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10 ARIZONA SUPERIOR COURT
11 MARICOPA COUNTY

12 UNITED FOOD AND COMMERCIAL
13 WORKERS, LOCAL 99; TEMPE
14 COUNCILMEMBERS LAUREN
15 KUBY, DAVID SCHAPIRA, KOLBY
16 GRANVILLE; TUCSON
17 COUNCILMEMBER REGINA
18 ROMERO; FLAGSTAFF COUNCIL
19 MEMBER EVA PUTZOVA; REP.
20 ERIC MEYER, REP. LELA ALSTON,
21 REP. RICHARD C. ANDRADE, REP.
22 REGINALD BOLDING JR., REP.
23 MARK A. CARDENAS, REP. KEN
24 CLARK, REP. DIEGO ESPINOZA,
25 REP. CHARLENE R. FERNANDEZ,
26 REP. RANDALL FRIESE, REP.
27 ROSANNA GABALDÓN, REP.
28 SALLY ANN GONZALES, REP.
ALBERT HALE, REP. MATTHEW A.
KOPEC, REP. JONATHAN R.
LARKIN, REP. STEFANIE MACH,
REP. JUAN JOSE MENDEZ, REP.
LISA A. OTONDO, REP. CELESTE
PLUMLEE, REP. REBECCA RIOS,
REP. MACARIO SALDATE, REP.
CECI VELASQUEZ, REP. BRUCE
WHEELER; SEN. KATIE HOBBS,
SEN. DAVID BRADLEY, SEN.
OLIVIA CAJERO BEDFORD, SEN.

No.

CV2016-092409

COMPLAINT FOR DECLARATORY
RELIEF

1 LUPE CONTRERAS, SEN. ANDREA
2 DALESSANDRO, SEN. STEVE
3 FARLEY, SEN. BARBARA
4 MCGUIRE, SEN. ROBERT MEZA,
5 SEN. CATHERINE MIRANDA, AND
6 SEN. MARTIN QUEZADA;

7 Plaintiffs,

8 v.

9 THE STATE OF ARIZONA, a body
10 politic;

11 Defendant.

12 Plaintiffs, by and through their attorneys, hereby allege as follows:

13 NATURE OF THE ACTION

14 1. This action seeks a Declaratory Judgment that House Bill 2579 enacted by
15 the Fifty-second Legislature, Second Regular Session 2016 (“H.B. 2579”) is
16 unconstitutional because it violates the Voter Protection Act, Ariz. Const. art. IV, Pt. 1 §
17 1(6), and the Home-Rule Provision, Ariz. Const. art. 13, § 2, of the Arizona Constitution.

18 PARTIES, JURISDICTION, AND VENUE

19 2. Plaintiff United Food and Commercial Workers, Local 99, is a labor
20 organization presently encouraging the City of Tucson and the City of Tempe to adopt
21 ordinances guaranteeing employees within their geographic boundaries paid sick leave
22 benefits in excess of that guaranteed by the State.

23 3. Plaintiffs Lauren Kuby, David Schapira, and Kolby Granville reside within
24 Tempe, Arizona, a charter city, and are members of the Tempe City Council who
25 advocate on behalf of workers within the community, including in support of a paid sick
26 leave benefits ordinance for workers in Tempe.
27
28

1 4. At a September 17, 2015 meeting, the Tempe City Council discussed a paid
2 sick leave benefits ordinance for workers in Tempe. The City Council created a Work
3 Group to explore the ordinance and engage identified stakeholders. During the next
4 several months, the City Council continued to explore and study the issue.

5 5. In 2015 and 2016, the Work Group held numerous public meetings on the
6 issue, reviewed and circulated a draft Tempe employee paid sick leave benefits ordinance,
7 and created an online survey to collect information on employee sick leave benefits from
8 businesses doing work in Tempe.

9 6. Plaintiff Regina Romero resides within Tucson, Arizona, a charter city, and
10 is a member of the Tucson City Council who advocates on behalf of workers within the
11 community, including in support of an employee paid sick leave benefits ordinance in
12 Tucson.

13 7. On December 8, 2015, Council Member Romero provided information,
14 including a draft paid sick leave benefits ordinance, to the Tucson City Council in a
15 Council Study Session on the need for a paid sick leave benefits ordinance in the city.
16

17 8. In response to a motion by Council Member Romero, the Tucson City
18 Council voted 6-1 to organize stakeholder meetings to gather public input on how the City
19 could make paid sick leave benefits a reality for workers in the City.
20

21 9. In January 2016, the City of Tucson held three public meetings with
22 business and community leaders to discuss and gather input on the proposed paid sick
23 leave benefits ordinance.
24

25 10. Plaintiff Eva Putzova resides within Flagstaff, Arizona, a charter city, and is
26 a member of Flagstaff City Council who advocates on behalf of workers within the
27 community, including in support of an employee benefits in Flagstaff.
28

1 The legislature may by statute raise the minimum wage established under
2 this article, extend coverage, or increase penalties. A county, city, or town
3 may by ordinance regulate minimum wages and benefits within its
4 geographic boundaries but may not provide for a minimum wage lower than
5 that prescribed in this article. State agencies, counties, cities, towns and
6 other political subdivisions of the state may consider violations of this
7 article in determining whether employers may receive or renew public
8 contracts, financial assistance or licenses. This article shall be liberally
9 construed in favor of its purposes and shall not limit the authority of the
10 legislature or any other body to adopt any law or policy that requires
11 payment of higher or supplemental wages or benefits, or that extends such
12 protections to employers or employees not covered by this article.

13 19. On March 1, 2016, the Arizona House of Representatives passed H.B. 2579
14 with thirty-five ayes, twenty-four nays, and one not voting.

15 20. On April 11, 2016, the measure passed in the Arizona Senate with eighteen
16 ayes, eleven nays, and one not voting.

17 21. On May 6, 2016, the Arizona House concurred with the Senate amendments
18 by a vote of thirty-four ayes, twenty nays, and six not voting and transmitted the bill to the
19 Governor's Office.

20 22. On May 11, 2016, the Governor signed H.B. 2579 into law.

21 23. The bill has been chaptered as Laws 2016, ch. 203.

22 24. H.B. 2579, amends Ariz. Rev. Stat. § 23-204 to read:

23 A. The regulation of employee benefits, including nonwage compensation,
24 paid and unpaid leave and other absences, meal breaks and rest periods, is of
25 26 27 28

1 statewide concern. The regulation of nonwage employee benefits pursuant
2 to this chapter and federal law is not subject to further regulation by a city,
3 town or other political subdivision of this state.

4
5 B. This section does not apply to any employee benefit, including nonwage
6 compensation, paid and unpaid leave and other absences, meal breaks and
7 rest periods, provided by a city, town or other political subdivision of this
8 state to any of its employees.

9 C. For the purposes of this section, "nonwage compensation" includes
10 fringe benefits, welfare benefits, child or adult care plans, sick pay, vacation
11 pay, severance pay, commissions, bonuses, retirement plan or pension
12 contributions, other employment benefits provided in 29 United States Code
13 section 2611 and other amounts promised to the employee that are more
14 than the minimum compensation due an employee by reason of
15 employment.

16 FIRST CLAIM FOR RELIEF
17 (Voter Protection Act)

18 25. Plaintiffs incorporate by reference paragraphs 1 through 24 as though fully
19 set forth herein.

20
21 26. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), "The legislature shall not have
22 the power to amend an initiative measure approved by a majority of the votes cast thereon,
23 or to amend a referendum measure decided by a majority of the votes cast thereon, unless
24 the amending legislation furthers the purposes of such measure and at least three-fourths
25 of the members of each house of the legislature, by a roll call of ayes and nays, vote to
26 amend such measure."

27 27. H.B. 2579 prohibits cities, towns, and political subdivisions from regulating
28 "nonwage employee benefits," which the law states includes both "nonwage

1 compensation” and “paid and unpaid leave and other absences,” Laws 2016, ch. 203, § 1,
2 para. (A).

3
4 28. H.B. 2579 defines “nonwage compensation” to include “fringe benefits,
5 welfare benefits, child or adult care plans, sick pay, vacation pay, severance pay,
6 commissions, bonuses, retirement plan or pension contributions, other employment
7 benefits,” Laws 2016, ch. 203, § 1, para. (C).

8 29. Prop 202 grants authority to a “county, city, or town,” to “regulate minimum
9 wages and benefits within its geographic boundaries,” A.R.S. § 23-364(I). Prop 202’s
10 clear grant of authority to municipalities to regulate benefits is amended by H.B. 2579,
11 which provides that “[t]he regulation of nonwage employee benefits pursuant to this
12 chapter and federal law is not subject to further regulation by a city, town or other
13 political subdivision of this state,” Laws 2016, ch. 203, § 1, para. (A).

14 30. H.B. 2579 was passed by less than three-quarters of the Senate and passed
15 by less than three-quarters of the House.

16
17 31. H.B. 2579 does not further the purpose of Prop 202. Rather, H.B. 2579
18 directly conflicts with Prop 202 by removing local authority over benefits, including but
19 not limited to employee paid sick leave benefits, even though the state’s voters authorized
20 that local control when they approved Prop 202.

21 32. Because H.B. 2579 amends Prop 202 as codified at Ariz. Rev. Stat. Section
22 23-364 without furthering the purpose of Prop 202 and without receiving a supermajority
23 in either chamber of the Arizona State Legislature, it violates Article 4, Part 1, § 1(6) of
24 the Arizona Constitution.

25
26 33. Unless and until the Court grants the requested declaratory relief, Plaintiffs
27 Kuby, Schapira, Granville, Romero, and Putzova will be deprived of the opportunity,
28

1 authorized under Prop 202, to advance an employee paid sick leave ordinance within the
2 boundaries of their respective cities.

3
4 34. Without the clarity of the Court's declaration of the unconstitutionality of
5 H.B. 2579, the City Councils of Tucson, Tempe, and Flagstaff cannot be certain whether
6 their respective cities have the authority provided under Prop 202 to pass an employee
7 benefits ordinance.

8 SECOND CLAIM FOR RELIEF
9 (Supermajority Requirement)

10 35. Plaintiffs incorporate by reference paragraphs 1 through 34 as though fully
11 set forth herein.

12 36. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), "The legislature shall not have
13 the power to amend an initiative measure approved by a majority of the votes cast thereon,
14 or to amend a referendum measure decided by a majority of the votes cast thereon, unless
15 the amending legislation furthers the purposes of such measure and at least three-fourths
16 of the members of each house of the legislature, by a roll call of ayes and nays, vote to
17 amend such measure."

18
19 37. The requirements cited in the preceding paragraph applied to H.B. 2579
20 because it amended Prop 202, which was passed by a majority of the votes cast in the
21 2006 election.

22 38. Because enough legislators, specifically House Plaintiffs, voted against H.B.
23 2579 in the Arizona State House to deny its passage with a three-fourths supermajority,
24 the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B). The signing of H.B.
25 2579 into law effectively denied representation to the constituents of those legislators.

26
27 39. Because enough legislators, specifically Senate Plaintiffs, voted against
28 H.B. 2579 in the Arizona State Senate to deny its passage with a three-fourths

1 supermajority, the bill cannot becoming law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B).
2 The signing of H.B. 2579 into law effectively denied representation to the constituents of
3 those legislators.

4 40. Because H.B. 2579 did not further the purpose of Prop 202, which it was
5 amending, the bill cannot becoming law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B).
6

7 41. Because H.B. 2579 was not properly approved according to Ariz. Const. art.
8 IV, Pt. 1 § 1(6), the bill is unconstitutional.

9 THIRD CLAIM FOR RELIEF
10 (Home-Rule Provision)

11 42. Plaintiffs incorporate by reference paragraphs 1 through 41 as though fully
12 set forth herein.

13 43. Article 13 § 2 of the Arizona Constitution, known as the home-rule
14 provision, gives charter cities certain rights and privileges in local matters to legislate free
15 from interference by the legislature.
16

17 44. Prop 202 establishes that setting “minimum wages and benefits within its
18 geographic boundaries,” above the state minimum levels is a local issue. A.R.S. § 23-
19 364(I).

20 45. Furthermore, the regulation of benefits, such as employee paid sick leave,
21 fall squarely within the police powers of municipalities to promote the health, safety, and
22 general welfare within the municipality.
23

24 46. The legislative findings in the draft ordinances reviewed and circulated by
25 the Tempe and Tucson City Councils both acknowledge the widespread lack of employee
26 paid sick leave benefits within their respective cities.
27
28

1 47. Both draft ordinances also assert that a municipal employee paid sick leave
2 benefits law would improve health and welfare within the municipality by reducing public
3 and private health care costs, promoting preventive health, reducing the spread of
4 contagion and related public health risks, and improving the health and economic security
5 of workers and their families.

6 48. H.B. 2579 restricts regulation of minimum employee benefits that exceed
7 state minimums, which is a local issue pursuant to Prop 202 and municipal police powers.
8 Such state interference in a local issue violates Article 13 § 2 of the Arizona Constitution.
9

10 49. Under Article 13 § 2 of the Arizona Constitution, because the bill violates
11 the home-rule requirement, the entire bill is unconstitutional.

12 WHEREFORE, Plaintiffs request that this Court

13
14 a. Declare that H.B. 2579 violates Article 4, Part 1, § 1(6) of the
15 Arizona Constitution.

16 b. Declare that H.B. 2579 violates Article 13 § 2 of the Arizona
17 Constitution.

18 c. Grant Plaintiffs their costs and attorneys' fees.

19 d. Grant further relief as the Court deems appropriate.
20
21

22 RESPECTFULLY SUBMITTED this 21st day of June, 2016

23 By: 

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ORIGINAL of the foregoing complaint UFCW et al v. Arizona, filed by hand
this 21st day of June 2016 with:

Clerk of Maricopa County Superior Court

COPY of the foregoing complaint sent via electronic mail to:
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s/ Saman J. Golestan

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