IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ASSOCIATED MINORITY CONTRACTORS OF ARIZONA, et al., Plaintiffs/Appellees v. CITY OF PHOENIX, et al., Defendants/Appellants.	Arizona Court of Appeals Case No. 1 CA-CV 24-0658 Maricopa County Superior Court Case No. CV2024-001435

APPELLEES' ANSWERING BRIEF

Robert G. Schaffer
ROBERT G. SCHAFFER PLC
13220 North Scottsdale Road,
Unit 1055
Scottsdale, Arizona 85254
(602) 448-5642
bob@rgslawfirm.com

Jonathan Riches (025712)
John Thorpe (034901)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 East Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
Litigation@goldwaterinstitute.org

Counsel for Plaintiffs/Appellees

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INTRODUCTION

For forty years, Arizona law has expressly prohibited municipalities from including in their public works contracts "prevailing wage" mandates. Unlike the "minimum wage," which specifies a basic minimum amount that must be paid for all labor, "prevailing wage" mandates require contractors to pay workers based on complex schedules produced by the federal Department of Labor that vary by occupation, locality, and other factors. Last year, the cities of Phoenix and Tucson enacted nearly identical "Prevailing Wage" ordinances in violation of that clear prohibition. Their sole argument in defense of these ordinances is that a provision in the state's Minimum Wage Act authorizing cities to "regulate minimum wages and benefits" impliedly repealed the state law prohibiting municipal prevailing wage requirements.

When Plaintiff-Appellees challenged the cities' ordinances, the Superior Court held that the ordinances were pre-empted by state law, reasoning that "[a] prevailing wage ordinance is not a minimum wage law, and the Minimum Wage Act did not impliedly repeal the prevailing wage prohibition because the two laws can be harmonized by 'reasonable construction.'" Appx53 (citation omitted). The Superior Court soundly applied longstanding authority on the doctrine of implied repeal, as well as the plain language of the relevant statutes, and this Court should affirm its judgment. Additionally, should the Court reach the issue, the cities'

ordinances also violate the procedural due process protections in Arizona's Constitution.

COMBINED STATEMENT OF FACTS AND STATEMENT OF THE CASE

FACTUAL BACKGROUND

In 1984, the Arizona Legislature prohibited municipalities, agencies, and other political subdivisions from imposing "prevailing wage" requirements. It did so by enacting A.R.S. § 34-321, which provides that "[t]he public interest in the rates of wages paid under public works contracts transcends local or municipal interests and is of statewide concern." The statute includes the following prohibition:

> Agencies and political subdivisions of this state shall not by regulation, ordinance or in any other manner require public works contracts to contain a provision requiring the wages paid by the contractor or any subcontractor to be not less than the prevailing rate of wages for work of a similar nature in the state or political subdivision where the project is located.

A.R.S. § 34-321(B).

The statute also prohibits municipalities, agencies, and other political subdivisions from imposing a variety of other requirements on public works contractors, including requirements that they "become a party to any project labor agreement or other agreement with employees, employees' representatives or any labor organization," "[e]nter into a neutrality agreement with any labor

organization," or "[p]articipate in or contribute to an apprenticeship program that is registered with the United States department of labor." *Id.* (C).

Despite this clear prohibition, the enactment of municipal prevailing wage ordinances has long been a political priority for several members of the Phoenix City Council and the Tucson City Council. For example, on March 22, 2023, the Phoenix City Council considered a "Prevailing Wage Ordinance for City Projects," which would require businesses that contract with the city for construction projects costing $250,000 or more to provide their employees with "prevailing" wages and benefits, as defined by the city engineer and the United States Department of Labor. The Council passed that ordinance by a 5–4 vote, despite the city attorney's admission during the meeting that her legal team had not had an opportunity to review the draft ordinance, and that "there might be some legal issues" with it. Appx6 ¶¶ 18-22. Less than a month later, the council repealed the ordinance, with council members expressing concerns that it was pre-empted by state law, and, if left in place, would lead to costly litigation that the City would lose. Appx6-7 ¶ 23. Nevertheless, several council members expressed a desire to revisit the issue of a prevailing wage requirement in the future, and directed staff to research the issue and prepare another draft ordinance for the council's consideration. Appx7 ¶ 24.

On January 9, 2024, the Phoenix City Council enacted another prevailing wage ordinance, Ordinance G-7217 (the "Phoenix Ordinance"), which is the

subject of this case. Apart from some minor technical differences, the Phoenix Ordinance is substantially similar to the repealed March 22, 2023 ordinance in its requirement that public works contractors and sub-contractors pay employees a "prevailing wage" as defined by the City. *Id.* ¶¶ 25-28. Also nearly identical to the previous ordinance are its record-keeping requirements and its penalties for violations, which include restitution, treble damages, contract rescission, and disqualification from future City contracts. Appx8 ¶¶ 31-34.

At the January 9, 2024, meeting, Councilmember Ann O'Brien, voting against the ordinance, expressed "strong concerns" that it would be "deemed illegal," and explained that "state law is clear: we cannot pass a prevailing wage." Appx7 ¶ 27. *See also,* Phoenix City Council Policy Session (Jan. 9, 2024) at 48:45–48:00. Councilmember Stark also expressed doubt about the legality of the Phoenix Ordinance, voting against the ordinance and explaining that it was pre-empted by state law. *Id.* at 50:30–51:10. Nevertheless, the council approved the Phoenix Ordinance by a 6–3 vote. Appx7 ¶ 28.

The Phoenix Ordinance declares that "it is in the best interests of the City to have a uniform determination of the prevailing wages to be paid to the various classes of mechanics, laborers or other workers on City construction projects." *Id.* ¶ 29. To that end, it requires any contractor or subcontractor under a City construction contract with an aggregate value of $4,000,000 or more to pay its

workers "not less than the Prevailing Wage Rate for the same class and kind of work in the Phoenix metropolitan area." Appx7-8 ¶ 30. The ordinance itself does not state what dollar amounts constitute a "Prevailing Wage Rate" for any given "class [or] kind of work." Instead, it defines "Prevailing wage rate" as:

> the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding class of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the construction takes place, as determined by the City Engineer on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 3142 et seq., as amended.
>
> Appx26-27.

That is, it incorporates by reference the federal Department of Labor's schedules of "prevailing wage" determinations for any given class or kind of work, locality, seniority, and various other factors.

The Phoenix Ordinance also requires that every applicable City construction contract include provisions mandating that contractors pay employees "at least once a week the full amount of wages accrued at the time of payment at the applicable Prevailing Wage Rate," and imposing "recordkeeping and notice posting requirements," including the requirement that contractors "keep certified payroll records showing the name, address, job classification, wages and benefits paid or provided, and the number of hours worked for each employee" for at least four years "from the date of an employee's final payment." It designates all such

records as "public records under Arizona Public Records Law." It also requires contractors to file detailed paperwork (Federal Form WH-347) every week, for every employee, with the City Engineer, along with weekly statements of compliance, and to post workplace notices. Appx8 ¶ 31.

The Phoenix Ordinance authorizes "[a]ny affected individual or organization representing such individual(s)" to "file a complaint with the City engineer for any violation," and it establishes an administrative process for investigating and adjudicating such complaints. *Id.* ¶ 32. It authorizes the Phoenix City Engineer to impose penalties for violations, including "wage restitution," "liquidated damages in the amount of three (3) times the wages owed," "a directive to the applicable City department to withhold any payments due" under the public works contract, and "rescission of the City Construction Contract in violation." *Id.* ¶ 34.

If the City Engineer or the City Engineer-appointed hearing officer determines that a contractor has violated the Phoenix Ordinance "willfully or more than twice in a three-year period," they may "order debarment of the contractor" as well as additional fines. Appx8-9 ¶ 35. The Phoenix Ordinance allows a contractor to request review of the City Engineer's findings by a hearing officer, who is also appointed by the City Engineer. And if the City Engineer or City Engineer-appointed hearing officer deems such an appeal to have been "frivolous or …

brought for the purpose of delaying compliance," that officer may order additional penalties. Appx9 ¶ 36.

On January 9, 2024 (the same day that the Phoenix City Council enacted its prevailing wage ordinance), the Tucson City Council unanimously voted to enact its own prevailing wage ordinance: Ordinance No. 12066, "Amending Chapter 28 of the Tucson City Code by Enacting Prevailing Wage Requirements for Certain City Public Works Construction Contracts" (the "Tucson Ordinance"). Much of the language in the Tucson Ordinance mirrors the language in the Phoenix Ordinance. *Id.* ¶¶ 39-40. The two ordinances' provisions are substantially similar, apart from a few differences immaterial to the issues in this case.[1]

PROCEDURAL BACKGROUND

The Associated Minority Contractors of Arizona, the Arizona Chapter of the Associated General Contractors of America, and the Arizona Builders Alliance are all membership organizations whose members are contractors and subcontractors that work on projects throughout the State of Arizona, including municipal public works projects in Phoenix and Tucson. Appx11-12 ¶¶ 52-55.

[1] For example, the Tucson Ordinance applies to all construction contracts with a "total project cost" of $2,000,000 or more, while the Phoenix Ordinance sets a $4,000,000 threshold.

On January 23, 2024, these groups filed a lawsuit for declaratory and injunctive relief in Maricopa County Superior Court against the City of Phoenix and its officials responsible for enforcing the Phoenix Ordinance, asserting that the ordinance was facially invalid because (1) it was pre-empted by the state law prohibition on municipal prevailing wage ordinances, *see* A.R.S. § 34-321, and (2) the ordinance's enforcement provisions violate procedural due process, *see* Ariz. Const. art. II, § 4. *See generally* IR 1. Shortly thereafter, the City of Tucson indicated that it wished to intervene in the lawsuit to defend its own ordinance, and on March 1, 2024, consistent with a joint stipulation, *see* IR 13, Plaintiffs filed a First Amended Complaint naming the City of Tucson and its responsible officials as additional defendants. Appx4-20.

Defendants moved to dismiss, arguing that (1) Plaintiffs' pre-emption claim failed because A.R.S. § 34-321's prohibition on municipal prevailing wage ordinances "has been implicitly repealed or amended" by the Minimum Wage Act, and (2) the Ordinances included adequate procedural protections to satisfy due process. IR 17, 18. Plaintiffs cross-moved for summary judgment, arguing that as a matter of law and undisputed fact, the Ordinances were pre-empted and violated due process.[2] IR 21, 22.

[2] Defendants have conceded that "there [were] no disputed issues of fact in this case," and that the dispute is purely a legal one. Appx45; *see also* Op. Br. at 9.

The Superior Court denied Defendants' motion to dismiss and granted Plaintiffs' cross-motion for summary judgment on June 21, 2024, concluding that both cities' "ordinances … violate the intact prevailing wage prohibition," and are therefore "preempted and cannot stand." Appx53. The court rejected Defendants' argument that the Minimum Wage Act impliedly repealed the Prevailing Wage Prohibition, reasoning that "it is inappropriate to apply the doctrine of implied repeal, because there is a straightforward way to construe both laws harmoniously." *Id.* Having found the ordinances invalid on statutory grounds, the court did not reach Plaintiffs' constitutional due process arguments. *Id.*

Defendants filed timely notices of appeal. *See* IR.47-48; Ariz. R. Civ. App. P. 9(a).

STATEMENT OF THE ISSUES

1. Did the Superior Court correctly hold that A.R.S. § 34-321(B), a state law that expressly prohibits cities from enacting prevailing wage laws, pre-empts the Prevailing Wage Ordinances, and that A.R.S. § 23-364(I) (the "Minimum Wage Act") did not impliedly repeal Arizona's prevailing wage law?

2. Do the Prevailing Wage Ordinances facially violate procedural due process by vesting city officials to investigate and adjudicate alleged violations without adequate procedural safeguards?

STANDARD OF REVIEW

This Court reviews the denial of a motion to dismiss based on a question of statutory interpretation de novo. *State v. Villegas*, 227 Ariz. 344, 345 ¶ 2 (App. 2011). Likewise, "[t]his court reviews a grant of summary judgment de novo, viewing the facts and reasonable inferences in the light most favorable to the party opposing the motion and will affirm for any reason supported by the record, even if not explicitly considered by the superior court." *Joshua Tree Health Ctr., LLC v. State*, 255 Ariz. 220, 222 ¶ 8 (App. 2023) (citation omitted).

ARGUMENT

I. Section 34-321(B) pre-empts the Prevailing Wage Ordinances.

Defendants recognize that Section 34-321(B) "prohibits cities from enacting a prevailing wage mandate," Op. Br. 11, and thus, assuming Section 34-321(B) is valid, it pre-empts the Prevailing Wage Ordinances. Defendants' only argument against pre-emption is that Section 34-321(B) is *not* valid: they invoke a "disfavored" doctrine, *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 7 ¶ 24 (2013), to argue that that provision is no longer good law because Section 23-364(I) (the "Minimum Wage Act") "covers the whole subject matter of the prevailing wage statute, is more specific, and was enacted later in time," and thus, the Minimum Wage Act implicitly repeals Section 34-321(B). Op. Br. 3.

That argument is misplaced because, quite simply, a "prevailing wage law" is not a "minimum wage law." The "prevailing wage" laws that Section 34-321(B) prohibits are not the same things as the "minimum wage" laws Section 23-364(I) permits.

Critically, Defendants only argue that Section 23-364(I) *impliedly* repealed Section 34-321(B) (it certainly did not *explicitly* repeal Section 34-321(B)). But courts strive to harmonize statutes, even when those statutes stand in some tension with one another, and only apply the doctrine of implied repeal—holding a duly enacted law invalid despite never *actually* being repealed—as a last resort, when the competing provisions cannot reasonably be reconciled. Here, as the Superior Court held, it would be "inappropriate to apply the doctrine of implied repeal, because there is a straightforward way to construe both laws harmoniously." Appx53. Indeed, Defendants' arguments to the contrary violate both statutes' plain meaning as well as principles of statutory construction. As such, Defendants simply cannot show "repugnancy" or "inconsistency" between the two laws, which is required to establish an implicit repeal. *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 29 (2001).

A. Implied repeal applies only when statutes cannot be reconciled.

"It is generally disfavored to find an implied repeal of a statute." *Jurju v. Ile*, 255 Ariz. 558, 562 ¶ 21 (App. 2023). Indeed, courts find implied repeal only in the

rare case "where it appears by reason of repugnancy, or inconsistency, that two conflicting statutes cannot operate contemporaneously," *UNUM Life Ins.*, 200 Ariz. at 333 ¶ 29, "when conflicting statutes cannot be harmonized to give each effect and meaning," *Cave Creek Unified Sch. Dist.*, 233 Ariz. at 7 ¶ 24 (emphasis added), and where "no reasonable construction can [reconcile the] two statutes." *State ex. rel. Larson v. Farley*, 106 Ariz. 119, 122–23 (1970) (emphasis added; citation omitted).

This is a high bar for Defendants to clear. "Instead of presuming that the more recent statute controls, [courts] first look to whether [they] can reconcile the statutes that are in apparent conflict." *Jurju*, 534 P.3d at 930 ¶ 21. Only where there is a "plain, unavoidable, and irreconcilable repugnancy" between the two statutes will courts conclude that the later one implicitly repealed the earlier one. *Burnside v. Douglas Sch. Dist. No. 27*, 33 Ariz. 1, 8 (1927). Notably, the implied repeal analysis does not depend on whether a law was enacted by the Legislature or by popular initiative. *See In re Riggins*, 544 P.3d 64, 67–68 ¶¶ 13–20 (Ariz. 2024).

Defendants argue that Section 1-245 creates a "legislative exception to the judge-made presumption against implied repeal of statutes." Op. Br. 31. Section 1-245 provides:

> When a statute has been enacted and has become a law, no other statute or law is continued in force because it is consistent with the

> statute enacted, but in all cases provided for by the subsequent statute, the statutes, laws and rules theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless expressly continued in force by it, shall be deemed repealed and abrogated.

A.R.S. § 1-245.

But the Supreme Court squarely rejected Defendants' approach last year in *In re Riggins*, 544 P.3d 64, where it analyzed Section 1-245 at length and concluded that that provision "deems as repealed only those former statutes that address 'cases provided for by the subsequent statute'"—that is, only in situations where a court must determine "which of two applicable statutes, both of which address the same substantive issue, controls in a given case." *Id.* at 70–71 ¶¶ 33–34 (citation omitted).

Arizona courts have never endorsed Defendants' novel theory of "flip[ping] th[e] clear statement burden" and *presuming* implied repeal. Op. Br. 32. Instead, they have consistently held that "all portions of [a] law are to be given effect, if possible, and only those earlier portions which cannot be reconciled reasonably with the later and added enactment are considered as repealed." *Biles v. Robey*, 43 Ariz. 276, 281 (1934); *see also, e.g.*, *Pima County v. Maya Constr. Co.*, 158 Ariz. 151, 155 (1988) ("Unless a statute, from its language or effect, clearly requires the conclusion that the legislature must have intended it to supersede or impliedly repeal an earlier statute, courts will not presume such an intent."); *Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Truck Ins. Exchange*, 107 Ariz. 291, 294 (1971)

("[R]epeals by implication are not favored and will not be indulged in if there is any other reasonable construction."); *Hudson v. Brooks*, 62 Ariz. 505, 513 (1945) ("It is a cardinal rule of statutory construction that repeals by implication are not favored.").[3]

What's more, if, as Defendants argue, Section 1-245 "flips" the longstanding presumption against implied repeal, this would lead to bizarre results. It would seem to indicate that whenever the Legislature passes or amends a law on a given subject, that new bill impliedly repeals *every prior law on the same subject*—even if the laws were completely consistent with each other—unless the new bill expressly states otherwise. *See* Op. Br. at 32 (arguing that "Arizona flips [the] clear-statement burden, requiring that the Legislature 'expressly *continue*' the previous statute by stating as much in the new statute." (citations omitted & alteration adopted)). Even if that approach did not violate the Supreme Court's clear instruction in *Riggins* and elsewhere, it could not possibly be correct, as it would result in the invalidation of countless statutes every legislative term.

[3] In fact, the strong common-law presumption against implied repeal dates back at least four centuries, rooted in judicial "deference to legislative wisdom and supremacy," as well as courts' reluctance to invalidate or rewrite a duly enacted law on their own initiative. *See* Karen Petroski, *Retheorizing the Presumption Against Implied Repeals*, 92 Cal. L. Rev. 487, 524–26 (2004).

Here, as detailed in the following subsections, the two relevant statutes do not "address the same substantive issue," *Riggins*, 544 P.3d at 71 ¶ 34, and it is inappropriate to apply the doctrine of implied repeal, because there is a straightforward way to construe both laws harmoniously. A minimum wage law and a prevailing wage ordinance are two different things. The Minimum Wage Act allows cities to "regulate minimum wages," A.R.S. § 23-364(I), i.e., to set generally applicable wage floors for employees and employers generally. The Prevailing Wage Prohibition, on the other hand, bans cities from requiring contractors on public works projects to follow detailed wage requirements based on locality, occupation, and market conditions, as a requirement for contracting with the city.

B. The Prevailing Wage Prohibition is consistent with the Minimum Wage Act.

Defendants' entire argument against preemption depends on the premise that a prevailing wage law is a type of minimum wage law. But "[p]revailing wage regulations are substantially different from minimum wage statutes." *San Francisco Labor Council v. Regents of Univ. of Cal.*, 608 P.2d 277, 279 (Cal. 1980). As the Ohio Supreme Court explained in *Harris v. Atlas Single Ply Sys., Inc.*, 593 N.E.2d 1376, 1376 (Ohio 1992):

> The term "minimum wages" denotes a specified hourly wage guaranteed to all qualified workers under federal and Ohio law. It is a dollar and cents amount readily cited by most American adults—

> $4.25 at the time of the decision. … The term "prevailing wage," by contrast, is calculated based on union wages paid in a given locale and based on a sum of various compensation factors defined in [state law], including hourly wage rates and fringe benefits. Accordingly, if we were to find that the reference … to "minimum wages" governs actions for prevailing wages, we would be ascribing two entirely different meanings to the use of the term "minimum wages."

This distinction is well known. *See, e.g.*, *Assoc. Builders & Contractors, Golden Gate Chpt. Inc. v. Baca*, 769 F. Supp. 1537, 1545 (N.D. Cal. 1991) ("[V]irtually by definition, a 'prevailing' wage is not a 'minimum' wage. One is a definitive standard, applicable to all workers. The other is a standard determined by the agreements of a certain segment of workers and employers." (emphasis removed)); *Druml Co. v. Milwaukee Sewerage Comm'n*, No. 82-1338, 1983 WL 161480, at *4 (Wis. App. 1983) (unpublished) ("The coexistence of the concepts of minimum wages and prevailing wages for state and municipal contracts are of long standing and have been rigidly adhered to."). It is commonplace in federal law, too, where statutes such as the Davis-Bacon Act and the Fair Labor Standards Act establish a "prevailing wage" that significantly exceeds the Minimum Wage. *Moodie v. Kiawah Island Inn Co.*, 124 F. Supp. 3d 711, 720–21 (D.S.C. 2015); *De Leon-Granados v. Eller & Sons Trees, Inc.*, 581 F. Supp. 2d 1295, 1319 (N.D. Ga. 2008).

This distinction is also reflected in the differing structures of Arizona's Prevailing Wage Prohibition and its Minimum Wage Act, the general/specific canon of construction, and legislative history.

C. "Minimum wage" and "prevailing wage" are distinct concepts.

Defendants synthesize their definition of "minimum wage" by grafting a dictionary definition of "minimum"[4] onto a statutory definition of "wage."[5] Op. Br. 13–14. But in doing so, they overlook the fact that "minimum wage" is a well-established term with a long history of use, both as a common phrase in everyday speech and as a legal concept. *See* A.R.S. § 1-213 ("Words and phrases shall be construed according to the common and approved use of the language. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.").

A law mandating a "minimum wage" has long been widely understood as a single, generally applicable floor on pay. *See* S. Rep. No. 6, 101st Cong., 1st Sess. 12 (1989) (describing the purpose of the federal minimum wage law, first enacted

[4] "[T]he smallest acceptable or possible quantity in a given case." (11th ed. 2019).
[5] "[M]onetary compensation due to an employee by reason of employment, including an employee's commissions, but not tips or gratuities." A.R.S. § 23-362(E).

in 1938, as "establish[ing] a floor below which wages would not fall, a floor which is adequate to support life and a measure of human dignity").

Minimum wage laws set generalized floors on wages, that, with very limited exceptions, apply to all workers, regardless of industry, occupation, locality, or public contractor status. See A.R.S. § 23-363(A) ("Employers shall pay employees no less than the minimum wage, which shall be not less than … ."); *see also* Flagstaff City Code § 15-01-001- 0003(A) ("Employers shall pay employees no less than the minimum wage, which shall be not less than … .")[6]; 29 U.S.C. § 206(a) ("Every employer shall pay to each of his employees … wages at the following rates … ."). They establish a single minimum rate of pay, which may increase over time or to account for inflation, but *does not fluctuate by locality, industry, occupation, or other market conditions.*

The Prevailing Wage Ordinances, in contrast, do not set a jurisdiction-wide floor on how much employers in general must pay their employees. In fact, they do not directly regulate *employers* at all. Instead, they require *cities* to include certain

[6] An "employee" is "any person who is or was employed by an employer," apart from those "employed by a parent or a sibling" and babysitters. A.R.S. § 23-362(A). "Employer" includes "any corporation, proprietorship, partnership, joint venture … individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee," other than the state and federal government, and "small business[es]," which are exempted. *Id.* (B).

provisions in public works contracts mandating *variable pay schedules* that apply only to specific trades and industries.

Additionally, prevailing wage laws have much more specific, and distinct, purposes, inseparable from their context as regulations of public works projects, collective bargaining, and labor relations. As the Ohio Supreme Court put it:

> The prevailing wage law evidences a legislative intent to provide a comprehensive, uniform framework for, inter alia, worker rights and remedies vis-à-vis private contractors, sub-contractors and materialmen engaged in the construction of public improvements … . Above all else, the primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector.

State ex rel. Evans v. Moore, 431 N.E.2d 311, 313 (Ohio 1982); *see also, e.g.*, *Mullally v. Waste Mgmt. of Mass., Inc.*, 895 N.E.2d 1277, 1282 (Mass. 2008) ("The prevailing wage law endeavors to achieve parity between the wages of workers engaged in public construction projects and workers in the rest of the construction industry."); *Lusardi Constr. Co. v. Aubry*, 824 P.2d 643, 649 (Cal. 1992) (listing "specific goals" of prevailing wage law, including "to permit union contractors to compete with nonunion contractors" and "to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees").

Also unlike minimum wage laws, prevailing wage laws like the Prevailing Wage Ordinances incorporate federal law by reference, in that they rely

prospectively on a set of fluctuating determinations set by a federal agency based on federal regulations and statutes. See Phoenix Ordinance, Appx26-27 § 43-51, Tucson Ordinance, Appx 38 § 28-160 (setting prevailing wages "on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 3142 et seq., as amended"). If the Minimum Wage Act authorized cities to enact prevailing wage measures, it would thus "implicitly incorporate into Arizona law (or, alternatively, authorize [cities] to incorporate)" a whole complex federal legal regime of statute, regulations, and administrative determinations. *Roberts v. State*, 253 Ariz. 259, 266 ¶ 19 (2022). "That is a great deal of freight to load upon a tiny statutory vessel." *Id.*

To be clear, in harmonizing Section 23-364(I)'s authorization to regulate "minimum wages" with Section 34-321(B)'s prohibition on *prevailing wage* requirements, the Superior Court did not "defin[e] 'minimum wage' to admit no exceptions or to prohibit any variation in a floor on wages." Op. Br. 16. Instead, it recognized that the minimum wage ordinances Section 23-364(I) authorizes are a well- established type of regulation that quintessentially restrict the baseline amount an employer can pay an employee throughout a jurisdiction *in general*—regardless of what kind of work the employee does, whether the employer is a public contractor, or any other such consideration. To be sure, as Defendants

observe, minimum wage laws sometimes include exceptions allowing certain types of employees to be paid less. *See, e.g.*, 29 U.S.C. § 213(a) (providing that federal minimum wage "shall not apply with respect to" certain enumerated types of workers). But while Defendants list several statutory exemptions from minimum wage laws, they have not identified a single example (nor can they) of a minimum wage law that mandates complex *schedules* of compensation based on workers' locality, experience, tasks, and so on, as the Prevailing Wage Ordinances do.

What's more, *other* aspects of wage-and-hour law can vary based on factors like occupation. For example, subsection (a)(17), which Defendants describe as "imposing a *higher* compensation floor" for certain skilled workers, in reality exempts those workers from other provisions, such as mandatory overtime and maximum hour restrictions, provided they make "not less than $27.63 an hour." 29 U.S.C. § 213(a)(17). But once again, this does not change the fact that a *minimum wage* law (i.e., a definite, generally applicable minimum with certain enumerated exceptions) is fundamentally different from a prevailing wage requirement (i.e., a schedule of pay rates for specific contractors that varies depending on many different factors). *See, e.g.*, A.R.S. § 23-350(5) (defining "[m]inimum wage" as "the nondiscretionary minimum compensation due [to] an employee by reason of employment," including commissions but excluding tips); "Wage," Black's Law

Dictionary (12th ed. 2024) (defining "minimum wage" as "[t]he lowest permissible hourly rate of compensation for labor").

Obviously, there is a colloquial sense in which prevailing wage laws set "minimums," i.e., they establish lower limits on permissible pay rates. But unlike "minimum wage" laws, they set entire schedules of pay rates for specific industries. Moreover, these schedules are highly variable, and they generally represent an average or median wage based on a particular trade and locality, not an across-the-board floor.[7] A superficial overlap in the colloquial meaning of the word "minimum" does not mean that "minimum wage laws," as a widely used term, encompasses "prevailing wage laws."

Prevailing wage laws express specific policy choices on how to resolve the tension between minimizing government spending by awarding contracts "to the lowest responsible bidder" on one hand, and "discourag[ing] contractors on public works projects from paying substandard wages to [certain] classes of their workers" on the other. *Heller v. McClure & Sons, Inc.*, 963 P.2d 923, 926 (Wash. App. 1998). Because prevailing wage laws involve fundamentally different policy

[7] The federal Department of Labor (whose determinations both Ordinances use in establishing their own wage schedules) calculates prevailing wages based on "[t]he wage paid to the majority … of the laborers or mechanics in the classification on similar projects in the area during the period in question," "the wage paid to the greatest number" of such workers, or a weighted average of wages paid to such workers. 29 C.F.R. § 1.2.

considerations, and have different effects, than minimum wage laws, it makes no sense to simply treat them as the same thing. *See Harris*, 593 N.E.2d at 1378 ("The minimum wage laws were enacted to protect all workers; the prevailing wage laws were intended to support the integrity of the collective bargaining process in the building and construction trades.").

D. The Prevailing Wage Prohibition does not function as a minimum wage law.

In addition to the conceptual differences between minimum wage and prevailing wage laws, the Prevailing Wage Prohibition is separate from, and independent of, the Minimum Wage Act. It appears in a different title: Title 34 (Public Buildings and Improvements), not 23 (Labor). That is because, unlike the Minimum Wage Act, the focus of a Prevailing Wage law is not on the wages employers pay their employees, but rather, the terms of public works contracts between political subdivisions and private parties. A.R.S. § 34-321(B). In fact, other subsections of the Prevailing Wage Prohibition regulate how political subdivisions may deal with labor unions and collective bargaining processes. *Id.* (C). This focus on contracting, collective bargaining, and labor agreements rather than generalized employee compensation makes sense, given the differences between prevailing wage and minimum wage regulations.

Unlike the Minimum Wage Act, the Prevailing Wage Prohibition is part of a package of specific policy choices by the Legislature regarding how Arizona's

political subdivisions will handle public works projects. *Cf.* *Heller*, 963 P.2d at 926. There is no reason to think that Arizonans intended to alter these policy choices when they enacted general requirements about what "[e]mployers shall pay employees," A.R.S. § 23- 363(A), and authorized cities to "regulate minimum wages and benefits" consistent with those "prescribed in [Title 23]," § 23-364(I).

The Prevailing Wage Prohibition coexists easily with the Minimum Wage Act. A minimum wage law specifies the lowest limit of payment for services generally, while the Prevailing Wage Prohibition forbids cities from doing what the Defendants have done: namely, mandate that "public works contracts … contain a provision" which requires contractors or subcontractors to pay "not less than the prevailing rate of wages for work of a similar nature in the state or political subdivision where the project is located." A.R.S. § 34-321(B).

Because Section 34-321(B) (and the Prevailing Wage Ordinances that it prohibits) differs in context, scope, purpose, and method of operation from Section 23-364(I), this further shows that the laws regulate distinct types of municipal ordinances and can be reconciled without holding that one impliedly repeals the other. Nor does this require any extra-textual speculation about legislative intent. *See* Op. Br. 28 ("[T]he [superior] court said that a prevailing wage is not a minimum wage because prevailing wages and minimum wages 'have

fundamentally different underlying policy goals.' But the court had it right earlier in its order: 'policy is for the executive and legislative departments.'").

A faithful textual reading of the statutes accounts for critical considerations like statutory structure and context. *See* *Ariz. Dep't of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 143 ¶ 10 (2008) ("We construe the statute as a whole, and consider its context, language, subject matter, historical background, effects and consequences, and its spirit and purpose." (citations omitted & alterations adopted)). Moreover, "[i]t is presumed the legislature is aware of existing case law when it passes a statute, and that it is aware of court decisions interpreting the language of the statute; and when it retains the language upon which those decisions are based, it approves the interpretations." *State v. Pennington*, 149 Ariz. 167, 168 (App. 1985) (citations omitted); *see also* *State v. Patel*, 247 Ariz. 482, 484 ¶ 8 (App. 2019) (applying the same principle to ballot initiatives). These premises lead to the simple conclusion that the Prevailing Wage Prohibition and the Minimum Wage Act are reconcilable—because prevailing wages and minimum wages are simply different things.

II. Defendants' statutory construction arguments fail.

A. The general/specific canon favors Section 34-321(B).

Defendants observe that "[i]f there is a conflict between a general provision and a specific provision, the specific provision prevails, because the specific

provision is treated as an exception to the general rule." Op. Br. 36 (citations omitted). True, but in attempting to apply this canon, Defendants flip it on its head. Assuming the canon applies at all—that is, taking Defendants' premise that a prevailing wage law is a type of minimum wage law, and that there is therefore some conflict between the Prevailing Wage Prohibition and the Minimum Wage Act—the *specific* prohibition on prevailing wage ordinances would override the *general* authorization for cities to regulate minimum wages.

As an initial note, the Court need "not apply the general/specific canon because, as noted above, there is no conflict in the first place." *State v. Santillanes*, 256 Ariz. 534 ¶ 20 (2024). The Prevailing Wage Prohibition and the Minimum Wage Act are easily reconciled, because the "minimum wage" laws Section 23-364(I) authorizes do not include prevailing wage ordinances, so no conflict exists—and therefore there is no need to consult the general/specific canon.

But even if the canon did apply, it would favor Plaintiffs' position. Essential to Defendants' argument is the claim that "a prevailing wage is a kind of minimum wage," Op. Br. at 25, and that the Minimum Wage Act's general authorization to regulate minimum wages thus covers prevailing wages. But if that were true, the Minimum Wage Act would be the more *general* law, because it establishes the broader policy—while the Prevailing Wage Prohibition, which addresses only one particular *type* of minimum wage, applying to specific industries and local

communities, would be the more specific. Thus, the specific Prevailing Wage Prohibition should trump the general Minimum Wage Act.

To be sure, two statutes might be "narrow and broad in their own ways such that determining which provision is more specific turns entirely on how you define the subject matter at issue." *Milne v. Robinson*, 6 N.W.3d 40, 50 (Mich. 2024). When, as here, two statutes both address whether certain actions are allowed or prohibited, the proper question is whether what is prohibited is more specific than what is allowed.[8] Here, the only relevant comparison between Section 23-364(I) and Section 34-321(B) is what they allow cities to do. Section 23-364(I) allows cities to set minimum wage laws, while Section 34-321(B) specifically prohibits cities from enacting prevailing wage laws. Minimum wage laws apply generally to all employers and employees (apart from specific exceptions not relevant here). Prevailing wage laws, by contrast, only apply to public contractors. Assuming prevailing wage laws are a type of minimum wage law, they are only one specific

[8] *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission."); *see, e.g.*, *Morton v. Mancari*, 417 U.S. 535, 551 (1974) (holding specific provision authorizing federal agency to accord an employment preference to Native Americans controlled over general prohibition on employment discrimination); *Hackie v. Bryant*, 654 S.W.3d 814, 819 (Ark. 2022) (holding specific prohibition on issuing licenses for private security or investigative services to an unpardoned felon controlled over general statement that criminal records were not an automatic bar to occupational licensing).

type, compared with the general category of minimum wage laws. That means the *specific* prohibition on prevailing wage laws would control over the *general* authorization to enact minimum wage laws.

In applying the general/specific canon, the Supreme Court has made clear that "[w]hen statutes relate to the same subject matter, and the later enactment does not contain an express repeal or amendment, the later enactment is deemed to have been enacted in accordance with the legislative policy embodied in the earlier statute." *Hibbs ex rel. Ariz. Dep't of Revenue v. Chandler Ginning Co.*, 164 Ariz. 11, 16 (App. 1990). Thus, "a later act, general in its terms, will not be construed as repealing a prior act treating in a special way something within the purview of the general act." *Hudson*, 62 Ariz. at 513. Instead, when "there are two provisions applicable to the same subject, one general in its scope and the other covering a limited portion only of the subject included in the general one, the special statute is to be considered as governing the exception, while the general statute applies only to matters not included in the special one." *Midtown Med. Grp., Inc. v. State Farm Mut. Auto. Ins. Co.*, 220 Ariz. 341, 347 ¶ 22 n.9 (App. 2008) (citation omitted).

B. The *expressio unius* canon does not apply.

Defendants argue that Section 23-364(I) "specifically grants cities plenary power to enact any kind of minimum wage within their jurisdictions that is equal to or higher than the state minimum," and that "by specifically providing only those

qualifications on cities' regulatory power, [that provision] implied that there are no others." Op. Br. 35 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107–11 (2012) for the "*expressio unius* canon"). This argument is misplaced for two reasons.

First, under the *expressio unius* canon, "the statement of one exception implicitly denies the existence of other unstated exceptions." *Estate of Tovrea v. Nolan*, 173 Ariz. 568, 573 (App. 1992). But **the prohibition on prevailing wage ordinances *is not "unstated."*** In fact, it is stated quite clearly, albeit in a different statute. *See* A.R.S. § 34-321. Defendants cite no cases (nor have Plaintiffs found any) where one statute's *silence* on a subject impliedly repeals another statute that expressly *addresses* that subject.

Second, "the *expressio unius* canon should be used with caution; it is appropriate only when the *unius* can reasonably be thought to be an expression of *all* that shares in the grant or prohibition involved." *Riggins*, 544 P.3d at 69–70 ¶ 30 (citation & internal marks omitted). Here, there is no reason to think that Section 23-364(I) would have addressed every municipal power that could conceivably affect how much employers pay their employees. Instead, it addressed cities' authority to do one thing: "by ordinance [to] regulate minimum wages and benefits within its geographic boundaries." A.R.S. § 23-364(I). Indeed, the fact that the drafters of the Minimum Wage Act would not have thought to specifically

address municipal prevailing wage ordinances in Section 23-364(I) *supports* Plaintiffs' argument: they had no reason to address prevailing wage ordinances because they understood, consistent with common usage and the authority discussed in preceding sections, that the Minimum Wage Act had nothing to do with prevailing wage requirements.

C. Legislative history supports the prohibition on prevailing wage ordinances.

Defendants recount the history of several minimum-wage-related ballot measures, as well as the Voter Protection Act, Op. Br. 4–6, and suggest that while "the Arizona Legislature enacted laws limiting cities' authority to regulate minimum wages," "Arizona's citizen-legislature," in contrast, "gave cities plenary power to regulate minimum wages." (citation & internal marks omitted)

Legislative history, of course, cannot "supersede the unambiguous words in a statute." *Qasimyar v. Maricopa Cnty.*, 250 Ariz. 580, 590 ¶ 33 (App. 2021). Here, the relevant statutory text is "clear and unambiguous," *id.* (citation omitted), in authorizing cities to regulate *minimum* wages, while prohibiting them from including *prevailing wage* mandates in public works contracts.

But to the extent that legislative history is relevant, it indicates that the voters who passed the Minimum Wage Act understood "minimum wage" in its usual sense, as a generally applicable floor on wages. That law's express purpose and intent was that "[a]ll working Arizonans deserve to be paid a minimum wage

that is sufficient to give them a fighting chance to provide for their families." Prop. 202, sec. 2 (2006). In the amendment to the minimum wage law on which Defendants rely, there is no evidence that the initiative was intended to repeal A.R.S. § 34-321(B). The name of the initiative is the "Fair Wages and Healthy Families Act," indicating that the measure was intended to apply to working families, not cities or municipal contractors. And nowhere in the measure's text, ballot description, or in the arguments for or against the act is the phrase "prevailing wage" ever used. Prop. 202. Instead, all of those materials describe a broad-based minimum wage for all employees in the state, not a variable prevailing wage schedule for municipal contractors. There is simply no indication that the initiative was meant to repeal and authorize cities to specially regulate public contractors' payrolls based on complex, locality- and occupation-specific tables, via "prevailing wage" ordinances.

Finally, even assuming Defendants' characterization of a longstanding struggle between the people (favoring a higher minimum wage) and the Legislature (which did not), this account would actually *support* Plaintiffs' pre-emption argument. Section 34-321's prevailing wage prohibition has been in place since 1984. If Arizonans really intended the series of minimum wage initiatives to repeal that decree, they would have made that clear—particularly if they were engaged in a years-long tug-of-war with the Legislature over this very issue. They would have

included language to that effect somewhere in the initiatives, clarifying that in authorizing cities to regulate the minimum wage, they were also authorizing cities to implement prevailing wage laws. But they never did so, which is why Defendants' "repeal[] by implication" argument must fail. *Truck Ins. Exchange*, 107 Ariz. at 294.

III. The Prevailing Wage Ordinances facially violate procedural due process.

Arizona's Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." Ariz. Const. art. II, § 4. Both Prevailing Wage Ordinances violate this guarantee by authorizing a single city official to investigate, make determinations of liability, and impose penalties on contractors, without any meaningful checks on that authority apart from an appeal to another official hand-picked by the first official.

The Superior Court did not reach this constitutional issue because it found the Prevailing Wage Ordinances invalid in their entirety on statutory grounds. Appx49-55; *see R.L. Augustine Constr. Co. v. Peoria Unified Sch. Dist. No. 11*, 188 Ariz. 368, 370 (1997) ("We will not reach a constitutional question if a case can be fairly decided on nonconstitutional grounds."). However, even if the Prevailing Wage Ordinances were not pre-empted by Section 34-321, the Court

should still affirm the judgment below, because the ordinances facially violate Arizona's Due Process Clause and are thus invalid.[9]

Both Ordinances provide inadequate process to contractors accused of violations in several regards.

First, each ordinance vests a single city official (the City Engineer in the Phoenix Ordinance; the Director of Procurement in the Tucson Ordinance) with virtually unchecked power to investigate *and* adjudicate alleged violations. Moreover, the only opportunity for a contractor to appeal an initial decision is before a municipal "hearing officer" *appointed by the initial decision-maker himself* (i.e., the City Engineer or the Director of Procurement). This dynamic creates "an appearance of potential bias," if not "actual bias," and violates the "right to a neutral adjudicator" which "has long been recognized as a component of a fair process." *Horne v. Polk*, 242 Ariz. 226, 230–31 ¶¶ 16–17 (2017). "One cannot both participate in a case (for instance, as a prosecutor) and then decide the case." *Id.* at 231 ¶ 17; *see also Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 254 Ariz. 485, 495 ¶ 37 (2023) ("Due process requires an

[9] This is a purely legal issue that was fully briefed below and can be resolved based on the undisputed facts. *See, e.g.*, *Motley v. Simmons*, 256 Ariz. 317 ¶ 10 (App. 2023) ("We will affirm if the [superior] court's order is correct for any reason supported by the record."); *City of Phoenix v. Geyler*, 144 Ariz. 323, 330 (1985) ("We recognize the obligation of appellate courts to affirm where any reasonable view of the facts and law might support the judgment of the trial court. This rule is followed even if the trial court has reached the right result for the wrong reason.").

agency to separate prosecutorial and adjudicative functions."). By the same token, a city official cannot participate in the case as investigator (effectively a prosecutor), make an initial decision, then hand-pick a fellow bureaucrat as the "appellate" tribunal who will review that decision.

Both *Falcone Brothers & Assocs. v. City of Tucson*, 240 Ariz. 482 (App. 2016), and *R.L. Augustine*, 188 Ariz. 368, found similar arrangements invalid because they provided insufficient procedural protections. *Falcone Brothers* involved a city's procurement rules, whereby an initial decision was made by the city's procurement officer, but then an aggrieved party could appeal to the director of procurement, who would assign a hearing officer to conduct the review. *See* 240 Ariz. at 485–86 ¶ 2. Notably, this arrangement was actually more protective of due process than the arrangement created by the Prevailing Wage Ordinances, given that under the Prevailing Wage Ordinances, the same officer can both make a finding of liability and impose a penalty.

Still, the plaintiff in *Falcone Brothers* argued, and this Court agreed, that that was an inadequate appellate process, because it did not provide for a genuinely de novo review of a wrongful initial determination. *Id.* at 487 ¶ 9. Given that "[t]he second level of administrative review … took place before a hearing officer selected by the City's procurement director," the review procedure was illusory. *Id.* at 488–89 ¶ 18. "Despite its formalities," the court said, this process "provided

only one level of administrative review in which the City, through its agents and employees, acted as 'both the first-tier reviewer and the second-tier final decision maker.'" *Id.* at 489 ¶ 19 (emphasis added, citation omitted).

The same was true in *R.L. Augustine*, where the rules empowered the Board of Education to make an initial contracting decision and allowed aggrieved parties to appeal—but the appeal was before "a hearing officer appointed by the Governing Board." 188 Ariz. at 370. Under such rules, said the court, "the purchasing agency is both the first-tier reviewer and the second-tier final decision maker. … [T]he interested party is the adjudicator of contract obligations." *Id.* Likewise, here, the alleged "appeal" rights enjoyed by entities subject to the Ordinance are illusory, because the accusing official is the one who chooses the hearing officer for the appeal.

Another procedural due process defect is that the Prevailing Wage Ordinances allow municipal officials to impose *additional* punishments on a contractor for even attempting to exercise due process rights and dispute an alleged violation. If the municipal official, in his or her sole discretion, deems an appeal "frivolous or … brought for the purpose of delaying compliance," that official can impose an even harsher punishment. The prospect of incurring additional penalties for simply disputing a city official's findings compounds the due process defects in the Ordinances, because it harnesses the coercive power of the government to

discourage citizens from using even what procedural protections they do have. *See* *Webb v. State ex rel. Bd. of Med. Exam'rs*, 202 Ariz. 555, 558 ¶¶ 10–11 (App. 2002) (finding waiver of formal hearing in favor of "informal interview" was not "voluntary, knowing, and intelligent" because "[a] physician facing potentially severe disciplinary sanctions from the tribunal extending such an invitation would understandably be hesitant to refuse"); *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort … and for an agent of the State … to penalize a person's reliance on his legal rights is 'patently unconstitutional.'" (citations omitted)).

Finally, the Ordinances inadequately provide for judicial review of city officials' findings. The Tucson Ordinance does not provide for judicial review at all, and the Phoenix Ordinance only provides for judicial review of "non-final decision[s] of the hearing officer." Appx23 ¶ 13. While courts have held that not all agency determinations require judicial review to comport with due process, those determinations that impose fines and other serious penalties do require some meaningful recourse to judicial review. Here, contractors who are found to be in violation of the Prevailing Wage Ordinances face serious penalties, including fines, disgorgement, and even being barred from bidding on future public works projects—the ultimate penalty that threatens a contractor's very existence. *See*

Brian Young, *Ready for Primetime? The Interagency Suspension and Debarment Committee, the Nonprocurement Common Rule, and Lead Agency Coordination*, 4 William & Mary Pol'y Rev. 110, 113 (2012) (describing how "a contractor who deals primarily with the government will often view suspension or debarment akin to a corporate death sentence," and "[p]rocedural safeguards are required to protect a contractor's due process interests, which are necessarily impacted by the extensive nature of the government-wide exclusion that results from a suspension or debarment").[10]

What's more, even if the ordinances *did* provide for judicial review, "the availability of an appeal to the superior court [would] not cure the due process violation" because the court "would … deferentially review[] the [municipal officers'] non-neutral findings of fact." *Legacy Found. Action Fund*, 254 Ariz. at 494 ¶ 36; *see, e.g.*, A.R.S. § 12-910(F) ("The court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion."). "[D]ue process does not permit the same individual to issue the initial decision finding violations, personally participate in prosecuting the case, and then

[10] While Young focuses on federal contracting procedures involving interagency suspension and debarment, the same principles apply to municipal contractors, whose livelihoods depend on the right to continue competing for, and doing business with, governmental entities like Defendants.

make an ultimate decision that will receive only deferential judicial review." *Platt v. Moore*, No. 2 CA-CV 2023-0264, 2024 WL 5200586, at *5 ¶ 21 (Ariz. App. Nov. 14, 2024) (quotation marks and citation omitted).

Each of these defects—tasking a single official with investigating and adjudicating alleged violations, allowing the same official to appoint the hearing officer in an appeal, allowing those officials to further penalize contractors for exercising procedural rights, vesting those officials with unchecked discretion to impose severe penalties, and providing for limited or no judicial review—is constitutionally problematic on its own. Their cumulative effect, however, is even worse. Even if any one of these defects taken alone did not rise to the level of a constitutional violation, the collective effect of combining "functions in a single official" and granting that official too much deference and discretion renders the Prevailing Wage Ordinances constitutionally defective. As the Supreme Court held:

> [W]here an agency head makes an initial determination of a legal violation, participates materially in prosecuting the case, and makes the final agency decision, the combination of functions in a single official violates an individual's Fourteenth Amendment due process right to a neutral adjudication in appearance and reality. ***That due process violation is magnified*** where the agency's final determination is subject only to deferential review.

Horne, 242 Ariz. at 230 ¶ 14 (emphasis added).

Because the Prevailing Wage Ordinances violate Arizona's constitutional guarantee of due process, in addition to being pre-empted by Section 34-321, they are unconstitutional and invalid.

CONCLUSION

The judgment of the Superior Court should be affirmed.

NOTICE UNDER RULE 21(A)

Appellees request costs and attorney fees pursuant to A.R.S. Sections 12-341 and 12-348 and the private attorney general doctrine.

Respectfully submitted this 13th day of January 2025 by:

/s/ *John Thorpe*
Jonathan Riches (025712)
John Thorpe
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE

Robert G. Schaffer
ROBERT G. SCHAFFER PLC
13220 North Scottsdale Road,
Unit 1055
Scottsdale, Arizona 85254
(602) 448-5642
bob@rgslawfirm.com

Counsel for Plaintiffs/Appellees

Robert G. Schaffer
ROBERT G. SCHAFFER PLC
13220 North Scottsdale Road,
Unit 1055
Scottsdale, Arizona 85254
(602) 448-5642
bob@rgslawfirm.com

Jonathan Riches (025712)
John Thorpe (034901)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 East Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
Litigation@goldwaterinstitute.org

Counsel for Plaintiffs/Appellees

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ASSOCIATED MINORITY CONTRACTORS OF ARIZONA, et al., Plaintiffs/Appellees v. CITY OF PHOENIX, et al., Defendants/Appellants.	Arizona Court of Appeals Case No. 1 CA-CV 24-0658 Maricopa County Superior Court Case No. CV2024-001435 **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 14(a) of the Ariz. R. Civ. App. P., I certify that the body of the attached Plaintiffs-Appellees' Answering Brief appears in proportionately spaced type of 14 points, is double spaced using a Roman font, and contains 8,963 words, excluding table of contents and table of authorities.

/s/ *John Thorpe*
Jonathan Riches (025712)
John Thorpe
Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE

Robert G. Schaffer
ROBERT G. SCHAFFER PLC
13220 North Scottsdale Road,
Unit 1055
Scottsdale, Arizona 85254
(602) 448-5642
bob@rgslawfirm.com

Robert G. Schaffer
ROBERT G. SCHAFFER PLC
13220 North Scottsdale Road,
Unit 1055
Scottsdale, Arizona 85254
(602) 448-5642
bob@rgslawfirm.com

Jonathan Riches (025712)
John Thorpe (034901)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 East Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
Litigation@goldwaterinstitute.org

Counsel for Plaintiffs/Appellees

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Arizona Court of Appeals
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Maricopa County Superior Court
Case No. CV2024-001435

CERTIFICATE OF SERVICE

The undersigned certifies that on January 13, 2025, she caused the attached Appellees' Answering Brief to be filed via the Court's Electronic Filing System and electronically served a copy to:

Jean-Jacques Cabou
Alexis Danneman
Karl Worsham
Jordan M. Buckwald
PERKINS COIE LLP
2525 E. Camelback Rd., Ste. 500
Phoenix, Arizona 85016
jcabou@perkinscoie.com
adanneman@perkinscoie.com
kworsham@perkinscoie.com
jbuckwald@perkinscoie.com

Counsel for Defendants/Appellants

/s/ *Kris Schlott*
Kris Schlott, Paralegal