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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
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.

No. 1 CA-CV 26-0017
FILED 10-14-2026

Appeal from the Superior Court in Maricopa County
No. CV2025-006909
The Honorable Joseph C. Kreamer, Judge

AFFIRMED

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MEMORANDUM DECISION

Judge Michael S. Catlett delivered the decision of the Court, in which Presiding Judge Veronika Fabian and Judge Kent E. Cattani joined.

C A T L E T T, Judge:

¶1 In 2024, the Arizona Department of Health Services ("the Department") awarded Sherri Dunn, LLC ("Dunn") a marijuana establishment license under A.R.S. § 36-2854(A)(1)(d). Arizona Wellness Center Springerville, LLC ("Arizona Wellness") and Mason Cave ("Cave") (collectively, "the Wellness Plaintiffs") sued the Department, the State of Arizona, several state officials, and Dunn (collectively, "the Defendants"). The Wellness Plaintiffs alleged the Defendants violated Arizona's Gift Clause and acted ultra vires by awarding Dunn the license.

¶2 The Defendants moved to dismiss those claims on several grounds. The superior court granted that motion. Because the Wellness Plaintiffs lack standing, we affirm.

FACTS AND PROCEDURAL HISTORY

¶3 When reviewing a decision granting a motion to dismiss, we view the facts in the light most favorable to the non-moving party. *A. Uberti and C. v. Leonardo*, 181 Ariz. 565, 566 (1995).

I. Dunn's Establishment License

¶4 In Arizona, a dispensary registration certificate ("DRC") lets a licensee dispense medical marijuana to qualified consumers. In October 2016, Dunn was one of three applicants for a DRC in La Paz County. The Department denied all three applications, believing the law did not require it to issue a DRC for La Paz County.

¶5 One applicant (not Dunn) challenged that decision. That challenge made its way to the Arizona Supreme Court. *See Saguaro Healing LLC v. State*, 249 Ariz. 362 (2020). The court concluded the Department had "to issue at least one medical marijuana [DRC] in each county with a qualified applicant" and remanded to the superior court. *Id.* at 366 ¶ 23.

¶6 On remand, the superior court ordered the Department to consider the three previous applications, including Dunn's. After considering statutes and rules existing in October 2016, the Department awarded Dunn a DRC.

¶7 In 2020, Arizona voters enacted the Safe and Smart Arizona Act ("the Act"), legalizing recreational marijuana. *See* A.R.S. § 36-2802 *et seq.* The Act required the Department to review marijuana establishment license applications from "early applicants" between January 19, 2021 and March 9, 2021, and issue such licenses to any qualified applicant. A.R.S. § 36-2854(A)(1)(d). An "early applicant" included any "nonprofit medical marijuana dispensary that is registered and in good standing with the [D]epartment." A.R.S. § 36-2850(10)(b).

¶8 Shortly after obtaining a DRC, Dunn applied for an establishment license to dispense recreational marijuana. Obtaining that license would make Dunn 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). But by the time Dunn applied for an establishment license, the "early applicant" period had lapsed.

¶9 The Department denied Dunn's application as untimely. Dunn challenged that decision in the superior court, which affirmed the Department's decision. Dunn appealed to this court.

¶10 Arizona Wellness alleges the Governor's Chief of Staff then intervened to ensure the Department issued Dunn an establishment license. In February 2024, while Dunn's appeal was pending, Dunn and the Department settled. As part of their settlement, the parties agreed that "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)[.]" In other words, the Department gave Dunn an establishment license as if Dunn held a DRC in 2016.

II. Arizona Wellness's DRC

¶11 Arizona Wellness was incorporated in 2022 and received a DRC for Apache County on March 10, 2023. Having been created in 2022, Arizona Wellness was ineligible to be an "early applicant" under § 36-2854(A)(1)(d). Still, Arizona Wellness applied for an establishment license. Arizona Wellness explained it did so because Dunn received its establishment license after the "early applicant" period. The Department did not process Arizona Wellness's application; it returned the application as untimely.

¶12 In 2024, Arizona Wellness sued the Department and asked the court to decide (1) whether an entity automatically becomes a dual licensee once it holds a DRC and an establishment license and (2) whether a dual licensee can move throughout the state. *Ariz. Wellness Ctr. Springerville, LLC v. Ariz. Dep't of Health Servs.*, 2026 WL 801285, at *2 ¶ 7 (Ariz. App. Mar. 23, 2026) (mem. decision). The superior court denied relief, finding that Arizona Wellness's DRC was invalid as of September 10, 2024.

¶13 This court affirmed, concluding that "Arizona Wellness has not demonstrated that it would have been eligible to apply for a dual license during an open application window." *Id.* at *6 ¶ 35. Rejecting Arizona Wellness's argument that it "should be afforded the 'same considerations as Sherri Dunn'" with respect to an establishment license, the panel explained that "the factual circumstances are different." *Id.* at ¶¶ 34–35.

III. This Litigation

¶14 The Wellness Plaintiffs filed this action in February 2025. After twice amending their complaint, the Wellness Plaintiffs asserted two

claims against the Defendants for: (1) violating the Gift Clause and (2) acting ultra vires by violating a court order. The second amended complaint sought a declaration that the Defendants violated the Gift Clause by granting Dunn an establishment license, an order revoking that license, and a declaration that granting the license was ultra vires.

¶15 The Defendants moved to dismiss in three separate motions. They each argued that the Wellness Defendants lacked standing to challenge the Department's decision granting an establishment license to Dunn, that the Gift Clause is inapplicable to the establishment license, and that an "ultra vires claim" is not a viable cause of action.

¶16 The superior court dismissed the Wellness Plaintiffs' claims with prejudice. The court "agree[d] with the Defendant[s'] arguments down the line." On standing, the court concluded the Wellness Plaintiffs did not "have a real, actual, personal stake" and had not "alleged concrete harm." The court concluded the Wellness Plaintiffs did not establish that they were "ever in a position to receive the license that [Dunn] received" or "that there will be another license available." And the court rejected the Wellness Plaintiffs' argument that they have taxpayer standing.

¶17 The Wellness Plaintiffs timely appealed. We have jurisdiction. *See* A.R.S. § 12-2101(A)(1).

DISCUSSION

¶18 The Wellness Plaintiffs argue the court erred by dismissing their Gift Clause and ultra vires claims. We review orders granting a motion to dismiss de novo. *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, 10 ¶ 8 (2022). Dismissal is appropriate only if the plaintiff cannot obtain relief under any plausible interpretation of the facts susceptible to proof. *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 130 ¶ 7 (2020). When reviewing a judgment dismissing a complaint, we assume any well-pleaded facts in the complaint are true and resolve all reasonable inferences in the claimant's favor. *Id.*

¶19 The superior court dismissed the Wellness Plaintiffs' complaint on several grounds. We focus on standing. Because we agree the Wellness Plaintiffs lack standing, we do not address other grounds for dismissal. *See Sears v. Hull*, 192 Ariz. 65, 68 ¶ 9 (1998).

I. Standing

¶20 The Wellness Plaintiffs contend "[t]he superior court erred as a matter of law because [they have] standing under multiple independent Arizona doctrines[.]" Whether a party has standing is a legal question we review de novo. *Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 562 ¶ 16 (App. 2003).

¶21 The Arizona Constitution says that "[t]he judicial power shall be vested in an integrated judicial department[.]" Ariz. Const. art. 6, § 1. It also prohibits the judiciary from exercising legislative and executive powers. Ariz. Const. art. 3. So "a litigant seeking relief in the Arizona courts must first establish standing," *Bennett v. Napolitano*, 206 Ariz. 520, 525 ¶ 19 (2003), which ensures courts do not issue advisory opinions. *Mills v. Ariz. Bd. of Technical Registration*, 253 Ariz. 415, 423 ¶ 23 (2022). To have standing, "a plaintiff must allege a distinct and palpable injury." *Sears*, 192 Ariz. at 69 ¶ 16. "[A] generalized harm shared by all or by a large class of people is generally insufficient." *Mills*, 253 Ariz. at 423 ¶ 24.

¶22 The Wellness Plaintiffs press three theories for standing. First, they allege they were deprived of the "competitive and unfair advantages" Dunn was afforded. Second, they allege they "have a direct interest in the outcome of this litigation because" it might result in guidance on whether the Department has authority "to award licenses in excess of its statutory and regulatory authority." And third, they assert that Cave has taxpayer standing because the Department made illegal expenditures, and Cave "utilizes [public services], which are funded by application fees from Establishment License applications."

¶23 None of these theories establish standing. Instead, even taking the Wellness Plaintiffs' allegations as true, they establish nothing more than "a generalized harm shared by all or by a large class of people[.]" *See id.*

A. Competitive and Unfair Advantages

¶24 The Wellness Plaintiffs first argue they have standing because they were economically disadvantaged when the Department granted Dunn an establishment license outside the early application period but would not do the same for them. As a result, the Wellness Plaintiffs claim they suffered a particularized economic harm. The Defendants respond that Arizona does not recognize competitor standing, but even if it did, the Wellness Defendants do not qualify.

¶25 A plaintiff who suffers particularized economic harm at the hands of a defendant may have standing. *Center Bay Gardens, L.L.C. v. City of Tempe City Council*, 214 Ariz. 353, 360 ¶ 29 (App. 2007). But "[g]eneral economic losses . . . without a particularized palpable injury to the plaintiff are typically not sufficient to confer standing." *Id.* at 358–59 ¶ 20.

¶26 Although the Wellness Plaintiffs argue they suffered economic harm through differential treatment in favor of a competitor, their allegations do not support standing on that basis. The Wellness Plaintiffs' theory has two components: (1) differential treatment (2) in favor of a competitor. Neither component shows particularized injury.

¶27 Begin with the Wellness Plaintiffs' argument that they experienced differential treatment. "For purposes of determining standing, we assume that the plaintiffs are correct on the merits, although that is not a binding or even preliminary determination." *Montenegro v. Fontes*, 260 Ariz. 443, 448 ¶ 19 (2025). But we are not writing on a blank slate when it comes to whether the Department treated Arizona Wellness differently than Dunn. In a parallel lawsuit between Arizona Wellness and Dunn, this court concluded that "although Arizona Wellness argues that it should be afforded the 'same considerations as Sherri Dunn,' the factual circumstances are different[,]" because Arizona Wellness would not "have been eligible to apply for a dual license during an open application window." *Ariz. Wellness Ctr. Springerville*, 2026 WL 801285, at *6 ¶ 35. Thus, this court concluded the superior court in that litigation did not err by finding that "Arizona Wellness was unlikely to obtain a dual license because the department was not accepting applications." *Id.* This conclusion undercuts the Wellness Plaintiffs' differential treatment theory.

¶28 In any event, the merits of the Wellness Plaintiffs' disparate treatment theory are irrelevant to whether they have standing to assert Gift Clause and ultra vires claims against the Defendants. Just as defendants cannot rely on merits arguments to defeat standing, plaintiffs cannot rely on merits arguments to generate it. *See RCH Wellness Ctr. v. City of Flagstaff*, 591 P.3d 916, 921 ¶ 24 (App. 2026) (concluding that the plaintiff's "claim of 'official discrimination' goes to the merits of its argument that the Board acted in an arbitrary or capricious manner or abused its discretion" and cannot self-generate standing without some injury). In other words, even assuming the Wellness Plaintiffs experienced differential treatment, to have standing, they must establish that such treatment resulted in particularized injury. The only claimed injury the Wellness Plaintiffs offer is that "the Department provided [Dunn] competitive and unfair advantages Arizona Wellness . . . [was] not afforded." That alleged injury fails twice over.

¶29 First, in *RCH Wellness Center*, we rejected the primary argument the Wellness Plaintiffs make—that *Center Bay* supports standing when a competitor faces increased competition from a government decision. 591 P.3d at 920 ¶ 18. To the contrary, we explained that *Center Bay* "expressly declined to consider that issue." *Id.* We then found "persuasive the majority view that the 'particularized harm' needed to establish standing cannot be established by showing that a municipal land use decision will result in increased competition from a business rival." *Id.* at ¶ 20. We see no reason why that conclusion does not similarly apply when the Department licenses marijuana establishments.

¶30 Second, the Wellness Plaintiffs cannot allege that Arizona Wellness ever competed with Dunn, such that issuing an establishment license to Dunn gave it a "competitive and unfair advantage" over Arizona Wellness. To the contrary, Arizona Wellness and Dunn never competed.

¶31 Arizona Wellness never opened a marijuana dispensary, so it lost its DRC. *See* A.R.S. § 36-2803.01(C); *Ariz. Wellness Ctr. Springerville*, 2026 WL 801285 at *1 ¶ 2 ("Arizona Wellness's claims are moot because its DRC has become invalid."). Moreover, Arizona Wellness was not incorporated until 2022 and did not obtain a DRC until March 2023—long after the early applicant window for establishment licenses closed. *See id.* at *2 ¶ 13; A.R.S. § 36-2854(A)(1)(d), (e). In fact, Arizona Wellness never attempted to obtain an establishment license via either statutory method for doing so. *See Ariz. Wellness Ctr. Springerville*, 2026 WL 801285 at *5 ¶ 28 ("Arizona Wellness did not seek to obtain an establishment license by either method."). The Wellness Plaintiffs cannot rely on competitive injury when they cannot allege that Arizona Wellness ever competed with Dunn.

B. Direct and Substantial Interest

¶32 The Wellness Plaintiffs' next theory fares no better. They posit that they have a direct and substantial interest in having the courts determine whether the Department and other state officials acted illegally by issuing Dunn an establishment license. In their reply brief, the Wellness Defendants clarify that "declaratory relief from this Court that the Department acted outside its statutory authority in" awarding Dunn a license would redress a "structural injury."

¶33 It is not clear what structural injury the Wellness Plaintiffs have suffered. To the extent that injury is competitive in nature, we have already rejected it. To the extent the Wellness Plaintiffs suggest that a declaratory judgment saying the Department acted illegally will benefit

them because a future court will apply that ruling and reasoning to their benefit, that argument also fails.

¶34 Under the Uniform Declaratory Judgments Act ("UDJA"), any party "whose rights, status or other legal relations are affected by a statute . . . or franchise" may "obtain a declaration of rights, status or other legal relations thereunder." A.R.S. § 12-1832. "While broad, that language does not permit courts to act as legislators by setting policy or issuing advisory opinions—standing is still required." *Ariz. Creditors Bar Assoc., Inc. v. State*, 257 Ariz. 406, 410 ¶ 12 (App. 2024). Standing exists under the UDJA when there is "an actual controversy ripe for adjudication" and the parties have "a real interest in the questions to be resolved." *Bd. of Supervisors of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978); *see also Mills*, 253 Ariz. at 423–24 ¶ 25.

¶35 The Wellness Plaintiffs identify no particularized interest in the questions they want resolved. In other words, there are no existing facts supporting the issuance of declaratory relief. In their second amended complaint, the Wellness Plaintiffs sought a declaration that the Defendants violated the Gift Clause, that the Defendants acted ultra vires, and that giving Dunn an establishment license is illegal. But the Wellness Plaintiffs did not allege that their "rights, status or other legal relations" would be impacted in any real sense by the declaratory relief they sought. A.R.S. § 12–1832. And the Wellness Plaintiffs did not allege they would obtain any real benefit or harm through such relief. *See Ariz. Creditors Bar Assoc., Inc.*, 257 Ariz. at 412 ¶ 20 (rejecting standing under the UDJA when "the [plaintiffs'] interests would not have been sufficiently affected by the narrower request for declaratory relief"). For example, obtaining the declaratory relief requested will not make it materially more or less likely that Arizona Wellness will ever obtain an establishment license. In fact, the Wellness Plaintiffs "do not ask this Court to award them an Establishment License or re-open the early applicant window on their behalf."

¶36 The only interest the Wellness Plaintiffs identify is an interest in "creating new law by which the Department is able [or not] to award licenses in excess of its statutory and regulatory authority." But we have rejected the notion that a party has standing to obtain a declaratory judgment based on "the downstream effects of the reasoning used to produce it." *Id.* ¶ 22. Put differently, "[a]n opinion that is advisory is no less so because it will bind or guide future courts." *Id.* Instead, standing under the UDJA is lacking when plaintiffs "request an advisory opinion about how the [law] works in a particular situation" they do not face. *Id.*

Because the declaratory relief the Wellness Plaintiffs seek would have no impact on their rights or legal relations, they lack standing.

C. Taxpayer Standing

¶37 That leaves only the Wellness Plaintiffs' third theory—taxpayer standing. The Wellness Plaintiffs assert that Cave has taxpayer standing because he is a resident and taxpayer in Maricopa County who utilizes public services funded with fees from establishment license applications. Thus, they claim Cave can challenge illegal expenditures the Department made when accepting Dunn's application and awarding it a license. The Defendants counter that Cave lacks taxpayer standing because issuing a license does not involve an expenditure of funds and Cave has not alleged that he contributed to the fund to be expended.

¶38 "A taxpayer has sufficient standing in an appropriate action to question illegal expenditures made or threatened by a public agency." *Smith v. Graham Cnty. Cmty. Coll. Dist.*, 123 Ariz. 431, 432 (App. 1979). Such standing is based on taxpayers' "equitable ownership of such 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 (1948). A taxpayer does not have standing "unless the taxpayer and his class have sustained or will sustain some pecuniary loss" and it "affirmatively appear[s] by the complaint that such loss will occur." *Henderson v. McCormick*, 70 Ariz. 19, 24–25 (1950).

¶39 "When there is no expenditure of funds raised by taxation, the rationale for permitting [taxpayer] standing does not exist[.]" *Dail v. City of Phoenix*, 128 Ariz. 199, 202 (App. 1980). So a claimant cannot rely on taxpayer standing when an expenditure is made from funds not raised by taxation. *Id.* ("Expenditures made under a contract from funds other than those raised by taxation do not confer upon taxpayers the right to challenge the contract."). Moreover, a taxpayer does not have standing to challenge an expenditure out of a particular fund unless he contributes to that fund. *Smith*, 123 Ariz. at 433. When a taxpayer cannot incur "liability to replenish the public treasury for an insufficiency caused by misappropriation," his connection "is too remote." *Id.*

¶40 We need not decide whether granting an establishment license expends funds. This is because the Wellness Plaintiffs have not alleged that Cave contributes to the fund out of which any such expenditure would derive.

¶41 Any funds needed for the Department to regulate DRC and establishment licenses come from the Smart and Safe Arizona Fund. *See* A.R.S. § 36-2856(B)(1). The money for that Fund comes from, among other sources, license application fees and excise taxes on the sale of marijuana products. *See* A.R.S. § 36-2856(A) ("The smart and safe Arizona fund is established consisting of all monies deposited pursuant to §§ 36-2853, 36-2854, 36-2859, 42-5452 and 42-5453[.]"). Other than those excise taxes, the Fund does not receive money through general taxation. *See id.* State and county taxpayers do not pay into the Fund, and thus they have no equitable ownership of funds contained therein and no liability for replenishing those funds. *See Smith*, 123 Ariz. at 433.

¶42 In their second amended complaint, the Wellness Plaintiffs allege only that Cave is a taxpayer residing in Maricopa County who utilizes public services "funded by application fees from Establishment License applications." The Wellness Plaintiffs never allege that Cave contributed to the Smart and Safe Arizona Fund or that he will be responsible for replenishing it. And it is insufficient that Cave uses services the Fund *might* help pay for. *See* A.R.S. § 36-2856(D) (instructing the state treasurer to transfer funds "in excess of the amounts paid" to administer the law); A.R.S. § 36-2856(E)(1) (monies transferred from the fund "may not supplant, replace or cause a reduction in other funding sources"). Without contributing to the Safe and Smart Arizona Fund, Cave lacks standing to challenge expenditures out of that Fund. *See Smith*, 123 Ariz. at 433.

ATTORNEY FEES

¶43 The Wellness Plaintiffs seek an award of attorney fees under A.R.S. § 12-348. Because the Wellness Plaintiffs have not "prevail[ed] by an adjudication on the merits," we deny their request. A.R.S. § 12-348(A). Dunn requests an award of attorney fees under A.R.S. § 12-341.01. Because the Wellness Plaintiffs' action does not arise out of contract, we similarly deny Dunn's request. As prevailing parties, we award the Defendants their taxable costs on appeal upon complying with ARCAP 21.

CONCLUSION

¶44 Because the Wellness Plaintiffs lack standing, we need not address the parties' other arguments. We affirm the superior court's judgment dismissing the Wellness Plaintiffs' claims with prejudice. We deny the Defendants' Joint Request for Order to Show Cause.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JT