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Phoenix's new prevailing wage law is worse than the last one — and just as illegal

Opinion: Phoenix rescinded its prevailing wage ordinance the first time because of legal concerns. This second attempt is no better.

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It's harmful for minorities, entry-level workers and small businesses. It's illegal and has a troubling, discriminatory history.

And it will cost the city nearly \$100 million.

Despite all that, the Phoenix City Council pushed through, yet again, another counterproductive and unconstitutional "prevailing wage" ordinance.

Remarkably, the latest mandate is even worse than the last one.

Phoenix passed it with little review

On Jan. 9, by a 6–3 vote, the City Council passed an ordinance restricting private businesses from bidding or working on municipal public works contracts unless they pay well above market rates, based on complicated formulas issued by the federal government.

The ordinance also saddles these businesses with burdensome paperwork and notice requirements, and it imposes heavy fines and other penalties, even for minor or accidental violations.

What's even more remarkable, however, is that this is virtually the same ordinance the Phoenix City Council passed last March, with barely 24 hours' notice and against the advice of the city attorney (who admitted on the record that her team hadn't had a chance to review the ordinance and that "there might be some legal issues" with it) and the city manager (who publicly stated that the ordinance would cost the city upward of \$93 million in the coming year).

Prevailing wage law: Should be tested in court

The city attorney was right: there *were* legal issues with the ordinance.

As the Goldwater Institute pointed out in a letter urging the City Council to repeal the mandate, state law expressly prohibits cities and towns from engaging in this kind of piecemeal regulation of “prevailing wage” mandates for public works contractors.

Prevailing wage mandates hurt workers

And with good reason: “Prevailing wage” mandates are terrible policy.

They date back to 1931, when Congress passed a federal prevailing wage law intended to favor white workers and white-only labor unions over nonunionized and minority workers.

Since then, more than half the states have adopted their own prevailing-wage measures, and again and again, these laws have proven harmful to workers, businesses and taxpayers.

True to the policy’s racist and xenophobic origins, research has proven that prevailing wage mandates disproportionately harm minorities, entry-level workers and small businesses, who are forced out of the market because they can’t afford to pay the higher costs or navigate the bureaucracy these laws create.

And of course, they hurt taxpayers, who are forced to shell out more and wait longer for public-works projects to be completed.

In some ways, the new law is even worse

Less than a month after passing the prevailing wage mandate, amid considerable outcry from small businesses and other affected stakeholders, the Phoenix City Council repealed the illegal ordinance.

But they’re right back at it. The latest prevailing wage ordinance is bad policy for all the same reasons as the old one, and it’s just as illegal.

In fact, in some ways it’s even worse:

In addition to violating Arizona’s clear prohibition on municipal prevailing wage mandates, it’s unconstitutional — it denies businesses and entrepreneurs due process of law by giving an unelected bureaucrat, the city engineer, virtually unlimited power to investigate and punish businesses for alleged violations.

That's why the Goldwater Institute is suing the city on behalf of dozens of Arizona businesses. We're challenging the ordinance for violating both state law and the Arizona Constitution, and we're asking the court to strike it down in its entirety.

Life is hard enough these days with persistent inflation, labor shortages and economic uncertainty. The last thing Phoenix taxpayers, workers and entrepreneurs need right now is a costly, wrong-headed bundle of bureaucratic red tape like this ordinance.

We've shut it down before — and we're ready to do it again.

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