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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-018092 12/21/2016

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
C. Green
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JANE ANN RIDDLE, et al.

TIMOTHY A LASOTA

v.

STATE OF ARIZONA, et al.

CHARLES A GRUBE

JAMES E BARTON II
BRETT W JOHNSON
LOGAN T JOHNSTON
JASON M PORTER
STEPHEN W TULLY
JENNIFER M PERKINS
SARAH E DELANEY
SAMAN J GOLESTAN
APPEALS-CCC
ATTORNEY GENERAL
DOCKET-CIVIL-CCC

UNDER ADVISEMENT RULING

At the general election on November 8, 2016, the Arizona electorate approved the voter-initiated Proposition 206, also known as "The Fair Wages and Healthy Families Act" (referred to hereafter as "the Act"). One provision of the Act, which mandates an increase in the minimum wage, is set to take effect on January 1, 2017, while the Act's provisions relating to mandatory sick leave benefits will go into effect on July 1, 2017. The Plaintiffs allege that the Act violates three separate provisions of the Arizona Constitution: Article 21, Section 1, also known as the "Separate Amendment Rule"; Article 4, Part 2, Section 13, also known as the "Single Subject Rule"; and Article 9, Section 23, also known as the "Revenue Source Rule." First Amended Complaint at ¶¶ 52-71. The Plaintiffs seek a Preliminary Injunction to stay the Act's

implementation. *See* Joint Application for Order to Show Cause and Joint Motion for Temporary Restraining Order With Notice and Preliminary Injunctive Relief ("Plaintiffs' Application").

Each legislative enactment is presumed to be constitutional, a presumption that "applies equally to initiatives." *Ruiz v. Hull*, 191 Ariz. 441, 448, 957 P.2d 984, 991 (1998). The party challenging the validity of an enactment "bears the burden of establishing that the legislation is unconstitutional," with "any doubts" being "resolved to the contrary." *Ariz. Dep't of Public Safety v. Superior Court*, 190 Ariz. 490, 494, 949 P.2d 983, 987 (App. 1997).

The party seeking a preliminary injunction bears a heavy burden; a preliminary injunction "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865, 1867 (1997) (citation and internal quotations omitted). The party seeking a preliminary injunction "must show a strong likelihood of success on the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships weighing in his favor, and public policy favoring the requested relief." *TP Racing, L.L.L.P. v. Simms*, 232 Ariz. 489, 495, 307 P.3d 56, 62 (App. 2013). A court applying these factors "may apply a sliding scale" requiring the moving party to "establish either (1) probable success on the merits and the possibility of irreparable injury; or (2) the presence of serious questions and that the balance of hardships tips sharply" in the moving party's favor. *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12, 219 P.3d 216, 222 (App. 2009) (citation, internal quotations, and internal parentheses omitted).

The Court first addresses whether the Plaintiffs have established *both* probable success on the merits *and* the possibility of irreparable injury. *See Ariz. Ass'n of Providers*, 223 Ariz. at 12, 219 P.3d at 222.

The Plaintiffs allege that the Act "embraces multiple subjects" in violation of the Separate Amendment Rule. Plaintiffs' Application at p. 7. The Separate Amendment Rule provides in part that "[a]ny amendment or amendments to this constitution may be proposed…by initiative petition," and that, "[i]f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." Ariz.Const., art. 21, § 1.

Intervenor Arizonans for Fair Wages and Healthy Families Supporting Prop. 206 asserts that the Plaintiffs' claim for relief based on the Separate Amendment Rule is moot because the Plaintiffs waited to raise the claim until after the election was held. Opposition to Joint Motion for Temporary Restraining Order With Notice and Preliminary Injunction Relief ("Intervenor's Response") at p. 6. The Court agrees. Arizona courts have long held that "[c]hallenges concerning alleged procedural violations of the election process must be brought prior to the

actual election." *Sherman v. City of Tempe*, 202 Ariz. 339, 342, 45 P.3d 336, 339 (2002). *See also Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) ("[W]e have held that the procedures leading up to an election cannot be questioned after the people have voted, but instead the procedures *must* be challenged before the election is held.") (emphasis in original); *Kromko v. Superior Court*, 168 Ariz. 51, 57, 811 P.2d 12, 18 (1991) ("[D]isputes concerning election and petition matters must be initiated and heard in time to prepare the ballots for absentee voting to avoid rendering an action moot."). The Court finds that, by waiting until after the election to raise their Separate Amendment Rule challenge, the Plaintiffs waited too late.

In any event, the Separate Amendment Rule, on its face, applies only to proposed amendments to the Arizona Constitution, and case law has so construed it. *See Bentley v. Building Our Future*, 217 Ariz. 265, 272, 172 P.3d 860, 867 (App. 2007) (Article 21, § 1 "only applies to ballot propositions involving an amendment to the Arizona Constitution"). Because the Act does not purport to amend any provision of the Arizona Constitution, the Separate Amendment Rule is inapplicable to this case.

The Plaintiffs acknowledge that the Separate Amendment Rule "has only been applied to date to proposed constitutional amendments," but urge this Court to extend its application to statutory ballot measures such as the Act. Plaintiffs' Application at pp. 7-8. Because this Court is bound to apply Article 21, § 1 of the Arizona Constitution as written and to follow the case law that has construed it[1], this Court cannot extend the reach of the Separate Amendment Rule in the manner the Plaintiffs propose.

Even if the Separate Amendment Rule were extended to apply to voter-initiated statutory measures such as the Act, the Act would, in the Court's view, pass the test established by the rule. A proposed enactment satisfies the Separate Amendment Rule if its provisions are "topically related" and "sufficiently interrelated so as to form a consistent and workable proposition." *Save Our Vote v. Bennett*, 231 Ariz. 145, 149-50, 291 P.3d 342, 346-47 (2013) (citation and internal quotations omitted). An increase in the minimum wage and the establishment of mandatory sick leave are topically related to the subject of minimum conditions of employment, and are sufficiently interrelated to form a consistent and workable proposition. *Cf. Filo Foods, L.L.C. v. City of SeaTac*, 357 P.3d 1040, 1047 (Wash. 2015) (rejecting "single subject rule" challenge to voter-approved initiative establishing $15-per-hour minimum wage, paid sick leave, and other benefits for employees in hospitality and transportation industries). The two subjects are addressed together in Title 23 of the Arizona Revised Statutes. *See* A.R.S. § 23-204(A) (declaring "[t]he regulation of employee benefits…including paid and unpaid leave…" to be "of statewide concern"); § 23-364(I) (providing that county and municipal

[1] *See, e.g., Francis v. Ariz. Dep't of Transp.*, 192 Ariz. 269, 271, 963 P.2d 1092, 1094 (App. 1998) ("[T]he superior court is bound by decisions of the court of appeals…").

governments "may by ordinance regulate minimum wages and benefits" subject to certain restrictions). As the Intervenor correctly notes, the two are "a common topic of negotiation between employers and employees in which one may be traded off for the other." Intervenor's Response at p. 10. The Court simply sees no basis for the Plaintiffs' assertion that an increase in the minimum wage and the establishment of mandatory sick leave are "two separate and distinct matters" that the Act has improperly "cobble[d] together." First Amended Complaint at ¶ 71.

The Court finds that the Act would survive a Separate Amendment Rule challenge on the merits and thus finds that the Plaintiffs have failed to establish probable success on the merits of their claim for relief based on the Separate Amendment Rule.

In support of their request for preliminary injunctive relief, the Plaintiffs also assert that the Act violates the Single Subject Rule, which provides as follows:

> Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

Ariz.Const. art. 4, pt. 2, § 13. The Single Subject Rule serves "to prevent surprise and the evils of surreptitious or hodgepodge legislation, including the practice known as logrolling." *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 243, 99 P.3d 570, 572 (2004).

For several reasons, the Court finds that the Plaintiffs have failed to establish probable success on the merits of their challenge to the Act based on the Single Subject Rule.

First, as noted above, the Court agrees with the Intervenor that, now that the election is over, the Plaintiffs' claim for relief based on the Single Subject Rule is moot. *See Tilson*, 153 Ariz. at 470, 737 P.2d at 1369.

Second, the Single Subject Rule applies only to acts of the legislature, not ballot initiatives. *See Iman v. Bolin*, 98 Ariz. 358, 365, 404 P.2d 705, 710 (1965) (Article 4, Part 2, § 13 of the Arizona Constitution "is applicable only to acts of the legislature"). The Plaintiffs' assertion that "[t]here is absolutely no reason not to apply" the Single Subject Rule "to statutory initiatives" as well as to legislative enactments, Supplement to Joint Application for Order to Show Cause and Joint Motion for Temporary Restraining Order at p. 6, finds no support in Arizona case law. *See, e.g., Citizens Clean Elections Comm'n v. Myers*, 196 Ariz. 516, 525, 1 P.3d 706, 715 (2000) ("We affirm *Iman* for the proposition that…article IV, part 2, section 13 applies to bills" of the legislature, and therefore "does not apply to" the disputed ballot initiative).

Third, even if the Single Subject Rule were extended to apply to voter-initiated legislative enactments such as the Act, the Act would pass the test established by the Single Subject Rule for the same reasons, discussed above, that it would pass the Separate Amendment Rule test.[2]

In support of their request for preliminary injunctive relief, the Plaintiffs also assert that the Act fails to comply with the Revenue Source Rule, which provides as follows:

> (A) An initiative or referendum measure that proposes a mandatory expenditure of state revenues for any purpose, establishes a fund for any specific purpose or allocates funding for any specific purpose must also provide for an increased source of revenues sufficient to cover the entire immediate and future costs of the proposal. The increased revenues may not be derived from the state general fund or reduce or cause a reduction in general fund revenues.
>
> (B) If the identified revenue source provided pursuant to subsection A in any fiscal year fails to fund the entire mandated expenditure for that fiscal year, the legislature may reduce the expenditure of state revenues for that purpose in that fiscal year to the amount of funding supplied by the identified revenue source.

Ariz.Const. art. 9, § 23. As the Arizona Supreme Court has recognized, the Revenue Source Rule "protect[s] the state general fund from unfunded ballot initiative measures." *League of Arizona Cities & Towns v. Brewer*, 213 Ariz. 557, 561, 146 P.3d 58, 62 (2006).

The Intervenor asserts that the Plaintiffs lack standing to bring a challenge based on the Revenue Source Rule because they allege no "particularized harm," but simply "a generalized harm shared alike by a large class of citizens." Intervenor's Response at p. 4. The Court does not agree. Numerous cases have recognized that taxpayers have standing to challenge the expenditure of taxpayer funds in violation of constitutional requirements. *See Ethington v. Wright*, 66 Ariz. 382, 387, 189 P.2d 209, 213 (1948); *Turken v. Gordon*, 220 Ariz. 456, 461, 207 P.3d 709, 714 (App. 2008) *vacated on other grounds* 223 Ariz. 342, 224 P.3d 158 (2010). Moreover, since the initiation of these proceedings, new parties have joined as plaintiffs, including Marc Community Resources, Inc. ("MCR") and ABRiO Family Services and Supports, Inc. ("ABRiO"). The Plaintiffs have presented evidence, in the form of the declaration of MRC's President and Chief Executive Officer John Moore, that MRC "has contracts with" various state agencies, including the Arizona Health Care Cost Containment System

[2] Indeed, the Separate Amendment Rule establishes a "stricter test" than the Single Subject Rule. *Clean Elections*, 209 Ariz. at 244, 99 P.3d at 573. If the Act would pass the former, it would necessarily pass the latter.

("AHCCCS"), that implementation of the Act "will significantly increase MCR's wage and employment related expenses," and that the State's failure to reimburse MCR for these additional expenses may "force[]" MCR "to decrease services or decline to further perform under its contracts." Declaration of John Moore at ¶¶ 3, 8, 11, 13, attached as Exhibit 1 to Joint Supplemental Briefing on Motion for Preliminary Injunction ("Plaintiffs' Supplemental Briefing"). Similarly, the Plaintiffs have presented the declaration of Richard Hargrove, an owner of ABRiO as well as its Vice President and Chief Operating Officer, that ABRiO contracts with various state agencies, including the Arizona Department of Economic Security, to provide "hourly support in individual homes" as well as "group home…and day program services"; that implementation of the Act "will significantly increase ABRiO's wage and employment related expenses"; that ABRiO has already "laid off nine employees" in anticipation of the Act taking effect; and that implementation of the Act may require ABRiO to "discontinue providing services," which could leave "many elderly persons or individuals with developmental disabilities in Arizona's rural communities…without any service at all." Declaration of Richard Hargrove at ¶¶ 3, 5, 10, 12, 15, attached as Exhibit 3 to Plaintiffs' Supplemental Briefing. Clearly, MRC and ABRiO have alleged that they will suffer the kind of "particularized harm" required for a plaintiff to establish standing. *See Ariz. Ass'n of Providers*, 223 Ariz. at 13, 219 P.3d at 223. The Court therefore rejects the Intervenor's "standing" argument.

The Intervenor also asserts that the doctrine of laches applies to bar the Plaintiffs' claims for relief. Intervenor's Response at p. 13. In support of its position, the Intervenor argues that the Plaintiffs "waited over five weeks" after the election on November 8, 2016, "leaving only ten court days to decide the matter" before the January 1, 2017 effective date of the Act (or, at least, a portion of the Act). *Id*. at p. 14. As the Plaintiffs correctly note, however, the Arizona Supreme Court has held that a challenge to an initiative based on the Revenue Source Rule is not ripe until the initiative has passed and the State had taken specific actions pursuant thereto that provide the reviewing court with "the context of concrete facts." *League of Arizona Cities & Towns*, 213 Ariz. at 562, 146 P.3d at 63. The Plaintiffs contend, and the Intervenors do not dispute, that the Plaintiffs initiated this action within a day of the posting by AHCCCS of notice of a wage rate increase for its contractors. Plaintiffs' Supplemental Briefing at p. 14. Under the circumstances, the Court does not find that the Plaintiffs unreasonably delayed in bringing this action, and so finds the doctrine of laches inapplicable. *See Harris v. Purcell*, 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998) ("delay alone in asserting an election law violation" does not justify application of laches defense; court must consider "justification for delay" in determining "whether delay…was unreasonable").

The Court therefore turns to the merits of the Plaintiffs' claim for relief based on the Revenue Source Rule.

By its terms, the Act does not propose a mandatory expenditure of state revenues for a specific purpose, establish a fund for a specific purpose, or allocate funding for a specific purpose. On its face, therefore, the Act does not implicate the Revenue Source Rule. *See* Ariz.Const. art. 9, § 23. *See also Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1233 (Nev. 2006) (rejecting business group's challenge, based on Nevada's counterpart to the Revenue Source Rule, to initiative that expanded ban on smoking in public places, because the initiative "requires neither the setting aside nor the payment of any funds"). Likewise, the Act has no direct impact on the State's payroll, as it does not apply to state employees. *See* A.R.S. § 23-362(B).

The Plaintiffs nonetheless assert that the Act implicates the Revenue Source Rule in two ways. The Plaintiffs assert, first, that state employees will necessarily devote time to developing guidelines and regulations for implementing and enforcing the Act, and the Act identifies no funding source for this staff time. Plaintiffs' Application at pp. 4-5. The Attorney General disputes the Plaintiffs' assertion on this point, arguing that "there has been no showing that [the Industrial Commission] cannot implement the statutory changes within its existing budget." State's Response at p. 5. The Plaintiffs' assertion on this point is, however, is consistent with the Industrial Commission's statement that "the new implementation and enforcement obligations" created by the Act "will require an allocation and expenditure of funds by" the Industrial Commission. Preliminary Injunction Brief of Arizona Department of Administration, Director Craig Brown, and the Industrial Commission of Arizona at p. 2.

It is by no means clear that any increased staff costs that the Act imposes on agencies charged with its implementation and enforcement would implicate the Revenue Source Rule. *See Herbst Gaming*, 141 P.3d at 1233 (rejecting challenge, based on Nevada's counterpart to the Revenue Source Rule, to anti-smoking initiative that expanded enforcement obligations but did not deprive "budgeting officials [of] discretion in appropriating or expending money mandated by the initiative"; the initiative "neither explicitly nor implicitly compels an appropriation or expenditure, but rather, leaves the mechanics of its enforcement with government officials…"). In any event, at the Preliminary Injunction hearing on December 20, 2016, the Industrial Commission's counsel stated that the commission anticipates having increased staff needs for the development and implementation of the Act, but that greater specifics are not yet available because commission officials are "still working that out." Given the limited information available on this issue at this early stage of the proceedings, the Court finds that the Plaintiffs' assertions regarding the increased agency staff costs imposed by the Act do little to establish the "clear showing" necessary to justify the "extraordinary" remedy the Plaintiffs seek. *See Mazurek*, 520 U.S. at 972, 117 S.Ct. at 1867.

In support of their contention that the Act violates the Revenue Source Rule, the Plaintiffs also argue that, once the Act goes into effect, the State will be contractually required to

increase its reimbursements to AHCCCS service providers and other State contractors who will be required to pay their employees the increased wage and sick leave benefits mandated by the Act. Plaintiffs' Application at pp. 6-7. Because the Act fails to provide a funding mechanism for this increased drain on the State's coffers, the Plaintiffs maintain, the Act violates the Revenue Source Rule. *Id*. at p. 7.

For several reasons, the Court is not convinced.

First, as noted above, Subsection (B) of the Revenue Source Rule provides that "[i]f the identified revenue source…fails to fund the entire mandated expenditure for that fiscal year, the legislature may reduce the expenditure of state revenues for that purpose in that fiscal year to the amount of funding supplied by the identified revenue source." Subsection (B), in effect, renders the Revenue Source Rule self-executing, relieving the legislature of the obligation to identify and appropriate monies pursuant to an initiative that lacks a funding source. *See League of Arizona Cities & Towns*, 213 Ariz. at 561, 146 P.3d at 62 (Subsection (B) permits the legislature to "reduce the expenditure of state revenues to fund [an] initiative for the fiscal year to the amount produced by the funding source identified in the initiative."). This provision thus protects against what the Plaintiffs describe as "an unfunded mandate" imposed on the State treasury by voter initiative.

The Plaintiffs assert that Subsection (B) is "inapplicable" here, arguing that Subsection (B) "only applies in instances where an actual revenue source was identified but is insufficient to pay for the initiative." Plaintiffs' Supplemental Briefing at p. 9. The Court sees no basis for the Plaintiffs' assertion that Subsection (B) relieves the State of the obligation to expend funds in support of an initiative with a funding source that is inadequate, but does not protect the State of the obligation to expend funds in support of an initiative with no funding source at all. In the Court's view, Subsection (B) should be read to limit the State's obligation to expend monies to fund a voter-passed initiative to whatever amount is provided for by that initiative, and thus to relieve the State of any obligation to expend monies to fund an initiative that contains no funding source.

In support of their position, the Plaintiffs cite *Weinschenk v. Missouri*, 2006 WL 4639853 (Mo.Cir.Ct., Cole Cnty., Sept. 14, 2006), in which a Missouri trial court held that a state "voter fraud" statute violated the "unfunded mandate" provision of the state constitution because it improperly imposed expanded responsibilities on local election officials without additional funding to carry out those responsibilities. The Court held that the appropriate remedy for the violation "is simply that" election officials in any county that objects to the state statute "are relieved of performing the unfunded mandate activity…" In relieving county officials from the obligation to act pursuant to the unfunded mandate, the judge in *Weinschenk*, in effect, granted the same relief that Subsection (B) of the Revenue Source Rule provides here. The Court does

not find that *Weinschenk* supports the Plaintiffs' request for relief other than the relief that Subsection (B) of the Revenue Source Rule already provides.

Second, as the Attorney General argues, "Arizona public monies law has built-in safeguards to prevent the automatic over-expenditures Plaintiffs forecast." State of Arizona's Opposition to Motion for Preliminary Injunction ("State's Response") at p. 5. By statute, Arizona is not bound to make any contractually-incurred expenditure in the event of insufficient appropriated funding. A.R.S. § 35-154. *See also Univ. of Ariz. v. Pima County*, 150 Ariz. 184, 186, 722 P.2d 352, 354 (App. 1986) (A.R.S. § 35-154 "provides the state a mechanism to avoid liability when the legislature chooses, for financial reasons, to do so"). Indeed, by statute no state official may be required to take an action that would require an expenditure in excess of that authorized by legislative appropriation. A.R.S. § 1-254.

The Plaintiffs argue that, irrespective of any safeguards to the State treasury that may be found in state statute, federal law imposes obligations on state agencies that will require increased expenditures in the form of higher payments to service providers. Defendants AHCCCS and its Director, Thomas J. Betlach, persuasively argue, however, "[n]either federal nor state law specifically require adjustments to health care provider or managed care contracts whenever contractors' labor costs increase" because "there is no legal requirement or contractual mechanism…that requires AHCCCS to pass through cost increases in the rates it pays, especially in any dollar-for-dollar relationship."[3] Response of Defendants AHCCCS and Betlach to Joint Motion for Temporary Restraining Order and Preliminary Injunction ("AHCCCS's Response") at pp. 2, 4-5. Their assertion that "AHCCCS's contracts with healthcare service providers and managed care entities do not include provisions that provide for the reimbursement of costs," *id*. at p. 7, is corroborated by the terms of the sample contract for professional services issued by the Arizona Department of Economic Security that the Plaintiffs attached as Exhibit B to their Notice of Filing Supplemental Material in Support of Motion for Temporary Restraining Order. Paragraphs 33.1 and 38.1 of the sample contract provide that, while a service provider may apply for a rate increase, the State retains discretion to determine whether to grant the increase after considering "the best interests of the State." Notice of Filing Supplemental Material in Support of Motion for Temporary Restraining Order, Exhibit B at ¶¶ 33.1, 38.1. The sample contract further provides that "[t]he Department may reduce payments or terminate this contract without

[3] AHCCCS has made clear in its filings that it believes that "an increase in payments is necessary under the appropriate legal standards and the present circumstances" in light of the "financial stress" on service providers resulting from "rate reductions AHCCCS was forced to make during the Great Recession" and "other cost pressures," including, but not limited to, those created by the Act. AHCCCS's Response at pp. 2, 3. AHCCCS nonetheless acknowledges that "[n]either federal nor state law specifically require adjustments to health care provider or managed care contracts whenever contractors' labor costs increase…" *Id*. at p .2.

further recourse, obligation or penalty in the event that insufficient funds are appropriated or allocated." *Id*. at ¶ 4.1.

In support of their position that the Act mandates an improper expenditure of State monies, the Plaintiffs cite *District of Columbia Board of Elections and Ethics v. District of Columbia*, 866 A.2d 788 (D.C.App. 2005). *See* Plaintiffs' Supplemental Briefing at p. 6. In *District of Columbia Board of Elections*, the Court invalidated a voter-approved initiative that mandated substance abuse treatment instead of incarceration for certain offenders. *District of Columbia Board of Elections* is inapposite, however, because the holding of that case was based on the District of Columbia's strict statutory restrictions on voter-approved initiatives, restrictions which have no counterpart in Arizona. As the *District of Columbia Board of Elections* court noted, District of Columbia law narrowly restricts the right of initiative to those measures that "propose" legislation to the District of Columbia Council, "raise revenues without directing their allocation," or "contain a non-binding policy statement…" 866 A.2d at 794. Arizona imposes no such restrictions on the right of initiative; on the contrary, the Arizona Constitution expressly "reserve[s]" to the people "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." Ariz.Const. art. IV, part 1, § 1(1). The Court therefore does not find persuasive the decision cited by the Plaintiff construing the scope of the right of initiative in the District of Columbia.

The Court finds that the Plaintiffs have failed to establish probable success on the merits, and therefore need not address whether the Plaintiffs have established the possibility of irreparable injury. *Ariz. Ass'n of Providers*, 223 Ariz. at 12, 219 P.3d at 222 (one test for preliminary injunction requires a showing of *both* "probable success on the merits and the possibility of irreparable injury") (citation and internal quotations omitted).

The Court now turns to whether the Plaintiffs have established *both* the presence of serious questions *and* that the balance of hardships tips sharply in their favor. *Ariz. Ass'n of Providers*, 223 Ariz. at 12, 219 P.3d at 222.

"In determining whether 'serious questions' exist to support a preliminary injunction…the relevant inquiry is whether there are 'serious questions going to the merits'." *Ariz. Ass'n of Providers*, 223 Ariz. at 12, 219 P.3d at 222 (citation and internal quotations omitted). The existence of "serious questions" therefore "depends more on the strength of the legal claim than on the gravity of the issue." *Id*. The moving party need not establish a likelihood of success to "serious questions," but merely "a fair chance of success on the merits, or questions serious enough to require litigation." *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987

The Court finds that the Plaintiffs have failed to establish the existence of "serious questions going to the merits" of their claims for relief based on the Separate Amendment Rule and the Single Subject Rule. Because binding case law establishes that those constitutional provisions do not apply to voter-initiated statutory enactments; the Plaintiffs' position to the contrary raises no "serious questions" justifying preliminary injunctive relief.

The Plaintiffs' Revenue Source Rule challenge, however, presents a more difficult issue. While the Court does not find a likelihood that the Plaintiffs will succeed on the merits of their Revenue Source Rule claim, the Court agrees that, given the dearth of case law construing the rule, the Plaintiffs' challenge raises "questions serious enough to require litigation." *See Arcamuzi*, 819 F.2d at 937. For that reason, the Court finds that the Plaintiff has raised "serious questions going to the merits" of their Revenue Source Rule claim.

The Court must therefore determine whether the balance of hardships tips sharply in the Plaintiffs' favor. The Plaintiffs assert that it does, alleging, in part, that "state agencies will begin accruing increased contracting costs, which will necessitate additional, significant expenditures from the State General Fund." Plaintiffs' Application at p. 9. Certainly, any staff time dedicated to developing regulations to implement the Act would be lost if the Act were ultimately determined to be unconstitutional; the loss of this staff time could, therefore, be considered irreparable. As noted above, however, the Act does not mandate increases in payments to state contractors. Even if it did, the Court fails to see how an increased payment made by a state agency to a state contractor could be considered "irreparable harm" if the Act were ultimately determined to be unconstitutional. A state agency is not helpless to recover an overpayment made to a state contractor.

In support of their position that the balance of hardships tips sharply in their favor, the Plaintiffs have submitted the declarations of Mr. Moore and Mr. Hargrove discussed above, as well as the Declaration of Monica Attridge, Chief Executive Officer of the Hozhoni Foundation, a non-profit organization that serves adults with intellectual disabilities in residential, day, and vocational programs. Exhibits 1-3 to Plaintiffs' Supplemental Briefing. These declarations establish that MCR, ABRiO, and the Hozhoni Foundation, state contractors serving the elderly, those with developmental disabilities, and others in need, may be forced out of business if the State does not increase its reimbursements to offset the increased labor costs imposed by the Act. *Id*. Likewise, the Plaintiffs allege that the Act "will significantly increase the operating cost for" private employers, with the result that "[s]ome employers will be required to reduce the number of employees, while others may close their operations altogether." Plaintiffs' Application at p. 9.

No party expressly disputes, nor does the Court doubt, the Plaintiffs' assertions about the increased financial burden that will be placed on employers, including state contractors and private business owners, if the Act takes effect as scheduled. Against the harm to these

employers, however, the Court must consider the hardship that will be visited upon employees at the bottom of the income scale by a delay in the implementation of the Act. Granting the Plaintiffs' requested relief would delay the pay raise promised to low-wage employees, many of whom struggle on a daily basis to make ends meet. In the Court's view, delaying the promised pay raise would impose a significant hardship on low-wage workers that could not be fully remedied by the payment of back wages at some point in the future if the preliminary injunction were later vacated. The Court believes, in other words, that genuine hardship may be found on both sides of the issue. Based on the present record, however, the Court cannot find that "the balance of hardships" tips in favor of either party, much less that it tips "sharply" in favor of the Plaintiffs. *Ariz. Ass'n of Providers*, 223 Ariz. at 12, 219 P.3d at 222 (moving party must establish presence of serious questions and that the balance of hardships "tips sharply" in its favor) (citation and internal quotations omitted).

The Court must also consider public policy in weighing a request for a preliminary injunction. *TP Racing*, 232 Ariz. at 495, 307 P.3d at 62. *See also Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24, 129 S.Ct. 365, 376-77 (2008) ("In exercising their sound discretion, courts of equity should pay particular regard [to] the public consequences in employing the extraordinary remedy of injunction.") (citation and internal quotations omitted). Here, blocking the implementation of the Act would run counter to public policy. The Act evidences Arizona public policy regarding appropriate minimum conditions of employment. *See Winkle v. City of Tucson*, 190 Ariz. 413, 418, 949 P.2d 502, 507 (1997) ("A vote to enact legislation…expresses the voters' preferred rule of governance."). *Cf. State Farm Mut. Auto. Ins. Co. v. Wilson*, 162 Ariz. 251, 253, 782 P.2d 727, 729 (1989) (legislative enactments evidence public policy). Moreover, Arizona public policy strongly favors direct citizen participation in the legislative process, a fact of which any court must be mindful in considering a request to block implementation of a voter-approved ballot initiative. *See, e.g., Western Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 428, 814 P.2d 767, 769 (1991) ("Throughout the years…we have recognized Arizona's strong public policy favoring the initiative and referendum."); *Forszt v. Rodriguez*, 212 Ariz. 263, 265, 130 P.3d 538, 540 (App. 2006) ("Arizona recognizes a strong public policy favoring the powers of initiative and referendum.").

The Attorney General urges the Court not to "block the will of [the] voters…given the Plaintiffs' failure to establish a strong likelihood of success on the merits and in the fact of the state's history favoring its citizens' ability to change the law through the initiative process." State's Response at p. 10. For the reasons set forth above, the Court agrees. The Court finds that, although the Plaintiffs have established the existence of serious questions going to the merits of their claim for relief based on the Revenue Source Rule, the Plaintiffs have not made the requisite showing of a likelihood of success on the merits of their claims or that the balance of hardships tips sharply in their favor. The Court likewise finds that public policy would not be furthered by granting the Plaintiffs' requested relief. Accordingly,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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IT IS ORDERED denying the Plaintiffs' request for a preliminary injunction.

/s/ HONORABLE DANIEL J. KILEY

Daniel J. Kiley
Judge of the Superior Court