IN THE SUPREME COURT

STATE OF ARIZONA

ARIZONA CHAMBER OF COMMERCE & INDUSTRY, et al., Plaintiffs/Petitioners, v. HON. DANIEL J. KILEY, Judge of the Superior Court of the State of Arizona, in and for the County of Maricopa, Respondent, STATE OF ARIZONA, et al., Defendants/Real Parties in Interest, and ARIZONANS FOR FAIR WAGES AND HEALTHY FAMILIES SUPPORTING PROP 206, Intervenor – Defendant/Real Party in Interest.	Supreme Court No. 16-0314-SA Maricopa County Superior Court Case No. CV2016-0180902

BRIEF OF AMICUS CURIAE GOLDWATER INSTITUTE IN SUPPORT OF PLAINTIFFS/PETITIONERS WITH CONSENT OF PARTIES

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files amicus briefs when its or its clients' objectives are directly implicated. The Goldwater Institute seeks to promote the economic freedom essential to a prosperous society, and to enforce provisions of our state Constitution that protect the rights of taxpayers. To this end, the Institute is frequently involved in constitutional litigation involving taxpayer protections, *see, e.g.*, *Biggs v. Cooper ex rel. County of Maricopa*, 236 Ariz. 415 (2014); *Friedman v. Cave Creek Unified Sch. Dist. No. 93*, 231 Ariz. 567 (App. 2013), and Institute scholars have published extensively about the importance of economic freedom. *See, e.g.*, TIMOTHY SANDEFUR, THE RIGHT TO EARN A LIVING: ECONOMIC FREEDOM AND THE LAW (2010).[1]

[1] Counsel for the parties did not author this brief in whole or in part. No person or entity, other than amicus, its members and counsel made any monetary contribution to the preparation and submission of this brief.

SUMMARY OF ARGUMENT

Minimum wages cause the most harm to the people they allegedly help: low-income and entry-level workers. The simple fact—substantiated by nearly unanimous consensus among economists—is that it does not help workers to make it more expensive to employ them. While those who already have jobs may benefit in the short-term, those benefits come at the immediate expense of job-seekers, whose economic opportunities are stifled by the increased costs of an employer's present work force. And because Prop. 206 increases the expense of employing current workers, it puts added pressure on employers not only to stop hiring, but to start firing.

In fact, this law is not designed "to raise the minimum wages and benefits for all Arizonans employed by any employer in Arizona but the state or federal government," as Intervenor claims. Intervenor's Opp'n to Req. for Stay at 1. On the contrary, it includes an explicit loophole in Section 23-381 for employers that have a collective bargaining agreement with a union. The reason for that exemption is that this initiative is a form of "reverse featherbedding," designed to impose greater costs on non-union employers—including non-union state contractors who pass their labor costs directly on to the taxpayers.

The State also bears immediate and direct costs from this initiative, for which a funding source has not been identified. Art. IX, Sec. 23 of the Arizona

Constitution, passed by voters as Prop. 101, was written to protect taxpayers against the sorts of mandatory expenditures that this initiative imposes. Although the Intervenor tries to distinguish a "mandated" expenditure from a "caused" increase to an expenditure, that distinction makes no sense and flies in the face of the voters' intent. When voters enacted Prop. 101, they did so to prevent "ballot box budgeting," which forces taxpayers to shoulder the burden of increased state costs, in whatever form. This Court cannot disregard the violation of Art. IX, Sec. 23 on the theory that the state can simply nullify the increased expenditures under Section 23(b), because that only applies where an initiative has "identified" a funding source but that source falls short of the costs incurred. Here, the initiative does not identify any funding source in the first place. Thus Section 23(b) does not apply. As courts in other states with similar constitutional requirements have done, this Court should hold that Prop. 206 violates the state Constitution and is therefore void.

ARGUMENT

I.
MINIMUM WAGE LAWS HINDER ECONOMIC GROWTH AND JOB CREATION, HARMING ENTRY-LEVEL WORKERS MOST OF ALL

There is a nearly universal consensus among economists that minimum wage laws slow economic growth, raise costs for consumers, and handicap job creation, particularly for entry-level or unskilled labor. *See generally* MARVIN H.

KOSTERS, ED., THE EFFECTS OF THE MINIMUM WAGE ON EMPLOYMENT (1996); Donald J. Boudreaux & Walter E. Williams, *How to Keep More Kids on the Streets*, WALL ST. J., Mar. 13, 2012.[2] The reason for this is simple: any policy that forces an increase in the cost of something will tend to reduce demand for that thing. Negative employment effects resulting from minimum wages are the manifestation of the economics' most basic law: supply and demand. *See* Robert P. Murphy, *Economists Debate the Minimum Wage*, LIBR. OF ECON. & LIBERTY, Feb. 3, 2014.[3]

This invariable law of economics cannot be escaped (although it can be ignored or disguised for political reasons). While economists disagree about the details—some hold that *small* increases have no measurable impact on the economy due to the interference of other factors—there is virtually no dispute that laws that make it more expensive to hire people mean fewer people will be hired.

Minimum wages are laws against jobs. If an employer is forbidden from paying a worker less than $12 per hour, then the employer must seek an employee whose work product will benefit that employer by at least $12 per hour in order to remain in business at all. A prospective employee who—due perhaps to lack of experience—produces less than that, will find it harder to persuade an employer to

[2] http://www.wsj.com/articles/SB10001424052970203458604577263033966950776
[3] http://www.econlib.org/library/Columns/y2014/Murphyminimumwage.html

hire her. Before enactment of the $12 mandate, such a person might have persuaded an employer to hire her at a lower wage and to provide her with on-the-job training and experience so that the worker would come to produce $12 per hour—whereupon she would be eligible for a raise. But a law forbidding employment at less than $12 per hour makes that illegal—closing off this avenue of opportunity.

It is no answer to say that employers can simply raise prices or take less profit to make up the difference. In an industry like the restaurant business, demand is highly elastic—if a meal out gets more expensive fewer people will eat out. Abigail M. Okrent & Julian M. Alston, *The Demand for Disaggregated Food-Away-From-Home and Food-at-Home Products in the United States* 28 (USDA Economic Research Service, Aug. 2012).[4] Every time a restaurant like Plaintiff Valle Luna charges more for a Sonora style enchilada, it loses customers on the margin. If it raises prices too far, it loses more customers than the business can bear.

The line between just right and too high is not dictated by the greed of owners. It is a complex calculation based on the cost of capital, cost of inputs, competition among restaurants, and myriad other factors. If the profitability of restaurants declines because wage mandates make labor more expensive, investors

[4] https://www.ers.usda.gov/webdocs/publications/err139/30438_err139.pdf?v=41148

will devote their funds to other, more profitable industries. All of this is true of all industries at all times and in all places. As one journalist recently noted, "[i]f you have 10 hourly employees working eight-hour shifts, five days a week and you raise the wages a dollar an hour, that comes out to a nearly $20K increase on the year. In [fashionable San Francisco restaurant] AQ's best year—a phenomenal year by restaurant standards—that would have been nearly 10% of profits." Kevin Alexander, *There's a Massive Restaurant Industry Bubble, and It's About to Burst,* Thrillist.com, Dec. 30, 2016.[5]

The deleterious consequences of minimum wages fall hardest on entry-level and unskilled workers, because they are most likely to be in need of on-the-job training and least likely to produce above the increased marginal cost of hiring. That is why Nobel Prize-winning economist Milton Friedman called the minimum wage "the most anti-black law on the statute books." MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE 238 (Orlando: Harcourt, 1990) (1979).

Outlawing jobs does not help workers or the poor. A law that purports to help workers by eliminating their job prospects is not rationally calculated to advance that legitimate government interest.

In 1981, the Congressional Minimum Wage Study Commission published a comprehensive report summarizing four years of research by dozens of labor

[5] https://www.thrillist.com/eat/nation/american-restaurant-industry-bubble-burst

economists. It concluded that minimum wage increases reduce employment in proportion to the heavier costs, so that "a 10 percent increase in the minimum wage would reduce teenage employment between 0.5 and 3.0 percent, with most studies finding 1.0 to 2.5 percent reductions. The latter translates into a loss of 80,000 to 200,000 jobs from a base of 8 million." 1 REPORT OF THE MINIMUM WAGE STUDY COMMISSION 38 (1981).[6] In 2006, researchers published an update noting that economists now had different opinions about these numerical results—but that "the oft-stated assertion that the new minimum wage research fails to support the traditional view that the minimum wage reduces the employment of low-wage workers is clearly incorrect. Indeed . . . the preponderance of the evidence points to disemployment effects." David Neumark & William Wascher, *Minimum Wages and Employment: A Review of Evidence from the New Minimum Wage Research* 121 (Nat'l Bureau of Econ. R., Working Paper No. 12663, Nov. 2006).[7]

One reason the public is easily misled about the consequences of minimum wage laws is a phenomenon economists call "unseen costs." *See* Russell Roberts, *Illuminating The Unseen*, THE FREEMAN, Mar. 1999 at 63.[8] In short, minimum wages increase the wealth of workers who are able to keep their present jobs and

[6] http://rsickles.rice.edu/files/2015/11/Minimum-Wage-Study-1983-Carter-Administration-1hkd1cv.pdf
[7] http://www.nber.org/papers/w12663.pdf
[8] http://www.unz.org/Pub/Freeman-1999mar-00063?View=PDF

enjoy a raise—but they impose costs in the form of lost *opportunities*—the jobs that *might* have come into existence, and the wealth that *might* have been created, in the absence of this mandate. Workers who *might* have been employable at $10 or $11 per hour are deprived of those opportunities. *See further* MASANORI HASHIMOTO, MINIMUM WAGES AND ON-THE-JOB TRAINING ch. 3 (1981) (reporting that increases in minimum wage harm workers who need on-the-job training).

Mandated increases also create incentives for businesses to substitute machine for human labor. As the Congressional Budget Office reported in 2014, employers often are forced to respond to minimum-wage increases "by reducing their use of low-wage workers and shifting toward those other inputs. That is known as a substitution effect, and it reduces employment among low-wage workers but increases it among higher-wage workers." *The Effects of a Minimum-Wage Increase on Employment and Family Income*, Feb. 2014, at 6.[9]

The employment consequences of minimum wages are also sometimes masked by other economic phenomena. For example, Australia is often cited as an example of a country with a high minimum wage which has not suffered unemployment effects. But Australia's minimum wage differentiates between experienced older workers and unskilled young people, for whom the minimum

[9] https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44995-MinimumWage.pdf

wage is substantially lower. Because unskilled young people suffer the greatest negative consequences from minimum wages, this fact masks the employment consequences of Australia's policy. *See generally* Hans Bader, *Minimum Wage Increases Harm the Young, Unskilled, and Less Educated*, COMPETITIVE ENTERPISE INSTITUTE BLOG, Dec. 12, 2013,[10] and sources cited therein.

In short, "[t]here is no 'free lunch' when the government mandates a minimum wage. If the government requires that certain workers be paid higher wages, then businesses make adjustments to pay for the added costs, such as reducing hiring, cutting employee work hours, reducing benefits, and charging higher prices." Mark Wilson, *The Negative Effects of Minimum Wage Laws* at 1 (Cato Policy Analysis No. 701, June 12, 2012).[11]

II.
PROP. 206 IS A FORM OF "REVERSE FEATHERBEDDING" DESIGNED TO ADVANCE THE POLITICAL STRENGTH OF UNIONS, NOT TO BENEFIT WORKERS

Prop. 206 is *not* actually designed to aid workers at the bottom of the economic ladder. The proof of this is Section 23-381, which creates an exemption for employers who have negotiated a collective bargaining agreement with a union. If the benefits mandated by Prop. 206 were truly in the interests of workers generally, this loophole would make no sense.

[10] https://cei.org/blog/minimum-wage-increases-harm-young-unskilled-and-less-educated
[11] https://object.cato.org/sites/cato.org/files/pubs/pdf/PA701.pdf

The reason for this exception is that Prop. 206 is in fact designed, not to protect workers, but to promote the interests of labor unions. It is designed to increase costs on non-union employers as a way of compelling them to negotiate with unions. This is the latest instance of a recent trend of "reverse featherbedding" by union activists.

"Featherbedding" refers to a practice whereby unions force employers to hire or maintain workers in excess of needs, in order to enrich those workers (and their union). The most famous example is the requirement decades ago imposed by railroad unions that forced railroads to employ firemen (coal-shovelers) on diesel locomotives where no fireman was needed. *See Brotherhood of Locomotive Eng'rs v. Atchison, Topeka & Santa Fe Ry. Co*., 768 F.2d 914, 917 (7th Cir. 1985). Featherbedding is economically wasteful and unjust because it punishes efficient labor practices and rewards workers who do not produce. And, as with a minimum wage law, it benefits existing employees only by snuffing the job prospects of young, inexperienced workers. *See* Richard A. Posner, *Some Economics of Labor Law*, 51 U. CHI. L. REV. 988, 1001 (1984) ("[F]or every older worker whom job security encourages to share his know-how, casual observation suggests that there is at least one other older worker, and probably several, whom job security protects at the expense of a more efficient younger worker.").

Reverse featherbedding occurs when unions impose unnecessary costs on *non*-union employers so as to essentially force employers to negotiate with unions. As Eugene Scalia, former Solicitor of the Department of Labor, has written, "[b]y raising costs for rival non-union companies, employment regulations help union companies preserve market share and thus protect union jobs and wages." *Ending Our Anti-Union Federal Employment Policy*, 24 HARV. J.L. & PUB. POL'Y 489, 491 (2001).

It is thus not surprising that the campaign behind Prop. 206 was primarily led by "Living United for Change in Arizona," which is the Arizona arm of the "Center for Popular Democracy," ("CFP") a front group for labor unions. CFP's board of directors is comprised of the leadership of various unions, including the AFL-CIO, SEIU, Wholesale and Department Store Union, American Federation of Teachers, and the Pineros y Campesinos Unidos del Noroeste.[12]

The trend of unions seeking to impose higher costs on non-union workers is an attempt to evade the federal *Machinists* Preemption Doctrine, which forbids states from imposing regulations that put a thumb on the scale in the relationship between employers and labor unions. *See Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Emp't Relations Comm'n*, 427 U.S. 132, 147 (1976). That doctrine forbids state governments from "substitut[ing]

[12] *See* https://ballotpedia.org/Living_United_for_Change_in_Arizona

itself as the bargaining representative," *520 S. Michigan Ave. Assoc. v. Shannon*, 549 F.3d 1119, 1136 (7th Cir. 2008), given that the balance between labor and management is supposed to be a "zone protected and reserved for market freedom." *Building & Constr. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 227 (1993).

Unions have made no secret of their effort to "leverage[ ] the traditional tools of local government" against non-union employers, and to "advance organizing goals" "outside the NLRA framework." Katherine V.W. Stone & Scott L. Cummings, *Labor Activism in Local Politics: From CBAs to 'CBAs,' in* THE IDEA OF LABOUR LAW 274, 278 (Guy Davidov et al. eds., 2011).[13] As U.C. Berkeley Institute of Industrial Relations experts Carol Zabin and Isaac Martin explain, groups like CFP seek to "deliberately structure[]" economic regulations "in a way that creates opportunities for union organizing," and "maximiz[ing] their usefulness to unions." Carol Zabin & Isaac Martin, *Living Wage Campaigns in the Economic Policy Arena: Four Case Studies from California* 14-15 (June 1999).[14]

In particular, by "includ[ing] a union 'opt out' clause requested by labor that allows specific terms of the ordinance to be superseded by a collective bargaining contract," *id.*, laws like Prop. 206 help push employers into agreeing to collective

[13] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1719822
[14] http://laborcenter.berkeley.edu/pdf/1999/livwage.pdf

bargaining demands. *See also* Stephanie Luce, *Building Political Power and Community Coalitions*, *in* CENTRAL LABOR COUNCILS AND THE REVIVAL OF AMERICAN UNIONISM 150-51 (Immanuel Ness & Stuart Eimer eds., 2001) (noting how cities have "assist[ed] organizing by inserting union-friendly language into the[ir] laws," including "'union opt-out clause[s],'" which "give[] unions leverage . . . because some employers may agree to [union demands] . . . in exchange for a [collective bargaining agreement] that provides [for lower employment costs].").

Justice Elizabeth Grimes of the California Supreme Court made the point clear in a 2011 case involving a Los Angeles ordinance that prohibited grocery store owners from terminating certain employees for a three-month period after acquiring a new grocery store—but exempting unionized stores. *California Grocers Assn. v. City of L.A.*, 254 P.3d 1019, 1040 (2011) (Grimes, J., dissenting). The requirement, wrote Justice Grimes, was simply "an economic weapon" designed to "alter[] the collective bargaining relationship." *Id*. at 1045. That "economic pressure [was] not imposed by the employees as union members during collective bargaining, but it is government-imposed on their behalf," *id.* and it "necessarily subvert[ed]" the free negotiations that are supposed to form the basis of labor/management relations. *Id.* at 1044.

The point here is not that Prop. 206 violates *Machinists* Preemption Doctrine, but that the union loophole undermines the purported rationale for the

law and exists solely to benefit unions as an act of pure political favoritism. Intervenor claims the purpose of the initiative is "to raise the minimum wages and benefits for all Arizonans employed by any employer in Arizona but the state or federal government," Intervenor's Opp'n to Req. for Stay at 1, but the loophole contradicts that rationale. *Cf. Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008) (under the rational basis test, a court "cannot simultaneously uphold [a law] based on one rationale and then uphold [the] exclusion from [that law] based on a completely contradictory rationale," because that would "undercut[] the principle of non-contradiction.").

The Ninth Circuit Court of Appeals recently found that a California regulation that included a similar "carve-out[ ]" designed solely "to procure the support" of a labor union could violate the federal Due Process Clause. *Fowler Packing Co., v. Lanier*, No. 16-16236, 2016 WL 7367831 at *4 (9th Cir. Dec. 20, 2016). That law allowed employers who might have been liable to workers for back wages to escape liability if they paid by a specified date—but denied one particular class of employers that protection, merely "for the purpose of arbitrarily excluding individuals" in order "to procure the UFW's support in passing that legislation." *Id.* at *5. Such favoritism, the Court declared, "would not survive even rational basis scrutiny." *Id.* Precisely the same has occurred in this case—and the same result should follow. The exemption provided to employers who sign

collective bargaining agreements contradicts the rationale for the initiative, and is designed solely to benefit labor unions. It cannot withstand constitutional scrutiny.

III.
TAXPAYERS DESERVE RIGOROUS ENFORCEMENT OF PROP. 101

A. Intervenor's Attempted Distinction Between A Mandatory Expenditure And A "Caused" Expenditure Is Illusory

Article IX, Section 23 of the Arizona Constitution was added by Prop. 101 in 2004, which received some 55 percent of the vote. When Intervenor argues that this Court would be "interfering with the will of…voters" by enforcing that provision, Intervenor's Opp'n to Req. for Stay at 1, in fact, enforcing Section 23's taxpayer protections would give effect to the will of the voters.

Intervenor contends that Section 23 does not apply because although Prop. 206 does force the state to spend more money on the mandatory services that contractors provide, it nevertheless does not constitute a "mandatory expenditure of state funds" but only *causes* an increase in the expenditure of state resources. *Id*. at 15-16.

This is a distinction without a difference, however, as this *cause* is made *mandatory* by the minimum wage increase. The state has ongoing contracts to provide mandatory services. The minimum wage increase unquestionably increases the costs of providing those *mandatory* services under those contracts. It therefore *mandates* an expenditure of state funds.

The conclusion could not be otherwise. If the taxpayer protections of Prop. 101 could be so easily evaded, it would be a simple matter to draft an initiative that would, for instance, order every contractor in the state to hire one additional employee, regardless of the employer's needs—perhaps to "create jobs"—and then claim that the increased cost of state contracts is not subject to Prop. 101 because this is not *mandating new* expenditures, but simply *causing increased* expenditures. Such an initiative might also make no explicit reference to agencies passing on increased costs to taxpayers, and the cost of hiring additional employees surely depends on a "mixture of factors," only one of which is the person's salary. *Cf. id.* at 16. But such an argument would fail because it would be a mere semantic game. The same is true of the Intervenor's argument here. A law causing an increased expenditure is literally the same as mandating an increased expenditure.

Prop. 101 was written to prevent "ballot-box budgeting" that forces upon taxpayers costs that cannot be provided for through the ordinary budget process, and it cannot be so easily evaded by semantics. The 2004 voter information pamphlet[15] makes this plain. *Cf. Jett v. City of Tucson*, 180 Ariz. 115, 119–20 (1994) (citation omitted) (voter information pamphlet is entitled to weight in

[15] Available at http://apps.azsos.gov/election/2004/Info/PubPamphlet/Sun_Sounds/english/prop101.htm

interpreting initiatives). Voters were told that Prop. 101 would prevent unfunded mandates under which "[m]oney must be taken away from somewhere to finance a new project," and that Section 23 would ensure that "If the citizen's [*sic*] demand that the legislature provide a specific benefit then they [must] also describe what benefits they are currently receiving that should be scaled back or eliminated as well." 2004 voter information pamphlet, *supra*. Another argument observed that "hard questions of funding" had been "neither asked nor answered" in the past, and "the costs of the programs have simply been pushed onto the general fund with no controls." *Id.* Another observed that "voter approved initiatives" have often forced more government spending, with the result that "costs have often outpaced the revenue, forcing the Legislature to cut funding for other programs like education, health care, and public safety." *Id.*

Even more tellingly, the *opposition* arguments to Prop. 101 identified situations analogous to the one at issue here. One argued that the initiative would apply "no matter the expenditure required," even to an initiative that "was simply for the addition of two members to an already established commission." Another argued that it would "effectively prohibit[] the public from directing the Legislature on how to spend any general fund revenues." *Id.* A third argued that it would "extend[] to propositions that result only in small administrative costs or one-time expenditures…. If you spend one dollar, you need a new tax." *Id.*

These arguments show that voters were well aware that what the Intervenor calls "*[c]ausing* an expenditure of state resources" would be subject to Section 23 requirement just as much as *mandating* an expenditure of resources. Intervenor's Opp'n to Req. for Stay at 16. Voters approved Prop. 101 knowing this. But Prop. 206 voters were deprived of the protections that Prop. 101 provides.

Prop. 101 was written to "protect[] the state general fund from unfunded ballot initiative mandates" like this. *League of Ariz. Cities & Towns v. Brewer*, 213 Ariz. 557, 561 ¶ 17 (2006). Even if the increased costs at issue are part of "a mixture of factors" that determine the taxpayer's ultimate liability, those costs will ultimately fall on taxpayers. *There is no such thing as a free lunch*. What Intervenor rightly calls "increase[ed] costs for private government contractors," Intervenor's Opp'n to Req. for Stay at 16, must come from somewhere. Ultimately, they must come from taxpayers in one form or another. Even if the state simply decreases the amount or quality of public services to make up the difference, or pays for increased costs by borrowing, the taxpayers will ultimately bear the burden. Always.

B. Prop. 206's Failure to Identify a Revenue Source Renders It Void

Intervenor suggests that the state adopt "[t]he remedy" of simply "nullif[ying]" its obligations to provide services. Intervenor's Opp'n to Req. for Stay at 18. That is not what Section 23 provides. Section 23(a) requires that an

initiative "provide for an increased source of revenues," and Section 23(b) provides a contingency if "the identified revenue source…fails to fund" all of the incurred costs. Section 23(b) cannot apply here because the minimum wage requirement does not "provide for" or "identify" a revenue source in the first place. Section 23(b) therefore cannot apply because there is no "identified revenue source." The minimum wage increase simply fails to conform to Prop. 101 *at all*, and the fallback provision in Section 23(b) is simply not available.

Although Section 23 has not been interpreted by this Court, noncompliance with similar provisions has been held to void initiatives in other states that have similar constitutional provisions. The Mississippi Constitution requires that ballot initiatives provide a revenue impact statement, and the Mississippi Supreme Court has held that lack of such a statement renders an initiative void. *In re Proposed Initiative Measure No. 20*, 774 So. 2d 397, 401–02 ¶ 18 (Miss. 2000), *overruled on other grounds*, *Speed v. Hosemann*, 68 So. 3d 1278 (Miss. 2011). That court explained that the purpose of the requirement is

> to protect the integrity of the constitutional initiative process and to prevent the electors of this state from being presented with false and misleading initiative petitions. The people are entitled to the best, most accurate information available when voting on matters of state. When a sponsor of an initiative asserts that the initiative will have no negative impact on current funding of state programs and chooses to exclude a government revenue impact statement from the text of the initiative…[t]his constitutional deficiency clearly violates…the state Constitution.

Id. at 402 ¶ 18. The Missouri and Nevada Supreme Courts have likewise held that violation of those states' analogous provisions—which forbid initiatives from appropriating money unless paid for by revenues created in the same initiative—renders an initiative "fatally defective" and unenforceable. *Kansas City v. McGee*, 269 S.W.2d 662, 664–65 (Mo. 1954); *see also Rogers v. Heller*, 18 P.3d 1034, 1036–39 (Nev. 2001).

Intervenor emphasizes "Arizona's strong history of supporting the citizen initiative process." Intervenors' Opp'n to Req. for Stay at 21. But Section 23 is itself a product of that process. It exists to protect taxpayers, who have a right to accurate information about the fiscal impact of ballot initiatives. They were deprived of that right, and deceived as to the fiscal impact of the minimum wage increase.

CONCLUSION

Prop. 206 by its own terms does not "raise the minimum wages and benefits for all Arizonans employed by any employer in Arizona but the state or federal government," *id*. at 1. On the contrary, it exempts employers that have collective bargaining agreements with unions. That exception exists because Prop. 206 is designed not to protect workers—minimum wages do not protect workers—but to protect the interests of organized labor. In the process, it also increases burdens on taxpayers and violates their rights as protected by Prop. 101. The voters who

enacted Prop. 101 have the right to have their votes count. This Court should enforce its protections—and in the process, protect the state's economic growth against the deleterious consequences of laws against jobs.

Respectfully submitted this 11th day of January, 2017 by:

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IN THE SUPREME COURT

STATE OF ARIZONA

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CERTIFICATE OF COMPLIANCE

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Pursuant to Rule 16(b)(4) of the Arizona Rules of Civil Appellate Procedures, I certify that the body of the attached Brief of Amicus Curiae Goldwater Institute in Support of Plaintiffs/Petitioners With Consent of Parties appears in proportionately spaced type of 14 points, is double-spaced using a Roman font, and contains 4,552 words, excluding the table of contents and table of citations.

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The undersigned further certifies that on this 11th day of January, 2017, a copy of the foregoing was sent via regular mail to:

Honorable Daniel J. Kiley
Maricopa County Superior Court
101 W. Jefferson Street, ECB-511
Phoenix, AZ 85003-2243
Respondent Judge

/s/ Kris Schlott