IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

BEN TOMA, et al., *Plaintiffs/Appellants*,

v.

ADRIAN FONTES, et al., *Defendants/Appellees*,

and

KRISTIN MAYES, et al., *Intervenors/Appellees*.

No. 1 CA-CV 24-0002

FILED 06-27-2024

Appeal from the Superior Court in Maricopa County
No. CV2023-011834
The Honorable Timothy J. Ryan, Judge

AFFIRMED IN PART; REVERSED IN PART; REMANDED

COUNSEL

Snell & Wilmer LLP, Phoenix
By Brett W. Johnson, Tracy A. Olson, Ryan Hogan, Charlene A. Warner
Counsel for Plaintiffs/Appellants Toma, et al.

Sherman & Howard LLC, Phoenix
By Craig A. Morgan, Shayna Stuart
Counsel for Defendant/Appellee Adrian P. Fontes

Osborn Maledon PA, Phoenix
By Mary R. O'Grady, Eric M. Fraser, Sarah P. Lawson
Counsel for Defendant/Appellee Arizona Citizens Clean Elections Commission

Arizona Attorney General's Office, Phoenix
By Alexander W. Samuels, Nathan T. Arrowsmith, Luci D. Davis
Counsel for Intervenor/Appellee Kristin K. Mayes

Campaign Legal Center, Washington, DC
By David Kolker, Tara Malloy, Elizabeth D. Shimek
Counsel for Intervenor/Appellee Voters' Right to Know

Arizona Center for Law in the Public Interest, Phoenix
By Daniel J. Adelman, Chanele N. Reyes
Counsel for Intervenor/Appellee Voters' Right to Know

Arizona Chamber of Commerce & Industry, Phoenix
By Nate Curtisi
Counsel for Amicus Curiae

OPINION

Acting Presiding Judge Michael S. Catlett delivered the opinion of the Court, in which Judge James B. Morse Jr. and Judge Jennifer B. Campbell joined.

C A T L E T T, Judge:

¶1 Arizona voters approved Proposition 211, also known as the "Voters' Right to Know Act" ("the Act"), in November 2022. The Act attempts to regulate "dark money," which it describes as "the practice of laundering political contributions, often through multiple intermediaries, to hide the original source." To accomplish that purpose, the Act requires a "covered person" to disclose the original source of donations exceeding $5,000 and used for "campaign spending." The Act also delegates authority to the Arizona Clean Elections Commission ("the Commission") "to enforce its disclosure requirements."

¶2 Two sections of the Act are at issue. First, the Act grants the Commission authority to "[p]erform any other act that may assist in implementing this chapter." A.R.S. § 16-974(A)(8). Second, the Act provides that "[t]he [C]ommission's rules and any commission enforcement actions pursuant to this chapter are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official." A.R.S. § 16-974(D).

¶3 The Speaker of the House of Representatives, Ben Toma, and the President of the Senate, Warren Petersen (collectively, "the Legislature"), seek to enjoin the Act and three rules the Commission issued after the Act became effective. The Legislature claims the two statutory provisions violate the separation of powers, the nondelegation doctrine, and the Voter Protection Act, and it claims the Commission lacked authority to issue the three rules. The Legislature seeks to have the Act preliminarily enjoined in full.

¶4 We conclude the Legislature has standing to challenge § 16-974(D) insofar as it prevents the Legislature from limiting or prohibiting the Commission's rules or enforcement actions. But the Legislature lacks standing to challenge § 16-974(A)(8) and the Commission's three rules. We conclude § 16-974(D) is unconstitutional in part but is severable. We therefore preliminarily enjoin § 16-974(D), but only in part.

STATUTORY AND REGULATORY BACKGROUND

I.

¶5 The Act "establishes" that Arizonans have "the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending." 2022 Ariz. Legis. Serv. Prop. 211 § 2(A). It also "empower[s] the [Commission] and individual voters to enforce its disclosure requirements" and imposes "significant civil penalties" for violating those requirements. 2022 Ariz. Legis. Serv. Prop. 211 § 2(D).

¶6 Under the Act, "covered persons" who surpass a set amount of "campaign media spending" are required to disclose to the Secretary of State particular information about certain donors. A.R.S. §§ 16-971(7)(a), (10)(a)–(b); 16-973(A)(6). With some exceptions, a "covered person" is "any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than $50,000 in statewide campaigns or more than $25,000 in any other type of campaigns." A.R.S. § 16-971(7)(a). "Campaign media spending" includes "spending monies or accepting in-kind contributions to pay for" a variety of political activities and public communications, as well as any "[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with" certain political activities or public communications. A.R.S. § 16-971(2)(a)(i)–(vii). "Covered persons" must notify donors that their funds may be used for "campaign media spending" and let them elect not to have their funds used

for that purpose. A.R.S. § 16-972(B). Absent consent, a donor's funds may not be used or transferred for "campaign media spending" for 21 days. A.R.S. § 16-972(C).

¶7 Violating the Act carries a steep penalty—"at least the amount of the undisclosed or improperly disclosed contribution and not more than three times that amount." A.R.S. § 16-976(A). "Any qualified voter" in Arizona may file a complaint against any person for violating the Act's requirements or the Commission's rules. A.R.S. § 16-977(A).

¶8 The Act designates the Commission as "the primary agency authorized to implement and enforce" the Act. A.R.S. § 16-974(A). The Commission may (1) adopt and enforce rules, (2) issue and enforce civil subpoenas, (3) initiate enforcement actions, (4) conduct fact-finding hearings and investigations, (5) impose civil penalties, (6) seek relief in court as necessary, and (7) establish the records regulated parties must maintain. A.R.S. § 16-974(A)(1)–(7). The Act also contains a catch-all grant of authority, allowing the Commission to "[p]erform any other act that may assist in implementing [Chapter 6.1]." A.R.S. § 16-974(A)(8).

¶9 Finally, the Act insulates the Commission. Its rulemaking is exempt from the Arizona Administrative Procedures Act. A.R.S. § 16-974(D). Its rules and enforcement actions "are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official." *Id.* And if there is a conflict between the Act and state law, the Act prevails. A.R.S. § 16-978(B). But the Act allows "the legislature, a county board of supervisors or a municipal government" to enact "more stringent disclosure requirements for campaign media spending." A.R.S. § 16-978(A).

II.

¶10 "The Arizona Citizens Clean Elections Act, passed by initiative in 1998, created a voluntary public financing system to fund the primary and general election campaigns of candidates for state office." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 728 (2011). That Act also created the Commission and gave it enforcement authority. *See* A.R.S. §§ 16-955(A); 16-956(A)(7).

¶11 The Commission is comprised of five commissioners, no more than two of whom can be from the same political party or county. A.R.S. § 16-955(A). Each commissioner serves a five-year term and "shall be a qualified elector who has not, in the previous five years in this state, been appointed to, been elected to or run for any public office . . . or served as an

officer of a political party." A.R.S. §§ 16-955(B), (D), (I). The commissioners are not elected; various elected officials appoint them. The Governor and other statewide officials selected the first set of commissioners, and those elected officials select replacements as vacancies occur. A.R.S. §§ 16-955(C)–(D), (F); *see Citizens Clean Elections Comm'n v. Myers*, 196 Ariz. 516, 518 ¶ 3 (2000).

¶12 By design, the Commission has little political accountability. Commissioners must "act quite independently of elected officials." *Myers*, 196 Ariz. at 523 ¶ 29. "They are not subordinates of the Governor or any other official who may have appointed them." *Id.* The Governor may remove a commissioner, but only "with concurrence of the senate" and "for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of [§ 16-955]." A.R.S. § 16-955(E). Moreover, "[n]o commissioner, during the commissioner's tenure or for three years thereafter, shall seek or hold any other public office[.]" A.R.S. § 16-955(I).

III.

¶13 The Commission has adopted three rules relevant here. *See* A.R.S. § 16-974(A). A.A.C. R2-20-801 explains when certain activities listed in § 16-971(2)(a)(vii) qualify as "campaign media spending." The rule says those activities—"research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with" other activities listed in § 16-971(2)(a)—do not qualify as "campaign media spending" except when "specifically conducted in preparation for or in conjunction with" other campaign media spending. A.A.C. R2-20-801(B).

¶14 A.A.C. R2-20-803 permits donors to opt out of campaign media spending after the 21-day notice period in the Act. The rule states that "[i]f a donor does not opt out after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out[.]" A.A.C. R2-20-803(D). It also allows "[a] donor" to "request to opt out at any time after the initial notice period." A.A.C. R2-20-803(E). If a donor does so, the "covered person" must acknowledge the request in writing within 5 days. *Id.* Then, the "donor shall be treated as having opted out by the covered person." *Id.*

¶15 A.A.C. R2-20-808 allows the Commission to issue advisory opinions. Within 60 days of receiving a request for an advisory opinion, and if a majority of the commissioners approve, "the Commission shall

issue . . . a written advisory opinion." A.A.C. R2-20-808(C)(1). The Commission also created a safe harbor—any person who, in good faith, relies on an advisory opinion cannot be sanctioned. A.A.C. R2-20-808(C)(4).

PROCEDURAL BACKGROUND

¶16 The Legislature filed a three-count verified complaint, to which it later added a fourth count. The Legislature named the Arizona Secretary of State and the Commission as defendants. The Legislature claimed the Act violates the separation of powers, the nondelegation doctrine, and the Voter Protection Act ("VPA"), and it sought declaratory and injunctive relief. The Arizona Attorney General and Voters' Right to Know, the Act's sponsoring organization, intervened to defend the Act. For ease, we refer to the Commission, Secretary of State, Attorney General, and Voters' Right to Know as "Defendants."

¶17 The Legislature sought a preliminary injunction and moved to consolidate the hearing on that motion with the trial on the merits. Defendants opposed both requests. The Attorney General and Voters' Right to Know moved to dismiss for lack of standing.

¶18 The superior court declined to consolidate the preliminary injunction hearing with a trial on the merits. Then, after oral argument, the court denied the preliminary injunction and the motions to dismiss. The Legislature timely appealed the preliminary injunction decision; we have jurisdiction. *See* A.R.S. § 12-2101(A)(5)(b).

DISCUSSION

¶19 The Legislature sought, but the superior court denied, a preliminary injunction. We review that decision for an abuse of discretion. *Fann v. State*, 251 Ariz. 425, 432 ¶ 15 (2021). We review legal conclusions *de novo*. *State ex rel. Mitchell v. Palmer in and for Cnty. of Maricopa*, ___ Ariz. ___, 546 P.3d 101, 104 ¶ 11 (2024). The superior court abuses its discretion if it commits a legal error during a discretionary decision. *Id.*

¶20 One seeking a preliminary injunction must establish four factors: (1) a strong likelihood of success on the merits, (2) irreparable harm, (3) the balance of hardships favors that party, and (4) public policy supports an injunction. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶¶ 9–10 (2006). We analyze those factors on a sliding scale and do not inflexibly count them. *See id.* at 410 ¶ 10. So, for example, "probable success on the merits and the possibility of irreparable injury" is sufficient, and so

is "the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party." *Id.* (cleaned up).

I.

¶21 We start with the likelihood of success on the merits.

A.

¶22 The Arizona Constitution provides 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 give advisory opinions and issues are fully developed. *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 v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998). "[A] generalized harm shared by all or by a large class of people is generally insufficient." *Mills*, 253 Ariz. at 423 ¶ 24.

¶23 The Legislature seeks relief here under the Uniform Declaratory Judgments Act ("UDJA"). The UDJA allows courts "to declare rights, status, and other legal relations[.]" A.R.S. § 12-1831. A claim under the UDJA requires standing. *Mills*, 253 Ariz. at 423 ¶ 25. But actual injury is not required for standing under the UDJA—actual injury is sufficient but not necessary. *Id.* at 424 ¶ 29. If actual injury is lacking, standing still exists if there is an actual controversy between interested parties. *Id.* at 424 ¶ 25.

¶24 Defendants think the Legislature lacks standing because, first, it did not specifically authorize Speaker Toma and President Petersen to bring this action and, second, the Act's provisions are not causing the Legislature institutional injury. We address those arguments in that order.

1.

¶25 Defendants argue the Legislature did not sufficiently authorize Speaker Toma and President Petersen to sue on its behalf because it must authorize litigation on a case-by-case basis. Without such authorization here, Defendants contend Speaker Toma and President Petersen lacked authority to bring this action. We disagree.

¶26 The Arizona Constitution provides that "[e]ach house, when assembled, shall . . . determine its own rules of procedure." Ariz. Const.

art. 4, pt. 2, § 8. That provision "textually commits to the legislative houses the authority to determine their own internal procedures." *Puente v. Ariz. State Legislature*, 254 Ariz. 265, 269 ¶ 10 (2022). "That authority is absolute and continuous, meaning each successive embodiment of a house is empowered to establish its own procedures." *Id.* at 270 ¶ 14.

¶27 At the start of the 56th Legislature, each legislative house adopted rules authorizing Speaker Toma and President Petersen to assert claims on their behalf. The House of Representatives authorized Speaker Toma to bring any claim "arising out of any injury to the House's powers or duties under the Constitution or Laws of this state." The Senate similarly authorized President Petersen to bring any claim "arising out of any injury to the Senate's powers or duties under the constitution or laws of this state."

¶28 Defendants do not dispute that the claims here fall within those authorizations. Rightly so—the Legislature's claims assert an injury to its constitutional powers and duties. Defendants also do not contend that authorizing litigation is an improper subject for a legislative rule. Instead, Defendants argue the authorizations here were not specific enough, and we should require case-by-case authorizations.

¶29 We will not superintend the specificity with which the Legislature authorizes litigation. As explained, the Constitution commits the power to craft internal rules to the Legislature, not to the courts. That commitment "means each house can interpret, amend, enforce, or disregard those rules with almost limitless impunity." *Puente*, 254 Ariz. at 269 ¶ 12. At most, courts can review legislative rules for constitutional violations or to determine whether they reasonably relate to their intended result. *Id.* Defendants bring neither challenge.

¶30 Defendants instead assert that "courts have seemingly treated it as a given that legislator-plaintiffs must obtain approval for a *particular* action." For support, they cite case law where *individual* legislators *lacked* legislative authorization. They do not cite any decision where the judiciary has imposed a specificity requirement for authorizing legislative litigation. The closest they come is *Bennett*, where our supreme court said the plaintiffs "ha[d] not been authorized by their respective chambers to maintain this action." 206 Ariz. at 527 ¶ 29. Defendants seize on the phrase "this action" as supporting a specificity requirement. But there was no question in *Bennett* that the individual legislators were not authorized to sue on the Legislature's behalf, and thus the court had no occasion to decide whether courts can dictate how *specific* legislative authorizations must be.

¶31 Defendants also cite *Arizona State Legislature v. Arizona Independent Redistricting Commission*, but that opinion cuts against them. 576 U.S. 787 (2015). There, both legislative houses authorized their leaders to "file suit, and join or intervene in any suit in both state and federal court to defend the authority of the [Legislature] related to redistricting under the Constitutions of both the United States and the State of Arizona." The authorizations did not mention any specific legal action. Yet the Court allowed the Legislature to proceed, explaining that the situation there was different than one where an individual legislator with *no authorization* sues. *Id.* at 802. Likewise, the situation at hand—one where there is authorization—is different than one where authorization is missing.

¶32 Finally, Defendants think it would be easy for the Legislature to authorize litigation on a case-by-case basis. But the practical ease of Defendants' proffered requirement is beside the point. The Constitution vests the Legislature with the power to create rules authorizing litigation. *See Puente*, 254 Ariz. at 270 ¶ 14. The Legislature authorized Speaker Toma and President Petersen to bring litigation, and the claims here fall within that authorization—that is the end of the matter so far as the judiciary is concerned.

2.

¶33 With authorization verified, we analyze whether the Legislature can otherwise establish standing.

a.

¶34 Defendants insist that "the sole basis for [the Legislature's] standing is [its] erroneous legal conclusion about [§ 16-974(D)]'s meaning." They claim the phrase "legislative governmental body" does not include the Legislature. And if true, then § 16-974(D) is not injuring the Legislature.

¶35 Standing does not turn on the *merits* of a party's arguments. We instead accept a plaintiff's allegations and then analyze whether there is standing. *See Brewer v. Burns*, 222 Ariz. 234, 238 ¶ 14 (2009); *see also Ariz. State Legislature*, 576 U.S. at 800. In other words, "[D]efendants cannot defeat standing merely by assuming" victory. *Brewer*, 222 Ariz. at 238 ¶ 14.

¶36 We therefore will not definitively interpret "legislative governmental body" as part of our standing inquiry so long as a proper understanding of "legislative governmental body" *could* encompass the Legislature. *See Warth v. Seldin*, 422 U.S. 490, 500 (1975) (standing in public disputes turns on whether the "statutory provision on which the claim rests

properly can be understood" the way the plaintiff claims). Because the phrase "legislative governmental body" "properly can be understood" to include the Legislature (*see infra* ¶¶ 57-67), Defendants' alternative interpretation of that phrase, even if ultimately correct on the merits, cannot defeat standing. *Id.*

b.

¶37 Defendants next argue the Legislature lacks standing because it is not suffering institutional injury. The Legislature counters that the Act "and its related rules inflict a direct institutional injury on the Legislature's otherwise plenary power to enact laws[.]"

¶38 Legislative standing based on institutional injury turns on the facts and circumstances in each case. *See Biggs v. Cooper ex rel. Cnty. of Maricopa*, 236 Ariz. 415, 419 ¶¶ 13–14 (2014); *Bennett*, 206 Ariz. at 526–27 ¶ 28; *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 486–87 ¶¶ 14–15 (2006). Institutional injury does not "zero[] in on any individual [m]ember." *Ariz. State Legislature*, 576 U.S. at 802. Instead, it is "[w]idely dispersed" and "necessarily impact[s] all [m]embers of [a legislature] equally." *Id.* (cleaned up). The Legislature suffers institutional injury when there is "a particularized injury to the legislative body as a whole." *Forty-Seventh Legislature*, 213 Ariz. at 486 ¶ 14.

¶39 Vote nullification plays a leading role in legislative standing based on institutional injury. In *Arizona State Legislature*, the Court observed that the Legislature's injury was like a "nullification" injury. 576 U.S. at 803–04. In that case, giving redistricting power to a commission "would 'completely nullif[y]' any vote by the Legislature, now or 'in the future,' purporting to adopt a redistricting plan," so the Legislature had standing. *Id.* at 804. Similarly, in *Forty-Seventh Legislature*, our supreme court concluded the Legislature could challenge the Governor's line-item veto because if the veto was invalid, "the Legislature's right to have the votes of a majority given effect has been overridden and the Legislature, as an institution, has sustained a direct injury to its authority to make and amend laws[.]" 213 Ariz. at 487 ¶ 15. And, in *Biggs*, our supreme court found institutional injury based on nullification of the plaintiffs' "power, as a group, to have defeated the bill, if a supermajority was required for passage." 236 Ariz. at 419 ¶ 15; *see also Bennett*, 296 Ariz. at 526 ¶ 26 (rejecting standing because "no legislator's vote was nullified by interference in the legislature"). We must therefore determine whether the Act or the Commission's rules are directly injuring the Legislature's

powers, including by nullifying its power to make and amend laws. *See Forty-Seventh Legislature*, 213 Ariz. at 487 ¶ 15.

i.

¶40 The Legislature first challenges § 16-974(D). Again, that section says the Commission's rules and enforcement actions "are not subject to the approval of or any prohibition or limit imposed by any . . . legislative governmental body[.]" The Legislature argues it has standing because that section "disrupts the legislative process by barring the Legislature from being able to" pass laws regulating campaign spending. Defendants respond that the Legislature has not alleged a concrete harm stemming from § 16-974(D). We conclude the Legislature has standing to challenge § 16-974(D).

¶41 If the Legislature is correct that § 16-974(D) stops it from legislating when doing so prohibits or limits a Commission rule or enforcement action, then it is sustaining a direct injury to its constitutional authority. *See Forty-Seventh Legislature*, 213 Ariz. at 487 ¶ 15. According to the Legislature, without § 16-974(D), it could pass legislation, subject to constitutional restraints (like the VPA), even if doing so would prohibit or limit a Commission rule or enforcement action. *See Earhart v. Frohmiller*, 65 Ariz. 221, 224–25 (1947). Under that view, § 16-974(D) "would completely nullify any vote by the Legislature now or in the future" if it resulted in a law prohibiting or limiting a Commission rule or enforcement action. *Arizona State Legislature*, 576 U.S. at 804 (cleaned up). Thus, "the Legislature, as an institution, has sustained a direct injury to its authority to make and amend laws[.]" *Forty-Seventh Legislature*, 213 Ariz. at 487 ¶ 15.

¶42 Defendants argue the Legislature must identify specific legislation it wants to pass that the Act prohibits. The superior court agreed, finding that the Legislature has "not contended . . . that any legislator hopes to run a bill in the 2024 session that may affect [the Act], much less evidence that a legislator is forgoing any legislative act because of supposed uncertainty about [the Act]."

¶43 The Legislature need not identify specific legislation it would have passed or wants to pass but for the Act. In *Arizona State Legislature*, the Redistricting Commission argued the Legislature's injury was not concrete "absent some 'specific legislative act that would have taken effect but for Proposition 106.'" 576 U.S. at 800. The United States went further, arguing the Legislature had to present a redistricting plan to the Secretary of State and have it rejected. *Id.* The Court discarded both arguments

because, "[t]o establish standing, the Legislature need not violate the Arizona Constitution." *Id.* at 801. Similarly, in *Brewer*, our supreme court concluded the Governor's claims were not premature even if "the Legislature was still in session and" presentment must only occur "before the Legislature adjourns." 222 Ariz. at 238 ¶ 15. If the Governor's interpretation was correct, "she suffered a constitutional injury." *Id.* Finally, in *Biggs*, the Governor argued "that the plaintiff legislators had other remedies available to them, such as attempting to repeal the law or seeking a referendum on it." 236 Ariz. at 419 ¶ 17. Yet the court concluded the claim was not premature, explaining that the legislators "need not exhaust all alternative political remedies before filing suit." *Id.* So, to have standing, the Legislature need not violate the Act, identify specific legislation that would do so, or exhaust other political remedies.

¶44 Finally, Defendants argue that any injury the Legislature claims to be suffering from § 16-974(D) stems exclusively from the VPA. Not so. The VPA prohibits the Legislature from repealing or amending an approved initiative measure unless certain conditions are met. *See* Ariz. Const. art. 4, pt. 1, § 1(6)(C). But, according to the Legislature, § 16-974(D) goes further and prohibits it from passing any legislation prohibiting or limiting Commission rules or enforcement actions, even if the VPA would not apply or would allow such legislation. By doing so, the Legislature claims § 16-974(D) nullifies its authority to pass laws. That view, which is not inconsistent with a proper understanding of § 16-974(D), gives the Legislature standing. *See Forty-Seventh Legislature*, 213 Ariz. at 487 ¶ 15; *Warth*, 422 U.S. at 500.

ii.

¶45 We next address § 16-974(A)(8), which allows the Commission to "[p]erform any other act that may assist in implementing this chapter." The Legislature says that section "usurps legislative authority by delegating legislative power to the Commission." Defendants counter that "the Legislature cannot be harmed simply because voters" delegated authority to the Commission. We conclude the Legislature lacks standing to challenge § 16-974(A)(8).

¶46 The Legislature has broad—but not unbounded—discretion to delegate authority to the executive branch. *See State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205–06 (1971). The Legislature has often exercised that authority, including in areas as essential as elections and emergency management and obscure as eradicating the Pink Bollworm of Cotton. *See,*

e.g., A.R.S. § 16-452(A); A.R.S. § 26-303(E)(1); *State v. Wacker*, 86 Ariz. 247, 248–49 (1959).

¶47 The people made the delegation here, but ultimately that makes no difference. "The legislative power of the people is as great as that of the legislature." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 6 ¶ 15 (2013) ("*Cave Creek*"). Like the Legislature, the people can enact laws that include broad—but again not unbounded—delegations to the executive branch. And, like the Legislature, the people have occasionally done so. *See, e.g.*, A.R.S. § 36-2854(A); A.R.S. § 36-601.01(G)(11).

¶48 The flaw in the Legislature's theory is this: delegating authority does not, standing alone, nullify legislative power. To the contrary, when the Legislature delegates, it can still legislate, including on subjects falling within the delegation. For example, delegating authority to conduct elections or manage emergencies did not stop the Legislature from later passing laws on those subjects. The Legislature similarly retains lawmaking power (subject to the VPA, if applicable) when *the people* delegate authority to the executive branch. Thus, § 16-974(A)(8), by itself, cannot properly be understood as stopping the Legislature from passing laws, or otherwise causing it institutional harm. *See Warth*, 422 U.S. at 500.

¶49 The institutional injury the Legislature attributes to § 16-974(A)(8) is instead *traceable* to two other laws. *See Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 405 ¶ 23 (App. 2020) ("[A] party must first establish 'a causal nexus between the defendant's conduct and [its] injury.'"). First, because the people approved the Act, the Constitution prohibits the Legislature from repealing or amending the text of § 16-974(A)(8) unless the VPA's conditions are met. *See* Ariz. Const. art. 4, pt. 1, § 1(6)(C), (14); *Cave Creek*, 233 Ariz. at 4 ¶ 9. Second, once the Commission issues a rule or pursues an enforcement action, the Legislature alleges that it can no longer legislate if doing so would prohibit or limit that rule or enforcement action. In neither situation, however, does injury stem from § 16-974(A)(8)—in the first, injury stems from the VPA, in the second, injury stems from § 16-974(D). The Legislature does not challenge the VPA and it has standing to challenge § 16-974(D) (*see supra* ¶ 41). Because § 16-974(A)(8), no matter how it might be construed, is not causing "a direct injury to [the Legislature's] authority to make and amend laws," the Legislature lacks standing to challenge that provision. *Forty-Seventh Legislature*, 213 Ariz. at 487 ¶ 15; *cf. Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 17 (2005) (rejecting standing despite plaintiff alleging "that *she* was injured by the requirement in the ordinance").

¶50 The Legislature argues that, even if injury is lacking, there is standing because there is an actual controversy between interested parties about the Act's validity. *See Mills*, 253 Ariz. at 424 ¶ 25. The Legislature argues it has "a real and present need" to know whether the Act is valid. But the Legislature's "interested party" argument focuses on § 16-974(D). It argues that once the Commission issues a rule, "§ 16-974(D) operates to shrink the constitutional scope of the Legislature's power to pass laws concerning the same subject." That argument does not establish that the Legislature is sufficiently interested in the constitutionality of § 16-974(A)(8). The argument instead underscores that the Legislature's injury is traceable to § 16-974(D).

iii.

¶51 We turn last to the three Commission rules the Legislature claims are *ultra vires*. The Legislature argues the rules are injuring it because they are "an 'excursion' into lawmaking by promulgating legislative policy" and "shrink the constitutional scope of the Legislature's powers." Defendants disagree, arguing the Legislature "is not constrained or affected in any way by the Commission issuing advisory opinions (under R2-20-808) or interpreting and implementing the statutory text (R2-20-801, 803(E))." We agree the Legislature lacks standing to challenge the rules.

¶52 None of the three rules regulate the Legislature as an entity and none can be understood as nullifying legislative power. Because the delegation in § 16-974(A)(8) does not nullify legislative power, neither do the three rules at issue, even assuming they were promulgated using that delegation. Any institutional injury the Legislature is suffering from those rules is instead *traceable* to the limits in § 16-974(D).

¶53 The Legislature cites *Cochise County v. Kirschner*, 171 Ariz. 258 (App. 1992), to support standing. We said there that "[a]ny excursion by an administrative body beyond the legislative guidelines is" a "usurpation of constitutional powers vested only in the major branch of government." *Id.* at 261–62. Though that statement is correct, *Kirschner* did not involve a claim by the Legislature and did not make that statement in the context of legislative standing. Rather, the quoted passage merely supported this court's broader (but still correct) statement that "[a]n agency . . . has no powers other than those the legislature has delegated to it." *Id.* at 261.

c.

¶54 The Legislature alternatively asks us to waive standing because this matter involves a controversy "between the highest branches of state government" and "[t]ime is of the essence" with the 2024 election approaching. Because the Legislature has standing to challenge § 16-974(D), we need not waive standing as to that section.

¶55 As to § 16-974(A)(8) and the Commission's rules, we decline to waive standing. Our supreme court has indicated it might ditch standing "in exceptional circumstances." *Sears*, 192 Ariz. at 71 ¶ 25. But we are unaware of any instance where *this court* has done so. With standing missing, the controversy over whether and how the Act should delegate authority to the Commission remains a political dispute between the legislative and executive branches of government. We are "naturally reluctant" to referee such a dispute. *Bennett*, 206 Ariz. at 525 ¶ 20. And, in any event, we question the propriety of waiving standing when determining whether there is a likelihood of success on the merits for purposes of a preliminary injunction.[1]

B.

¶56 We next consider whether § 16-974(D) is constitutional. To do so, we first answer the question Defendants sought to have us answer during our standing analysis, but that we reserved for the merits (*see infra* ¶ 36)—whether the Legislature is a "legislative governmental body." And, if the Legislature is such a body (preview: it is), we then address § 16-974(D)'s constitutionality.

1.

¶57 The parties offer competing interpretations of the phrase "legislative governmental body." The Legislature contends that phrase includes it. Defendants contend that phrase covers only the Administrative Rules Oversight Committee ("the Committee"). The superior court agreed with Defendants. We are of a different mind—the phrase "legislative governmental body" includes the Legislature.

¶58 We interpret statutes "according to the plain meaning of the words in their broader statutory context," unless directed to do otherwise.

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[1] We therefore take no view on the merits of the Legislature's argument that § 16-974(A)(8) violates the separation of powers or the non-delegation doctrine.

S. Ariz. Home Builders Ass'n v. Town of Marana, 254 Ariz. 281, 286 ¶ 31 (2023). "Clear and unequivocal language determines a statute's meaning, reading each word, phrase, clause, and sentence in such a way to ensure no part of the statute is void or trivial." *Planned Parenthood Arizona, Inc. v. Mayes*, ___ Ariz. ___, 545 P.3d 892, 897 ¶ 15 (2024). "When the statute's language is clear and unambiguous, we must give effect to that language without employing other rules of statutory construction." *Parsons v. Ariz. Dep't of Health Servs.*, 242 Ariz. 320, 323 ¶ 11 (App. 2017). Only if statutory language is ambiguous may we "use alternative methods of statutory construction, including examining the [statute's] historical background, its spirit and purpose, and the effects and consequences of competing interpretations." *Planned Parenthood Ariz., Inc.*, 545 P.3d at 897 ¶ 17.

¶59 The Act does not define the phrase "legislative governmental body" or any of its terms. *See* A.R.S. § 16-971 (defining terms in the Act). Thus, we "may look to dictionary definitions." *In re Drummond*, ___ Ariz. ___, 543 P.3d 1022, 1025 ¶ 7 (2024); *see also* A.R.S. § 1-213.

¶60 The Merriam-Webster Dictionary defines "legislative" as "having the power or performing the function of legislating."[2] The Oxford Advanced Learner's Dictionary defines "legislative" as "connected with the act of making and passing laws."[3] Merriam-Webster defines "governmental" as "the body of persons that constitutes the governing authority of a political unit or organization."[4] Merriam-Webster defines "body," as relevant here, as "a group of persons or things: such as a group of individuals organized for some purpose," and the Oxford Dictionary defines "body" as "a group of people who work or act together, often for an official purpose[.]"[5] Combining those definitions, the phrase "legislative

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[2] *Legislative*, Merriam-Webster, https://www.merriam-webster.com/ dictionary/legislative (last visited June 26, 2024); *see also Windhurst v. Ariz. Dep't. of Corrections*, 256 Ariz. 186, 191 ¶ 19 (2023) (using the Merriam-Webster dictionary to define a statutory term).

[3] *Legislative*, Oxford Advanced Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/definition/english/legislat ive?q=legislative (last visited June 26, 2024); *see also Windhurst*, 256 Ariz. at 191 ¶ 19 (using the Oxford Dictionary to define a statutory term).

[4] *Governmental*, Merriam-Webster, https://www.merriam-webster.com/ dictionary/governmental (last visited June 26, 2024).

[5] *Body*, Merriam-Webster, https://www.merriam-webster.com/ dictionary/body (last visited June 26, 2024); *Body*, Oxford Advanced Learner's Dictionary, https://www.oxfordlearnersdictionaries .com/definition/english/body?q=body (last visited June 26, 2024).

governmental body" means this: a group of people constituting the governing authority of a political unit and having the power or performing the function of legislating.

¶61 Applying that definition, the Legislature is a "legislative governmental body." The Legislature is a group of people—representatives and senators—constituting the governing authority of the state and having the power to legislate. The Arizona Constitution provides that "[t]he legislative authority of the state shall be vested in the legislature[.]" Ariz. Const. art. 4, pt. 1, § 1(1); *see also Earhart*, 65 Ariz. at 224. So the phrase "legislative governmental body" in § 16-974(D) includes the Legislature.

¶62 Prior case law supports that conclusion. Our supreme court has referred to the Legislature as a "legislative body." In *Queen Creek Land and Cattle Corporation v. Yavapai County Board of Supervisors*, the court explained that "the constitutional reservation of initiative and referendum powers establishes the electorate as a coordinate source of legislation with the constituted *legislative bodies*." 108 Ariz. 449, 451 (1972) (emphasis added). The court identified those "legislative bodies" as "the Legislature and the inferior law-making bodies." *Id.* Later, in *Robbins v. Arizona Department of Economic Security*, this court interpreted the phrase "legislative body" as including the Navajo Nation Council, which the Navajo Nation Code "established [as] the Legislative Branch of the Navajo Nation Government." 232 Ariz. 21, 22, 24 ¶¶ 2, 14–17 (App. 2013).

¶63 Defendants argue that "legislative governmental body" does not refer to the Legislature because the Act later references the Legislature in § 16-978, thereby creating surplusage if we adopt the Legislature's interpretation. Section 16-978(A) allows "the legislature, a county board of supervisors or a municipal government" to enact "additional or more stringent disclosure provisions for campaign media spending." That the Act returns some power to three governmental bodies does not render the more general restriction on "any other . . . legislative governmental body" superfluous if that phrase includes the Legislature. Instead, the Act identifies a broad class of entities subject to § 16-974(D) and then clarifies in § 16-978 that three specific governmental bodies retain some power in the realm of campaign media spending.

¶64 We also disagree that "legislative governmental body" refers *only* to the Committee. The Committee has eleven members—five members each from the House and Senate and the Governor or the Governor's designee—and it reviews agency rules "for conformity with statute and

legislative intent." A.R.S. §§ 41-1046, -1047. The Committee is not the governing body of a political unit and has no legislative power. Voters therefore would not have *widely* understood the phrase "legislative governmental body" to refer exclusively to the Committee. It is unlikely *any* voter would have done so.

¶65 The structure of § 16-974(D) also supports our interpretation. Recall that the second sentence in § 16-974(D) exempts the Commission's rules "from title 41, chapters 6 and 6.1." The Committee's process for reviewing agency rules and policies is found in title 41, chapter 6. *See* A.R.S. §§ 41-1047, -1048. That means § 16-974(D)'s second sentence exempts the Commission's rules from Committee review. So interpreting "legislative governmental body" in the first sentence to refer *only* to the Committee risks superfluidity—the first sentence would exempt the Commission from Committee oversight when the second sentence also does so. *See Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019). Moreover, the Committee is tasked with reviewing and commenting on agency rules. It does not have the power to prohibit or limit agency rulemaking or enforcement actions. *See* A.R.S. § 41-1047. Thus, Defendants' interpretation of "legislative governmental body" would merely result in the Committee being prohibited from exercising power it does not possess, thereby rendering § 16-974(D) partly illusory.

¶66 Moreover, § 16-974(D) refers to "*any other* . . . legislative governmental body." (Emphasis added.) Interpreting that broad phrase as referring *only* to the Committee would contradict the common meaning of "any other" and the general terms canon. *See City of Phoenix v. Tanner*, 63 Ariz. 278, 280 (1945) ("[T]he word 'any' is, in its ordinary sense, broadly inclusive[.]"); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 101-03 (2012) (general terms canon instructs that terms like "all persons" and "any property" not be arbitrarily limited).

¶67 The superior court adopted Defendants' definition, relying on the constitutional avoidance canon. That canon does not allow us to rewrite a statute to avoid constitutional conflict. *See Fann*, 251 Ariz. at 433–34 ¶ 23. Instead, it applies only "in the choice of fair alternatives that one construction may raise serious constitutional questions avoided by another." *United States v. Rumely*, 345 U.S. 41, 45 (1953); *see also Skilling v. United States*, 561 U.S. 358, 423 (2010) (Scalia, J., concurring in part and in the judgment). Defendants' interpretation is not a fair alternative to the common meaning of "legislative governmental body." That phrase is not susceptible to an interpretation that includes only the Committee. Instead, the phrase's common meaning includes the Legislature.

2.

¶68 We next address whether § 16-974(D) unconstitutionally restricts the Legislature's lawmaking power. The Commission conceded during oral argument that, if the Legislature is a "legislative governmental body," then § 16-974(D) is unconstitutional in part. We agree.

a.

¶69 The framers of the Federal Constitution knew well what happens when one individual possesses too much governmental power. As Madison said, "[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 293 (James Madison) (Bantam Classic ed., 1982). So the framers separated the federal government into three branches—legislative, executive, and judicial. And they split the legislative branch into two bodies—the House of Representatives and the Senate. *See* U.S. Const. art. I, § 1.

¶70 Arizona's framers concluded the separation of powers remained a vital bulwark against government overreach. *See* Ariz. Const. art. 3; *Mecham v. Gordon*, 156 Ariz. 297, 300 (1988). But they went further than their federal counterparts. Not only did they split the legislature into two bodies—the House and the Senate—but they gave the people direct lawmaking power. *See* Ariz. Const. art. 4, pt. 1, § 1(2).

¶71 Here is another relevant difference between the Federal and Arizona Constitutions: the Arizona Constitution is not one of granted powers, "but instead [is a] limitation[] thereof." *Earhart*, 65 Ariz. at 224. Thus, the Legislature need not ground its lawmaking in an express grant of authority. *Id.* Instead, it "may deal with any subject within the scope of civil government," unless the Constitution says otherwise. *Id.*

¶72 The same is true for the people's lawmaking power. The Arizona Constitution says, "Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative." Ariz. Const. art. 22, § 14; *see also Tilson v. Mofford*, 153 Ariz. 468, 470 (1987). The converse is also true—the people may not exercise their lawmaking authority in a way the Legislature cannot. As the Constitution puts it, "Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people." Ariz. Const. art. 22, § 14.

b.

¶73 Without § 16-974(D), the Legislature could enact laws prohibiting or limiting the Commission's rules or enforcement actions, subject to the VPA if applicable. But § 16-974(D) nullifies that power. The portion that does so is unconstitutional.

¶74 History tells us that one legislature cannot limit the lawmaking powers of future legislatures. Blackstone observed that "Acts of parliament derogatory from the power of subsequent parliaments bind not." 1 William Blackstone, Commentaries on the Laws of England 90 (1765). Chief Justice Marshall explained "that one legislature cannot abridge the powers of a succeeding legislature." *Fletcher v. Peck*, 10 U.S. 87, 135 (1810). And the Supreme Court has since reaffirmed that principle. *See Manigault v. Springs*, 199 U.S. 473, 487 (1905); *Reichelderfer v. Quinn*, 287 U.S. 315, 318 (1932).

¶75 The Arizona Constitution, too, prohibits one legislature from stopping a future legislature from passing laws. According to our supreme court, "it is axiomatic that any [legislative] body may alter, limit, or repeal, in whole or in part, any statute by a preceding one[.]" *Higgins' Est. v. Hubbs*, 31 Ariz. 252, 264 (1926). Moreover, it is "undoubted" that one legislature cannot "limit or bind the acts of a future one." *Id.* More recently, the court reiterated that "one legislature generally cannot restrict the lawmaking powers of a future legislature." *Cave Creek*, 233 Ariz. at 6 ¶ 16. For support, the court quoted a Washington Supreme Court opinion, which said, "Implicit in the plenary power of a legislature is the principle that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power." *Id.* (quoting *Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wash.2d 284 (2007)).

¶76 If one legislature cannot stop a future legislature from passing laws, then neither can a voter-approved *statute*. *See* Ariz. Const. art. 22, § 14. Yet that is precisely what § 16-974(D) does—it restricts future legislatures from passing laws prohibiting or limiting the Commission's rules or enforcement actions. In fact, § 16-974(D) does not just restrict the Legislature from legislating in defined areas. It instead lets the Commission choose when future legislation is off limits—in whatever areas the Commission promulgates rules or pursues enforcement actions.

¶77 Of course, the VPA limits legislative power, including when a voter-approved statute restricts legislative discretion, and nothing in our analysis impacts the VPA. *See Cave Creek*, 233 Ariz. at 6 ¶ 17. But the VPA

is contained in the Constitution, and it restricts the Legislature's power to amend or repeal voter-approved *statutes*. Section 16-974(D) goes further and statutorily prohibits the Legislature from passing any law limiting or prohibiting any Commission *rule or enforcement action*, even when the VPA does not apply, or its requirements are met.

¶78 *Cave Creek* does not save § 16-974(D). There, the Legislature passed a school-funding bill and referred portions of it to the people. 233 Ariz. at 3 ¶ 3. Among the provisions referred was "a requirement that the [L]egislature make annual inflation adjustments to the budget for K-12 public schools." *Id.* Beginning in 2010, the Legislature did not budget for the required inflation adjustments. *Id.* at 3 ¶ 4. When challenged, the State argued that the Legislature need not do so because "the electorate, through a voter-approved statute . . . cannot bind future legislatures." *Id.* at 6 ¶ 17. The court disagreed that the budget requirements were not VPA-protected: "[H]aving chosen to refer the measure to the people, who then passed it, the [L]egislature is subject to the restrictions of the VPA[.]" *Id.* The court reasoned that "[t]he VPA expressly limits the legislature's powers relating to a[n approved] 'referendum measure.'" *Id.* at 6 ¶ 18.

¶79 This case is different. The Legislature is not ignoring a voter-approved directive, thereby effectively repealing a voter-approved statute. *See id.* at 7 ¶ 25 (noting that "[t]he State conceded" that the statute at issue "violated the VPA by effectively repealing, amending, or superseding § 15-901.01"). In *Cave Creek*, the Constitution, through the VPA, restricted the Legislature's budgeting discretion. Here, a *statute* nullifies legislative power whenever the Commission enacts a rule or pursues an enforcement action. Also, in *Cave Creek*, the Legislature referred the law in question to the people, so the court "presume[d] that . . . the legislature acted 'with full knowledge of relevant constitutional provisions,' including the VPA." *Id.* at 5 ¶ 11. No such presumption applies here.

¶80 We conclude § 16-974(D) is unconstitutional in part because it prohibits the Legislature from passing any law prohibiting or limiting the Commission's rules or enforcement actions, even when the VPA does not apply, or its requirements are met.

C.

¶81 We arrive at severability. The Legislature argues that because § 16-974(D) is unconstitutional in part, the whole Act must fall. We disagree.

¶82 The Act contains a severability clause, providing that "[i]f any provision of this [A]ct or application of a provision to any person or circumstance is held to be unconstitutional, the remainder of this [A]ct . . . shall not be affected by the holding." 2022 Ariz. Legis. Serv. Prop. 211 § 4. Through that clause, the people expressed their will that courts should respect any part of the Act not deemed unconstitutional. One could argue our analysis should end there. *See Myers*, 196 Ariz. at 523 ¶ 25; *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2349 (2020) (plurality opinion).

¶83 Yet our supreme court uses a severability test for initiatives. *See Randolph v. Groscost*, 195 Ariz. 423, 427 ¶ 15 (1999). Thereunder, "we ask whether the valid portion can operate without the unconstitutional provision and, if so, [whether] the result is so . . . irrational that one would not have been adopted without the other." *Myers*, 196 Ariz. at 522 ¶ 23.

¶84 The Legislature argues that "without § 16-974(D), the Commission's rulemaking will be subject to executive and legislative oversight." But that does not establish that the Act is unworkable if § 16-974(D) is unenforceable against the Legislature. There is no executive official here challenging § 16-974(D), so we do not address whether § 16-974(D) is enforceable against executive officials. Also, if § 16-974(D) is enjoined as to the Legislature, then the Commission will be subject to some legislative oversight, but that can be said of most administrative agencies. Moreover, the Act's core will remain—its disclosure requirements will still be enforceable. The Act will be workable.

¶85 Nor will the result be so absurd or irrational that we can say the electorate would not have adopted the Act. Importantly, the Act will remain subject to the VPA's restrictions on lawmaking. As such, the Commission will be in the same situation as other agencies delegated authority through a VPA-protected measure. And, through the express severability clause, the people expressed their desire to have the Act's unchallenged provisions remain. *See Myers*, 196 Ariz. at 523 ¶ 25. The Legislature is not likely to succeed on its request to enjoin the Act in full.

* * *

¶86 In sum, the Legislature has shown a strong likelihood of success on its challenge to § 16-974(D) because it has standing and that section unconstitutionally restricts its lawmaking power. The Legislature is unlikely to succeed on its claim that the unconstitutional portion of § 16-974(D) is not severable. And the Legislature is unlikely to succeed on its

challenge to § 16-974(A)(8) and the Commission's three rules because it lacks standing.

II.

¶87 We turn briefly to the other preliminary injunction factors—irreparable harm, the balance of hardships, and public policy. *Smith*, 212 Ariz. at 410 ¶¶ 9–10.

¶88 The Legislature is suffering irreparable harm. Harm is irreparable when it is "not remediable by damages." *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990); *see also City of Flagstaff v. Ariz. Dep't. of Admin.*, 255 Ariz. 7, 13 ¶ 18 (App. 2023). "An award of monetary damages generally is an adequate remedy when damages are calculable with reasonable certainty and 'address the full harm suffered.'" *City of Flagstaff*, 255 Ariz. at 13 ¶ 18. Ordinarily, *ongoing* constitutional violations cannot be remedied through monetary damages, rendering the harm caused by such a violation irreparable. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017). Thus, irreparable harm ordinarily exists when a statute is *both* violating the separation of powers *and* that violation is directly harming the plaintiff.

¶89 Defendants have not established that the harm § 16-974(D) is causing the Legislature—nullification of its lawmaking powers (*see supra* ¶ 76)—is remedial by money damages or any other legal remedy. The Legislature's underlying claim for declaratory relief cannot result in money damages. *See* A.R.S. § 12-1831 *et seq.* And Defendants have not identified any other claim the Legislature might have brought to remedy the harm it is suffering. Moreover, that harm is not speculative or remote. Section 16-974(D) is *currently* in effect and nullifying the Legislature's lawmaking power. *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 212 (2020) ("[W]hen such a provision violates the separation of powers it inflicts a 'here-and-now' injury on affected third parties that can be remedied by a court."). Just as the Legislature need not violate § 16-974(D) to establish standing, it need not do so to show irreparable harm.

¶90 The balance of hardships and the public interest also favor injunctive relief. On one hand, the Legislature is suffering harm to its authority to enact laws. That also harms the people of Arizona, who have a paramount interest in having elected representatives carry out their will. On the other hand, a preliminary injunction as to § 16-974(D)'s restriction on the Legislature is narrow and the Act's primary provisions remain, thereby minimizing any harm to the electorate that approved the Act. Moreover, Defendants argue the Legislature is not a "legislative

governmental body" covered by § 16-974(D). Although we reject that interpretation, enjoining § 16-974(D)'s restriction on the Legislature has the same impact as that interpretation—§ 16-974(D) does not apply to the Legislature. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("The Defendants cannot be harmed by an order enjoining an action they will not take."). Finally, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Id.*

III.

¶91 The Legislature seeks attorney fees and costs, as do Defendants. Because this is a split decision, in the exercise of our discretion, each side shall bear their own fees and costs. *See State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 134 ¶ 30 (2020).

CONCLUSION

¶92 Each of the preliminary injunction factors supports the Legislature's request to preliminarily enjoin § 16-974(D) in part. We therefore reverse in part the superior court's denial of a preliminary injunction. Defendants and their agents are enjoined during the pendency of this litigation from enforcing § 16-974(D) to prohibit the Legislature from passing legislation prohibiting or limiting the Commission's rules or enforcement actions. *See* A.R.S. § 12-120.21(A)(3); Ariz. R. Civ. App. P. 7(c). We remand to the superior court for further proceedings consistent herewith. The existing stay of trial court proceedings shall lift when the mandate is issued.

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