**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

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

# PLAINTIFFS/APPELLEES' RESPONSE TO AMICUS BRIEF OF STATE OF ARIZONA


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## INTRODUCTION

The State of Arizona argues in its amicus brief that the Prevailing Wage Ordinances are lawful despite the express prohibition in "one of the Legislature's old statutes," A.R.S. Section 34-321(B). State's Br. 1. That "old statute[]," the State argues, was impliedly repealed because it "facially conflict[s]" with the Section 23-364(I) in the voter-enacted Minimum Wage Law. *Id.* at 5. But the State's arguments are misplaced for largely the same reasons as the Cities'. The statutes' plain text (not speculation about "policy choices") makes clear that Section 34-321(B)'s prohibition on *Prevailing Wage* ordinances is distinct from, and readily harmonized with, Section 23-364(I)'s authorization for cities to enact *Minimum Wage* laws.

Even if there were a conflict, Section 34-321(B)'s specific prohibition would control over Section 23-364(I)'s general authorization. Nor does the Voter Protection Act ("VPA") apply—and the State's unfounded speculation about "the people's intent" cannot override the statutory text. State's Br. 20.

## ARGUMENT

### I. This case is about statutory construction, not "policy choices."

The State argues that the Superior Court's decision "defies the plain text of the statutes and improperly favors the Legislature's policy choices over those of the People." State's Br. 1. But this characterization of a purported conflict between the Legislature and the People is incorrect. Arizona voters *also* enacted the

Prevailing Wage Law. *See* Laws 1984, S.C.R. No. 1001, § 1 (Referendum Measure, § 3).

The State also faults the Superior Court for beginning "its analysis by highlighting differences in the underlying policy goals, purposes, and calculation methodologies of prevailing wage laws versus minimum wage laws" instead of "assess[ing] whether a conflict existed on the plain text." *Id.* at 8; *id.* at 9-11.

As a preliminary note, the State focuses excessively on "the superior court's reasoning" and "the superior court's construction" throughout its brief. State's Br. 3, 16; *see also id.* at 1, 4, 6, 8, 9, 11, 15. This Court reviews questions of statutory interpretation de novo. Thus, the relevant question is not what the Superior Court said (although its reasoning was sound), but rather, what the relevant statutes mean and how they interact with each other. *See* *Lake Havasu Resort, Inc. v. Com. Loan Ins. Corp.*, 139 Ariz. 369, 373 (App. 1983) ("On appeal, we will sustain the trial court's ruling on any theory supported by the evidence, even though the trial court's reasoning may differ from our own.").

More fundamentally, however, the State misunderstands the issue. The question in this case is whether *Prevailing Wage* laws are a type of *Minimum Wage* law such that Section 23-364(I)'s authorization of municipal *Minimum Wage* laws impliedly repeals Section 34-321's prohibition on municipal *Prevailing Wage* laws.

Because the Minimum Wage is simply a different animal from Prevailing Wage laws, no such repeal exists here. That alone defeats the State's argument.

The statutes do not define the phrases "minimum wage" or "prevailing wage." Therefore, the Court must ascertain what those terms mean "according to the common and approved use of the language," taking into account any "peculiar and appropriate" meaning of "[t]echnical words and phrases." A.R.S. § 1-213. That means considering how the terms "minimum wage" and "prevailing wage" are commonly understood and used, for example, in dictionaries, court opinions, statutes, regulations, and other sources. As Plaintiffs detail in their principal briefing, and in their Response to the Amicus Brief of the City of Tempe, those sources demonstrate that a Prevailing Wage law is not a Minimum Wage law because the two types of law fundamentally differ in a variety of ways:

- They regulate different entities: public contractors versus employers in general;
- They are implemented differently: through clauses in public works contracts versus through direct regulation;
- They set different types of requirements: occupation- and locality-specific federal Department of Labor formulas versus a single, broadly applicable legislative determination;

- They appear in different statutory titles: Title 34, Public Buildings and Improvements versus Title 23, Labor;
- They involve different policy considerations.

*See* Ans. Br. 18-25.

These are not "secondary interpretive principles," as the State claims. State's Br. 9. Rather, these differences are apparent from the statutory text, structure, and ordinary usage—the primary tools of statutory construction. A faithful textual reading does not (as the State urges) turn a blind eye to such factors and simply guess at the meaning of undefined terms in the abstract. Rather, this Court "construe[s] the statute as a whole, and consider[s] its context, language, subject matter, historical background, effects and consequences, and its spirit and purpose." *Ariz. Dep't of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 143 ¶ 10 (2008) (citations omitted & alterations adopted)); *see also State v. Bouhdida*, 560 P.3d 368, 370 ¶ 7 (Ariz. App. 2024) ("We do not interpret statutory provisions in a vacuum, but 'in view of the entire text, considering the context and related statutes on the same subject.'" (citation omitted)).[1]

[1] The State's hypothetical about competing state and local provisions on littering is misplaced because Plaintiffs are not speculating about what "motivated" the laws' enactment. State's Br. 10-11. "Motivation" is irrelevant. *Wait v. City of Scottsdale*, 127 Ariz. 107, 108 (1980). Instead, the question is resolved by considering the nature, mechanism, and purpose of the laws in question. As the Supreme Court said in *Summerfield v. Superior Ct.*, 144 Ariz. 467, 475 (1985), "[t]he solution to this problem cannot be found in a methodology which requires us to assume or

## II. There is no irreconcilable conflict between the statutes.

Even if the Cities or Amici could point to another *plausible* construction whereby the two statutes might "appear to conflict," State's Br. 11 (citation omitted),[2] that would still not overcome Section 34-321(B)'s prohibition, because the doctrine of implied repeal is a *last resort*—one this Court uses only when "no reasonable construction can [reconcile the] two statutes," *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122-23 (1970) (citation omitted). But here, "there is a straightforward way to construe both laws harmoniously." Appx53.

Specifically: a Minimum Wage ordinance sets "a specifi[c] hourly wage guaranteed to all qualified workers" in a jurisdiction, while Prevailing Wage ordinances are contractor-specific requirements "calculated based on … wages paid in a given locale and based on a sum of various compensation factors," including locality and occupation. *Harris v. Atlas Single Ply Sys., Inc.*, 593 N.E.2d 1376, 1377 (Ohio 1992); *see* Ans. Br. 15-20.

The State contrives a conflict between the statutes only by committing a fallacy. It says that both Minimum Wage laws and Prevailing Wages laws "address the lowest amount of wages an employer may permissibly pay an employee," and

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divine a legislative intent," but "in a study of the statute … and [the] common law principles governing its application."

[2] Their construction is not plausible, for all the reasons Plaintiffs have explained in their principal briefing, their response to the Tempe amicus brief, and below.

therefore that Prevailing Wages laws fall within the category of Minimum Wage laws. State's Br. 5-6. But that commits the fallacy of equivocation. *See* Stephen M. Rice, *A Design-Focused Approach to Legal Argument and the Logical Fallacy of Equivocation*, 54 U. Mem. L. Rev. 375, 398-406 (2023); *cf. Gonzalez v. Liberty Mut. Fire Ins. Co.*, 981 F. Supp.2d 1219 (M.D. Fla. 2013). This fallacy occurs when a word with a specific, technical meaning is used instead in a broader, more general sense, to lead to an invalid conclusion. For instance, *Gonzalez* concerned an insurance contract covering "structural damage" to a building. The plaintiffs argued that the policy should cover essentially *all* damage to their building, because a building is a "structure." But the court said no: the word "structure" in the insurance policy meant something more narrow and precise: it referred specifically to those elements that "bear[] the load of the building, and that provide[] the building durability and integrity." *Id.* at 1225.

The State's argument suffers from the same fallacy. Yes, Prevailing Wages set a "minimum" in the *broader* sense of the word, since they require that a public works employee's payment be no less than the applicable rate for a given occupation, locality, etc. But that does not make Prevailing Wages laws a M*inimum Wage* as commonly or legally understood. "Minimum Wage" here means *true* minimum wage: a law that applies to "every person whose employment

contemplate[s] compensation." *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947).

The State cites two 90-year-old cases, *Highland Park Realty Co. v. City of Tucson*, 46 Ariz. 10 (1935), and *State v. Anklam*, 43 Ariz. 362 (1934), to argue that "Arizona courts have historically treated prevailing wage laws as a form of minimum wage." State's Br. 6. But neither supports this conclusion. While both did refer to Prevailing Wage laws colloquially as "fix[ing] hours of labor and the minimum wages of employees of the state and its political subdivisions," *Anklam*, 43 Ariz. at 366, neither case considered or addressed the distinction between Prevailing Wages and Minimum Wages, and neither case discussed the prohibition on Prevailing Wages laws in Section 34-321(B)—which, of course, was adopted many decades after those cases. Moreover, the first Prevailing Wage law (the federal Davis-Bacon Act) was adopted in 1931, before both these decisions, and the first federal Minimum Wage Law, the Fair Labor Standards Act, was adopted in 1938, after both cases.[3] Thus courts had not been called upon to discuss the distinction. A court ruling sets precedent only for questions actually considered and decided, so the imprecise language in *Highland Park Realty* and *Anklam* is at best only dicta. *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 81 (1981).

[3] Arizona did not adopt a statewide Minimum Wage law until Proposition 202 in 2006.

If anything, those cases strengthen Appellees' position, because they show that Arizona has always treated Prevailing Wages determinations as a matter for *statewide* regulation, as opposed to a municipality-by-municipality patchwork. Section 34-321(A) declares that "the rates of wages paid under public works contracts" is a matter that "transcends local or municipal interests and is of statewide concern"—and that has been true since the 1930s. Yet the voters who enacted the Minimum Wage Act declined to undo that statute's prohibition on local prevailing wage ordinances that voters also enacted decades earlier.

## III. Section 34-321(B)'s specific prohibition overrides any general authorization in the Minimum Wage Act.

The State invokes the general/specific canon to argue that the Minimum Wage law overrides the purportedly more general prohibition on Prevailing Wages ordinances. This argument fails for two reasons.

First, it fails because the general/specific canon does not apply in the first place. The canon "only applies when 'conflicting provisions cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict.'" *CSX Corp. v. United States*, 18 F.4th 672, 683 (11th Cir. 2021) (quoting Antonin Scalia & Bryan Ganer, *Reading Law: The Interpretation of Legal Texts* 183 (2012)). Since the two statutes can easily be reconciled—cities may adopt Minimum Wage ordinances but not Prevailing Wage ordinances, and the ordinance

at issue is the latter, and therefore invalid—the general/specific canon does not apply.

Even if the Court were to apply the rule, however, the result would be that the challenged ordinances must fail. Assuming the State's flawed premise that a Prevailing Wage ordinance is a species of Minimum Wage law, Section 34-321(B) specifically prohibits *that species*—and therefore, under the general/specific rule, Section 34-321(B) would still control over the Minimum Wage Act's authorization to enact minimum wage laws *in general*. Ans. Br. 25-28. Section 34-321(B) may be broader in the sense that it "applies generally to all agencies and political subdivisions of the state," State's Br. 14, but that generality has nothing to do with the question here of what authority *cities* have to regulate wages and benefits. Section 34-321(B) *specifically* forbids cities from "in any … manner requir[ing] 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."

The fact that the Minimum Wage Act is to "be liberally construed in favor of its purposes" does nothing to change this. "Liberal construction" is not a license to rewrite statutory text. *State v. Ferraro*, 67 Ariz. 397, 401 (1948). Moreover, "[t]o give the statute a liberal construction, there must first be ambiguous language that

requires construction," *Caruthers v. Underhill*, 235 Ariz. 1, 10 ¶ 38 (App. 2014), and, as Appellees have explained, there is no ambiguity here.[4]

## IV. The VPA does not apply.

Finally, the State argues that Section 34-321(B) "is directly contrary to the explicit intent of the voters who adopted the Minimum Wage Law." State's Br. 17. But neither the VPA nor the State's speculation about "the people's intent," *Id.* at 20, can transmute the Cities' unlawful Prevailing Wage ordinances into legitimate Minimum Wage laws.

First, the VPA applies only when a bill from the Legislature "amends" a prior voter-enacted law. Here, Section 321(B) cannot possibly "amend" the Minimum Wage Law because *it came first*.

The State argues that "[i]f the VPA's principles were irrelevant when the Legislature speaks first and the people second, the Legislature could simply run to the floor and countermand potential initiatives before the people have the chance to vote." State's Br. 20. That concern is misplaced: the voters can always pass an initiative to amend the Legislature's prior bills, even if it "run[s] to the floor" first. Moreover, the VPA only limits the legislature's authority to repeal a voter-

[4] Also, while the Minimum Wage Act "shall not limit the authority of … any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits," Section 23-364(I), that sheds no light on whether another, entirely separate statute (Section 34-321(B)) limits cities' authority to enact prevailing wage ordinances.

approved law; it could not apply to Section 34-321, *which was itself a referendum and thus an act of the voters*.

As for "the people's intent," State's Br. 20, that begs the question. The State offers no legislative history or other evidence to show that "the will of the voters" was to impliedly repeal the Prevailing Wages prohibition, which, again, was itself adopted by the voters. *Id.* at 19. Nor is there any such evidence: nowhere in the measure's text, ballot description, or publicity pamphlet (or any other materials Plaintiffs could find) does the term "prevailing wage" appear, or any other indication that voters intended Section 23-364(I) to authorize municipal Prevailing Wages ordinances. *See* Ans. Br. 30-32. On the contrary, the Minimum Wage Act initiative was entitled "Fair Wages and *Healthy Families* Act," indicating that the measure was intended to apply to all of Arizona's working families, not specifically to municipal contractors. The ballot materials confirmed this intent, stating that "[*a*]*ll* working Arizonans deserve to be paid a minimum wage … ." Prop 202 § 1 (2006) (emphasis added). Moreover, courts construe "statutes adopted by initiative" using the same methods they apply to enactments of the Legislature, *see State v. Gomez*, 212 Ariz. 55, 57 ¶ 11 (2006), and as Plaintiffs have explained, the tools of statutory construction indicate that the Minimum Wage Act was *not* intended to impliedly repeal the Prevailing Wages prohibition.

## CONCLUSION

The Court should affirm.

**Respectfully submitted this 17th day of March 2025 by**:

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Pursuant to Rule 14(a) of the Ariz. R. Civ. App. P., I certify that the body of the attached Plaintiffs-Appellees' Response to State of Arizona's Amicus Brief appears in proportionately spaced type of 14 points, is double spaced using a Roman font, and contains 2,540 words, excluding table of contents and table of authorities.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 17, 2025, she caused the attached Plaintiffs/Appellees' Response to State of Arizona's Amicus Brief to be filed via the Court's Electronic Filing System and electronically served a copy to:

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