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10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF ARIZONA**

13 William Terrence Platt and Maria B. Platt,
 14 **Plaintiffs,**
 15 v.
 16 Jason Moore, *et al.*,
 17 **Defendants.**

Case No. CV-16-8262-PCT-BSB
**INTERVENOR STATE OF
 ARIZONA’S MOTION TO
 DISMISS**
(Oral Argument Requested)

20 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Intervenor-
 21 Defendant, the State of Arizona, moves this Court to dismiss the First, Second, and
 22 Third Causes of Action for failure to state a claim upon which relief can be granted.

24 **I. INTRODUCTION**

25 The State of Arizona moved to intervene in this matter for the purpose of
 26 defending the facial constitutionality of its civil asset forfeiture statutes. Although the

1 First Amended Complaint sets forth a multitude of facts, legal assertions, and general
 2 grievances, the Platts' facial challenges are focused on three sets of statutory
 3 provisions: A.R.S. §§ 13-4309, 13-4314(A) (the "Uncontested Forfeiture Statutes");
 4 A.R.S. §§ 13-2314.03, 13-4315 (the "Expenditure Statutes"); and A.R.S. §§ 13-
 5 4314(E)–(F) (the "Fee-Shifting Statutes"). (Compl. 44–45 ¶¶ A, C, D, and F.) These
 6 facial challenges are embodied in the First, Second, and Third Causes of Action. None
 7 of these three causes states a claim for relief that is "plausible on its face," and therefore
 8 each should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). *Bell Atl. Corp. v.*
 9 *Twombly*, 550 U.S. 554, 570 (2007); *see also Balistreri v. Pacifica Police Dep't*, 901
 10 F.2d 696, 699 (9th Cir. 1990) (upholding Rule 12(b)(6) dismissal of § 1983 claim that
 11 was not "alleged under a cognizable legal theory").

12 II. ARGUMENT¹

13 **A. THE FIRST CAUSE OF ACTION SHOULD BE DISMISSED.**

14 In their First Cause of Action, the Platts argue that the Uncontested Forfeiture
 15 Statutes and the Expenditure Statutes violate due process because they: (a) allow for
 16 forfeiture to be obtained without an adversarial hearing; (b) allow an attorney for the
 17 State to force a claimant through the uncontested forfeiture process; and (c) allow an
 18 attorney for the State to adjudicate a matter in which he has a pecuniary interest. (Compl.
 19 ¶¶ 246–57.)
 20

21 The First Cause of Action fails because the Uncontested Forfeiture Statutes
 22 provide property owners with a variety of procedural due process protections and require
 23 judicial determination of all forfeitures entered in Arizona. An attorney for the State
 24 simply does not and cannot "adjudicate" a forfeiture matter. Because the First Cause of
 25 Action relies on no cognizable or plausible legal theory, it must be dismissed.

26 ¹ The State joins and adopts the Statement of Material Facts and standing arguments
 27 made by the County/City/Town Defendants in their separate Motion to Dismiss.

1 **1. The Uncontested Forfeiture statutes provide notice, an opportunity for**
2 **property owners to be heard, and the right to demand an adversarial judicial**
3 **hearing.**

4 Uncontested forfeiture is one type of forfeiture proceeding authorized by Arizona
5 law, and it is the only type challenged in the instant lawsuit. Uncontested forfeiture bears
6 some similarity to federal administrative forfeiture, but it differs in a fundamental way:
7 uncontested forfeiture always requires a judicial determination, even when nobody
8 objects to the forfeiture. *Compare* 19 U.S.C. § 1602–613 (providing for forfeiture by
9 agency declaration) *with* A.R.S. § 13-4314(A) (“If no petitions . . . or claims are timely
10 filed . . . the attorney for the state *shall apply to the court* for an order of forfeiture. . . .”
(emphasis added)).

11 If a forfeiture of property is authorized by law, the attorney for the State may, in
12 his or her discretion, elect to make uncontested forfeiture proceedings available. A.R.S.
13 § 13-4309. He or she must then provide notice to all known owners of and interest
14 holders in the property, thereby giving them an opportunity to enter the proceedings and
15 be heard. *See id.* at § 13-4309(1).²

16 A person who receives notice of an uncontested forfeiture proceeding has the
17 right to pursue three options. He or she may elect to do nothing, in which case the
18 attorney for the State must submit an application for order of forfeiture to a superior
19 court judge. *Id.* at 13-4309(4); 13-4314(A). Alternatively, the person may file a timely
20 claim with the superior court. This terminates the uncontested forfeiture proceeding. *Id.*
21 at § 13-4309(6)(a) (“If a claim has been timely filed . . . it shall be determined in a
22 judicial forfeiture proceeding. . . .”). Finally, the person may submit a timely and
23 statutorily-compliant petition for remission or mitigation to the attorney for the State.

24 ² Unlike judicial forfeiture proceedings, uncontested forfeiture proceedings require no
25 submittal or filing fee and require the State to initiate proceedings within thirty days of
26 the seizure for forfeiture, rather than sixty days. *See generally* A.R.S. § 13-4309, 13-
27 4308(B). Thus, the uncontested forfeiture procedures not only provide notice and an
28 opportunity to be heard, they do so on a no-cost, expedited basis.

1 The attorney for the State must then inquire into the facts and circumstances surrounding
2 the petition, and then provide a written declaration of forfeiture, remission, or mitigation
3 of any or all interest in the property. *Id.* at §§ 13-4309(3)(a), (b).

4 A written declaration of forfeiture is not a summary adjudication by the State.
5 Any person wishing to challenge the State’s declaration in an adversarial judicial
6 forfeiture proceeding has the right to then file a timely claim with the superior court. *Id.*
7 at §§ 13-4309(3)(c), (6)(a). Even if he or she decides not to contest the declaration, the
8 State still must submit an application for order of forfeiture to a superior court judge. *Id.*
9 at § 13-4309(4), 13-4314(A).

10 The Platts assert that Arizona law “allows the attorney for the state to subject
11 property owners to the uncontested forfeiture process even when they have tried to
12 invoke their right to an adversarial proceeding.” (Compl. ¶ 249.) Hardly. The Platts, like
13 anyone else, had the right to file a claim with the superior court, thereby commencing a
14 judicial proceeding and avoiding the uncontested forfeiture procedures altogether.³ *See*
15 A.R.S. §§ 13-4309(2), (6)(a). There is no legal mechanism for an attorney for the State
16 to force a property owner to enter or stay in an uncontested proceeding over his or her
17 objection.

18 Alternatively, had they participated in the uncontested forfeiture proceeding by
19 filing a statutorily-compliant petition, the Platts *still* would have had the right to contest
20 any potential forfeiture in a subsequent judicial proceeding. For the purposes of the due
21 process analysis, it is the existence –not the exercise— of these procedural rights that
22 matters. *See United States v. Real Prop.*, 135 F.3d 1312, 1317 (9th Cir. 1998) (“So long
23 as the Government takes the steps mandated by due process to notify the record owner of
24 an impending forfeiture, it is the owner’s responsibility to comply with the procedural

25 _____
26 ³ The Platts also could have demanded an immediate probable cause hearing before a
27 judge to challenge the sufficiency of the state’s seizure, whether they also submitted a
petition, filed a claim, or did neither. *See* A.R.S. § 13-4310(B).

1 requirements for opposing the forfeiture.”). *Cf. United States v. Castro*, 78 F.3d 453, 456
2 (9th Cir. 1996) (concluding that a forfeiture claimant’s failure to comply with statutory
3 requirements for a claim “constitute[s] an abandonment of the property as a matter of
4 law.”). Due process requires notice and an *opportunity* to be heard. *Dusenbery v. United*
5 *States*, 534 U.S. 161, 167 (2002). Arizona law provides for both. *See Torres v. Goddard*,
6 793 F.3d 1046, 1052 (9th Cir. 2015) (finding Arizona forfeiture law provides “sufficient
7 procedural safeguards . . . as a means of controlling unconstitutional conduct” such as
8 notice and the right to challenge a proposed forfeiture before an impartial judge).
9 Because they entitle property owners to notice and multiple opportunities to be heard,
10 the Uncontested Forfeiture Statutes afford the process due.

11 **2. The “pecuniary interest” theory fails because all forfeitures in Arizona**
12 **require a judicial determination.**

13 Forfeited property is used to support statutorily-defined law-enforcement
14 purposes such as gang and substance abuse prevention programs, racketeering
15 investigations, and victim assistance. *See* A.R.S. §§ 13-2314.03, 13-4315. The Platts
16 argue that these statutes give law enforcement a “pecuniary interest” in forfeiture
17 proceedings which they argue offends due process. (Compl. ¶¶ 253, 255.)

18 In *Tumey v. Ohio*, the U.S. Supreme Court held that a judge’s “direct, personal,
19 substantial pecuniary interest” in a proceeding violates due process. 273 U.S. 510, 523
20 (1927). The First and Third Causes of Action rest on the ill-founded theory that law
21 enforcement’s interest in the outcome of a forfeiture therefore violates due process. But
22 *Tumey* is plainly inapplicable because disinterested courts –not prosecutors or law
23 enforcement officials– adjudicate all forfeiture proceedings. *See Torres*, 793 F.3d at
24 1052 (“In rem civil forfeiture proceedings . . . [in Arizona] carry sufficient procedural
25 safeguards . . . [and] are conducted before an impartial state court judge.”).

1 No Arizona statute permits law enforcement officers or state attorneys to
2 adjudicate a forfeiture matter. Even when no one comes forward to challenge the
3 forfeiture, the State must apply *to a judge* for a forfeiture order and make a showing of
4 jurisdiction, notice, and facts sufficient to demonstrate probable cause for subjecting the
5 property to forfeiture. *See, e.g., Matter of \$24,000 U.S. Currency*, 171 P.3d 1240 (Ariz.
6 Ct. App. 2007) (appeal of trial court’s denial of State’s application for forfeiture of
7 unclaimed property); A.R.S. § 13-4314(A) (“If no petitions . . . or claims are timely filed
8 . . . the attorney for the state shall apply *to the court* for an order of forfeiture”
9 (emphasis added)). In Arizona, a forfeiture order can only be effected by a judge.

10 Due process entitles property owners to adequate notice and “an impartial and
11 disinterested tribunal” in which to challenge the State’s deprivation of their property
12 interests. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Under A.R.S. §§ 13-
13 4309(2), (3)(c), and (6)(a), property owners have the right to superior court adjudication
14 of an *in rem* forfeiture, even if it was initiated as an uncontested forfeiture proceeding.

15 The State, as the party initiating the forfeiture proceeding, has an interest in its
16 outcome.⁴ But “[t]he rigid requirements of *Tumey* [and its progeny] . . . designed for
17 officials performing judicial or quasi-judicial functions, are not applicable to those acting
18 in a prosecutorial or plaintiff-like capacity.” *Marshall*, 446 U.S. at 248. Stated
19 differently:

20 In the statutory and administrative scheme provided here, as in *Marshall*,
21 the official seeking forfeiture is, apart from his or her public status, no
22 different from any other plaintiff seeking an economic recovery. The
23 plaintiff presents the claim and the proofs in support thereof to a detached

24 ⁴ The State has a “legitimate interest” in “recovering all forfeitable assets” to support law
25 enforcement efforts. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629
26 (1989). In addition, the government has an unquestionably legitimate interest in
27 diminishing the economic power of criminal enterprises, preventing crime, and
28 compensating victims of racketeering. The use of forfeiture promotes these interests. *See*
generally Section III(C), *infra*.

1 and independent adjudicator—here, a court The adjudicator receives
2 those proofs and any countervailing evidence and defenses the adversary
3 may proffer. The evidence from both sides is evaluated in the light of
4 statutory standards, and a fair and impartial assessment is made.

5 *County of Cumberland v. One 1990 Ford Thunderbird*, 852 A.2d 1114, 1125 (N.J.
6 Super. Ct. App. Div. 1990) (internal citations omitted).

7 In *U.S. ex rel. Kelly v. Boeing Co.*, the Ninth Circuit rejected a constitutional
8 challenge to the *qui tam* provisions of the False Claim Act. 9 F.3d 743, 759 (9th Cir.
9 1993). Those provisions allow private persons to bring civil actions on behalf of the U.S.
10 government to enforce the Act. If successful, the relator receives a percentage –
11 essentially, a bounty— of any recovered damages or settlement. *See id.* The *Kelly* Court
12 rejected the argument that the *qui tam* provisions violated due process, even though the
13 relator had a *direct* financial interest in the outcome of the litigation. *Id.* The court
14 reasoned that in “an adversary system, [prosecutors] are necessarily permitted to be
15 zealous in their enforcement of the law.” *Id.* at 759 (citing *Marshall*, 446 U.S. at 248–
16 49). Accordingly, the court concluded that the contention that “the Due Process Clause
17 prohibits civil prosecutions by financially interested prosecutors is exaggerated.” *Id.*

18 *Marshall*, *Kelly*, and *One 1990 Ford Thunderbird* reveal the fallacy in Platts’
19 legal theory: due process cannot turn on an agency’s financial incentive to act rather than
20 an interested party’s meaningful opportunity to challenge the act. Government actors
21 have financial incentives to issue parking tickets, to assess fines for zoning violations,
22 and to take countless actions that put money into public coffers. Merely pursuing such
23 fines, forfeitures, costs and fees does not offend due process. *See Northern Mariana*
24 *Islands v. Kaipat*, 94 F.3d 574, 575 (9th Cir. 1996) (“Kaipat has not shown a violation of
25 his federal constitutional rights since **the judge** had no pecuniary interest in the fine. . .
26 .” (emphasis added)). Because Arizona forfeiture proceedings are “conducted before . . .
27 impartial state court judge[s],” *Torres*, 793 F.3d at 1052, and those judges have no

1 pecuniary interest in those proceedings, the Platts' *Tumey*-based argument must be
2 rejected.

3 **3. The First Cause of Action also fails to state a valid claim under the**
4 **Arizona Constitution.**

5 In addition to the federal due process claims addressed above, the First Cause of
6 Action also argues that the Uncontested Forfeiture Statutes and Expenditure Statutes
7 violate the Arizona Constitution's due process clause. (Compl. ¶ 255.) Arizona courts
8 have held that the federal and state due process clauses are substantially the same.
9 *Stewart v. Carroll*, 214 Ariz. 480, 482 (Ct. App. 2007) ("[T]he federal and state due-
10 process clauses contain nearly identical language and protect the same interests."
11 (internal quotation marks omitted)). Therefore, it is unnecessary to evaluate the claims
12 separately. *See Seidman v. Paradise Valley Unified Sch. Dist. No. 69*, 327 F. Supp. 2d
13 1098, 1104 (D. Ariz. 2004) ("When state and federal constitutional provisions are
14 'coextensive,' federal courts decide the federal constitutional claims because doing so
15 will also dispose of the state constitutional claims."). Moreover, Arizona courts have
16 already found that state forfeiture laws comport with due process. *See State ex rel.*
17 *Napolitano v. Gravano*, 204 Ariz. 106, 115 (Ct. App. 2002) ("[Arizona's] forfeiture laws
18 afford full due process before depriving a person of his or her property [They]
19 require the State to file an action in court and to prove the underlying racketeering and
20 the connection between the racketeering and the property subject to forfeiture. The
21 burden of proof is on the State, and civil procedural rules are applied.").

22 As explained above, the Platts' federal due process claims do not rely on a
23 cognizable or plausible legal theory. Because the state and federal due process clauses
24 are essentially coextensive, the state constitutional claims fail for all the same reasons
25 the federal claims do. The First Cause of Action must be dismissed in its entirety.

1 **B. THE SECOND CAUSE OF ACTION SHOULD BE DISMISSED.**

2 The Platts' Second Cause of Action argues that the fee-shifting provision in
3 A.R.S. § 13-4314(F), which requires unsuccessful claimants to pay the State's costs and
4 expenses of investigation and prosecution, violates their right to petition the government
5 and the guarantee of equal protection. (Compl. ¶¶ 262, 265.) The right to petition does
6 not prohibit fee-shifting. Section 13-4314 also does not violate equal protection because
7 its disparate treatment of plaintiffs and defendants is rationally related to a legitimate
8 government interest. For those reasons, the Second Cause of Action states no claim upon
9 which relief may be granted and should be dismissed.

10
11 **1. Fee-shifting does not violate the right to petition.**

12 The First Amendment secures the right of the people to "petition the Government
13 for a redress of grievances." U.S. Const. amend. I. The right to petition includes the right
14 to access the courts. *GBE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525 (2002). But as
15 a general proposition, the notion that "the first amendment . . . prohibits or even has
16 anything to say about fee-shifting statutes in litigation seems too farfetched to require
17 extended analysis." *Premier Elec. Const. Co. v. Nat'l Elec. Contractors Ass'n, Inc.*, 814
18 F.2d 358, 373 (7th Cir. 1987).

19 The U.S. Supreme Court's seminal opinion on fee-shifting, *Alyeska Pipeline*
20 *Service Co. v. Wilderness Society*, mentions neither the Petition Clause nor the First
21 Amendment at all. 421 U.S. 240, 262 (1975) ("[I]t is apparent that the circumstances
22 under which attorneys' fees are to be awarded and the range of discretion of the courts in
23 making those awards are matters for . . . [the Legislative Branch] to determine."). Other
24 courts have rejected First Amendment challenges to fee-shifting statutes. *Legal Aid Soc.*
25 *of Haw. v. Legal Servs. Corp.*, 961 F. Supp. 1402, 1411 (D. Haw. 1997) (rejecting
26 argument that fee-shifting provisions offend due process or implicate the First

1 Amendment); *Vargas v. City of Salinas*, 134 Cal. Rptr. 3d 244, 255 (Ct. App. 2011)
2 (“[A]n award of attorney fees in favor of a government defendant does not *per se* violate
3 a plaintiff’s constitutional right of petition.”). Like the plaintiffs in *Legal Aid Society*, the
4 Platts “do not cite any authority that fee-shifting provisions violate Due Process or
5 implicate the First Amendment.” 961 F.Supp. at 1411.

6 In *In re Workers’ Compensation Refund*, the Eighth Circuit found that a statutory
7 provision which assigned the full cost of litigation to one party *—regardless of who*
8 *prevailed—* violated the First Amendment. 46 F.3d 813, 821–22 (8th Cir. 1995). The
9 Court reasoned that an “unconditional litigation penalty . . . is much harder to justify
10 than a mere assessment of costs upon a losing party.” *Id.* at 822. In contrast, A.R.S. § 13-
11 4314(F) only requires an award of investigation and litigation costs where the “claimant .
12 . . . fails to establish that his entire interest is exempt from forfeiture.” It is a “mere
13 assessment of costs upon a losing party.”

14 The statute books are replete with fee-shifting provisions. As these myriad
15 provisions suggest, and as *Premier Electric* and *Legal Aid Society of Hawaii* make clear,
16 fee and cost shifting statutes do not violate the Constitution; they permissibly assign the
17 risk of liability for fees and costs to the losing party. Consequently, the Platts’ First
18 Amendment challenge to A.R.S. § 13-4314(F) must be dismissed.

19 The Platts also argue that the Fee-Shifting Statutes violate their right to petition
20 under the Arizona Constitution. (Compl. ¶ 262.) There is scant case law regarding this
21 provision. John D. Leshy, *The Arizona State Constitution* 60 (2011) (noting that
22 “Arizona courts have paid little attention” to the Arizona Constitution’s right to petition).
23 Ordinarily, Arizona courts interpret state constitutional provisions consistently with their
24 federal counterparts. *State v. Noble*, 171 Ariz. 171, 173 (1992) (“We ordinarily interpret
25 the scope of a clause in the Arizona Constitution similarly to the United States Supreme
26 Court’s interpretation of an identical clause in the federal constitution.”). The Court

1 could do so here and conclude that –for all the reasons stated above— A.R.S. § 13-
2 4314(F) does not violate Arizona’s right to petition clause. Alternatively, the Court could
3 decline to exercise supplemental jurisdiction over this novel issue of state law, as
4 authorized by 28 U.S.C. § 1367(c)(1). *See Imagineering, Inc. v. Kiewit Pac. Co.*, 976
5 F.2d 1303, 1309 (9th Cir. 1992) (finding no abuse of discretion where court declined to
6 consider state constitutional law claim on 28 U.S.C. § 1367 grounds). Either way, both
7 the state and federal right to petition claims stated in the Second Cause of Action should
8 be dismissed.

9 **2. A.R.S. § 13-4314 does not violate equal protection.**

10 The Platts’ complaint alleges violations of both the federal and state equal
11 protection clauses. (Compl. ¶ 265.) These clauses are coextensive. *Valley Nat. Bank of*
12 *Phoenix v. Glover*, 62 Ariz. 538, 554 (1945) (“The equal protection clauses of the 14th
13 Amendment and the state constitution have for all practical purposes the same effect.”).
14 For that reason, the Court need not (and should not) decide the state constitution equal
15 protection claim. *See Seidman*, 327 F. Supp. 2d at 1104 (“When state and federal
16 constitutional provisions are ‘coextensive,’ federal courts decide the federal
17 constitutional claims because doing so will also dispose of the state constitutional
18 claims.”).

19 A.R.S. § 13-4314(E) provides that a successful forfeiture claimant, under certain
20 circumstances, cannot recover costs or damages from the State.⁵ On the other hand, an
21 unsuccessful claimant is liable to the State for certain investigation and litigation costs.
22 A.R.S. § 13-4314(F). According to the Platts, this disparity violates the Equal Protection
23 Clause. (Compl. ¶ 265.) Put differently, the Court is asked to accept the proposition that
24

25 ⁵ The Fee-Shifting Statutes do not preclude an award of fees in favor of the claimant if
26 there is an independent basis for an award. *See In re \$15,379 in U.S. Currency*, --- P3d. --
27 -, 2016 WL 7826506 (Ariz. Ct. App. Dec. 22, 2016) (awarding forfeiture claimant fees as
28 a Rule 11 sanction).

1 asymmetrical fee-shifting statutes are unconstitutional. This argument does not withstand
2 scrutiny.

3 It is well-established that statutes which provide for asymmetrical fee-shifting do
4 not *per se* violate the Equal Protection Clause. *See Missouri, K. & T. Ry. Co. of Texas v.*
5 *Cade*, 233 U.S. 642, 650 (1914) (“[T]he mere fact that attorney’s fees are allowed to
6 successful plaintiffs only, and not to successful defendants, does not render the statute
7 repugnant to the ‘equal protection’ clause.”). *Cf. Madrid v. Gomez*, 190 F.3d 990 (9th
8 Cir. 1999) (finding that federal law limiting the amount of fees paid to prisoners’
9 counsel, but not to non-prisoners’ counsel, did not violate equal protection).

10 The allocation of attorney fees is plainly a matter for legislatures to decide. *See*
11 *generally Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 271 (1975) (“[I]t
12 is not for us to invade the legislature’s province by redistributing litigation costs . . .”).
13 A statute which does not target a suspect class or burden the exercise of a fundamental
14 right must be upheld if it is rationally related to a legitimate government interest.
15 *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1047 (9th Cir. 2002). *See also Bankers*
16 *Life & Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988) (finding statute imposing 15% penalty
17 on parties who unsuccessfully appeal a money judgment does not violate the Equal
18 Protection Clause because it is rationally related to the objectives of discouraging
19 frivolous appeals and conserving judicial resources.)

20 In *Madrid v. Gomez*, the Ninth Circuit considered the constitutionality of
21 provisions of the Prison Litigation Reform Act (PLRA), which limited the amount of
22 attorney’s fees that could be awarded to prisoners’ counsel by capping their maximum
23 hourly rate and prohibiting payment of fees not directly incurred in vindicating a
24 prisoner’s rights. 190 F.3d at 993–94. Notwithstanding the fact that the PLRA treated
25 prisoners and non-prisoners differently for the purposes of awarding attorney’s fees, the
26 court concluded that this disparate treatment did not violate equal protection. In the

1 context of attorney’s fees, the relevant constitutional question is only “whether there is a
2 rational basis for the classification.” *Id.* at 996. If there is, the provision is constitutional.

3 A.R.S. § 13-4314 clearly does not concern a suspect or semi-suspect class. Nor
4 does it implicate any fundamental right.⁶ Therefore, it must be upheld if it is rationally
5 related to a legitimate government interest. *Id.* It does. Like the PLRA, § 13-4314 helps
6 “curtail frivolous . . . suits and . . . minimize the costs—which are borne by taxpayers—
7 associated with those suits.” *Id.* It is well-recognized that “danger of false claims in
8 [forfeiture] proceedings is substantial.” *Baker v. United States*, 722 F.2d 517, 519 (9th
9 Cir. 1983). The State has an unquestionably legitimate interest in limiting the
10 unnecessary costs incurred in litigating false claims. The requirement that losing
11 claimants pay is rationally related to that interest; it discourages the filing of false or
12 non-meritorious claims and defrays the costs caused by those claims.

13 The gist of the Platts’ argument is that § 13-4314 is invalid because it treats the
14 State and claimant differently. But, as explained above, that disparate treatment does not
15 violate the Equal Protection Clause, because it is rationally related to a legitimate
16 government interest. The Constitution requires no more. The Second Cause of Action
17 should be dismissed.

18
19 **C. THE THIRD CAUSE OF ACTION SHOULD BE DISMISSED.**

20 The Third Cause of Action, though styled as a separate claim, relies on
21 substantially the same legal theory as the First Cause of Action; it argues that the
22 Expenditure Statutes motivate law enforcement to seek forfeiture even in the absence of
23 conduct giving rise to forfeiture. For all the reasons stated in Section II(A) above –

24 ⁶ It can scarcely be argued, in light of the well-settled American Rule, that *anybody* has a
25 *right* to collect attorney fees. *See Christiansburg Garment Co. v. Equal Employment*
26 *Opportunity Comm'n*, 434 U.S. 412, 415 (1978) (“It is the general rule in the United
27 States that in the absence of legislation providing otherwise, litigants must pay their own
28 attorney’s fees.”).

1 namely, that forfeitures in Arizona are entered by impartial state court judges— the
2 Third Cause of Action does not state a cognizable claim and must be dismissed.

3 The Third Cause of Action also fails because it is based on the false and
4 untenable premise that the pursuit of forfeitures is outside “the proper role of law
5 enforcement” and is antithetical to the pursuit of justice. (Compl. ¶ 240; *see also* ¶ 272.)
6 This notion finds no support in the law. The U.S. Supreme Court has repeatedly and
7 emphatically expressed its approval of civil forfeiture as a law enforcement tool. *See*
8 *Kaley v. United States*, 134 S. Ct. 1090, 1094 (2014) (“Forfeitures help to ensure that
9 crime does not pay: They at once punish wrongdoing, deter future illegality, and lessen
10 the economic power of criminal enterprises.” (internal quotations omitted)); *Caplin &*
11 *Drysdale, Chartered v. United States*, 491 U.S. 617, 627 (1989) (holding government’s
12 “pecuniary interest in forfeiture” is “legitimate” and “not [to] be discounted” because
13 forfeited assets “are deposited in a Fund that supports law-enforcement efforts in a
14 variety of important and useful ways.”); *Calero-Toledo v. Pearson Yacht Leasing Co.*,
15 416 U.S. 663 (1974) (“Forfeiture . . . fosters the purposes served by the underlying
16 criminal statutes, both by preventing further illicit use of the [property] and by . . .
17 rendering illegal behavior unprofitable.”). *See also Gravano*, 204 Ariz. at 113 (noting
18 that the purposes of Arizona forfeiture statutes include “removing the economic
19 incentive to engage in racketeering, reducing the financial ability of racketeers to
20 continue to engage in crime, preventing unfair business competition by persons with
21 access to crime proceeds, compensating victims of racketeering, and reimbursing the
22 State for the costs of prosecution.”).

23 The Third Cause of Action states no plausible claim for relief. It relies on the
24 same fallacious theory the First Cause of Action does, and goes on to baselessly claim
25 that forfeiture is not a valuable law enforcement tool, despite numerous Supreme Court
26 pronouncements to the contrary. It must be dismissed.

1 **D. THE FIRST AND THIRD CAUSES OF ACTION FAIL TO STATE A**
2 **PLAUSIBLE FACIAL CHALLENGE TO THE UNCONTESTED FORFEITURE**
3 **AND EXPENDITURE STATUTES.**

4 In addition to all of the reasons stated above, the First and Third Causes of Action
5 must be dismissed because they are untenable facial challenges. By mounting facial
6 challenges, the Platts necessarily argue that under *no set of circumstances* can Arizona's
7 forfeiture laws be legally enforced. *See United States v. Salerno*, 481 U.S. 739, 745
8 (1987). A facial attack is an attack, not on a particular application of a statute, but on the
9 statute itself. *City of Los Angeles, Calif. v. Patel*, 135 S. Ct. 2443, 2449 (2015).

10 The argument that Arizona's forfeiture laws cannot, under any set of
11 circumstances, be legally enforced is simply implausible. The First and Third Causes of
12 Action argue that the Uncontested Forfeiture Laws and Expenditure Statutes create an
13 *incentive* for Arizona law enforcement officials to act improperly. This is little more than
14 a bare allegation that the *potential for abuse* exists. This is not enough to sustain a facial
15 challenge. *Caplin & Drysdale, Chartered v. United States*, a seminal asset forfeiture
16 case, explains why:

17 Every criminal law carries with it the potential for abuse, but **a potential for**
18 **abuse does not require a finding of facial invalidity**. . . . The Constitution does
19 not forbid the imposition of an otherwise permissible criminal sanction, such as
20 forfeiture, merely because in some cases prosecutors may abuse the processes
21 available to them, *e.g.*, by attempting to impose them on persons who should not
22 be subjected to that punishment. Cases involving particular abuses can be dealt
23 with individually by the lower courts, when (and if) any such cases arise.

24 491 U.S. at 634–35 (internal quotation marks and citations omitted) (emphasis added).
25 Even assuming *arguendo* that an abuse occurred with respect to the Platts, the First and
26 Third Causes of Action, as stated, do not carry the heavy burden required to sustain a
27 facial challenge. They must be dismissed.
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III. CONCLUSION

Uncontested forfeiture is a valuable, constitutionally sound tool which enhances public safety and serves vital law enforcement purposes. The Uncontested Forfeiture Statutes and Expenditures Statutes comport with the strictures of due process; property owners receive notice, an opportunity to be heard, and the right to seek relief in an adversarial judicial proceeding. All forfeitures in Arizona are subject to judicial scrutiny and determination. The Fee-Shifting Statutes do not violate the right to petition; they also do not violate equal protection because they are rationally related to a legitimate government interest. The First, Second, and Third Causes of Action do not rest on any solid legal footing. They must be dismissed.

RESPECTFULLY SUBMITTED this 21st day of February, 2017.

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Attorney General

By: /s/ Kenneth R. Hughes
Thomas Rankin
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CERTIFICATE OF SERVICE

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I certify that on February 21, 2017, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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