

Fadely v. Encompass Health Valley of Sun Rehabilitation Center: Bolstering the Pre-existing Enterprise Liability of the Arizona Adult Protective Service Act

Amanda Lombard*

INTRODUCTION

A phone call from a concerned family member exposed pervasive abuse and neglect in a local Arizona senior care facility.¹ This call prompted journalists to investigate senior living facilities across the state,² uncovering a notorious offender—Heritage Village Assisted Living Center (“Heritage Village”).³ Heritage Village’s systemic issues were immediately obvious. Over the span of three years, one resident was attacked and killed in the facility⁴ and another resident was raped⁵ by a staff member. During the same three-year period, Heritage Village also received more than 140 citations

* J.D. Candidate 2026, Sandra Day O’Connor College of Law at Arizona State University. Special thanks to Shane Ham for introducing me to APSA enterprise liability and encouraging me to write on this topic, and to Professor Charles Capps for his continuous guidance and insightful feedback throughout the development of this Note.

1. Liz Seegert, *How We Did It: Uncovering Abuse in Arizona Assisted Living Facilities*, ASS’N OF HEALTH CARE JOURNALISTS (May 17, 2024), <https://www.azfamily.com/2023/10/28/another-family-alleges-abuse-heritage-village-assisted-living-center-mesa/> [https://perma.cc/D6UT-7Y44].

2. *Id.*

3. *Id.*

4. Amy Cutler, *Family of Woman Killed by Roommate in Mesa Nursing Home: ‘This Never Should Have Happened’*, AZ FAM. (Apr. 12, 2023), <https://www.azfamily.com/2023/04/13/family-woman-killed-by-roommate-mesa-nursing-home-this-never-should-have-happened/> [https://perma.cc/S5VN-3W63].

5. PD: ‘Night Watchman’ Accused of Raping Elderly Woman at Mesa Care Facility, ABC15 (Feb. 18, 2020), <https://www.abc15.com/news/crime/pd-night-watchman-accused-of-raping-elderly-woman-at-mesa-care-facility> [https://perma.cc/9ZEK-XXTF].

from the Arizona Department of Health Services (“DHS”) for its treatment of senior residents.⁶

Sadly, Heritage Village’s conduct is not an anomaly. Alarming, approximately one in every ten Americans over the age of sixty experiences some form of abuse each year.⁷ Elder abuse reports in Arizona are similarly on the rise. In 2023, Maricopa County received 17,575 individual reports of elder abuse—nearly 3,000 more reports than the previous year.⁸ Additionally, the Arizona Adult Protective Services (“APS”) Registry,⁹ a state-wide public registry maintained by DHS to prevent the victimization of vulnerable adults, added 421 new entries in 2024 by individuals who have previously abused, neglected, or exploited vulnerable adults.¹⁰

These concerning statistics and increasing instances of abuse prompted Arizona officials to respond. In 2023, the Arizona Legislature passed a bipartisan bill that mandates the reporting of elder abuse in care facilities and increased oversight of these facilities by DHS.¹¹ Similarly, Arizona Attorney General Kris Mayes identified “Elder Affairs” one of her key issues,¹² vowing to hold facilities accountable for failing to maintain the requisite standard of

6. Jason Barry, *Another Family Alleges Abuse at Heritage Village Assisted Living Center in Mesa*, AZ FAM. (Oct. 27, 2023), <https://www.azfamily.com/2023/10/28/another-family-alleges-abuse-heritage-village-assisted-living-center-mesa/> [https://perma.cc/D6UT-7Y44].

7. *Elder Financial Abuse on the Rise*, ARIZ. PBS ARIZ. STATE UNIV. (Aug. 7, 2024), <https://azpbs.org/horizon/2024/08/elder-financial-abuse/> [https://perma.cc/RX2Y-YMA9].

8. Maricopa County Attorney’s Office, *Elder Abuse Reports Jump in Maricopa County*, GLENDALE INDEP. (June 14, 2024), <https://www.yourvalley.net/glendale-independent/stories/elder-abuse-cases-jump-in-maricpa-county,516863> [https://perma.cc/B8E2-PUUU].

9. *Adult Protective Services (APS) Registry*, ARIZ. DEP’T OF ECON. SEC., <https://des.az.gov/APSRegistry> [https://perma.cc/UK6S-YXR7].

10. *APS Registry Excel Format*, ARIZ. DEP’T OF ECON. SEC., <https://des.az.gov/APSRegistry> [https://perma.cc/UK6S-YXR7] (visit the website, click the “What is the APS Registry?” tab, and download the “APS Registry Excel Format”). Please note, new entries represent distinct violations. As a result, a single individual may have multiple entries in the system, if they have violated APSA multiple times. For instance, a violator may have separate entries for physical abuse and financial abuse.

11. Analisa Valdez, *Gov. Katie Hobbs Signs Law Aimed at Accountability for Arizona Long-term Care Facilities*, TUCSON SENTINEL (Apr. 9, 2024), https://www.tucsonsentinel.com/local/report/040924_long_term_care/gov-katie-hobbs-signs-law-aimed-accountability-arizona-long-term-care-facilities/ [https://perma.cc/MX5G-KEXN]. Governor Katie Hobbs signed the bill on April 8, 2024. *Id.*

12. *Key Issues*, ARIZ. ATT’Y GEN., <https://www.azag.gov/issues> [https://perma.cc/X8N5-HEPS].

care.¹³ To achieve this goal, the Attorney General's Office relies on the Arizona Adult Protective Services Act ("APSA").¹⁴

APSA was instituted by the Arizona Legislature in 1988¹⁵ and provides a cause of action for vulnerable adults to pursue civil damages after sustained abuse, neglect, or exploitation.¹⁶ The law was amended in 1989 to specify its intent: to protect vulnerable adults, including the elderly.¹⁷ The 1989 amendment also established a broad remedial cause of action, enabling victims to take legal action against those responsible for neglecting or exploiting vulnerable adults.¹⁸

A key aspect of APSA is that it allows actions¹⁹ to be pursued against "any person or enterprise" violating the Act.²⁰ The legal definitions of "person" and "enterprise" extend APSA's reach to a wide range of potentially liable persons and entities.²¹ The definition of "enterprise" is especially broad, encompassing "*any* corporation, partnership, association, labor union or other legal entity, or *any* group of persons associated in fact although not a legal entity, that is involved with providing care to a vulnerable adult."²²

Historically, most APSA actions targeted "persons" rather than "enterprises." However, recent APSA cases have revived "enterprise" litigation, largely due to *Fadely v. Encompass Health Valley of Sun Rehabilitation Hospital*.²³ In *Fadely*, the Arizona Court of Appeals found that enterprise liability applied to a hospital because it formed a "continuing unit"

13. Caitlin McGlade, 'I Want to Send a Message': Arizona Attorney General Says She May Prosecute Senior Care Facilities, AZCENTRAL. (Sept. 21, 2023), <https://www.azcentral.com/story/news/local/arizona-investigations/2023/09/21/arizona-may-prosecute-facilities-over-senior-care-attorney-general-says/70912767007> [<https://perma.cc/Z8QX-RQQE>].

14. ARIZ. REV. STAT. § 46-451 (2025).

15. 1988 Ariz. Sess. Laws, 236. [hereinafter APSA or Act].

16. ARIZ. REV. STAT. § 46-455(B) (2025). For the purposes of this Note, the term will largely refer to senior citizens, characterized as individuals sixty years of age or older, living in long-term care facilities. See ARIZ. REV. STAT. § 46-451(12) (2025).

17. See 1989 Ariz. Sess. Laws, 403–04.

18. Delgado v. Manor Care of Tucson, LLC, 395 P.3d 698, 701 (Ariz. 2007).

19. APSA actions can be criminal or civil.

20. ARIZ. REV. STAT. § 46-455(B) (2025).

21. See ARIZ. REV. STAT. § 1-215(29) (2025) (defining "person" as used generally in Arizona statutes), 46-455(Q) (2025) (defining "enterprise" as used in the Adult Protective Services Act).

22. ARIZ. REV. STAT. § 46-455(Q) (2025) (emphasis added).

23. *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (Ariz. Ct. App. 2022) [hereinafter *Fadely*] (petition for review denied).

of care²⁴ with two independent contractor doctors.²⁵ In doing so, the *Fadely* court vindicated the expansive framework of APSA enterprise liability, thereby reinforcing the legislature’s intent to protect vulnerable adults.²⁶

This Note defends *Fadely*’s holding that APSA enterprise liability implicates more than the direct perpetrators of elder abuse and includes all members of the “continuing unit” of care. Part I demonstrates how the holding in *Fadely* confirmed the existing broad framework of APSA enterprise liability. Part II addresses how background information and related case law demonstrate the naturally broad understanding and application of enterprise liability. Part III discusses four main reasons why enterprise liability should be implemented broadly and addresses concerns with the broad application. Part IV concludes by reiterating the fundamentality of APSA enterprise liability.

I. *FADELY*: PROCEDURAL AND FACTUAL BACKGROUND

A. *Foundational Facts*

On March 8, 2016, 73 year old Terrell Fadely (“Mrs. Fadely”) underwent a successful spinal fusion.²⁷ Following the surgery, Mrs. Fadely was discharged with full leg strength²⁸ and transferred to Encompass, a recovery and rehabilitation hospital, where she received care from two independent medical professionals contracted by the hospital.²⁹ Mrs. Fadely’s assigned primary attending physician was Dr. Barnes, whose responsibilities included monitoring her rehabilitation and preventing complications.³⁰ Dr. Barnes examined Mrs. Fadely the day after her arrival and determined that she was stable.³¹

After a few days, Mrs. Fadely began complaining of severe back pain and displayed signs of significant neurological decline.³² However, Dr. Barnes

24. See *id.* at 707. “Continuing unit” is derived from *Fadely* and *Turkette*. See *id.*; see also *United States v. Turkette*, 452 U.S. 576, 583 (1981). For more on the “continuing unit” of care, see *infra* Part I.E and II.C.

25. *Fadely*, 515 P.3d at 707–08.

26. See *id.* at 708 (“We will not rewrite the statute.”).

27. Second Amended Complaint at *3, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (2022) (No. CV2017-007473), 2020 WL 8365412 (Ariz. Super. June 2020).

28. *Fadely*, 515 P.3d at 704.

29. *Id.*

30. *Id.* at 704–05.

31. *Id.* at 705.

32. *Id.*

was unavailable, so Mrs. Fadely was examined instead by Dr. Patel, the on-call physician covering for Dr. Barnes.³³ After a brief physical examination, Dr. Patel noted Mrs. Fadely displayed symptoms³⁴ suggestive of a spinal cord injury. Despite these concerning symptoms, Dr. Patel ordered only close monitoring and did not order a spinal x-ray or a neurological exam.³⁵

Over the next two days, Mrs. Fadely's condition worsened, resulting in a pressure ulcer and further cognitive decline.³⁶ Upon Dr. Barnes return, despite Mrs. Fadely's obvious decline, he did not perform a neurological or spinal examination.³⁷ The following day, a physician's assistant examined Mrs. Fadely and worried she was experiencing spinal cord compression.³⁸ As a result, Mrs. Fadely was rushed to HonorHealth Hospital for emergency surgery, but the damage was done.³⁹ Mrs. Fadely never walked again, required a tracheotomy tube for months, and spent the next two years living in long-term care facilities.⁴⁰

B. Superior Court Decision

Mrs. Fadely sued Encompass for abuse and neglect under APSA.⁴¹ Mrs. Fadely's complaint relied on enterprise liability, arguing that Encompass's⁴² actions constitute a violation because Encompass was an enterprise and failed to protect Mrs. Fadely as a vulnerable adult under APSA.⁴³ Encompass argued the converse, asserting various forms of APSA immunity and denying

33. *Id.*

34. These symptoms included leg numbness, weakness, and neurological decline. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* Spinal cord compression occurs when there is extreme pressure on the spinal cord, which results in symptoms like numbness, pain, and weakness. In severe cases, the condition can result in motor issues and paralysis. See *Spinal Cord Compression*, JOHNS HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/spinal-cord-compression> [https://perma.cc/NQ3B-PQBV].

39. *Fadely*, 515 P.3d at 705.

40. *Id.*

41. *Id.* Interestingly, Plaintiff never sued Dr. Patel or Dr. Barnes individually and dropped her original negligence claim. Tom Ryan, Mrs. Fadely's counsel, shared his litigation strategy was to keep the claims simple and focus on the most critical claim—APSA. Interview with Tom Ryan, Owner of L. Off. of Thomas M. Ryan, in Chandler, Ariz. (Oct. 21, 2024).

42. Please note, early court documents in this case refer to Encompass as "HealthSouth."

43. See Second Amended Complaint, *supra* note 27, at *12–14 (emphasizing Encompass's enterprise status and failure to adequately care for Mrs. Fadely, as a vulnerable adult under APSA).

the existence of an enterprise.⁴⁴ After trial, the superior court ruled in favor of Mrs. Fadely, finding that she sustained abuse and neglect under APSA.⁴⁵

According to the superior court, APSA intentionally defines “enterprise” broadly and nothing within APSA expressly excludes specialty hospitals from liability.⁴⁶ Under the statutory definition of “enterprise” and the parties’ stipulated agreement, the superior court determined Encompass was a member of the “enterprise” legally responsible for Mrs. Fadely’s care.⁴⁷ Dr. Patel and Dr. Barnes were also deemed part of the “enterprise” responsible for Mrs. Fadely’s care.⁴⁸

After establishing Encompass as an “enterprise,” the superior court then assessed Mrs. Fadely’s APSA claim. The superior court easily deemed Mrs. Fadely a “vulnerable adult” under A.R.S. § 46-451(A)(10), due to her serious medical conditions and ongoing recovery from spinal surgery.⁴⁹ The court determined that Mrs. Fadely had proved by a preponderance of the evidence that Encompass committed negligent acts amounting to abuse.⁵⁰ Further, Encompass’s failure to timely diagnose and treat Mrs. Fadely’s spinal cord injury sufficiently proved neglect under a preponderance of the evidence.⁵¹ As a result, the superior court found Encompass, as a member of the enterprise, liable for the abuse and neglect of Mrs. Fadely under A.R.S. § 46-455(B).⁵²

44. Defendant’s Proposed Findings of Fact and Conclusions of Law at *11–17, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (2022) (No. CV2017-007473), 2020 WL 7681090 (Ariz. Super. Aug. 5, 2020).

45. Verdict and Findings of Fact and Conclusions of Law at *1, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (2022) (No. CV2017-007473) (Ariz. Super. Dec. 9, 2020), [<https://perma.cc/5U3J-BB6X>]. This verdict, as well as the appellate briefing and decision, included more than just APSA claims. These issues are outside of the scope of this paper and will not be addressed.

46. *Id.* at *15–16, *8 (stating APSA is not intended to protect vulnerable adults only in specific facilities).

47. *Id.* at *16.

48. *Id.* at *17.

49. *Id.* at *17–18. Prior to her spinal surgery, Mrs. Fadely’s medical charting noted “a history of cervical and thoracic stenosis and kyphosis and chin-on-chest deformity.” Second Amended Complaint, *supra* note 27, at *4.

50. Verdict and Findings of Fact and Conclusions of Law, *supra* note 45, at *18.

51. *Id.* at *18–19.

52. *Id.* at *17 (“[T]he Court finds that Encompass is liable for the conduct of Drs. Patel and Barnes because Drs. Patel and Barnes were part of Encompass’s ‘enterprise’ for providing Mrs. Fadely’s care.”).

C. Encompass's Claims on Appeal

On October 21, 2022, Encompass filed its Opening Brief with the Arizona Court of Appeals.⁵³ While the brief contested multiple superior court findings,⁵⁴ Encompass primarily disputed the existence of an enterprise.⁵⁵ Encompass's argument rested on two main points. First, Encompass claimed it was not the direct cause of Mrs. Fadely's injury.⁵⁶ Second, as a non-listed facility, Encompass argued it was not subject to APSA claims.⁵⁷

According to Encompass, the superior court found Encompass liable "only because it concluded that Drs. Barnes and Patel were part of the Encompass enterprise."⁵⁸ Encompass argued it did not directly cause Mrs. Fadely's injury, and therefore "enterprise liability" was not applicable unless Dr. Barnes and Dr. Patel were members of the enterprise.⁵⁹

Encompass then addressed the scope of APSA immunity by listing the individuals and entities explicitly liable under the statute. It noted that four classes of caregivers, including licensed physicians, were exempt from APSA claims.⁶⁰ Based on this interpretation of APSA immunity, Encompass

53. Appellant's Opening Brief at *1, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (Ariz. Ct. App. 2022) (No. 1 CA-CV 21-0478), 2019 WL 13112235.

54. The Court of Appeals also addressed the parties' additional arguments and claims, including the doctrine of apparent or ostensible agency, the preclusion of expert witness testimony, the admission of medical bills into evidence, and the award of post-judgment interest. *Fadely*, 515 P.3d at 704, 708–09. Each of these findings are paramount to the current landscape of medical malpractice in Arizona. However, these additional issues are irrelevant to the enterprise issue and beyond the scope of this Note.

55. Appellant's Opening Brief, *supra* note 53, at *44–52. This dispute is contentious because the superior court found the parties stipulated to Encompass's enterprise status. *See* Verdict and Findings of Fact and Conclusions of Law, *supra* note 45, at *3. Encompass also conceded the point, stating "[Encompass] is an enterprise hired to provide care to [Mrs. Fadely] for the purposes of A.R.S. § 46-455(Q)." *See* Defendant's Proposed Findings of Fact and Conclusions of Law, *supra* note 44, at *11. However, Encompass makes an implicit argument that they did not form an enterprise with the doctors, which may circumvent waiver of the argument. Encompass conceded that it's an enterprise but does not implicate either doctor in the concession. *Id.* Encompass continued to state (1) the doctors were not apparent or ostensible agents and (2) Encompass and its independent contractors were immune to APSA claims. *Id.* at *11–12.

56. Appellant's Opening Brief, *supra* note 53, at *8.

57. *Id.* at 50. Encompass argued it's a specialty hospital under Ariz. Admin. Code § R9-10-102(3). *Id.* at 49; Defendant's Proposed Findings of Fact and Conclusions of Law, *supra* note 44, at *12. Since specialty hospitals are not explicitly listed in the facilities of Ariz. Rev. Stat. § 46-455(B)(1), Encompass reasoned its primary providers were not subject to APSA liability. Appellant's Opening Brief, *supra* note 53, at *50.

58. Appellant's Opening Brief, *supra* note 53, at *47.

59. *Id.* at *46.

60. *Id.* at *48–51. However, the statute does not provide immunity to a facility's medical director or the patient's primary provider. *Id.* at *49; *see* ARIZ. REV. STAT. § 46-455(B)(2) (2025).

reasoned that Dr. Patel and Dr. Barnes were therefore exempt from APSA because they were neither medical directors nor Mrs. Fadely's primary providers.⁶¹

Alternatively, Encompass argued that, even if Dr. Barnes and Dr. Patel were not independently exempt from APSA liability, Encompass was not a facility subject to APSA liability as defined in Ariz. Rev. Stat. § 46-455(B).⁶² Instead, Encompass asserted that it qualified as a "special hospital" and was not included in the nine facility categories included in the statutory framework.⁶³ Encompass concluded that "the legislature did not intend primary providers in non-listed facilities to be subject to APSA liability."⁶⁴ Therefore, under this statutory interpretation, Dr. Barnes and Dr. Patel could not be held liable under APSA.⁶⁵

Finally, Encompass argued that the doctors' APSA immunity, under any of the aforementioned theories, therefore precluded the formation of an enterprise with Encompass.⁶⁶ Since Dr. Barnes and Dr. Patel were exempt from APSA liability, Encompass maintained it was similarly exempt from inclusion in the enterprise.⁶⁷ Encompass contended that construing the statute otherwise would not be complete and harmonious, thus leading to an absurd result.⁶⁸ Ultimately, Encompass argued that because Dr. Barnes and Dr. Patel did not form an enterprise with Encompass, the facility could not be liable for "any injury" caused by the doctors' abuse or neglect.⁶⁹

D. Mrs. Fadely's Claims on Appeal

Mrs. Fadely's answering argument rested on two main points. First, Mrs. Fadely addressed Encompass's lack of enterprise argument. Second, Mrs.

61. *Id.* at *49; *see* ARIZ. REV. STAT. § 46-455(B)(1) (2025).

62. Appellant's Opening Brief, *supra* note 53, at *48–49 ("Therefore, even a doctor who is an agent of a facility is exempt from liability unless the doctor is the medical director of the facility or is a patient's primary provider in a listed facility.").

63. *Id.* at *49; ARIZ. REV. STAT. § 46-455(B)(1) (2025) ("[The nine facilities are] a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.").

64. Appellant's Opening Brief, *supra* note 53, at *49–50.

65. *Id.* at *50–51.

66. *Id.* at *51.

67. *Id.* at *51–52.

68. *Id.* at *52. Statutory construction in Arizona requires a statute's interpretation to be "harmonious" and avoid "absurdity or constitutional violation." *State v. Green*, 459 P.3d 45, 47 (Ariz. 2020).

69. Appellant's Opening Brief, *supra* note 53, at *52.

Fadely disputed Encompass's claim that Dr. Barnes and Dr. Patel's exemption from APSA prevented the application of enterprise liability to the facility.⁷⁰

Mrs. Fadely first argued Encompass clearly formed an enterprise with Dr. Barnes and Dr. Patel.⁷¹ She highlighted that Encompass already stipulated its enterprise status before the superior court.⁷² Furthermore, Mrs. Fadely contended that determining the existence of an enterprise and identifying its members is a matter of fact.⁷³ Following trial, the superior court found Dr. Barnes and Dr. Patel were members of the Encompass enterprise under this standard.⁷⁴ Therefore, Mrs. Fadely reasoned that Encompass's stipulation regarding its enterprise status, paired with the appellate court's obligation to defer to the superior court's factual findings, bound the appellate court to the superior court's determination that Dr. Barnes, Dr. Patel, and Encompass formed an enterprise.⁷⁵

Mrs. Fadely then argued that the doctors' exemption from APSA liability did not affect Encompass's liability.⁷⁶ In fact, Dr. Barnes and Dr. Patel were not even parties to the litigation.⁷⁷ Citing a recent Arizona Supreme Court decision, Mrs. Fadely noted there is no statutory immunity for an employer merely because its employee enjoys separate statutory immunity.⁷⁸ Under this precedent, Mrs. Fadely concluded Encompass had "no right to benefit from any statutory immunity" that applied to Dr. Barnes or Dr. Patel.⁷⁹

70. Answering Brief at *23–24, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (Ariz. Ct. App. 2022) (No. 1 CA-CV 21-0478), 2021 WL 7081949.

71. *Id.* at *22–23.

72. *Id.* at *22. For more discussion of the stipulation, please see the text and footnote for *supra* note 55.

73. Answering Brief, *supra* note 70, at *22. Encompass disagreed, arguing that the issue of whether Dr. Barnes and Dr. Patel were members of the enterprise is a matter of law, not fact. Appellant's Reply Brief at *16, *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701 (Ariz. Ct. App. 2022) (No. 1 CA-CV 21-0478), 2021 WL 7081950.

74. Answering Brief, *supra* note 70, at *23–24.

75. *Id.* at *22–24.

76. *Id.* at *24–26.

77. *Id.* at *24. Mrs. Fadely argued that since an enterprise existed, it was sufficient to pursue an action only against Encompass. *See id.*

78. *Id.* at *25 (citing *Banner Univ. Med. Ctr. Tucson Campus, LLC v. Gordon*, 467 P.3d 257, 262 (Ariz. Ct. App. 2020)). Encompass completely disputed this conclusion. Encompass argued the *Gordon* case was distinguishable from the case at hand. "[T]he position of encompass is more fundamental and goes to the existence of liability rather than the avoidance of liability." Appellant's Reply Brief, *supra* note 73, at *16–18.

79. Answering Brief, *supra* note 70, at *25–26.

E. Appellate Court Decision

The Court of Appeals affirmed the superior court's enterprise ruling in favor of Mrs. Fadely,⁸⁰ holding that Encompass formed an enterprise with Dr. Barnes and Dr. Patel.⁸¹

First, the court found the meaning of "enterprise" was plain.⁸² The plain meaning can be understood by APSA's definition of "enterprise"⁸³ and the general statutory definition of "person."⁸⁴ In applying the statutory language, the court found that "Encompass, Dr. Barnes and Dr. Patel formed an 'enterprise' as a 'group of persons [who] associated in fact' to 'provid[e] care to a vulnerable adult.'"⁸⁵ Accordingly, the association between Encompass and the doctors clearly established an enterprise under APSA's plain language meaning.⁸⁶

The court also pointed out the similarities between APSA "enterprise liability" and "associated in fact enterprise" under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO").⁸⁷ RICO imposes criminal penalties against enterprises, which include "any individual, partnership, corporation, association, or other legal entity, and any union or

80. However, the Court of Appeals overturned the superior court's apparent agency finding, determining that Dr. Barnes and Dr. Patel were not apparent agents of Encompass. *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 515 P.3d 701, 706–07 (Ariz. Ct. App. 2022). First, the superior court applied the wrong legal standard. *Id.* at 705–06. Under the correct legal standard, the Plaintiff could not show representation or justifiable reliance required to establish an apparent agency. *Id.* at 706. Additionally, the court found there was no ambiguity in the contract's agency clause. *Id.* In making a distinction between independent practitioners and hospital employees, the contract adequately drew a line between Encompass and independent medical staff. *Id.* at 706–07. The reversal on this point has no impact on the APSA enterprise liability claim but required the superior court to recalculate damages. *Id.* at 709.

81. *Id.* at 708.

82. *Id.* at 707 ("[Encompass's arguments] cannot withstand APSA's plain language.").

83. *Id.* Ariz. Rev. Stat. § 46-455(Q) defines "enterprise" as "any group of persons associated in fact although not a legal entity" who care for "a vulnerable adult." ARIZ. REV. STAT. § 46-455(Q) (2025).

84. *Fadely*, 515 P.3d at 707. Under Arizona law, the general rules of construction, including standardized definitions, apply to all Arizona statutes, unless it would contravene the Legislature's intent. ARIZ. REV. STAT. § 1-211(A) (2025). As a result, any use of "person" in APSA refers to "a corporation, company, partnership, firm, association or society, as well as a natural person." ARIZ. REV. STAT. § 1-215(29) (2025).

85. *Fadely*, 515 P.3d at 707.

86. *Id.* at 704.

87. For more information about racketeering, please see the US DOJ Criminal Resource Manual. *See* U.S. DEP'T OF JUST., CRIM. RES. MANUAL § 109 <https://www.justice.gov/archives/jm/criminal-resource-manual-109-rico-charges> [<https://perma.cc/Y68L-VDQ6>].

group of individuals associated in fact although not a legal entity.”⁸⁸ This verbiage is essentially mirrored in APSA’s definition of “enterprise.”⁸⁹

In *United States v. Turkette*, a dominant case in RICO jurisprudence, the United States Supreme Court decided an “enterprise” comprises “various associates function[ing] as a continuing unit” and working towards “a common purpose.”⁹⁰ When an entity assigns care to an individual, it forms an association with the individuals acting toward the common purpose.⁹¹ As the *Fadely* court noted, entities cannot care for patients without people.⁹² Thus, an “enterprise” is any individual or entity that participates in the “‘continuing unit’ toward the common purpose.”⁹³

The court ultimately determined Dr. Barnes, Dr. Patel, and Encompass formed an enterprise,⁹⁴ and that all parties worked as a “group of persons [who] associated in fact” to “provid[e] care to a vulnerable adult.”⁹⁵ Because Encompass is not a natural person, it must have relied on human beings to care for patients.⁹⁶ Encompass assigned the responsibility of Mrs. Fadely to Dr. Barnes and Dr. Patel, who had to comply with Encompass’s requirements in the course of their work, despite working as independent contractors.⁹⁷ This relationship between the hospital and the doctors was necessary to meet the common purpose: treating patients.⁹⁸ Since the three “worked as a ‘continuing unit’” to treat Mrs. Fadely, the court upheld the superior court’s finding that Encompass, Dr. Barnes, and Dr. Patel were an “enterprise” under APSA.⁹⁹

Additionally, the court considered whether Encompass was exempt from civil damages,¹⁰⁰ ultimately finding that Dr. Barnes’s and Dr. Patel’s liability

88. 18 U.S.C. § 1961(4).

89. ARIZ. REV. STAT. § 46-455 (2025) (“any corporation, partnership, association, labor union or other legal entity, or any group of persons associated in fact although not a legal entity . . .”); *Fadely*, 515 P.3d at 707 (noting that the two definitions are “substantially similar”).

90. 452 U.S. 576, 583 (1981); *see Fadely*, 515 P.3d at 707 (applying the *Turkette* language to the facts of *Fadely*).

91. *Fadely*, 515 P.3d at 707.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* (inside quotations removed).

96. *Id.*

97. *Id.* at 707–08 (noting these requirements include compliance with “Encompass’s policies, procedures and medical staff bylaws”). Interestingly, there is no clear correlation between agency and enterprise findings. *See id.* at 707 (overturning the superior court’s apparent agency finding).

98. *Id.* at 707–08. The court cites *Boyle v. United States*, 556 U.S. 938, 942 (2009) (finding that an enterprise must have a formal or informal framework for carrying out objectives, where members of the enterprise act as a continuing unit to achieve a common purpose).

99. *Fadely*, 515 P.3d at 708.

100. *Id.*

exemption did not preclude Encompass from paying civil damages since APSA does not exempt an enterprise merely because a member of the enterprise is immune to civil damages.¹⁰¹ The court reasoned that the legislature intentionally immunized liability for certain medical professionals,¹⁰² but that Encompass was not a “medical professional.”¹⁰³ Similarly, hospitals and care facilities are not exempt from civil damages.¹⁰⁴ If the legislature intended this exemption to extend to hospitals, the statute would have explicitly conveyed that immunity.¹⁰⁵ Limiting the types of facilities and individuals liable for APSA claims beyond the exemptions specifically enumerated would contradict the statutory language,¹⁰⁶ and consequently, the court recognized Encompass was not immune to civil damages.¹⁰⁷

Ultimately, the court affirmed the superior court’s judgment regarding the enterprise liability issue.¹⁰⁸ Accordingly, *Fadely* set a valuable precedent, clarifying the scope of APSA enterprise liability. In analogizing APSA to RICO and reiterating APSA’s legislative intent, *Fadely* duly explains the scope of the statute as written.

II. ENTERPRISE LIABILITY: *FADELY*’S CONSISTENCY WITH APSA LEGISLATIVE INTENT

Fadely reflects the Arizona Legislature and Arizona Court of Appeals’ joint understanding of APSA as an unambiguously broad tool to protect vulnerable adults and promote justice. The court’s interpretation of APSA and enterprise liability in *Fadely* is not an expansion of APSA but rather aligns with the naturally broad plain language and legislative intent of the statute.

Section A of this Part explores the remedial nature of APSA. As a remedial statute, APSA invites a broad interpretation to fulfill its primary objective of

101. *Id.*; see *In re Estate of Wyatt*, 329 P.3d 1040, 1042–43 (Ariz. 2014) (“The statute contains no exemption for acute care hospitals, which, like nursing homes, may provide non-acute care, such as feeding and attending to the daily needs of vulnerable adults . . .”).

102. *Fadely*, 515 P.3d at 708; see ARIZ. REV. STAT. § 46-455(B) (2022) (exempting certain licensed medical officials from APSA liability).

103. *Fadely*, 515 P.3d at 708 (“[B]ut Encompass is none of these.”).

104. *Id.* (finding that the legislature would have explicitly excluded hospitals from civil damages if they intended to do so).

105. *Id.*

106. See *In re Estate of Wyatt*, 329 P.3d at 1043 (“Nothing in APSA indicates legislative intent to protect vulnerable adults . . . only when they are housed in particular facilities.”).

107. *Fadely*, 515 P.3d at 708 (“We will not rewrite the statute.”).

108. *Id.* at 709.

protecting vulnerable adults. Section B examines APSA exemptions, which establish immunity for many medical professionals and facilities. These numerous exceptions reinforce the need for enterprise liability. Section C compares “enterprise liability” under APSA and RICO, discussing how courts may look to RICO to better interpret APSA enterprise liability. Section D underscores APSA’s importance in policing senior care facilities. With the increasing use of liability limiting principles, including corporate structuring and real estate trusts, necessitates APSA enterprise liability to provide recourse for elders and their families.

A. APSA is a remedial statute designed to protect vulnerable adults.

Remedial statutes are construed broadly¹⁰⁹ to achieve their intended purpose: curing defects to provide an important public good.¹¹⁰ APSA was specifically designed to protect a vulnerable population from abuse, neglect, and exploitation, with its paramount purpose being the remediation of elder abuse.¹¹¹ Enforcing the broad scope of APSA enterprise liability is therefore essential to fulfilling the statute’s legislative intent.

Arizona courts have repeatedly found APSA is a remedial statute.¹¹² In fact, the courts have emphasized that APSA’s remedial purpose is clear and does not require an assessment of legislative history to determine its objectives.¹¹³ This broad scope carries several significant implications.

First, courts emphasize the legislature’s remedial construction when assessing APSA claims. In *In re Estate of Wyatt*, the court decided acute hospitals are liable to APSA claims because they are not expressly exempt under the statute.¹¹⁴ Because “[n]othing in APSA indicates legislative intent to protect vulnerable adults . . . only when they are housed in particular facilities,” restricting claims arising from certain facilities contravenes

109. Erin F. Norris, *Estate of Braden ex rel. Gabaldon v. State and Statutory Construction in the Arizona Supreme Court*, 54 ARIZ. L. REV. 311, 320 (2012).

110. *LaWall v. Pima Cnty. Merit Sys. Comm’n*, 134 P.3d 394, 397 (Ariz. Ct. App. 2006).

111. *In re Estate of Winn*, 150 P.3d 236, 238 (Ariz. 2007) (discussing APSA’s role in remedying “evils” of elder abuse).

112. *Id.* at 238 (“The language of APSA § 46-455 is clear in creating a remedial cause of action that may not be limited by . . . ‘any other provision of law.’”); *In re Estate of Wyatt*, 329 P.3d 1040, 1043 (Ariz. 2014) (finding that a narrow construction of APSA would “thwart the legislature’s goal of protecting vulnerable adults.”).

113. *In re Estate of Winn*, 150 P.3d at 238; *In re Estate of Wyatt*, 329 P.3d at 1041–42; ARIZ. REV. STAT. § 1-211(B) (2025).

114. 329 P.3d at 1043.

APSA's remedial nature.¹¹⁵ Thus, the *In re Estate of Wyatt* decision underscores APSA's broad applicability.

Moreover, APSA prevails over other legal barriers—unrestricted by death, competing civil remedies, or other legal provisions.¹¹⁶ For instance, the Arizona Supreme Court held that probate law does not supersede a properly raised APSA claim.¹¹⁷ Instead, in *In re Estate of Winn* the court affirmed “the language of A.R.S. § 46-455 is clear in creating a remedial cause of action that may not be limited by . . . ‘any other provision of law.’”¹¹⁸ APSA's remedial character ensures that its remedies cannot be constrained by conflicting statutes.¹¹⁹ Since APSA's purpose is to increase remedies available to vulnerable adults, its claims are not hindered by other legal restrictions.¹²⁰

The broad application of APSA is further exemplified by *Scott v. Kemp*.¹²¹ On special action, the Arizona Court of Appeals ruled personal jurisdiction existed where petitioners managed out-of-state business entities that operated several nursing homes and senior care facilities in Arizona.¹²² The annual license renewal for long-term care facilities entails the responsibility of ensuring “adequate and proper care.”¹²³ Since the petitioners were involved in license renewal and other managerial duties, it was reasonable to anticipate they could be involved in litigation. This implicitly supports enterprise liability—if activities like acquiring licensing and managing facilities are tied to “adequate and proper care,” then individuals or entities performing those duties may be within the “continuing unit toward the common purpose.” Those responsible for making care decisions should “expect[t] to defend against an action alleging they neglected that responsibility.”¹²⁴

115. *Id.*

116. ARIZ. REV. STAT. § 46-455(O)–(P) (2025).

117. *In re Estate of Winn*, 150 P.3d at 239.

118. *Id.* at 238.

119. *Id.* at 240 (citing ARIZ. REV. STAT. § 46-455(O)–(P) (2025); *In re Denton*, 945 P.2d 1283, 1287–88 (Ariz. 1997)).

120. *Id.* at 238.

121. See generally *Scott v. Kemp*, 460 P.3d 1264 (Ariz. Ct. App. 2020).

122. *Id.* at 1267–68.

123. *Id.* at 1274.

124. *Id.* at 1275–76.

B. APSA exemptions mitigate the breadth of liability, while enterprise liability ensures recourse for victims.

Many of the key actors in the medical care of seniors, such as certain medical professionals and facilities, are immune to APSA liability. Following the Arizona Supreme Court decision in *Estate of McGill ex rel. McGill v. Albrecht*,¹²⁵ the Arizona Legislature proposed a prohibition on medical malpractice actions against licensed providers based on the abuse or exploitation of vulnerable adults under APSA.¹²⁶ Despite a mixed public response, the proposed bill, S.B. 1010, passed the Arizona Senate Committee on Health.¹²⁷ Ultimately, S.B. 1010 was signed into law, which amended APSA to exempt most licensed medical professionals, including physicians and physician assistants, from civil liability.¹²⁸ As a result, A.R.S. § 46-455 does not apply to care provided by properly licensed physicians, podiatrists, nurse practitioners, and physician assistants¹²⁹ or primary providers who cared for a patient within the two years before admission to a facility.¹³⁰

On one hand, limiting liability for medical professionals is crucial to ensuring access to adequate care for seniors and other vulnerable adults. Senior care is often complicated by pre-existing conditions,¹³¹ comorbidities, and the natural aging process. Without insulation from liability, doctors may be reluctant to care for senior patients, particularly when the risks of providing such care may increase the potential for lawsuits. Doctors, fearing the financial and reputational consequences of legal actions, may opt to avoid

125. 57 P.3d 384, 389–90 (Ariz. 2002) (finding APSA and the Medical Malpractice Act are not mutually exclusive, so acts of medical negligence may substantiate an adult protective services action).

126. S.B. 1010, 46th Legis. (Ariz. 2003).

127. Several doctors, insurance companies, and medical professional organizations spoke in favor of the change, while families of elders worried about adverse impacts on seeking redress for elder abuse. ARIZ. STATE SENATE, MINUTES OF COMMITTEE ON HEALTH, 46th Legis., 1st Reg. Sess. (Feb. 27, 2003), https://www.azleg.gov/legtext/46leg/1R/comm_min/Senate/0227%20HEA.PDF [<https://perma.cc/LXG8-LFQV>].

128. 2003 Ariz. Legis. Serv. Ch. 129 (S.B. 1010).

129. ARIZ. REV. STAT. § 46-455(B) (2025).

130. ARIZ. REV. STAT. § 46-455(C) (2025).

131. Forty-eight to eighty-six percent of older Americans between the ages of fifty-five to sixty-four have a pre-existing health condition. *At Risk: Pre-Existing Conditions Could Affect 1 in 2 Americans*, CTRS. FOR MEDICAID & MEDICAID SERVS. (Sept. 10, 2024), <https://www.cms.gov/ccio/resources/forms-reports-and-other-resources/preexisting> [<https://perma.cc/WP8L-5643>]. Cf. *id.* (finding up to 50% of non-elderly Americans have pre-existing health conditions).

treating elderly patients, therefore reducing access to care for seniors.¹³² In this light, limiting liability for medical professionals is crucial to preserving the availability of treatment for vulnerable adults.

On the other hand, the immunity granted to doctors and some other medical professionals should not preclude APSA plaintiffs from recovering damages. The core premise of enterprise liability is implicating any individuals or entities involved in the provision of care. Any enterprise members not immunized by statute should remain liable parties in APSA actions. For instance, Mrs. Fadely pursued an APSA action against Encompass, despite being unable to pursue APSA claims against either physician due to their immunity.¹³³ Without Encompass's inclusion in the "continuing unit" of care, Mrs. Fadely would have had limited recourse for her injuries.

Ultimately, victims of elder abuse must have the opportunity to seek justice and be made whole.¹³⁴ The purpose of tort law is to compensate plaintiffs and "encourage reasonable conduct."¹³⁵ In establishing a duty of reasonable care and liability for breaches of that duty, tort law also "discourage[s] conduct that creates an unreasonable risk of injury to others."¹³⁶ Accordingly, courts broadly recognize "the primary purpose of tort law is that of compensating plaintiffs for the injuries they have suffered wrongfully at the hands of others."¹³⁷

132. Donald J. Palmisano, *Health Care in Crisis: The Need for Medical Liability Reform*, 5 YALE J. OF HEALTH POL'Y L. & ETHICS 371, 382 (2005) (arguing legal liability forces physicians to "give up providing care for their patients"); Bernard Dickens, *The Effects of Legal Liability on Physician Services*, 41 U. TORONTO L.J. 168, 207 (1991) (assessing reasons for physician concern and arguing legal liability shouldn't "reduce[] patient access to convenient services"). *But cf.* Jed Kurzban et al., *Neither Goose nor Gander: Why Tort Reform Fails All*, 98 FLA. BAR J. 10, 11–12 (2024) (noting a "steep decline" in the quality of healthcare following a reduction in liability for many medical professionals practicing in Florida).

133. *See supra* Section I.D (discussing Mrs. Fadely's claims and litigation strategy).

134. John A. Pearce II et al., *Protecting Nursing Home Residents from Attacks on Their Ability to Recover Damages*, 61 RUTGERS L. REV. 705, 715 (2009) (arguing that the lack of constitutional class protection results in an "unequal impact" on the amount of restitution elderly litigants receive).

135. Stuart M. Speiser et al., *Purposes and Aims of Tort Law*, in 1 AMERICAN LAW OF TORTS § 1:3 (2025).

136. *Id.*

137. *Id.* (quoting *Berman v. Allan*, 404 A.2d 8, 11 (N.J. 1979) (internal quotes removed)); *see* OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 130 (1881) ("The general purpose of the law of torts is to secure a man indemnity against certain forms of harm to person, reputation, or estate, at the hands of his neighbors, not because they are wrong, but because they are harms."); *see also* Kurzban et al., *supra* note 132, at 11 (explaining how all theoretical perspectives of tort law determine the purpose of tort law is to make "private wrongs right").

Overly broad liability exemptions, therefore, contravene not only the remedial purpose of APSA, but the entire purpose of tort law. While APSA includes statutory immunity for many individuals and entities, this broad waiver of liability diminishes a plaintiff's ability to recover for substantiated harm. However, enterprise liability presents a compromise: medical professionals are afforded immunity, but vulnerable adults have recourse against other participants in the "continuing unit" of care. As a result, APSA ensures the immunity of certain medical providers and facilities, while also preserving a path for recovery for vulnerable adults.

By adopting broad construction of enterprise liability, APSA ensures that vulnerable adults have avenues for recovery, while exceptions for some medical professionals maintain access to care. This careful balancing of interests reflects the legislature's intent to provide comprehensive protections to vulnerable adults, including seniors.

C. The similarity between APSA enterprise liability and RICO enterprise liability provides a guide for enforcement and interpretation.

APSA enterprise liability clearly mirrors RICO enterprise liability. The Racketeer Influenced and Corrupt Organizations Act¹³⁸ was enacted as a facet of the Organized Crime Control Act of 1970.¹³⁹ RICO prohibits any person or entity within an enterprise to conduct or participate in unlawful debt collection or racketeering.¹⁴⁰ Ultimately, the statute was designed to address rampant organized crime by providing the government a new tool to dismantle the Mafia and other similar organizations.¹⁴¹ However, due to the breadth of the statute's language, RICO claims quickly expanded beyond just organized crime.¹⁴² Today, RICO provides both criminal and civil causes of action.¹⁴³

Overall, the similarities between RICO and APSA enterprise liability support an analogous enforcement. First, the definitions of enterprise in both

138. 18 U.S.C. §§ 1961–68.

139. JENS DAVID OHLIN, WHARTON'S CRIMINAL LAW § 12:1 (16th ed. 2024).

140. *United States v. Turkette*, 452 U.S. 576, 580 (1981) (citing 18 U.S.C. §1962(c)).

141. John J. Lulejian, *Making Sense of the Kaleidoscope of Patterns: A Practitioner's Guide to Understanding the Third Circuit's Interpretation of Civil RICO's Pattern of Racketeering Activity*, 69 TEMP. L. REV. 413, 414–16 (1996).

142. *Id.* at 423.

143. *Racketeer Influenced and Corrupt Organizations (RICO) Law*, JUSTIA, <https://www.justia.com/criminal/docs/rico/> [<https://perma.cc/YJZ8-NQB3>]. Civil RICO claims

statutes are virtually identical. RICO broadly defines “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”¹⁴⁴ Similarly, APSA defines “enterprise” as “any corporation, partnership, association, labor union or other legal entity, or any group of persons associated in fact although not a legal entity, that is involved with providing care to a vulnerable adult.”¹⁴⁵ In using an almost identical definition, Arizona legislators clearly intended APSA enterprise liability to function similar to RICO.¹⁴⁶ Second, both statutes are remedial. Remedial statutes are designed to be liberally construed.¹⁴⁷ RICO was designed to be liberally construed to “effectuate its remedial purpose.”¹⁴⁸ Arizona courts apply the same liberal interpretation to APSA, since it’s a remedial statute.¹⁴⁹ The statutes’ common remedial status affirms the broad scope of enterprise liability as a mechanism to effectuate the legislature’s intent.¹⁵⁰

Taken seriously, RICO provides a useful framework for interpreting and enforcing APSA enterprise liability, as both statutes share a common goal of deterrence. RICO is designed to deter organized crime by holding entire enterprises accountable for illegal activities.¹⁵¹ APSA deters the physical and financial abuse of seniors by implicating all members within the “continuing

allow victims of organized crime to recover treble damages. William Woodward Webb & Kevin P. Roddy, *Some Practical Implications of Civil RICO Cases*, 7 CAMPBELL L. REV. 299, 301–02 (1985). This claim requires additional proofs that are beyond the scope of this Note.

144. 18 U.S.C. § 1961(4).

145. ARIZ. REV. STAT. § 46-455(Q) (2025).

146. See *Fadely v. Encompass Health Valley of Sun Rehab. Hosp.*, 517 P.3d 701, 707 (Ariz. Ct. App. 2022) (recognizing the similarities between RICO and APSA liability and therefore applying *Turkette* language to the facts of *Fadely*).

147. Richard A. Posner, *Legislation and Its Interpretation: A Primer*, 68 NEB. L. REV. 431, 442 (1989) (“[T]he legislature would have *wanted* such a construction, in order more perfectly to achieve the object of the statute.”). Liberal construction is only applied when a statute is ambiguous. Craig W. Palm, *Rico and the Liberal Construction Clause*, 66 CORNELL L. REV. 167, 170–71 (1980).

148. Eric Lloyd, *Making Civil RICO “Suave”: Congress Must Act to Ensure Consistent Judicial Interpretations of the Racketeer Influenced and Corrupt Organizations Act*, 47 SANTA CLARA L. REV. 123, 127 (2007).

149. See *supra* notes 118–20 (providing examples of APSA’s remedial language in Arizona case law).

150. “Liberal construction clauses provide legislatures with the opportunity to exercise their legislative responsibility to the fullest by providing guidance to courts struggling with ambiguities in the statute.” Palm, *supra* note 147, at 181. See, e.g., *id.* at 175 (arguing the policy considerations of RICO merit liberal interpretation).

151. See Leah Bressack, *Small Claim Mass Fraud Actions: A Proposal for Aggregate Litigation Under RICO*, 61 VAND. L. REV. 579, 582 (2008) (emphasizing RICO’s “central objective” of deterrence).

unit” of care. Because the enterprises under both statutes may include an extensive number of members,¹⁵² both statutes recognize that the deterrence effect is magnified beyond individual actors to implicate a larger association that enables or profits from the misconduct.

Enterprise liability under APSA, like under RICO, is particularly effective because it encompasses all members within the enterprise who contribute to the operation and decision-making processes, even if they are not directly involved in the abuse. This broader application of liability serves as a powerful deterrent, encouraging individuals and entities to make decisions that don’t implicate increased liability risk. In holding entire enterprises responsible, enterprise liability encourages systemic changes in behavior and operations. Thus, the deterrence mechanism of enterprise liability under APSA aligns with the principles established under RICO, ultimately fostering better protection for seniors and vulnerable adults from abuse and neglect.

D. Policing long-term care facilities is crucial to protect seniors, and therefore, a paramount purpose of APSA enterprise liability.

Enterprise liability should include all non-exempt individuals and entities implicated in the “continuing unit” of care, even if they are not directly responsible for the elder abuse. By including these actors, enterprise liability better polices the complexities of long-term care facilities and provides vulnerable adults a clear avenue to recovery for any harm.

Many long-term care facilities structure their corporate forms to shield themselves from legal and financial exposure. Given the significant liability risks associated with long-term care, including APSA claims, these facilities often adopt corporate structures to mitigate liability.¹⁵³ The use of corporations, limited liability companies (“LLCs”), and limited liability partnerships (“LLPs”) can “benefit nursing home companies by limiting the financial liability,” which ultimately protects investors and owners from bearing the full financial burden of any legal claims.¹⁵⁴

152. See, e.g., *United States v. Turkette*, 452 U.S. 576, 580–81 (1981) (“There is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact.”).

153. See Joseph E. Casson & Julie McMillen, *Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring*, 36 J. HEALTH L. 577, 580 (2003).

154. *Id.* at 578.

Private equity firms and other investors are increasingly drawn to senior living communities as a lucrative investment opportunity.¹⁵⁵ With Americans living longer due to the aging baby boomer population and advancements in medical technology, the demand for senior living facilities has surged, creating a growing market for senior care facilities.¹⁵⁶ For investors, this trend presents a proverbial gold mine, with steady income generated by monthly rent and care fees. To protect this reliable stream of income, owners and investors use complex corporate structures to shield themselves from liability associated with the operation of these facilities.¹⁵⁷

While many of these business entities properly adhere to statutory formalities, the trend of using corporate forms to operate senior living facilities is no coincidence.¹⁵⁸ Generally, limiting liability for these facilities is important to ensure the availability of long-term care for seniors.¹⁵⁹ However, the mitigation of liability may promote nefarious actors, intentions, and practices in the senior care. In *Scott v. Kemp*, the Arizona Court of Appeals noted the “complicated structuring” of entities operating senior care facilities “likely is not accidental.”¹⁶⁰ These structures enable owners and investors to limit their direct exposure to liability, further distancing themselves from financial accountability for the care provided to seniors. This strategy, while legally permissible, raises concerns about financial and legal accountability for the well-being of vulnerable adults living in senior care facilities.

Additionally, the rise of Real Estate Investment Trusts (“REITs”) in the senior care industry adds another layer of complexity.¹⁶¹ REITs are companies that own and operate income-producing real estate.¹⁶² Advocates

155. Michael Fenne, *Private Equity’s Growing Presence in Senior Living*, PRIV. EQUITY STAKEHOLDER PROJECT (Dec. 1, 2023), <https://pestakeholder.org/news/private-equitys-growing-presence-in-senior-living/> [<https://perma.cc/B2V5-E58R>].

156. *Id.*

157. See Casson & McMillen, *supra* note 153, at 578 (“In addition to providing a shield to protect against exposure to risk, the creation of multiple asset-holding entities can affirmatively benefit a nursing home company.”); see also McGlade, *supra* note 13 (informing private equity firms and facility owners they are neglecting their duty of care).

158. Casson & McMillen, *supra* note 153, at 580 (discussing requirements like preserving distinctions between the business entity and the ownership interests, adequately capitalize, and avoid the appearance of siphoning revenues).

159. See *supra* Section III.B (discussing the balance of the liability of medical professionals and the availability of care for senior citizens).

160. 460 P.3d 1264, 1268 (Ariz. Ct. App. 2020).

161. Interview with Tom Ryan, *supra* note 41.

162. *Real Estate Investment Trust (REIT)*, U.S. SEC. & EXCH. COMM’N, <https://www.investor.gov/introduction-investing/investing-basics/glossary/real-estate->

of this model argue that “[d]ividing the nursing home business into real-estate investment and nursing home operations will reduce the nursing home company’s exposure to risks associated with owning and operating one or more nursing homes.”¹⁶³ Under this model, a nursing home company would operate at least two entities per nursing home: one entity to own and lease the real estate and one operating company to obtain the require licenses and certifications necessary for the facility.¹⁶⁴ While this strategy “reduce[s] the overall risk” to senior care facilities,¹⁶⁵ it complicates litigation for potential plaintiffs.

Each of these liability-limiting strategies underscores the need for enterprise liability. As long-term care facilities continue to explore innovative means to limit their liability, as demonstrated by the use of corporate structuring and REITs, these tactics make it more difficult for plaintiffs to bring claims against those ultimately responsible for abuse and neglect. Without a broad interpretation of the “continuing unit” of care, vulnerable adults may be left without the opportunity to recover damages for harm suffered in long-term care facilities.

In effect, APSA enterprise liability may obviate the need to pierce the corporate veil. While no case directly supports the premise, the definition of APSA enterprise liability and its remedial purpose may be read to supplant piercing the corporate veil. Thus, applying APSA enterprise liability, consistent with *Fadely*, furthers the statute’s remedial purpose and fortifies statutory protections for vulnerable adults.

III. COUNTERARGUMENTS TO THE BROAD IMPLICATIONS OF APSA LIABILITY

The breadth of APSA enterprise liability is controversial. There are three predominant counterarguments against the expansive implementation of enterprise liability: a chilling effect on long-term care facilities, increased costs to patients, and an increase in APSA claims. Each of these implications are inherent conditions of the current APSA framework. While each concern

investment-trust-reit [<https://perma.cc/JQM7-D6JF>]. REITs may be public or non-public. *Id.* This Note focuses on the implications separating real estate ownership from the general operation of senior care facilities, without diving into the complicated nature of REIT investments (especially publicly traded REITS). In this way, the Note is more focused on the implications on liability than impacts to investors, including third party stockholders.

163. Casson & McMillen, *supra* note 153, at 585.

164. *See id.*

165. *Id.*

merits consideration, the ultimate impacts of enterprise liability and benefits to the Arizona community outweigh the concerns.

A. The breadth of APSA enterprise liability may result in a chilling effect on long-term care options in Arizona.

Long-term care facilities play a crucial role providing housing and care for seniors in Arizona. Given their importance to the community, concerns have been raised about how expansive APSA liability could disincentivize the establishment of long-term care facilities in the state. These concerns largely rest on the idea that if long-term care facilities are subject to broad liability, there is less incentive to establish and operate locations in Arizona. Under a cost-benefit analysis, these facilities may view the potential for increased liability as an unfavorable risk, adding to the high-risk nature of long-term care operations.¹⁶⁶

However, the interpretation of APSA in *Fadely* does not represent a newfound development. Instead, the case clarifies and reinforces the existing framework. APSA supersedes “any” conflicting laws,¹⁶⁷ meaning that causes of action and remedies under APSA cannot be abridged by other laws that would reduce liability or damages. As aforementioned, *In re Estate of Winn* found probate law does not diminish claims made under APSA.¹⁶⁸ Following this reasoning, waivers of liability, including those established by LLCs, are likely invalid if they impede remedies under APSA.

Furthermore, APSA has not discouraged the establishment of long-term care facilities in Arizona. If the “heightened” liability were a significant deterrent, one would expect to see a decline in the number of long-term care facilities. However, the data reflects the opposite trend. As of September 2024, Arizona has 142 nursing home facilities in Arizona with a total capacity of 15,840 residents.¹⁶⁹ Additionally, there are 327 assisted living centers in Arizona with a total capacity of 29,140 residents.¹⁷⁰ Finally, there are 1,683

166. John A. Pearce II et al., *Protecting Nursing Home Residents from Attacks on Their Ability to Recover Damages*, 61 RUTGERS L. REV. 705, 716 (2009) (“By their very nature, nursing homes are high risk ventures: they are inhabited by frail, unsteady residents who are often mentally compromised. Risk and litigation go hand-in-hand, and litigation increases costs . . . coupled with decreasing profit margins . . .”).

167. ARIZ. REV. STAT. § 46-455(O) (2025).

168. 150 P.3d 236, 238 (Ariz. 2007).

169. September 2024 Long Term Care Nursing Homes, Report from *Provider & Facility Databases*, ARIZ. DEP’T OF HEALTH SERVS., <https://www.azdhs.gov/licensing/index.php#databases> [https://perma.cc/A2NJ-VR3V]. This report shows the names, capacity and other data regarding Nursing Homes in Arizona as of September 1, 2024.

170. *Id.*

assisted living home facilities in Arizona, with a total capacity of 13,917 residents.¹⁷¹ In total, Arizona boasts senior care facilities that can provide services for tens of thousands of seniors.¹⁷² This growth in capacity contradicts the claim that APSA will lead to a shortage of long-term care facilities in the state.

Regardless, the key consideration here is the quality of care for individuals who are often unable to advocate for themselves. Seniors, particularly those living in long-term care facilities, are traditionally considered “vulnerable adults” because they cannot adequately protect themselves from abuse, neglect, or exploitation.¹⁷³ It is of no benefit to have many care facilities or facilities with large capacities if the provided care is insufficient—or worse—abusive.

APSA serves as an essential safeguard for ensuring quality of care for vulnerable adults. While it is important for long-term care facilities to expand their capacity to care for seniors, APSA incentivizes care facilities to operate within the letter of the law to avoid liability. The prospect of greater liability results in greater caution in the care of seniors, ultimately benefiting both residents and the broader community.

B. The broad effects of APSA enterprise liability may increase costs to consumers.

The national average monthly cost of a private room in a nursing home is \$9,733.¹⁷⁴ In comparison, the nationwide median monthly rate for a one-

171. *Id.*

172. Arizona also provides more total beds than states with similar populations. Arizona has a total of 42,476 beds available, as compared to Tennessee with 22,919 beds. *Compare Arizona by the Numbers*, NAT’L CTR. FOR ASSISTED LIVING, <https://www.ahcancal.org/Assisted-Living/Facts-and-Figures/Documents/State%20Facts/Arizona-AL.pdf> [https://perma.cc/HHY6-AAUA], *with Tennessee by the Numbers*, NAT’L CTR. FOR ASSISTED LIVING, <https://www.ahcancal.org/Assisted-Living/Facts-and-Figures/Documents/State%20Facts/Tennessee-AL.pdf> [https://perma.cc/6LXC-Q5K5]. Both states have total populations in the 7 million citizen range. *Population Estimate for 2024*, STATS AM. (Feb. 24, 2025), https://www.statsamerica.org/sip/rank_list.aspx?rank_label=pop1 [https://perma.cc/ZC5L-6RPE].

173. APSA defines vulnerable adults as individuals eighteen and older who are “unable” to protect themselves from “abuse, neglect, or exploitation by others because of a physical or mental impairment.” ARIZ. REV. STAT. § 46-451(A)(12) (2025).

174. Kate Van Dis, *How Much Does Assisted Living Cost?*, NAT’L COUNCIL ON AGING (June 14, 2024), <https://ncoa.admin-contentbridge.com/local-care/assisted-living/costs/> [https://perma.cc/4JH7-L89N].

bedroom residential rental is \$1,499¹⁷⁵—a difference of \$8,234 per month. While nursing homes have unique amenities not typically found in apartments, the price disparity is concerning, nonetheless. With the renewed emphasis on enterprise liability, this disparity is likely to widen as facilities attempt to offset additional insurance fees.¹⁷⁶ As a result, enforcement of enterprise liability could increase the financial burden on senior patients who rely on both medical care and living assistance. If long-term care facilities face supposedly heightened liability, any additional costs—such as increased insurance premiums—will likely be passed on to consumers. Long-term care is already a significant financial burden, so any further increase in costs due to APSA-related liability insurance will only exacerbate the issue.

While *Fadely*'s renewed emphasis of APSA enterprise liability will likely increase long-term care costs, it is a critical and essential accountability measure. Enterprise liability, in theory, should promote higher standards of care within of long-term care facilities, including the care provided by those not directly caring for patients. By ensuring that all members of the “continuing unit” of care are accountable, enterprise liability encourages a more comprehensive approach to preventing neglect and abuse, which ultimately benefits residents. Furthermore, when systematic failings occur in long-term care facilities, enterprise liability offers vulnerable adults with a better avenue for recourse. The benefits of holding facilities accountable outweigh the drawback of increased costs to residents.

Additionally, there are ways to mitigate the financial burden and make long-term care facilities more affordable and accessible. For example, Arizona's long-term Medicaid program, the Arizona Long Term Care System (“ALTCS”), provides medical care and services to individuals who meet the eligibility requirements.¹⁷⁷ Arizona also offers the Family Caregiver Support Program, which provides several resources to individuals caring for elderly

175. Liz Brumer-Smith, *Here's What Rent Costs Around the U.S.*, U.S. NEWS & WORLD REP.: REAL EST. (Jan. 17, 2024), <https://realestate.usnews.com/real-estate/articles/heres-what-rent-costs-around-the-u-s> [<https://perma.cc/F3R9-QCNU>].

176. A historic number of senior living facility claims (among other factors) is increasing the cost of facility insurance because “the insurance carriers bear the risk originally, but those costs get passed on to the [facility] operators, and the operators pass those costs back on to the residents.” Tom Gresham, *Senior Living Liability Claims: Trends, Costs, & Risk Factors*, ARGENTUM (Jan. 29, 2025), <https://www.argentum.org/senior-living-liability-claims-on-the-rise-trends-costs-and-risk-factors/> [<https://perma.cc/2SZW-8M7Q>].

177. *Arizona Long-Term Care (ALTCS): Application & Eligibility*, ARIZONA'S GUIDE TO ASSISTED LIVING SERVICES, <https://www.seniorplanning.org/altcs-arizona-long-term-care/> [<https://perma.cc/D3TN-JMVH>].

relatives, including funding for at-home care.¹⁷⁸ The availability of alternative options, such as at-home care services, reduces the concern about increased costs for long-term care facilities in response to *Fadely*.

Finally, while affordable senior living options are important, there is no benefit to cheap senior living facilities if there is a high risk of physical or financial exploitation of the vulnerable adults living in the facilities. The quality of care is paramount to ensuring humane conditions and treatment within senior care facilities. While affordability remains a valid concern, it is important to establish a minimum standard of care in senior care facilities. Ultimately, higher costs may need to be accepted in order to provide societal benefit and mitigate harm.

C. The current APSA framework may be used to circumvent the traditional challenges faced in complex medical malpractice cases.

Renewed focus on APSA enterprise liability, as a result of *Fadely*, may increase the number of APSA claims in Arizona courts.¹⁷⁹ APSA's expansive definition of "vulnerable adults" and its overall less stringent requirements when compared to medical malpractice claims makes it a more accessible litigation strategy. Accordingly, plaintiffs may use APSA claims to circumvent many of the complexities and costs associated with litigating traditional medical malpractice claims, such as the need for expert witnesses.¹⁸⁰

Even attorneys who support the broad application of enterprise liability have concerns about this development.¹⁸¹ While APSA's focus on the "vulnerable adult" requirement is paramount to protecting seniors, the statute's definition also includes "incapacitated person[s] as defined by § 14-

178. See *Family Caregiver Support*, ARIZ. DEP'T OF ECON. SEC., <https://des.az.gov/FamilyCaregiver> [<https://perma.cc/9CWC-JLPP>].

179. Interview with Tom Ryan, *supra* note 41 (explaining how he's seen more APSA actions since *Fadely*).

180. Medical malpractice cases are often treated distinctly from other civil actions and require additional proofs, including a written expert opinion to support a plaintiff's pre-trial allegations. *Medical Malpractice Actions State Law Survey*, LEXIS, <https://plus.lexis.com/api/permalink/ff6a7ded-c59f-497b-a6b3-db039c1aa806/?context=1530671> (May 9, 2025). Arizona, for instance, requires service of preliminary expert opinion with the initial disclosures in medical malpractice cases. ARIZ. REV. STAT. § 12-2603(B) (2025). Failure to supply the affidavits of preliminary expert opinion with the initial disclosures may result in dismissal. *Id.* § 12-2603(F).

181. Interview with Tom Ryan, *supra* note 41.

5101.”¹⁸² Because APSA applies to more than just seniors, the incapacitation element may take precedence over age in APSA claims.¹⁸³ For instance, some attorneys apply the “vulnerable adult” designation in cases involving adults in comas during medical procedures.¹⁸⁴ With the resurgence of APSA enterprise liability, more attorneys may shift toward using the “vulnerable adult” classification instead of pursuing medical malpractice claims. This shift could result in an influx of APSA claims, potentially leading to an overly restrictive amendment to APSA that would limit recourse for seniors suffering abuse or neglect in senior care facilities.

While the legislature intended APSA to be a broad remedial statute, its expansive scope raises concerns. If APSA is applied in too many cases, it may diminish the availability of remedy to the vulnerable adults the statute is truly designed to protect.¹⁸⁵ However, this concern alone does not justify rejecting broad APSA enterprise liability altogether. If APSA’s application becomes too common, the issue should be resolved in one of two ways: through litigation or legislative amendment.

The litigation approach, however, is problematic. On one hand, with the proper test case, the Arizona Supreme Court could offer further guidance on what cases are eligible for APSA claims. Just as *Fadely* clarified the scope of an APSA enterprise, another case may clarify the scope of “vulnerable adult” and therefore establish what cases may arise under APSA. On the other hand,

182. ARIZ. REV. STAT. § 46-451(A)(12) (2025). The incapacitated persons definition includes “any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.” ARIZ. REV. STAT. § 14-5101(3) (2025).

183. Interview with Tom Ryan, *supra* note 41.

184. For instance, Tom Ryan referenced the rape and subsequent pregnancy of an unconscious woman as a potential option for extending the vulnerable adult definition beyond the scope of ARIZ. REV. STAT. § 46-451(A)(12) (2025). See Interview with Tom Ryan, *supra* note 41. This instance was the sexual assault of a 29-year-old woman at Hacienda Health, who was at the facility due to a brain disorder that caused impairments, vision loss, and eliminated functional use of limbs. Nicole Garcia & Danille Miller, *Man Who Sexually Assaulted Incapacitated Woman at Hacienda Healthcare to Serve 10 Years in Prison*, FOX10 (Dec. 2, 2021), <https://www.fox10phoenix.com/news/man-who-sexually-assaulted-incapacitated-woman-at-hacienda-healthcare-to-serve-10-years-in-prison> [https://perma.cc/C8XX-VKM9]. While the civil case ultimately settled, an APSA claim premised on the woman’s incapacitation would be a strong potential claim. See Jacques Billeaud, *Judge OKs \$15M Settlement Over Rape of Incapacitated Woman at Hacienda Healthcare*, FOX10 (June 15, 2021), <https://www.fox10phoenix.com/news/judge-oks-15m-settlement-over-rape-of-incapacitated-woman-at-hacienda-healthcare> [https://perma.cc/Q9LX-4QT8].

185. Interview with Tom Ryan, *supra* note 41 (surmising the regular application of APSA will result in a statutory change that hurts future plaintiffs).

this approach risks judicial overreach.¹⁸⁶ In clarifying the application of APSA, the court could exceed the statute's text and potentially contravene the legislative intent.

Amending APSA would be the more appropriate approach. The legislature has the authority to amend APSA and has done so repeatedly in the past.¹⁸⁷ Any concerns about the extent of enterprise liability or other provisions of APSA should be addressed through the legislative process.¹⁸⁸ Unless or until APSA is amended, the current interpretation of the statute should prevail. APSA is the product of legislative action and should be enforced as written. If clarification or modification is needed, it is the legislature's responsibility to make those changes. As it stands, *Fadely* rightly interprets APSA to broadly protect vulnerable adults through enterprise liability.

IV. CONCLUSION

Fadely highlights the fundamental importance of APSA enterprise liability. The broad construction of the "enterprise" framework encompasses all individuals and entities participating in a "continuing unit toward the common purpose." This interpretation is consistent with legislative intent, the text of A.R.S. § 46-455, relevant case law, and the remedial objectives of APSA. Until the legislature directs otherwise, Arizona should continue to benefit from the expansive protections afforded by APSA enterprise liability.

186. Legislating from the bench provokes the deeply entrenched debate over the countermajoritarian dilemma. See, e.g., Douglas Nejaime & Reva B. Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 N.Y.U. L. REV. 1902, 1958–60 (2021) (arguing judicial review is inherently antidemocratic because it impedes on legislative sovereignty). Any interpretation of or alteration to a statute must be consistent with foundational underpinnings of the American legal system, including the checks and balances imposed by the separation of powers.

187. See *supra* Section II.B (discussing the amendments that provided immunity to various medical professionals).

188. The U.S. Supreme Court has endorsed a similar approach with RICO interpretation. SCOTUS encourages courts to interpret RICO broadly. Lulejian, *supra* note 141, at 426–28 (citing *Sedima v. Imrex Co.*, 473 U.S. 479 (1985)). Moreover, the *Sedima* Court emphasized the proper vehicle for modifying RICO liability was solely through legislative reform. APSA enterprise liability should similarly only be subject to legislative alterations. The court system is not the proper vehicle to amend the scope and application of enterprise liability. Michael Goldsmith, *Civil RICO Reform: The Basis for Compromise*, 71 MINN. L. REV. 827, 829 (1987). Instead, any revisions to APSA should be lobbied in the Arizona Legislature.