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COURT SEAL

MICHAEL K. JEANES, CLERK
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DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF ARIZONA

COUNTY OF MARICOPA

THE FLAGSTAFF LIVING WAGE COALITION, an unincorporated association; STEVEN LEVIN, a single person; and, NICOLE MARIE RUIZ, a single person,

Plaintiffs,

v.

STATE OF ARIZONA, a Body Politic; and, MARK BRNOVICH, in his Official Capacity as Attorney General of the State of Arizona,

Defendants.

No. CV2015-004240

COMPLAINT FOR DECLARATORY RELIEF

INTRODUCTION

1. In 1998, Arizona's voters approved Proposition 105, the Voter Protection Act (VPA). The VPA prohibits the Arizona Legislature's repeal of a voter-approved referendum or initiative. *See* ARIZ. CONST. art. 4, pt. 1, section 1, (6)(B).

2. In 2006, the voters of Arizona overwhelmingly passed the "Raise the Arizona Minimum Wage for Working Arizonan's Act" ("Proposition 202"), codified at A.R.S. §§ 23-362 through 23-364. Among other things, Proposition 202 authorized cities and counties to set the local minimum wage but those wages must be set at rates higher than the statewide minimum wage. *See* A.R.S. § 23-364(I).

3. In 2013, the Arizona Legislature adopted A.R.S. § 23-204 by simple majorities in the Senate and House and—contrary to the express provisions of Proposition 202 and A.R.S. § 23-364(I)—thereby removed local control over minimum wages and other employee benefits.

4. Because the Arizona Legislature ignored the requirements of the 1998 Voter Protection Act, and superseded Proposition 202, Plaintiffs request the Court's declaration striking A.R.S. § 23-204 as unconstitutional and thereby returning control over the minimum wage to Arizona's counties, cities, and towns.

JURISDICTION AND VENUE

5. Plaintiffs request no money damages. They seek instead the Court's declaration of their rights under A.R.S. §§ 23-204 and 23-364(I). Under A.R.S. § 12-1831, this Court has the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."

6. Venue lies in this court because Defendant Attorney General Mark Brnovich holds office in Phoenix, Maricopa County, Arizona. *See* A.R.S. § 12-401(16) ("Actions against public officers shall be brought in the county in which the officer, or one of several officers, holds office.").

PARTIES

7. Plaintiff Flagstaff Living Wage Coalition ("FLWC" or "the Coalition")—an unincorporated group of Flagstaff residents and voters whose members include low-wage workers—actively seeks a minimum wage in Flagstaff higher than the statewide minimum wage and certain minimal employee benefits.

8. The Coalition aims to achieve these higher minimum wages and better employee benefits through either local initiative in Flagstaff (to be placed on the 2016 election ballot) or a vote of the Flagstaff City Council. (*See Affidavit of Flagstaff Living Wage Coalition (Eva Putzova—Chairperson)* ("Putzova Aff.")).

9. Since 2004, Plaintiff Steven Levin has lived in Flagstaff where he has had several low-paying jobs. Since May 2014, he has been employed by a Flagstaff-based corporation. He received a raise from $8.50 per hour to $9.00 per hour in February 2015. Mr. Levin works full-time but, due to the high cost of living in Flagstaff, lives from paycheck to paycheck.

10. Mr. Levin is a member of FLWC. He will suffer direct and palpable injury absent relief. That is, he will be directly and positively affected by a higher local minimum wage and better benefits if Flagstaff voters or the Flagstaff City Council approve a local living wage initiative. *See* Putzova Aff.

11. Plaintiff Nicole Marie Ruiz has lived in Flagstaff since 2008. For the last year, she has been employed by a Flagstaff-based corporation. She works full-time and earns $9.00 per hour.

12. Ms. Ruiz is a member of FLWC. She will suffer direct and palpable injury absent relief. That is, she will be directly and positively affected by a higher local minimum wage and better benefits if Flagstaff voters or the Flagstaff City Council approve a local living wage initiative. *See* Putzova Aff.

13. Defendant State of Arizona is served by Attorney General Mark Brnovich, the chief legal and law enforcement officer of the State of Arizona.

14. Defendant Brnovich is sued only in his official capacity. Mr. Brnovich is charged with enforcing the laws of the State of Arizona, including state preemption of the field of minimum wage compensation described in the challenged statute, A.R.S. § 23-204. *See* ARIZ. CONST. art. 5, Section 9.

15. Defendant Brnovich's enforcement of A.R.S. § 23-204 would directly and adversely affect the Coalition, Mr. Levin, and Ms. Ruiz.

16. In addition, in cases in which the constitutionality of a statute is being challenged, the Declaratory Judgments Act requires that the Attorney General be served with a copy of the complaint, together with a claim of unconstitutionality, and be allowed to respond on behalf of the State. A.R.S. § 12-1841(A). Accordingly, Arizona courts have uniformly held that the Arizona Attorney General is an appropriate party to such cases because the Attorney General's participation is authorized by the Declaratory Judgments Act itself. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 469, 160 P.3d 1216, 1227 (App. 2007)(citing *Ethington v. Wright*, 66 Ariz. 382, 388, 189 P.2d 209, 213 (1948) and *City of Tucson v. Woods*, 191 Ariz. 523, 526-27, 959 P.2d 394, 397-98 (App. 1997)).

The 1998 Voter Protection Act

17. In 1998, the voters of Arizona adopted the Voter Protection Act (VPA). The VPA amended the Arizona Constitution to limit the Legislature's authority to modify voter-approved initiatives and referenda. See ARIZ. CONST., art. 4, pt. 1, section 1 (6)(B), (C) and (14).

18. The VPA prohibits the Legislature from amending voter-approved measures unless the new law (a) furthers the purposes of the referendum and (b) is approved by at least three-fourths of the members of each chamber.

19. The VPA prohibits the Legislature altogether from repealing any voter-approved measure.

Proposition 202: Authorizing Local Regulation of Minimum Wages

20. In 2006, Arizona voters approved a citizens' initiative entitled the "Raise the Arizona Minimum Wage for Working Arizonans Act." Under A.R.S. § 23-364(A), the Industrial Commission of Arizona was given the authority to enforce and implement the Act.

21. Proposition 202 revoked what had been state preemption of the field of minimum wage regulation. *See* A.R.S. § 23-263 (1997) ("No 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 section 206.").

22. Proposition 202 granted cities and counties the right to set local minimum compensation and benefits at levels higher than statewide minimum wages and benefits: "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." *See* § A.R.S. 23-364(I).

23. Although the title of Proposition 202 stated that it replaced A.R.S. § 23-362, the text of the proposition did not explicitly revoke and replace A.R.S. § 23-362.[1] As a result, two versions of A.R.S. § 23-362 remain in the Arizona Revised Statutes. The first version of A.R.S. § 23-362 was impliedly revoked by Proposition 202. *See* 2007 Ariz. Op. Atty. Gen. No. I07-002 (2007 WL 504666).

A.R.S. § 23-204: The Legislature Wrests Control Over the Minimum Wage From Arizona's Cities and Towns

24. In 2013, the Arizona Legislature adopted HB2280 (later codified as § A.R.S. 23-204), which provides as follows: "The regulation of employee benefits, including compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern. The regulation of employee benefits pursuant to this chapter and federal

[1] The official title of the proposition was "An Initiative Measure Repealing Section 23-362, Amending by Adding New Section 23-362 Relating to the Arizona Minimum Wage Act," codified at A.R.S. §§ 23-362 through 23-364 (effective January 1, 2007).

law is not subject to further regulation by a city, town or other political subdivision of this state."

25. The Legislature passed HB2280 by a vote of 32 to 27 in the House of Representatives on March 4, 2013, and, on April 18, 2013, by a vote of 17 to 11 in the Arizona Senate. Neither vote met the supermajority required by the VPA. *See* ARIZ. CONST., art. 4, pt. 1, section 1, (6)(C) and (14). The bill was signed by Gov. Brewer on April 29, 2013.

26. HB2280 directly conflicts with Proposition 202 by taking away local authority over minimum wages and benefits even though the state's voters had authorized that local control just seven years earlier when they approved Proposition 202.

The High Cost of Living in Flagstaff and Low Statewide Minimum Wage

27. A recent study based on data from the U.S. Department of Labor ranked Flagstaff as having the lowest private-sector wages in the United States when adjusted for cost of living. *See* http://www.governing.com/topics/mgmt/gov-metros-where-wages-are-lowest.html.

28. Prescott, Kingman, Lake Havasu City, and other Arizona cities also made the list of cities with lowest average wages in the nation when adjusted for cost of living.

29. In 2006, the voters of Arizona overwhelmingly passed Proposition 202. In the preamble of Proposition 202, the People of the State of Arizona made the following findings and declared their purpose in enacting the Proposition:

a. All working Arizonans deserve to be paid a minimum wage that is sufficient to give them a fighting chance to provide for their families.

b. 70% of Arizona workers earning the minimum wage are adults.

c. More than 145,000 working Arizonans will benefit by increasing the minimum wage, half of whom are working women struggling to live on less than $11,000 per year.

d. Increasing the minimum wage reduces dependency on taxpayer-funded public services [ ].

30. The Industrial Commission of Arizona (ICA) recently announced an increase of Arizona's minimum wage to $8.05 per hour effective January 1, 2015. The $0.15 raise

represent a 1.9 percent increase over the 2014 rate of $7.90 per hour. The increase affects more than 58,000 Arizona workers who earned hourly wages at (24,000) or below (34,000) the minimum wage. *See* http://www.govdocs.com/arizona-2015-minimum-wage-increase. Today, these thousands of Arizona's low-wage workers will be affected the Court's declaration in this action.

CLAIM FOR RELIEF

(A.R.S. § 23-204 IS UNCONSTITUTIONAL, NULL, AND VOID)

31. Plaintiffs re-allege and incorporate by reference paragraphs 1-30.

32. The Arizona Constitution grants to the citizens of Arizona the power to propose any measure to the voters. ARIZ. CONST., art. IV, pt. 1, § 1(2) (Initiative power).

33. In 2006, the citizens of Arizona properly exercised their constitutional initiative power to propose the "Raise the Minimum Wage for Working Arizonans Act" (aka Proposition 202).

34. On November 7, 2006, the voters of Arizona passed Proposition 202.

35. Proposition 202 established a state minimum wage law and raised the minimum wage to $6.75 per hour beginning January 1, 2007.

36. Under Proposition 202, this state minimum wage would be increased each January 1 based on changes in the cost of living and applied to all employers with some exceptions.

37. Under Proposition 202, the voters also authorized a county, city, or town to enact a law providing for a higher minimum wage than established by the Proposition.

38. Today, for that reason, one of the statutes codifying Proposition 202—A.R.S. § 23-364(I)—authorizes a county, city, or town to regulate by ordinance the "minimum wages and benefits within its geographic boundaries" but the county, city, or town "may not provide for minimum wage lower than that prescribed in this article."

39. In 2013, however, the Legislature passed and the Governor signed A.R.S. § 23-204 into law, which placed authority over the establishment of the minimum wage solely in the hands of the Legislature. In fact, A.R.S. § 23-204 expressly forbids "regulation" of

"employee benefits, including compensation" by "a city, town or other political subdivision of this state."

40. Thus, in 2006, under one of these two conflicting statutes—A.R.S. § 23-364(I)—the People of Arizona authorized a city, town, or county to set the minimum wage and, in 2013, under the second conflicting statute—A.R.S. § 23-204—the Legislature reserved that authority solely to itself.

41. Normally, under these circumstances, the Court would attempt to construe these two statutes to avoid repeal by implication of the earlier by the later in time. But, here, the Court cannot harmonize the two statutes by any reasonable means because the plain language of the two statutes undoubtedly conflicts.

42. Granted, A.R.S. § 23-204 did not expressly state its repeal of A.R.S. § 23-364. But, "the legislature may not do indirectly what it is prohibited from doing directly." *Caldwell v. Bd. of Regents*, 54 Ariz. 404, 410, 96 P.2d 401, 403 (1939).

43. The Supreme Court of Arizona has recognized that a statute can be implicitly repealed or amended by another through "repugnancy" or "inconsistency." *See UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 29, 26 P.3d 510, 516 (2001) (implied repeal).

44. Thus, here, the Legislature's passage of A.R.S. § 23-204 violated the VPA by impliedly or effectively repealing, amending, or superseding A.R.S. § 23-364(I).

45. Therefore, Plaintiffs allege and the Court should conclude that:

a. In 2006, the People of Arizona properly authorized the cities, towns, and counties of Arizona to set their local minimum wage higher than the statewide minimum wage (A.R.S. § 23-364(I)); and,

b. In 2013, the Arizona Legislature violated the VPA by effectively repealing this provision of the voter-approved initiative, Proposition 202.

46. The Arizona Constitution reserves the power of initiative to the qualified electors of cities, towns, and counties. ARIZ. CONST., art. IV, pt. 1, § 1(8). Therefore, unless and until the Court grants the requested declaratory relief, Plaintiffs FLWC, Levin, and Ruiz

will be deprived of the opportunity to pursue their stated intention to put before the voters of Flagstaff (or petition their City Council to pass) a measure raising the minimum wage within the boundaries of the City of Flagstaff.

47. The Uniform Declaratory Judgments Act provides that "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." A.R.S. § 12-1832.

48. These two conflicting statutes—A.R.S. § 23-204 and § 23- 364(I)—present a justiciable controversy under the Declaratory Judgments Act. Without the Court's declaration on the constitutionality of the first of these two conflicting statutes, the voters of Flagstaff (and their City Council) cannot be certain whether their City has the authority to set a higher minimum wage or better benefits.

49. Plaintiffs are entitled to and request an award of their reasonable attorneys' fees and costs under the Private Attorney General doctrine (*Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 775 P.2d 521 (1989)), A.R.S. § 12-341 (fees), and A.R.S. § 12-1841 (costs).

WHEREFORE, Plaintiffs request that the Court grant at least the following relief:

A. Declare that the original A.R.S. § 23-362 is no longer valid law after having been revoked and replaced by the voters in its entirety by Proposition 202.

B. Declare that A.R.S. § 23-204, in its attempt to establish state preemption over the field of employee compensation and benefits, and deny that right to local governmental entities, is an unconstitutional attempt to supersede, amend, or repeal Proposition 202 and is therefore void in violation of Article 4, pt. 1, section 1, (6)(B)(C) and (14) of the Arizona Constitution.

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C. Award Plaintiffs their reasonable attorneys' fees and costs under the Private Attorney General doctrine (*Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 775 P.2d 521 (1989)), A.R.S. § 12-341 (fees), and A.R.S. § 12-1841 (costs), or any other applicable basis.

D. Award any other relief that the Court may deem appropriate.

DATED: April 10, 2015.

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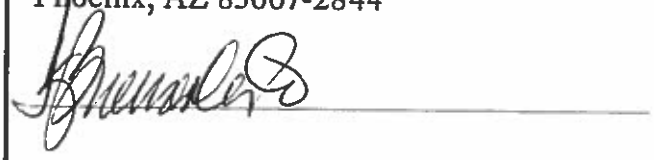
Plaintiffs filed an original of their Complaint with the Clerk of the Maricopa County Superior Court on April 10, 2015 and served their *Notice of Claim* under A.R.S. §12-1841 via hand-delivery on the following on April 13, 2015:

Rep. David M. Gowan, Sr.
Office of the Speaker
Arizona House of Representatives
1700 W. Washington Street, Suite H
Phoenix, AZ 85007-2844

Sen. Andy Biggs
Office of the President
Arizona State Senate
1700 W. Washington Street, Suite H
Phoenix, AZ 85007-2844