ARIZONA SUPREME COURT

ARIZONANS FOR RESPONSIBLE DEVELOPMENT, an Arizona political action committee; JORDAN GREENSLADE, an individual; Appellants/Petitioners v. TOWN OF MARANA, a political subdivision of the state of Arizona; JILL MCCLEARY, in her official capacity as town clerk for the Town of Marana; Appellees/Respondents. .	Arizona Supreme Court No. Court of Appeals Division Two No. 2 CA-CV 2026-0160 Pima County Superior Court No. C20261327

PETITION FOR REVIEW
(EXPEDITED ELECTION CASE)

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Plaintiffs Arizonans for Responsible Development and Jordan Greenslade, pursuant to ARCAP 10(j) and 23, hereby petition for review of the attached Court of Appeals Memorandum Decision ("Opinion") dated June 23, 2026.

ISSUES PRESENTED FOR REVIEW

1. Whether the plain language of A.R.S. § 9-500.05(G), read in conjunction with A.R.S. § 19-142(B), establishes that enacting development agreements is subject to citizen referendum.

2. Whether the trial court erred in classifying Marana Resolution No. 2025-121("the Development Agreement") as an administrative act not subject to the constitutional right of referendum.

STATEMENT OF THE CASE AND FACTS MATERIAL TO THE ISSUES

The Development Agreement regulates the development of 19 acres of land owned by the Town of Marana (the "Town"). [APP'X003.] Arizonans for Responsible Development (the "Committee") gathered the necessary signature to refer the Development Agreement to the citizens of the Town, but the clerk rejected the petition on the grounds that the Development Agreement was a non-referrable administrative act. [*Id.*] The trial court was bound by precedent to reject "that A.R.S. § 9-500.05(G) categorically subjects all development agreements to referendum," quoting *Workers for Responsible Dev. v. City of Tempe*, 254 Ariz. 505, 513 ¶32 (App. 2023): "While [Plaintiffs] make a persuasive argument that the legislature may have intended to subject development agreements to referenda through the thirty-day effective-date limitation in A.R.S. § 9-500.05(G), the statutory text does not go so far." [UA Ruling at 4, APP'X013.] The Court of Appeals affirmed this holding and that the details of the instant case were closer to the facts in *Voice of Surprise v. Skip Hall*, 257 Ariz. 101 (App. 2024), *review denied* (Mar. 5, 2024). [APP'X001.] The Development Agreement's details are as follows.

The Town "PASSED AND ADOPTED" the Development Agreement, which includes:

> WHEREAS the Town is authorized by A.R.S. § 9-500.05 to enter into a development agreement with a land owner or other person or entity having an interest in real property located within the Town to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions, and requirements for development and public infrastructure and the financing of public infrastructure

[APP'X014.] Like all development agreements adopted pursuant to A.R.S. §9-500.05, it has permanent characteristics; e.g., it burdens and benefits inuring to successors in interest and assigns that cannot be amended or cancelled without mutual consent. From APP'X041, 052:

- Section 34.1 "The terms of this Lease shall be binding upon and inure to the benefit of the Parties successors and assigns."

- Section 34.1 “No provision of this Lease may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought to be enforced.”
- Section 34.6 “This Lease is made and entered into for the sole protection and benefit of the Parties and their permitted assigns, and no person other than the Parties and their permitted assigns shall have any right of action based upon any provision of this Lease.”
- Section 34.9 “No change or addition shall be made to this Lease except by a written amendment executed by the Parties.”
- Section 15.5.5 provides, “no amendment, cancellation, termination, or modification of this Lease that adversely affects the Leasehold Mortgagee’s security or interest in this Lease is effective against the Leasehold Mortgagee unless consented to in writing by said Leasehold Mortgagee.”

The Development Agreement announces its public purpose as follows:

- Marana Resolution No. 2025-121: “WHEREAS in approving the agreement, the Town Council finds and determines that certain activities relating to the Project are economic development activities within the meaning of A.R.S. § 9-500.11.” [APP’X014.]

- Recital D (The “RFP Purpose”): “simulate economic development and expand employment opportunities in the Town; complement other nearby retail, academic, residential, and professional office development with a vibrant downtown area; expand entertainment and dining options by providing more variety, as well as providing amenities desirable to attract and retain employees sought by employers in Southern Arizona; and generate new tax revenues.” [APP’X016.]
- Recital EE: “The Town has determined that encouraging the development of the Property pursuant to this lease will result in significant economic benefits and other public purpose benefits for the Town and its residents…” [APP’X020.]
- Section 1.2: “Overall, the Project, which will have a unique regional draw, will create substantial additional sales tax revenues for the Town, will assist in the creation or retention of jobs, and will otherwise improve or enhance the economic welfare of the residents of the Town by bringing customers to the Project from the Town and surrounding communities.” [*Id.*]

The Development Agreement provides the ways and means of carrying out the announced purpose.

- Marana Resolution No.2025-121 (Inducement): "it is appropriate to provide the Developer with the reimbursement in the agreement as an inducement to cause the Developer to construct, lease, and operate the Project in the Town." [APP'X014.]
- Recital M (Infrastructure Reimbursement): "…as an incentive for the Developer to implement mixed-use development consistent with the zoning and RFP Purpose, the Town is willing to reimburse the Developer from the DMRF for public infrastructure costs associated with or benefiting the mixed use development." [APP'X017.]
- Section 6.2.1 (Fee Waivers): "The Town will waive all Town plan review fees and inspection and construction and building permit fees for the Project." [APP'X027.]
- Section 9.2.2 (Reimbursement Funding Mechanism): "The Town shall deposit into the Reimbursement Account 45% of the Sales Tax Revenues…and 75% of the Construction Sales Tax Revenues…as they are received from the Arizona Department of Revenue." ([APP'X032.]

These facts demonstrate that the Development Agreement is like those held to be legislative enactments and is a typical development agreement adopted under A.R.S. 9-500.05—the statute that both authorizes such agreements and prohibits them to be adopted as an emergency measure, notwithstanding A.R.S. § 19-142(B).

THE COURT SHOULD ACCEPT REVIEW AND REVERSE THE LOWER COURT DECISION

A. This is a matter of statewide importance that is likely to recur.

The Court should grant this petition to resolve conflicting decisions by the Court of Appeals: *Workers for Responsible Dev. v. City of Tempe*, 254 Ariz. 505 (App. 2023) ("*Workers*") and *Voice of Surprise v. Skip Hall*, 257 Ariz. 101 (App. 2024) ("*VOS*"). Furthermore, the Court should reverse the holding of the Court below and reject that of *Workers* to the extent it denies the categorical referability of development agreements mandated in the very statute that created this tool for municipalities. A.R.S. § 9-500.05(G).

The constitutional right of citizens to refer legislative acts to a popular vote is limited to *legislative* acts. *See* Ariz. Const. art. IV, Pt. 1 § 1; *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488 (1991). The Court in *Workers* summarized the *Wennerstom* test as investigating whether an action was: "(1) permanent or temporary, (2) of general or specific (limited) application, and (3) a matter of policy creation or a form of policy implementation." *Workers*, 254 Ariz. at 513 ¶35 (internal citations omitted). This final factor is the source of conflict between *Workers* and *VOS*.

The *Workers'* court determined that the Workers' Ordinance and Workers' Development Agreement were creating policy instead of executing it. While the defendant argued that the Workers' Ordinance and Workers' Development Agreement were executing a previously passed zoning ordinance, the court found that the zoning ordinance was insufficient. *Id.* at 515 ¶45 ("we cannot agree that the ZDC's MU-4 zoning designation is the previously declared legislative policy.") Crucially, the prior zoning designation did not inform the residents of future policies found within the Workers' Development Agreement. *Id.* at 515-16 ¶47.

One year after *Workers*, the Court of Appeals revisited the subject in *VOS*. The fact pattern in *VOS* strongly resembles the fact pattern in *Workers*: The defendant passed a zoning ordinance ("PAD zoning") in 2008. *Id* at 103 ¶8. A development plan ("Skip Hall Development Plan") was submitted and adopted in December 2021 and August 2022, respectively. *Id.* ¶8-9. The superior court granted the municipality's motion for summary judgment, holding the action was a non-referrable administrative action. *Id*. The plaintiff appealed, and the appellate court affirmed the lower court, while also holding that it did not overrule *Workers*. *Id.* ¶¶28, 30, 32.

The *VOS* court found that the choosing one option within a range permitted by a zoning ordinance was policy execution, not policy creation. The *VOS* court noted that the PAD zoning established a range of detailed standards "that specified the character of development contemplated and how such development was to proceed." *VOS*, 257 Ariz. at 106, ¶21. While these standards were not themselves a preliminary development plan, they did limit development going forward. *Id.* ¶25. Therefore, the *VOS* court held, choosing from among the already approved land sues and residential densities was executing the existing policy found in the PAD zoning ordinance. *Id.*¶¶25-27.

Thus, the *VOS* opinion directly conflicts with *Workers*. *Workers* provides three rationales for finding policy creation instead of policy execution. *Workers*, 254 Ariz. at 515-516 ¶¶45-47. *VOS* addresses two of these, the failure to explicitly invoke a prior policy decision and the ability to change the zoning code. *VOS,* 257 Ariz. at 107, ¶28. *VOS* does not address the primary point raised by *Workers*: that a choice from among options is the creation of policy. *Workers*, 254 Ariz. at 515 ¶45. *Workers* held that a 'choice' among a range of options in a zoning regulation was in fact the creation of policy. 254 Ariz. at 515 ¶45. *VOS* held the opposite: that choosing from a "menu of options" was still an administrative decision, so long as said options were within the range of options laid out by the PAD zoning. 257 Ariz. at 106, ¶¶25-27. This leaves lower courts in a confused position: is choosing a specific policy from among many options creating policy or executing policy? Similarly, in *VOS*, a zoning ordinance passed more than a decade before the detailed plan served as the plan that the development agreement was carrying out, while in *Workers* this exact reasoning was rejected. Which is it? This Court should grant this petition to end the ongoing confusion.

B. The Statute Is Being Misapplied.

1. The Appellate court ruled against the plain meaning of the statute.

"When the plain text of a statute is clear and unambiguous, it controls unless an absurdity or constitutional violation results." *4QTKIDZ, LLC v. HNT Holdings, LLC*, 253 Ariz. 382, 385, ¶5 (2022) (quotations omitted). The plain meaning of §9-500.05(G) requires development agreements to be referrable legislative acts. §9-500.05 deals with definitions in development agreements. §9-500.05(G) reads, in full: "Notwithstanding § 19-142, subsection B, a decision by the governing body involving a development agreement may not be enacted as an emergency measure and that decision is not effective for at least thirty days after final approval of the development agreement." Section 19-142, subsection B, deals exclusively with emergency measures and how they relate to referenda. The Court should give meaning to each part of a statute. *See, e.g., State v. Superior Ct. for Maricopa Cnty.*, 113 Ariz. 248, 249 (1976) (The court will interpret the law such that no sentence, clause, or word is "superfluous, void, contradictory or insignificant."). The only reason to disallow exempting development agreements using an emergency clause pursuant to §19-142(B), is that development agreements are subject to referral and but for Subsection G could be exempted from the referral process by using an emergency clause. Section 19-142 governs referable matters. Therefore, development agreements are subject to referenda and are legislative acts. Put another way, when the Legislature outlawed exempting development agreements from the referral process it made explicit that development agreements—at least those adopted under A.R.S. § 9-500.05—are subject to the referral process.

This principle also forecloses the idea that a development agreement has to make a zoning change in order to be subject to referral. Any zoning change is already subject to referral. A.R.S. § 19-142(D). The purpose of subsection G is to close off an avenue that city and town councils might have been tempted to take to use the new tool provided by the legislature but exempt it from city review.

Defendants and lower courts have brought forth a parade of horribles suggesting that interpretating the statute as it is written will make every development decision subject to referendum. This interpretation hinges on an expansive interpretation of "a decision involving a development agreement," that is not necessary. Defendants and the lower hold that this reading would expand referendum power beyond purely legislative acts to include "with any other local government act, legislative, executive, administrative, and quasi-judicial." [Opinion ¶17, APP'X008.] The context of the statute delivers us from this absurd result while still respecting the legislative command to make development agreements subject to referenda. In §9-500.05(A) and (C), the statute identifies a number of 'decisions' that a municipality may take: it may enter into, amend cancel in whole or in part, the agreements. These decisions, as they deal with a fundamentally legislative act, are subject to referenda like other attempts to amend, cancel, or enter into legislation. Other decisions involving a development plan, such as the execution of the plan by hiring a contractor, are transparently administrative action.

As the plain meaning of §9-500.05(G), read with §19-142(B), makes all development plans referable, the Development Agreement should be held as referable.

2. The lower court misapplied Wennerstrom to Development Agreements.

If the plain meaning of §9-500.05(G), read along with §19-142, does not render all development plans referrable, then in the alternative, the Court should find the Opinion erred in its application of the *Wennerstrom* test to development agreements. Note: There was not finding of fact at issue in this case. The controversy is applying the law to those facts; thus, this court reviews the matter *de novo*.

Regarding the first factor, permanence, the Development Agreement has benefits and burdens that inure themselves to successors and assigns. [*Supra* Facts Section at 2-3.] These are hallmarks of development agreements that are legislative action. *Workers*, 254 Ariz. at 514, ¶37 (citing *Town of Florence v. Florence Copper Inc.*, 251 Ariz. 464, ¶22 (App. 2021), as amended (Mar. 24, 2021)). The Development Agreement is a permanent act because the benefits and burdens inure themselves to successors and assigns. *Id.*

The Opinion's finding that the Development Agreement is temporary runs afoul of prior caselaw and makes legislative development plans impossible. The Opinion first notes that the contract self terminates after seventy-five years, with the choice for a twenty-five-year renewal. [Opinion, ¶13, APP'X005-6). This goes against existing caselaw, which does not define 'permanent' as 'without a termination date.' *See Workers*, 254 Ariz. at 514 ¶37 (recognizing ability to extend lease contributes to finding the development agreement is permanent). The Opinion next points to the potential termination of the agreement by breach or mutual agreement. *Id*. Following this logic, no development plan ever has been or could be legislative. The ability to cancel the development plan by mutual agreement is mandated by statute and the termination of a contract upon breach is a function of contract law. §9-500.05(C).

The Development Agreement announces a public policy and provides the ways-and-means for accomplishing that policy. [*Compare supra* Facts Section at 3-5, with *Workers* at ¶40.] Lastly, the Development Agreement creates policy by choosing from among a range of options the zoning ordinance will permit. *Id.* at 515 ¶45. Of course, residents were not informed of the specific policies in the Development Agreement by the previous zoning act, only the range of permissible policies. *See Workers*, at 515-516 ¶47 (holding that a zoning act declaring standards did not inform residents of development plan policies). Because the Development

Agreement provides specific policies from within the allowable range, it is policy creation and not implementation. It would be remarkably unfair, bordering on a demand of clairvoyance, to expect citizens to divine from the passage of a zoning ordinance that their tax dollars would someday be going to support a public-private partnership like that detailed in the 166-page Development Agreement. *Workers* got this right; *VOS* got it wrong. The Development Agreement is subject to referral based on the tests developed applying *Wennerstrom* to development agreements.

3. *VOS* and the court below overlook A.R.S. § 9-500.05's special treatment of development agreements.

At a minimum, A.R.S. § 9-500-05.05(G) compels courts to give special consideration to the status of development agreements. And that is not surprising. As this Court noted in *Town of Florence*, 251 Ariz. at 469 ¶23, "By authorizing cities and towns to enter development agreements, the legislature expanded the land-use toolbox of local governments to attract large investments from developers who demand more certainty and less risk—sheltering the developers from oscillating public preference and unpredictable political winds." The Court went on to quote *Home Builders Ass'n of Cent. Arizona v. City of Maricopa*, 215 Ariz. 146, 154 (App. 2007), which explained, "[D]evelopers would be loathe to enter into agreements requiring them to provide for part of the public infrastructure knowing that the governing authority could still require a larger contribution toward the public infrastructure in the future or that a successor in interest entity would not be bound by the agreement. The agreement would simply be too uncertain." Indeed. Finally, the Court explained that the special security offered by development agreements has also been identified in 3 *Rathkopf's The Law of Zoning and Planning* § 44:16 (4th ed. 2020) ("Development agreements can reduce this risk, especially when both the developer and the local government agree that a project would benefit the community."). In light of the nature of development agreements as described in the above cited cases, and as exemplified the specific Development Agreement at issue in this case, it is difficult to see how anything enacted under A.R.S. § 9-500.05(G) could be merely an administrative act carrying out an already announced purpose. That is simply not the way development agreements work. This is another place where *VOS* gets it wrong. *VOS* never mentions, let alone analyzes, A.R.S. § 9-500.05.

Thus, even if the strained reading of the statute adopted by the lower court can stand *in theory*, i.e., the Legislature forbid exempting development agreements from a process that may not apply to them at all, *in practice* these agreements will always satisfy the requirements of legislative acts. Perhaps that is why the Legislature forbid municipalities from exempting the development agreements from the process in the very statute that created development agreements in the first place.

None of this is necessarily an indictment of the use of development agreements, nor to suggest there is anything unusual about the Development

Agreement currently before the Court. It merely demonstrates that the Legislature, in granting this new special tool to municipalities, it also ensured its use would be subject to accountability through citizen referendum.

NOTICE UNDER RULE 21(a)

Appellants provide notice of intent to seek fees and allowable costs on appeal under the private attorney general doctrine and A.R.S. 12-348, to be briefed as directed by Rule 21.

CONCLUSION

For the foregoing reasons, Petitioners respectfully requests that the Court grant review and reverse the opinions below.

RESPECTFULLY SUBMITTED this 3rd day of July 2026.

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