NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MATTHEW G. MADONNA, et al., *Plaintiffs/Appellants*,

v.

STATE OF ARIZONA, *Defendant/Appellee*,

STEVE YARBROUGH, et al., *Intervenors/Appellees*.

No. 1 CA-CV 17-0550
FILED 5-8-2018

Appeal from the Superior Court in Maricopa County
No. CV2017-007407
The Honorable Sherry K. Stephens, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Peter B. Swann joined.

B E E N E, Judge:

¶1 Plaintiffs Matthew G. Madonna; Sandra L. Bahr; Animal Defense League of Arizona; Friends of ASBA, Inc.; Arizona Advocacy Network ("AzAN"); and Planned Parenthood of Arizona (collectively the "Initiative Proponents" or "IPs") appeal the superior court's decision denying relief under the IPs' complaint for declaratory judgment and injunctive relief, as well as the court's grant of the State's motion to dismiss and motion for judgment as a matter of law. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This appeal involves a challenge to the constitutionality of recently passed legislation pertaining to the standard of review for voter initiative petitions.

¶3 On April 13, 2017, the Arizona legislature passed HB 2244, which was signed by the governor the next day. The first section of HB 2244 provides as follows:

> 19-102.01. Initiative petitions; standard of review
>
> A. CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR STATEWIDE INITIATIVE MEASURES MUST BE STRICTLY CONSTRUED AND PERSONS USING THE INITIATIVE PROCESS MUST STRICTLY COMPLY WITH THOSE CONSTITUTIONAL AND STATUTORY REQUIREMENTS.

> B. THE SECRETARY OF STATE SHALL MAKE AVAILABLE A SAMPLE INITIATIVE PETITION THAT STRICTLY COMPLIES WITH THE REQUIREMENTS OF SECTION 19-121. ANY COMMITTEE THAT USES THE SAMPLE INITIATIVE PETITION PROVIDED BY THE SECRETARY OF STATE SHALL BE PRESUMED TO HAVE STRICTLY COMPLIED WITH THE REQUIREMENTS OF SECTION 19-121.

¶4 In response to HB 2244, the IPs filed a complaint for declaratory judgment and injunctive relief, arguing that HB 2244 was unconstitutional because changing the standard of review from substantial compliance to strict compliance violated Article III of the Arizona Constitution by "legislatively supersed[ing] decisions of the Supreme Court interpreting the Arizona Constitution." The President of the Arizona State Senate and the Speaker of the Arizona House of Representatives intervened as a matter of right under Arizona Revised Statutes ("A.R.S.") section 12-1841(D) after the IPs served a notice of claim of unconstitutionality. The State opposed the IPs' complaint and filed a motion to dismiss for failure to state a claim.

¶5 In July 2017, the superior court held a trial on the merits as stipulated by the parties. Several of the IPs and their representatives provided testimony either by deposition or at trial. A common element of this testimony was the belief that each initiative campaign would incur additional expenses to conform to strict compliance, which would include (1) legal advice to conform with HB 2244, (2) costs in training and securing adequate signature gatherers, and (3) greater difficulty in securing funds from donors to support their efforts due to the uncertainty caused by a strict compliance standard of review. Specifically, AzAN's representative testified that the looming effective date for HB 2244 had already affected AzAN's fundraising efforts.

¶6 At the conclusion of the trial, the State requested the court enter judgment as a matter of law. After taking the matter under advisement, on August 8, 2017, one day before HB 2244 was to take effect, the court denied the IPs' complaint and granted each of the State's motions. The court specifically found that (1) the matter was "not ripe for judicial review[;]" (2) none of the IPs had "a pending initiative measure[;]" (3) HB 2244 was not yet law and had "not been applied to any matter related to any pending initiative measure[;]" (4) "[n]o party has been affected by HB 2244 in a concrete matter[;]" and (5) an expectation of future harm was insufficient to make the "matter ripe for judicial review of the

constitutionality of HB 2244." The IPs timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶7 The Initiative Proponents argue that their claims are ripe for adjudication because HB 2244 caused "irreparable constitutional injury to each of the [IPs,] . . . the mere threat of its enforcement had actually caused injury" to some of the IPs by the time of trial, and the superior court created a "heightened" ripeness standard. We disagree.

I. The IPs' Claims Are Not Ripe

¶8 "We review ripeness de novo as an issue of law." *In re Estate of Stewart*, 230 Ariz. 480, 483-84, ¶ 11 (App. 2012). Ripeness "is closely related to and, to a large extent, has evolved from the federal constitutional 'case or controversy' requirement." *Ariz. Downs v. Turf Paradise, Inc.*, 140 Ariz. 438, 444 (App. 1984) (citation omitted). "In order for a justiciable issue or controversy to exist, there must be adverse claims asserted by the plaintiff upon present existing facts, which have ripened for judicial determination." *Am. Fed'n of State, Cty. & Mun. Employees, AFL-CIO, Council 97 v. Lewis*, 165 Ariz. 149, 152 (App. 1990). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation and internal quotations omitted)[1]; *see Moore v. Bolin*, 70 Ariz. 354, 358 (1950) (finding a claim was not ripe because "[t]he allegations merely show an intent to do certain things in the future all of which are dependent upon future events and contingencies within control of the appellant.").

¶9 The IPs argue that the superior court erred in determining that their claims were not ripe because "the mere 'threat of enforcement'" is sufficient to find ripeness. The IPs cite several cases in support of this point. They first argue that in *Stewart*, we held that a party's claim was ripe because "the threat of enforcement . . . was sufficient." 230 Ariz. at 483-84, ¶ 11. There, however, the litigant had taken concrete steps toward ripeness when he moved to invalidate the clauses, "contested the Will and Trust in a lawsuit and was entitled to conduct discovery to prove his case." *Id.* at

[1] We look to federal law for guidance in matters relating to constitutional issues. *See, e.g., Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 118, ¶ 94 (App. 2004).

484, ¶ 12. Here, in contrast, the IPs failed to engage in affirmative steps to put forth initiative petitions, such as filing to receive a serial number from the Secretary of State's Office, that would potentially be subjected to strict compliance review. Therefore, *Stewart* is distinguishable from the instant case as it pertains to ripeness.

¶10 The IPs also argue that in *U S W. Commc'ns, Inc. v. Ariz. Corp. Comm'n*, we found the party's claim to be ripe and rejected the argument that a party's claims were "not ripe for review because [the party] ha[d] not requested rate relief." 197 Ariz. 16, 19, ¶ 9 (App. 1999). In *U S W. Commc'ns, Inc.*, we determined that the party would not have to "incur expenses [and] consume time" to prove injury because there was already a monopoly contract being materially breached. *Id.* at 20, ¶ 15. Here, the IPs have no similar agreement. Likewise, *U S W. Commc'ns, Inc.* is inapposite.

¶11 Finally, the IPs cite *Pedersen v. Bennett*, 230 Ariz. 556 (2012) and *Sklar v. Town of Fountain Hills*, 220 Ariz. 449 (App. 2008) for the contention that strict compliance review affects every aspect of the initiative process, even applications for serial number and petition forms. However, in each of these cases, we only considered the issues that led us to apply substantial compliance review to the early stages of the initiative process after each petition was either denied by the Secretary of State's Office, *Pedersen*, 230 Ariz. at 557, ¶ 4, or challenged by a qualified elector, *Sklar*, 220 Ariz. at 450, ¶ 4. In other words, the respective parties' claims in *Pedersen* and *Sklar* were not ripe until they had suffered particularized injuries. Likewise, the IPs claims are not ripe as they have yet to start the process of filing initiative petitions that could lead to future injury.

¶12 In sum, given that the IPs have not yet engaged in the initiative petition process, their claims are not ripe for adjudication because they have suffered no particularized injury. No IP has taken any concrete, affirmative steps such as filing an application with the Secretary of State or obtaining a serial number with that office for the purpose of circulating petitions to place an initiative measure on the 2018 ballot. Thus, based on the present existing facts, no justiciable issue or controversy exists because the IPs' actions have not and cannot be challenged or reviewed under any standard of compliance, substantial or strict. *See Lewis*, 165 Ariz. at 152. Indeed, at the time of the superior court's ruling, HB 2244 had yet to become law. And, although the IPs testified that they *expect* an increase in *future* costs, they have taken no action to incur any such costs. Such speculative claims resting upon contingent future events that are within the IPs' control are not ripe for review. *See Texas*, 523 U.S. at 300; *Moore*, 70 Ariz. at 358.

II. We Will Not Waive the Ripeness Requirement

¶13 The IPs also argue that the superior court created a "novel and burdensome ripeness standard" that failed to define when a claim becomes ripe. They argue that the court should have "waived the ripeness requirement altogether" and that we should waive the ripeness requirement because "the importance of the people's reserved power to legislate by initiative" is sufficient to do so.

¶14 Despite the IPs' contentions, we have no authority to waive the ripeness requirement. The IPs cite to several authorities for support of our ability to waive the ripeness requirement, but each authority pertains to standing, not ripeness. *See Sears*, 192 Ariz. at 71, ¶ 25 ("Although, as a matter of discretion, we can waive the requirement of standing, we do so only in exceptional circumstances, generally in cases involving issues of great public importance that are likely to recur."); *Rios v. Symington*, 172 Ariz. 3, 5 n.2 (1992) (disregarding "potential standing issues" when the "case involves a dispute at the highest levels of state government, the issues are substantial and present matters of first impression in this state, and a prompt determination is required"); *Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 217 n.1 (1986) (accepting jurisdiction despite standing issues in part because case involved rule "of great public importance that [was] likely to recur"). Therefore, we do not waive the ripeness requirement.

CONCLUSION

¶15 We therefore affirm the ruling of the superior court.[2]

COURT OF APPEALS
STATE OF ARIZONA

AMY M. WOOD • Clerk of the Court
FILED: AA

[2] It should be noted that we are affirming the superior court's ruling based upon the record before it at the time of trial.