11 (APP123).]

* * *

In sum, following Arizona Wellness' position on consideration would take the gift clause far beyond its intended purpose to prevent the "depletion of the public treasury or inflation of public debt." *Schires*, 250 Ariz. at 374, ¶ 6. The superior court correctly recognized the legal and practical unworkability of Arizona Wellness's theory and dismissed the gift-clause claim.

III. In the alternative, the superior court correctly dismissed the "ultra vires claim."

The superior court correctly dismissed count two of the complaint, which purported to state an "ultra vires" claim. Arizona does not recognize a freestanding ultra vires cause of action, and Arizona Wellness did not plead a declaratory-judgment claim. And even if the complaint could be recast as a declaratory-judgment action, Arizona Wellness lacks the "definite interest" required for declaratory relief. The cases Arizona Wellness relies on—*Pawn 1st* and *Arkules*—involved statutory causes of action under A.R.S. § 9-462.06(K) that Arizona Wellness does not have. Regardless, the facts alleged do not support a finding that the Department acted without authority. The Department had statutory authority to award Sherri Dunn's establishment license under A.R.S. § 36-2854(A)(1)(d), and no statutory provision prohibited the settlement through which it did so.

A. Arizona does not recognize a freestanding "ultra vires" cause of action.

To state a claim, a plaintiff must identify a cognizable legal theory. Count two of the complaint purports to state an "ultra vires claim." [IR-26 (APP172).] But Arizona does not recognize a freestanding "ultra vires" cause

of action. The superior court correctly held that "[t]here's no such claim in Arizona." [Tr. 50:11-16 (APP117).]

On appeal, Arizona Wellness does not directly challenge the superior court's ruling that no freestanding "ultra vires" claim exists, and does sufficiently develop an argument that such a claim exists. This Court should therefore rule that the argument is waived.

B. Arizona Wellness did not plead a declaratory-judgment claim.

On appeal, rather than trying to establish that an "ultra vires" claim exists, Arizona Wellness instead pivots (at 25) to try to recast count two as a declaratory-judgment claim.

But the complaint does not assert a claim for declaratory judgment. Arizona Wellness cites its prayer for relief "requesting a 'declaration'" (Opening Br. at 25 (citing IR-26 at 30, ¶¶ C-D (APP174))), but that is not a claim for declaratory judgment. "[I]n considering the sufficiency of the complaint to state a claim for relief, the prayer is not part of the complaint." *Citizens' Comm. for Recall of Jack Williams v. Marston*, 109 Ariz. 188, 192 (1973). This is not a case of mistitling a pleading, like in *Bishop v. Marks*, 117 Ariz. 50, 51 (App. 1977).

Arizona Wellness never sought leave to amend its complaint to add a claim for declaratory judgment, and never took the steps necessary to try to do so. The superior court therefore properly held Arizona Wellness to its own pleading. [*See* Tr. 50:11-16 (APP117) ("You can't just call it a special action now because that's not how you pled it.").] Accordingly, the superior court correctly dismissed after concluding that a freestanding "ultra vires" claim does not exist.

The superior court did not stop there, however. It also ruled in the alternative that "Declaratory relief is not available because you have to have an underlying substantive claim. … There's no independent claim to support declaratory relief." [*Id.*] The superior court was correct. "Although an action for declaratory relief is remedial and to be liberally construed, the plaintiff must have an underlying cause of action." *Horne*, 576 P.3d at 115 (internal citation omitted) (citing *Ansley v. Banner Health Network*, 248 Ariz. 143, 151, ¶ 31 (2020)). Count two, however styled, does not have a valid underlying cause of action.

"For a court to grant declaratory judgment, a justiciable controversy must exist. A justiciable controversy exists if there is an assertion of a right, status, or legal relation in which the plaintiff has a definite interest and a

denial of it by the opposing party." *Hunt v. Richardson*, 216 Ariz. 114, 125 ¶ 37 (App. 2007) (quotation marks and citations omitted); *see also Morris v. Fleming*, 128 Ariz. 271, 273 (App. 1980) (requiring party to have "definite interest" for declaratory relief).

Arizona Wellness does not have a "definite interest" in voiding Sherri Dunn's license, because, again, Arizona Wellness is a stranger to the settlement and not harmed by the settlement or the Sherri Dunn establishment license. Authorizing a stranger to seek declaratory judgment over a regulatory license the stranger doesn't like would expand declaratory judgment without limit.

To try to manufacture a cause of action, Arizona Wellness relies (at 28) on *Pawn 1st LLC v. City of Phx.*, 242 Ariz. 547 (2017) ("*Pawn 1st II*"), and *Arkules v. Bd. of Adjustment of Town of Paradise Valley*, 151 Ariz. 438 (App. 1986). Neither case supports Arizona Wellness because the challengers in those cases had a statutory cause of action.

Both *Pawn 1st II* and *Arkules* involved challenges to decisions by municipal zoning boards of adjustment. The legislature has specifically authorized such challenges and created a right for certain limited third

parties to "file a complaint for special action in the superior court" to review the board of adjustment's decision. A.R.S. § 9-462.06(K).

Both *Pawn 1st II* and *Arkules* involved such special actions. *Pawn 1st II* explained that "Pawn filed a special action in superior court challenging the Board's variance decision," 242 Ariz. at 551, ¶ 6, and cited an earlier decision from the case further explaining that "Pawn sought review of the Board's decision by filing a complaint for special action with the superior court pursuant to A.R.S. § 9-462.06(K)." *Pawn 1st, LLC v. City of Phx.*, 231 Ariz. 309, 310, ¶ 7 (App. 2013) ("*Pawn 1st I*"). The challengers in *Arkules* likewise "filed a special action in the superior court seeking reversal of the Board's decision." 151 Ariz. at 439.[3]

Unlike the challengers in *Pawn 1st II* and *Arkules*, Arizona Wellness does not have a statutory cause of action. This context is critical. When *Pawn 1st II* described the Board's action as "ultra vires and void," it was not

[3] In addition, the holding on which Arizona Wellness relies (at 28)—"the effect of the void decision by the Board of Adjustment is the same as that of any void decision by a court: 'the mere lapse of time does not bar an attack on a void judgment'"—has been directly abrogated by *Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 243 Ariz. 404, 407-08 ¶¶ 14, 16-17 (2018) (party cannot challenge a void judgment through an untimely direct appeal).

recognizing a freestanding "ultra vires" cause of action. It was applying a substantive standard—whether the board exceeded its statutory authority—within a cause of action the legislature expressly created. The phrase "ultra vires and void" described the *merits* of the challenge; § 9-462.06(K) provided the *right to bring it*. Arizona Wellness attempts to borrow the "ultra vires and void" phrase while leaving behind the statutory cause of action that authorized the court to reach the question. That is precisely the gap the trial court identified: declaratory relief requires an underlying substantive claim, and "ultra vires" is not one.

Moreover, neither *Pawn 1st II* nor *Arkules* authorizes strangers to the proceedings to challenge government action. In both cases, the challengers were directly connected to the proceedings below. The competitor in *Pawn 1st II* had appeared and opposed the variance application before the Board. 242 Ariz. at 551, ¶ 5. The neighbors in *Arkules* lived immediately adjacent to the property at issue. 151 Ariz. at 441. Arizona Wellness, by contrast, was a stranger to the Sherri Dunn licensing proceedings, a stranger to the settlement agreement, and a stranger to the litigation that preceded it.

In short, *Pawn 1st II* and *Arkules* stand for the uncontroversial proposition that when the legislature has authorized a challenge to a board's

decision, a court may declare that decision ultra vires and void if the board exceeded its statutory powers. The cases do not stand for the proposition that any person may bring a freestanding ultra vires claim, in any court, against any party, without a cause of action. The superior court correctly dismissed count two.

C. Even if such a claim existed, the complaint does not allege facts supporting one.

Regardless, the facts alleged in the complaint do not support an ultra vires act by any party. On appeal, Arizona Wellness presents two arguments that the Department and Sherri Dunn's settlement agreement was ultra vires: (1) there was no statutory authority to settle the case (at 28), and (2) the settlement contravened the ruling of the lower court of appeals (at 29-32). Neither works.

First, as discussed above, but for the wait for *Saguaro Healing* to be decided, Sherri Dunn qualified under A.R.S. § 36-2854(A)(1)(d). The settlement agreement between the parties explained that that was the statute under which Sherri Dunn was awarded an establishment license. [IR-33 at 3, ¶ 4 (APP262).] The statutory authority existed. Sherri Dunn qualified as an

early applicant. Nothing prevented the Department making that determination.

Arizona Wellness identifies nothing preventing the Department from entering into settlement agreements. On that point, Arizona Wellness cites *Safeway Stores, Inc. v. Indus. Comm'n of Ariz.*, 152 Ariz. 42 (1986). But *Safeway* confirms that the Department had authority to settle. There, the Court allowed employers and workers compensation claimants to settle workers compensation claims, reasoning that there was no "express statutory prohibition" from doing so. *Id.* at 47. The Court analyzed A.R.S. § 23-1025 and found its plain text did "not expressly prohibit settlement agreements." *Id.*

Like in *Safeway Stores*, A.R.S. § 36-2854(A)(1)(d) does not prohibit the Department from settling cases. Other subparts of § 36-2854 also confirm that the Department can settle. Specifically, the Department is barred from "adopt[ing] any rule that [p]rohibits the operation of marijuana establishments, either expressly or through requirements that make the operation of a marijuana establishment unduly burdensome." A.R.S. § 36-2854(G)(1).

Using Arizona Wellness's interpretation of § 36-2854(A)(1)(d) to bar settlements would contravene the principle of construction that "two subsections must be interpreted consistently," *Wyatt v. Wehmueller*, 167 Ariz. 281, 285 (1991), and that related provisions "must be construed as one system governed by one spirit and policy," *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970). Specifically, Arizona Wellness's interpretation of § 36-2854(A)(1)(d) to prevent settlement agreements would undermine § 36-2854(G)(1)'s command to avoid undue burden on the operation of marijuana establishments. The Department deemed Sherri Dunn qualified under § 36-2854(A)(1)(d) because it would have qualified but for the Department's own legal error in 2016, as well as but for the unavoidable time-lag resulting from disputing that decision to the Supreme Court. Awarding the establishment license under § 36-2854(A)(1)(d) considering those undisputed facts is consistent with § 36-2854(G)(1)'s prohibitions on the Department.

Second, the lower court of appeals ruling in the establishment license litigation did not bar the Department and Sherri Dunn from settling their dispute. The lower court of appeals ruled that the Department did not abuse its discretion in denying Sherri Dunn's application under A.R.S. § 36-2854(A)(1)(d). [IR-32 at 11 (APP257).] Its Rule 54(c) appealable judgment

affirmed the November 21, 2022 decision of the Department. [*Id.*] The court did not issue an injunction preventing or compelling the Department to act in a certain way, nor did it issue a declaration in favor of the Department. Thus, nothing in its order prevented the Department and Sherri Dunn from settling their dispute by issuing an establishment license.

Longstanding principles favoring settlement also preclude labeling this settlement as ultra vires. Parties regularly settle disputes on appeal and settle them in a way that differs from how the court below ruled. Those principles are consistent with Arizona's policy that "settlements of disputed matters are favored by the law and will be upheld if fairly made." *Abbott v. Banner Health Network*, 239 Ariz. 409, 413, ¶ 12 (2016) (citations omitted). "Courts look with favor upon stipulations designed to simplify and settle litigation and save cost to the parties when they are not illegal or contrary to public policy, and surely it cannot be claimed that a stipulation for the dismissal of a suit is either illegal or contrary to good morals or public policy. Such stipulations are frequently entered into between litigants." *Assignment of Rich Hardware Co. v. Christy*, 22 Ariz. 254, 260 (1921). The settlement agreement between the Department and Sherri Dunn furthers that policy.

Further, the parties agreed in their settlement that "[a]ll findings of fact and conclusions of law preceding this Agreement shall be deemed nonfinal and nonbinding on either Party[.]" [IR-33 at 4, ¶ 10 (APP263).] "[A]s a general rule, the parties should be entitled to a stipulated reversal to effectuate settlement absent a showing of extraordinary circumstances that warrant an exception to this general rule." *Neary v. Regents of Univ. of Cal.*, 834 P.2d 119, 223 (Cal. 1992). There is no good reason to deviate from that sound rule and allow Arizona Wellness, a stranger to proceedings, to undo settlement through an ultra vires "claim."

The Department and Sherri Dunn entered a lawful settlement that is within the Department's powers and advances Arizona's public policy favoring settlement of claims. Even if Arizona Wellness's ultra vires claim exists, it fails. The superior court's dismissal of that claim should be affirmed.

ATTORNEYS' FEES

Sherri Dunn requests fees under ARCAP 21 and A.R.S. § 12-341.01.

Arizona Wellness requests fees under A.R.S. §§ 12-348 and 12-1840. The Court should deny that request as to Sherri Dunn because "A.R.S. § 12-348 provides for an award only against the state or other governmental

entity," *MVC Constr., Inc. v. Treadway*, 182 Ariz. 615, 620 (App. 1995), and § 12-1840 provides for costs, not fees.

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 2nd day of April, 2026.

OSBORN MALEDON, P.A.

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