

ARIZONA SUPREME COURT

RAISE THE WAGE AZ, an Arizona political action committee; and KRISTEN JOHNSON, KEVIN SMITH, KENNETH HERNANDEZ, and LUPITA MARTINEZ, qualified electors,

Plaintiffs/Appellants,

v.

STATE OF ARIZONA; and ADRIAN FONTES, in his official capacity as Secretary of State,

Defendants/Appellees,

and

THE RESTAURANT ASSOCIATION,

Intervenor-Defendants/
Appellees.

Arizona Supreme Court
No. CV-24-0178-AP/EL

Maricopa County Superior Court
Case No.: CV2024-016116

REPLY BRIEF

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Plaintiffs/Appellants offer this very brief reply to clarify the nature of their challenge to the Tipped Workers Protection Act.

First, the challenge of deception is based on the short title, and only the short title. As argued in the Opening Brief, a short title is not required, but if it is provided it cannot be deceptive. This has a strong analogy to *Molera I* and *Molera II* collectively holding that percentages are not required to be provided in an initiative's summary; but if they are provided, they must not be deceptive.

Second, the challenge is not to the Tipped Workers Protection Act's policy, nor is it to the Act's effect. *Cf.* Ans. Br. at 16. The challenge is that the short title tells voters it will provide protection, and it will not. It does not enshrine a minimum wage in the Arizona Constitution nor "codify[] a constitutional guarantee" of a minimum wage. *Cf.* Amicus Br. at 8. Instead, it enshrines in the Arizona Constitution that the minimum wage, whatever it is, will be less for a certain class of worker.

What cannot be avoided is that this referral bears a short title that is an outright lie. The Tipped Workers Protection Act provides literally no protection to tipped workers. Yes, it takes away the protection of a minimum wage, or reduces it. But more importantly, it also fails to add any kind of protection. No protection for wages, no protection for health and safety, no protection of any kind. It does one thing: It reduces the minimum wage protection available to a certain class of worker.

If it is acceptable to include a short title in legislation that is false, a title that names the measure the exact opposite of what it does, then Plaintiffs/Appellants lose that claim. Of course, it does not seem possible to reconcile that holding with this Court's other holdings wherein it stepped in to protect the sanctity of Arizona elections in the face of a significant danger of confusion.

In any case, Plaintiffs/Appellants urge the Court to reject the Intervenors' and Amici's invitation to mischaracterize their claim as a policy choice that the voters should decide. This challenge is not in any shape or form to the underlying policy. It is to the deception perpetrated by the Legislature in naming this Act. And that is the challenge on which this Court should rule.

Conclusion

For the above reasons, this Court should reverse the lower court's ruling and find that SCR 1040's deceptive Short Title creates a substantial danger of confusion or unfairness and must be enjoined from placing it on the November 2024 General Election Ballot.

RESPECTFULLY SUBMITTED this 16th day of August, 2024.

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