ARIZONA COURT OF APPEALS

DIVISION ONE

ASSOCIATED MINORITY CONTRACTORS OF ARIZONA, et al., Plaintiffs/Appellees, v. CITY OF PHOENIX, et al., Defendant/Appellants.	Court of Appeals Division One No. 1 CA-CV 2024-0658 Maricopa County Superior Court No. CV2024-001435

AMICUS CURIAE BRIEF OF THE STATE OF ARIZONA IN SUPPORT OF APPELLANTS

Joshua D. Bendor (No. 031908)
Hayleigh S. Crawford (No. 032326)
Joshua A. Katz (No. 039449)
OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
Joshua.Bendor@azag.gov
Hayleigh.Crawford@azag.gov
Joshua.Katz@azag.gov
ACL@azag.gov

Attorneys for Amicus Curiae State of Arizona

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Decades ago, the Legislature initiated two statutes barring local governments from requiring employers to pay not less than a certain wage to their workers. More recently, Arizonans voted to expressly allow local governments to require employers within their jurisdictions to pay not less than a certain wage to workers. The cities of Phoenix and Tucson subsequently adopted ordinances requiring employers performing public works contracts to pay not less than the prevailing rate of wages for similar work in the area.

Despite the clear text of the voter-enacted laws authorizing local governments to regulate minimum wages, the superior court held that one of the Legislature's old statutes still prohibited Phoenix and Tucson from enacting these ordinances. In doing so, the superior court improperly collapsed the first analytical step—whether the statutes present a conflict—with a secondary one—whether and how the conflict can be resolved. The resulting decision both defies the plain text of the statutes and improperly favors the Legislature's policy choices over those of the People, contrary to Arizona's constitutional design. This Court should reverse.

INTERESTS OF AMICUS CURIAE

The State files this as-of-right brief under ARCAP 16(b)(1)(B) because this case presents issues of statewide importance regarding statutory interpretation and the constitutional right of the people to legislate directly.

BACKGROUND

Until 2006, two laws implemented by the Legislature prevented local governments from regulating minimum wages. First, A.R.S. § 23-362(B) (1997) stated that "[n]o political subdivision of this state may establish, mandate or otherwise require a minimum wage that exceeds the federal minimum wage prescribed in 29 United States Code § 206." Second, A.R.S. § 34-321(B) (1984) (the "Prevailing Wage Ban") provided that:

> 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.

Things changed in 2006 when Arizona voters adopted Proposition 202 by initiative. This voter-approved law, codified in relevant part at A.R.S. § 23-364(I) (the "Minimum Wage Law"), explicitly authorizes local governments to set not just minimum wages, but also minimum benefits, within their jurisdictions: "A county, city, or town may by ordinance

regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. . . ." The voters also further instructed that:

> This article *shall* be liberally construed in favor of its purposes and *shall not limit the authority of* the legislature or *any other body* to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

Id. (emphases added).

Phoenix and Tucson each subsequently adopted an ordinance requiring employers performing public work contracts within the city's geographic boundaries to pay their employees "not less than the prevailing wage rate" for similar work. Appx52.

Plaintiffs sued to enjoin the ordinances, arguing that they were preempted by the Prevailing Wage Ban. Appx4. The Cities argued that the Minimum Wage Law authorized the ordinances and implicitly repealed the Prevailing Wage Ban. *See* Appx51, -53.

The superior court granted summary judgment to Plaintiffs, holding that the Prevailing Wage Ban controlled and preempted the Cities' ordinances. Appx53-54. The crux of the superior court's reasoning was its conclusion that "[a] prevailing wage ordinance is not a minimum wage law"

because minimum wages and prevailing wages serve "different underlying policy goals" and prevailing wages are "not an across-the-board floor" on pay. Appx53; *see also* Appx54 ("The minimum wage and the prevailing wage are two different things."). Based on these extra-textual considerations, the superior court found no conflict between the statutes. *See id.* On this basis, the superior court concluded that the Minimum Wage Law did not impliedly repeal the Prevailing Wage Ban. Appx53. It therefore gave full effect to the Ban while narrowly reading the Minimum Wage Law as expanding local governments' power only with respect to "***the*** minimum wage as established by A.R.S. § 23-363." Appx54 (bold emphasis original).

ARGUMENT

I. The statutes present a conflict.

Every statutory interpretation question starts with the text, which first must be examined as written "without resort to secondary interpretive principles." *E.g.*, *Lattin v. Shamrock Materials, LLC*, 252 Ariz. 352, 354 ¶ 9 (2022) ("We effectuate any clear and unambiguous text without resort to secondary interpretive principles."); *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 330 ¶ 12 (2001) (same). Only if the plain text "appear[s] to conflict" will courts then turn to secondary interpretative principles to aid in

reconciling "one with the other, giving force and meaning to all statutes involved." *UNUM*, 200 Ariz. at 329-30 ¶¶ 11-12; *In re Riggins*, 544 P.3d 64, 69 ¶ 24 (Ariz. 2024) ("Entertaining the notion that [a proposition's] effect on the [statutory text] may be ambiguous, we invoke other, including secondary, tools of statutory construction.").

Thus, the initial question for the Court is whether A.R.S. §§ 34-321(B) and 23-364(I) present a conflict. They do.

A. On their faces, the statutes give conflicting instructions regarding local governments' power to set a floor on wages.

The Minimum Wage Law and the Prevailing Wage Ban facially conflict.

The Prevailing Wage Ban says that a political subdivision (a term that includes local governments) cannot require employers on public works contracts to pay "not less than the prevailing rate of wages for work of a similar nature in the [area] where the project is located." A.R.S. § 34-321(B). Meanwhile, the Minimum Wage Law says that a local government can regulate the "minimum wages and benefits" paid by employers "within its geographic boundaries." A.R.S. § 23-364(I). Thus, both laws address the lowest amount of wages an employer may permissibly pay an employee, but

give opposing instructions on what local governments may and may not mandate in that regard.

As even the superior court acknowledged, the ordinary meaning of "minimum" overlaps with "not less than." *See* Appx54 (acknowledging "overlap in the colloquial meaning of the word 'minimum'"). Indeed, the statutes surrounding the Minimum Wage law use the very same "not less than" phrase as the Prevailing Wage Ban to define the minimum wage. *See* A.R.S. § 23-363(A) (specifying that the minimum wage "shall be *not less than*" a certain dollar amount); *cf.* § 34-321(B) (prohibiting imposition of wage requirements "*not less than*" the prevailing rate in the area) (emphases added). The plain text of both statutes thus address the same topic: the lowest wage—the minimum—that an employer can pay an employee.

Arizona caselaw confirms the overlap between "minimum wages" and wages "not less than" a prevailing wage. Arizona courts have historically treated prevailing wage laws as a form of minimum wage. For example, in 1933 the Legislature passed two laws: (1) "chapter 12," which provided for payment of "not less than the minimum per diem wages set by

the state highway commission" for certain state employees,[1] and (2) "chapter 71," which provided that certain government contracts must contain a provision requiring payment of a prevailing wage.[2] Notwithstanding that chapter 12 set an across-the-board minimum wage, and chapter 71 mandated a wage "not less than" a prevailing wage, the Arizona Supreme Court described both enactments as "minimum wage laws," *Highland Park Realty Co. v. City of Tucson*, 46 Ariz. 10, 12, 14 (1935), with the purpose of "fixing minimum wages" for covered workers, *State v. Anklam*, 43 Ariz. 362, 369-70 (1934). *See also* Op. Atty. Gen. No. I23-004 at *4-5 (June 15, 2023) (collecting federal cases, included United States Supreme Court cases, that describe federal prevailing wage laws as "minimum wage" laws).

In short, plainly read, the text of the Prevailing Wage Ban and the Minimum Wage Law provide conflicting instructions regarding local

---

[1] Laws 1933, H.B. No. 37 ("chapter 12") at 12, available at https://azmemory.azlibrary.gov/nodes/view/20952?keywords=minimum%20wages&type=phrase&highlights=WyJtaW5pbXVtIiwid2FnZXMiLCJwcmV2YWlsaW5nIiwicmF0ZSJd.

[2] Laws 1933, H.B. No. 123 ("chapter 71") at 140, available at https://azmemory.azlibrary.gov/nodes/view/20952?keywords=minimum%20wages&type=phrase&highlights=WyJtaW5pbXVtIiwid2FnZXMiLCJwcmV2YWlsaW5nIiwicmF0ZSJd.

governments' power to set a floor on the wages payable to employees working within their geographic bounds.

B. The superior court erred by finding no conflict based on extra-textual considerations.

Despite acknowledging the overlapping meaning of "minimum" wages and wages "not less than" a certain amount, the superior court found that the Minimum Wage Law and Prevailing Wage Ban do not conflict because "[p]revailing wage regulations are substantially different from minimum wage statutes" in terms of policy goals and calculation methods. Appx53. That was error.

First, and most fundamentally, the superior court failed to assess whether a conflict existed on the plain text. Instead, the court began its analysis by highlighting differences in the underlying policy goals, purposes, and calculation methodologies of prevailing wage laws versus minimum wage laws. Appx53. While these considerations might be relevant after a review of the statutory language yields an apparent conflict, they do not resolve whether the plain text of §§ 23-364(I) and 34-321(B) present a conflict in the first place. *See, e.g.*, *UNUM*, 200 Ariz. at 329-30 ¶¶ 11-12 (turning to secondary interpretive principles only after determining that

statutes "appear to conflict"); *Riggins*, 544 P.3d at 69 ¶ 24 (looking to secondary interpretive principles only after determining that ambiguity exists). And tellingly, the superior court made no attempt whatsoever to tie its statements about purpose and policy to the actual text of §§ 23-364(I) and 34-321(B). *See* Appx53-54.

Second, even if they were properly considered, none of the alleged differences in prevailing and minimum wage requirements cited by the superior court eliminate the conflict between §§ 23-364(I) and 34-321(B) here.

For example, the superior court relied heavily on the fact that minimum wage laws "set a single, across-the-board floor on wages, while prevailing wage measures impose a complex, fluctuating schedule of wage standards (determined by federal law and regulation) meant to approximate average wages for specific occupations and localities." But merely using different yardsticks for calculating the lowest wage payable in a given scenario does not eliminate the conflict over whether a local government has the power to adopt *any* yardstick, period.

Nor does it demonstrate that the Prevailing Wage Ban and Minimum Wage Law address different subjects. Logically, setting a wage floor requires two steps. First, a law must establish a legal obligation, requiring

payment of a wage that is not less than a certain amount. Next, it must either specify the minimum amount to be paid, or provide a means of calculating the minimum amount to be paid. Sometimes this is done directly by statute, and sometimes by reference to an outside source. In the case of Arizona's statewide minimum wage, that number is tied to a Department of Labor statistic. In the case of the Cities' ordinances, it is tied to a different Department of Labor statistic, the prevailing wage. In both cases, however, the law or ordinance sets a wage minimum.

For the same reasons, any purported difference in the "underlying policy goals" of the Minimum Wage Law and Prevailing Wage Ban are also misplaced. *See* Appx53-54. Whether the concepts of a prevailing wage and a minimum wage serve different or overlapping policy goals is simply irrelevant to determining whether the words of §§ 23-364(I) and 34-321(B) give conflicting instructions to local governments in the first instance.

For illustration, suppose a city adopts an ordinance imposing a $500 fine for littering, while a state law says that any fine for littering shall be not less than $1,000. The city may have been motivated by littering prevention, and the state by a desire to generate revenue for environmental cleanup

projects. That does not change that the ordinance and law give conflicting instructions on the same subject.

Last but not least, the superior court relied exclusively on out-of-state authority as support for its extra-textual conclusions. *See* Appx53. Other state courts' musings on legislative intent in the drafting of their statutes, relying on their legislative history, have little to say about the purposes of Arizona's laws. *See Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 180 (App. 2004) (turning to out-of-state authority only in the absence of Arizona authority).

II. The Minimum Wage Law must be read as exempting local governments from the Prevailing Wage Ban's prohibition.

"[W]hen two statutes appear to conflict, whenever possible, [courts] adopt a construction that reconciles one with the other, giving force and meaning to all statutes involved." *UNUM*, 200 Ariz. at 333 ¶ 28. But if "two conflicting statutes cannot operate contemporaneously, the more recent, specific statute governs over [an] older, more general statute." *Id.* ¶ 29 (internal quotation omitted).

The parties disagree whether the Minimum Wage Law and Prevailing Wage Ban can be harmonized. *Compare* Op. Br. at 30-33 (arguing that the

Minimum Wage Law repealed the Prevailing Wage Ban in full), *with* Answering Br. at 11-12 (arguing that "the Prevailing Wage Prohibition and the Minimum Wage Act are reconcilable"). But whether viewed through an implied repeal lens or a harmonization one, the Minimum Wage Law must be read as an exception to the prohibition in the Prevailing Wage Ban. This is the only reading that preserves the explicit intent of the voters, consistent with Arizona's constitutional design. *See infra* **Arg. § II.B**.

A. The Minimum Wage Law and Prevailing Wage Ban irreconcilably conflict with respect to local governments' powers.

It is impossible to simultaneously give full effect to every word and phrase in §§ 23-364(I) and 34-321(B). Under the Prevailing Wage Ban, all state agencies and political subdivisions—which includes local governments—are forbidden from enacting minimum prevailing wage requirements, while under § 23-364(I), local governments are expressly authorized to enact minimum wage and benefit requirements for all employers in their geographic bounds. Thus, either the phrase "political subdivisions" in the Prevailing Wage Ban must give way to the newer, voter-initiated law, or local governments' express authority to "regulate minimum

wages and benefits within its geographic boundaries" must give way to the older, Legislature-initiated law.

To answer that question, the Court must examine which statute is more specific or more recent. When the Legislature or the voters "enact[] a new statute that applies to preexisting statutes, we presume [they] intended some change in existing law." *Monroe v. Arizona Acreage LLC*, 246 Ariz. 557, 562 ¶ 17 (App. 2019) (quoting *Lavidas v. Smith*, 195 Ariz. 250, 254, ¶ 17 (App. 1999)). And "when two statutes truly conflict, either the more recent or more specific controls." *Baker v. Gardner*, 160 Ariz. 98, 101 (1988).

When a later statute, like the Minimum Wage Law, expresses a more specific intent than a more general existing statute, the new statute is "taken as an exception to the general intent, and both will stand." *State v. Cassius*, 110 Ariz. 485, 487 (1974); *see also* A.R.S. § 1-245; *Riggins*, 544 P.3d at 70 ¶ 32 (describing A.R.S. § 1-245 as a "legislative codification of the . . . rule that a subsequent statute repeals an earlier statute" (citation omitted).

Here, each statute is more specific than the other in a certain respect. The Prevailing Wage Ban is more specific in that it deals only with minimum wages based on a prevailing wage standard and payable under public works contracts, whereas the Minimum Wage Law deals with the regulation of all

types of minimum wages and benefits, for all types of work. Conversely, the Minimum Wage Law is more specific in that it conveys authority specifically to local governments, whereas the Prevailing Wage Ban applies generally to all agencies and political subdivisions of the state.

When two statutes are each more specific in different ways, the key question is which statute is more specific as to the issue at hand. *See, e.g.*, *Baker*, 160 Ariz. at 101 (concluding that an anti-deficiency statute that applied "to a particular, limited group of mortgages and trust deeds" like the one in dispute was more specific and should control). Here, the issue is local authority to regulate wage and benefit standards within geographic bounds. Importantly, the Minimum Wage Law explicitly advises that it is to "be liberally construed in favor of its purposes and *shall not limit* the authority" of local governments "to adopt any law or policy that requires payment of higher or supplemental wages or benefits" than those required by state law. A.R.S. § 23-364(I) (emphasis added). That is the exact question now before the Court—what authority these local governments have to adopt a law or policy requiring payment of a higher wage or benefit than required under state law, as they did when they adopted their prevailing wage ordinances. Because the Minimum Wage Law is more specific to that topic, it controls

over the statute addressing the power of all agencies and political subdivisions generally.

Even if it were unclear which statute is more specific, however, the recency of the Minimum Wage Law tips the scales in its favor. "[W]hen two statutes truly conflict, *either* the more recent *or* more specific controls." *Baker*, 160 Ariz. at 101 (emphases added). So, "[a]lthough both statutes here are quite specific, [the court] must give effect to the more recent enactment." *Lavidas*, 195 Ariz. at 253 ¶ 13; *see also Baker*, 160 Ariz. at 101 (statute adopted in 1971 should prevail over statute "from territorial days"); *Monroe*, 246 Ariz. at 562-63 ¶¶ 17, 21 (finding more recent statute of limitation governed where parties argued that each statute at issue was more specific than the other in different ways). The voters enacted § 23-364 in 2006, while § 34-321 is forty years old. As the more recent statute, the Minimum Wage Law has the advantage.

B. Reading the Prevailing Wage Ban as narrowing the Minimum Wage Law violates the voters' explicit intent, contrary to Arizona's constitutional design.

Instead of acknowledging the apparent conflict on the face of the statutes, the superior court concluded that prevailing wages and minimum wages are entirely different animals and thus no conflict exists. In effect, the

superior court concluded that the Minimum Wage Act never gave local governments the power to establish a minimum wage keyed to a prevailing rate of wages, because a prevailing wage is not part of the "minimum wages and benefits" local governments can regulate under § 23-364(I). But that conclusion contradicts both the power expressly given to local governments and the voters' stated intent.

First, the Minimum Wage Law expressly authorizes local governments to "regulate minimum wages and benefits within [their] geographic boundaries," subject to one—and only one—limitation: they "may not provide for a minimum wage lower than that prescribed in this article." *Id.* But the superior court's construction imposes an additional, and significant, limitation on local governments' powers. In effect, the superior court's reading amends the Minimum Wage Law to read: local governments may "regulate minimum wages and benefits within [their] geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article," *and* they may not adopt any minimum wage other than a minimum wage that applies across-the-board to all employees within its geographic bounds. Not only does this new limitation have no foundation in the statutory text, but it also conflicts with other aspects of

local governments' power with respect to minimum wages. *See, e.g.*, Op. Br. at 19-23.

Second, this limitation is directly contrary to the explicit intent of the voters who adopted the Minimum Wage Law. In § 23-364(I), the voters explicitly instructed that "[t]his article *shall be liberally construed* in favor of its purposes and *shall not limit the authority of* the legislature or *any other body* to *adopt any law or policy that requires payment of higher or supplemental wages or benefits*, or that extends such protections to employers or employees not covered by this article." (Emphases added).

Under Arizona's Constitution, the voters reserved to themselves an independent and overriding legislative power. *See* Ariz. Const. art. IV, Pt. 1 § 1(1) ("[T]he people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature."). After becoming frustrated with the Legislature's attempts to interfere with the people's right of direct democracy, the voters opted to adopt a "defensive bulwark protecting 'Arizona's strong public policy favoring the initiative and referendum'" in

the form of the Voter Protection Act, or VPA. *Riggins*, 544 P.3d at 71 ¶ 38 (quoting *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 7 (2009)).

The VPA is a constitutional provision that prohibits the Legislature from amending or repealing voter-approved legislation "unless the amending legislation furthers the purposes of such measure" and is approved by "at least three-fourths of the members of each house of the legislature." Ariz. Const. art. IV, Pt. 1 § 1(6)(C). Although not directly applicable here, the principles underlying the VPA further illustrate why the Prevailing Wage Ban cannot be construed to limit the explicit intent of the voters as expressed in the Minimum Wage Law. *See Riggins*, 544 P.3d at 71 ¶ 37 (recognizing that even when a "case does not turn on the [VPA]" because "the legislative act preceded the voter initiative," reconciling the two "does implicate its principles and purpose to deter the legislature's frustration of voter initiatives.").

Suppose the Minimum Wage Law were currently in effect, but not the Prevailing Wage Ban. It is unlikely anyone would read the Minimum Wage Law as containing a prevailing wage carve-out. Rather, its natural meaning is that local governments may regulate any kind of minimum wage, whether

tied to a United States Department of Labor prevailing wage statistic, as the ordinances do, or tied to the United States Department of Labor Consumer Price Index statistic, as is the statewide minimum wage. *See* A.R.S. § 23-363(B) (tying statewide minimum wage to CPI). Thus, absent the Prevailing Wage Ban, most would agree local governments may set minimum wages keyed to the prevailing wage.

Suppose the Legislature then took up, and passed, the Prevailing Wage Ban. It would conflict with the existing Minimum Wage initiative by removing power expressly granted local governments. And because limiting local government authority does not further the purposes of the Minimum Wage Law, a subsequent Prevailing Wage Ban would be disallowed by the VPA.

But legislation is not a race. The point of the VPA is not that whoever speaks first prevails. It is that the people are due deference. When the voters act first, deference under the VPA means subsequent conflicting legislative enactments are void. When the order is reversed, the two enactments are both permitted, but the constitutional principles underlying the VPA require the Legislative enactment to be read in accordance with the will of the voters.

If the VPA's principles were irrelevant when the Legislature speaks first and the people second, the Legislature could simply run to the floor to countermand potential initiatives before the people have the chance to vote. Indeed, if that were the law, it would have decided *In re Riggins*. There, the Legislature made changes to the bankruptcy exemptions while an initiative was pending. 544 P.3d at 66 ¶¶ 4–6. The initiative text did not reference the law with the Legislature's changes, because they did not exist yet when the initiative was filed. If the race approach were right, the initiative would be void to the extent it conflicted with the Legislature's amendments. But that is not what the Court did.

Neither should this Court. Instead, the Court still must ensure that it is the people's intent in legislating that prevails, not the contrary intent of the Legislature, regardless of the sequence of the enactments. To do so, the Court should give the Minimum Wage Law its fullest meaning, and when determining what the Prevailing Wage Ban means, hold the former fixed.

CONCLUSION

This Court should reverse.

RESPECTFULLY SUBMITTED this 24th day of February, 2025.

KRIS K. MAYES, ARIZONA
ATTORNEY GENERAL

By /s/ Hayleigh S. Crawford
Joshua D. Bendor (No. 031908)
Solicitor General
Hayleigh S. Crawford (No. 032326)
Deputy Solicitor General
Joshua A. Katz (No. 039449)
Assistant Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Attorneys for Amicus Curiae State of Arizona