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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-092409 08/29/2017

HONORABLE JOSHUA D. ROGERS

CLERK OF THE COURT
I. Ostrander
Deputy

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 99, et al. JAMES E BARTON II

v.

STATE OF ARIZONA, THE RUSTY D CRANDELL

UNDER ADVISEMENT RULING

Pending before the Court is Plaintiffs' *Motion for Summary Judgment* filed on January 27, 2017, as well as *Defendant State of Arizona's Cross-Motion for Summary Judgment* filed on March 24, 2017. The Court has considered both the Motion and the Cross-Motion, the memoranda submitted in support thereof and opposition thereto, the arguments of counsel, and the relevant law. For the reasons set forth below, Plaintiffs' *Motion for Summary Judgment* is granted and *Defendant State of Arizona's Cross-Motion for Summary Judgment* is denied.

I. FACTUAL BACKGROUND

The facts in this case are undisputed. In the 1998 general election, Arizona voters approved the Voter Protection Act ("VPA"), which limits the Legislature's authority to modify voter-approved initiatives and referenda. *See* Proposition 105, 1999 Ariz. Sess. Laws 1937, 1941. Specifically, the VPA bars the Legislature from amending or superseding a voter-approved initiative unless the proposed legislation "furthers the purposes" of the initiative and is approved by a three-fourths vote in the House of Representatives and Senate. Ariz. Const. art. 4, pt. 1, § 1(6)(C), (14).

In the 2006 general election, Arizona voters approved Proposition 202 ("Prop. 202"), an initiative measure commonly referred to as the "Raise the Minimum Wage for Working Arizonans Act." *See* Proposition 202, approved election Nov. 7, 2006, as proclaimed by the Governor Dec. 7, 2006, effective Jan. 1, 2007. This Act became codified as A.R.S. § 23-364 and specifically provides in pertinent part:

> **I.** The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. 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. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

A.R.S. § 23-364(I) (2017).

In 2016, the Arizona Legislature (the "Legislature") passed Laws 2016, Ch. 203 ("H.B. 2579"). On March 1, 2016, the Arizona House of Representatives passed H.B. 2579 with thirty-five ayes, twenty-four nays, and one not voting. On April 11, 2016, the measure passed in the Arizona Senate with eighteen ayes, eleven nays, and one not voting. On May 6, 2016, the Arizona House concurred with the Senate amendments by a vote of thirty-four ayes, twenty nays, and six not voting and transmitted the bill to the Governor's office. This Bill became codified as A.R.S. § 23-204 and specifically provides in pertinent part:

> **A.** The regulation of employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern. The regulation of nonwage employee benefits pursuant to this chapter and federal law is not subject to further regulation by a city, town or other political subdivision of this state.
>
> **B.** This section does not apply to any employee benefit, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods, provided by a city, town or other political subdivision of this state to any of its employees.

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

A.R.S. § 23-204 (2017).

Plaintiffs filed this action on June 21, 2016, seeking a declaration that A.R.S. § 23-204, as amended by H.B. 2579, is unconstitutional because it violates the VPA.

II. DISCUSSION

"Summary judgment is appropriate only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, ¶ 15, 132 P.3d 825, 829 (2006) (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, ¶ 14, 38 P.3d 12, 20 (2002)). Thus, a motion for summary judgment should only "be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeve*s, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts "must be viewed in a light most favorable to the party against whom it was directed and … [summary judgment] is inappropriate if there is any doubt as to whether an issue of material fact exists." *Joseph v. Markovitz*, 27 Ariz. App. 122, 125, 551 P.2d 571, 574 (1976).

Plaintiffs contend that A.R.S. § 23-204, as amended by H.B. 2579, is unconstitutional under the VPA because, without receiving the required three-fourths vote in the legislature, it effectively amends or repeals A.R.S. § 23-364(I) by removing local regulatory authority over employment benefits. It is undisputed that H.B. 2579 did not pass with a three-fourths majority vote in the legislature. Thus, as the parties acknowledge, there is only one issue before this Court: can the language of A.R.S. § 23-364(I) be reasonably interpreted to avoid conflict with the language of A.R.S. § 23-204? More specifically, can the word "benefits" in A.R.S. § 23-364(I) be reasonably interpreted to avoid conflict with the phrase "nonwage employee benefits" in A.R.S. § 23-204(A)? For the reasons set forth below, the Court concludes that the answer to this question is no.

When interpreting a statute, "we look first to the plain language of the statute as the most reliable indicator of its meaning." *Harris Corp. v. Ariz. Dep't of Revenue*, 233 Ariz. 377, 381, ¶

13, 312 P.3d 1143, 1147 (App. 2013). " 'The legislature is presumed to express its meaning as clearly as possible and therefore words used in a statute are to be accorded their obvious and natural meaning.' " *Little v. All Phoenix S. Cmty. Mental Health Ctr., Inc.*, 186 Ariz. 97, 102, 919 P.2d 1368, 1373 (App. 1995) (quoting *Deatherage v. Deatherage*, 140 Ariz. 317, 320, 681 P.2d 469, 472 (App. 1984)). Courts are to interpret a statute according to the ordinary meaning of its terms " 'unless a specific definition is given or the context clearly indicates that a special meaning was intended.' " *State v. Lee*, 236 Ariz. 377, 382, ¶ 16, 340 P.3d 1085, 1090 (App. 2014) (quoting *State v. Jones*, 222 Ariz. 555, ¶ 14, 218 P.3d 1012, 1016 (App. 2009)). *See also* A.R.S. § 1–213 (2016) ("Words and phrases shall be construed according to the common and approved use of the language."); *Spirlong v. Browne*, 236 Ariz. 146, 149, ¶ 9, 336 P.3d 779, 782 (App. 2014) (" 'We will give effect to each word or phrase and apply the "usual and commonly understood meaning unless the legislature clearly intended a different meaning." ' ").

In determining the ordinary meaning of a word, courts typically "refer to an established and widely used dictionary." *State v. Mahaney*, 193 Ariz. 566, 568, 975 P.2d 156, 158 (App. 1999). Many words, however, have more than one ordinary meaning. Indeed, "[m]ost common English words have a number of dictionary definitions, some of them quite abstruse and rarely intended." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 70 (2012).

"Benefit" or "benefits" is a word that has a number of dictionary definitions. For example, in Black's Law Dictionary, "benefit" is comprehensively defined as follows:

> **benefit** *n.* (14c) **1.** The advantage or privilege something gives; the helpful or useful effect something has <the benefit of owning a car>. **2.** Profit or gain; esp., the consideration that moves to the promisee <a benefit received from the sale>. — Also termed *legal benefit*; *legal value.* Cf. detriment (2).
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> - **benefit officiously conferred** (1948) A profit, gain, or advantage bestowed on another without the encouragement or even acquiescence of the person so enriched, the result being that there is no obligation to make restitution. • The person who so confers the benefit is known as a "mere volunteer" or (pejoratively) "officious intermeddler." See volunteer (4); officious intermeddler.
>
> - **collateral benefit** (18c) Any benefit incidental or in addition to a principal one.
>
> - **death benefit** (*usu. pl.*)(1873) A sum or sums paid to a beneficiary from a life-insurance policy on the death of an insured.

> - **fringe benefit** (1952) A benefit (other than direct salary or compensation) received by an employee from an employer, such as insurance, a company car, or a tuition allowance. — Often shortened (esp. in pl.) to *benefit.*
>
> - **general benefit** (1925) *Eminent domain.* The whole community's benefit as a result of a taking. • It cannot be considered to reduce the compensation that is due the condemnee.
>
> - **peculiar benefit** See *special benefit*.
>
> - **pecuniary benefit** (17c) A benefit capable of monetary valuation.
>
> - **private benefit** See private benefit.
>
> - **special benefit** (1857) *Eminent domain.* A benefit that accrues to the owner of the land in question and not to any others. • Any special benefits justify a reduction in the damages payable to the owner of land that is partially taken by the government during a public project. — Also termed *peculiar benefit.*
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> **3.** Financial assistance that is received from an employer, insurance, or a public program (such as Social Security) in time of sickness, disability, or unemployment <a benefit from the welfare office>. **4.** *Constitutional law.* A privilege or dispensation that the state is not constitutionally required to provide, esp. one offered in conditions that raise difficult constitutional questions under the unconstitutional-conditions doctrine. — Also termed *gratuitous benefit.* See unconstitutional-conditions doctrine. — **benefit,** *vb.*

BENEFIT, Black's Law Dictionary (10th ed. 2014). Similarly, Merriam-Webster's Collegiate Dictionary provides the following definition of "benefit":

> **1** *archaic* **:** an act of kindness **:** BENEFACTION **2 a :** something that promotes well-being: ADVANTAGE **b :** useful aid **:** HELP **3 a :** financial help in time of sickness, old age, or unemployment **b :** a payment or service provided for under an annuity, pension plan, or insurance policy **c :** a service (as health insurance) or right (as to take vacation time) provided by an employer in addition to wages or salary **4 :** an entertainment or social event to raise funds for a person or cause.

Merriam-Webster's Collegiate Dictionary p. 114 (11th ed. 2008).

As can be clearly seen from these definitions, "benefit" has more than one ordinary meaning. Of these several ordinary meanings, the parties in this case have each claimed a different one to be the correct meaning of "benefits" as used in this statute. Plaintiffs take the position that "benefits" as used in A.R.S. § 23-364(I) is referring to non-wage benefits received

by an employee from an employer, e.g., paid vacation time, paid sick leave, subsidized health insurance, a pension, etc. The State, on the other hand, takes the position the word "benefits" is being used in accordance with its more general meaning of "[t]he advantage or privilege something gives", and, more specifically, the "advantages and privileges" of the enforcement provisions contained in the eight preceding subparts of A.R.S. § 23-364.

The State asserts that because both parties have claimed meanings which are permissible under the above dictionary definitions of "benefit", "the Court must look to the statute's context, purpose, history, and consequences to derive voter intent." Response & Cross-Motion at p. 7. In essence, therefore, the State is arguing that by presenting two different dictionary definitions of the term "benefits", the word "benefits" is ambiguous and its meaning must be interpreted by looking beyond the plain language of the statute to secondary factors. *See Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195, 377 P.3d 988, 990 (2016) (observing that "[w]hen a statute is ambiguous, we determine its meaning by considering secondary factors, such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose.").

Contrary to the State's argument, "[a] statute is not 'ambiguous' merely because a term or phrase therein is subject to multiple definitions or understandings." *Klida v. Braman*, 483 Mich. 891, 759 N.W.2d 888, 889 (2009) (Markman, J., concurring). *See also Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 40 F.3d 146, 152 (7th Cir. 1994) ("The existence of multiple dictionary definitions does not compel the conclusion that a term is ambiguous."); *Cty. of Barnstable v. Am. Fin. Corp.*, 51 Mass. App. Ct. 213, 215, 744 N.E.2d 1107, 1109 (2001) ("An ambiguity is not created simply because a controversy exists between the parties. 'Nor does the mere existence of multiple dictionary definitions of a word, without more, suffice to create an ambiguity, for most words have multiple definitions.' " (citations omitted)); *Cmty. Action for Greater Middlesex Cty., Inc. v. Am. All. Ins. Co.*, 254 Conn. 387, 401, 757 A.2d 1074, 1082 (2000) ("The fact that a word may have several definitions does not necessarily render it ambiguous."); *State v. Danaher*, 174 Vt. 591, 593, 819 A.2d 691, 695 (2002) ("The existence of multiple definitions of a common term does not render that term ambiguous or vague."). "[I]f merely applying a definition in the dictionary suffices to create ambiguity, no term would be unambiguous." *Fireman's Fund Ins. Companies v. Ex-Cell-O Corp.*, 702 F. Supp. 1317, 1324 (E.D. Mich. 1988). As one court has aptly observed:

> While dictionaries may be helpful to the extent they set forth the ordinary, usual meaning of words, they provide an inadequate test for ambiguity. To allow the existence of more than one dictionary definition to be the *sine qua non* of ambiguity would eliminate contextual analysis of contractual terms; any time a definition appeared in a dictionary of whatever credibility or usage, that definition could be said to be "reasonable" and thus render many, if not

> most, words ambiguous. Dictionaries define words in the abstract, while courts must determine the meaning of terms in a particular context, … .

Gulf Metals Indus., Inc. v. Chicago Ins. Co., 993 S.W.2d 800, 805-06 (Tex. App. 1999).

Rather, where there are multiple definitions, "[o]ne should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise." Scalia & Garner, *supra*, at 70. Very simply, "[s]tatutory terms, … , must be considered in context." *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 325, ¶ 8, 266 P.3d 349, 351 (2011). The context of the word "benefits" as used in the statute is therefore the key to determining which of the two proposed definitions apply. *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 196, ¶ 16, 377 P.3d 988, 991 (2016) (holding that the meaning of disputed statutory language "is best discerned within its broader statutory context."); *J.D. v. Hegyi*, 236 Ariz. 39, 41 ¶ 6, 335 P.3d 1118, 1120 (2014) (explaining that when determining a statute's meaning, words "cannot be read in isolation from the context in which they are used"); *see also In re Casey Estate*, 306 Mich. App. 252, 260 n. 3, 856 N.W.2d 556, 561 (2014) (observing that "when faced with multiple definitions the courts must look to the context in which the word is used in the statute before determining the correct definition to apply." (citations omitted)); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

In conducting a contextual analysis, it is significant to note that "[t]his critical word *context* embraces not just textual purpose but also (1) a word's historical associations acquired from recurrent patterns of past usage, and (2) a word's immediate syntactic setting—that is, the words that surround it in a specific utterance." Scalia & Garner, *supra*, at 33. In the present case, the historical associations acquired from recurrent patterns of past usage of the word "benefits" and the immediate syntactic setting of this term are inextricably woven together and lead to only one reasonable conclusion: the word "benefits" plainly and unambiguously means non-wage benefits received by an employee from an employer.

The word "benefits" as found in A.R.S. § 23-364(I) is used only twice, but in both instances "benefits" is connected to "wages" by a conjunction, "and" and "or" respectively, forming the phrases "minimum wages and benefits" and "wages or benefits." "Wages" and "benefits" are therefore associated words and this specific and repeated association in the statute syntactically suggests that the words have some quality in common.

The analysis of the meaning of "benefits" based upon its immediate syntactic setting also brings into focus the associated-words canon of interpretation, otherwise known as *noscitur a sociis*. As the Arizona Supreme Court has observed, "*noscitur a sociis*—…—dictates that a

statutory term is interpreted in context of the accompanying words." *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 326, 266 P.3d 349, 352 (2011). It has further been explained: "The canon, *noscitur a sociis*, reminds us that 'a word is known by the company it keeps,' …, and is invoked when a string of statutory terms raises the implication that the 'words grouped in a list should be given related meaning, …' " *S.D. Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 378, 126 S. Ct. 1843, 1849, 164 L. Ed. 2d 625 (2006) (citations omitted).

In accordance with the foregoing, "benefits" must be assigned a meaning that makes it similar to the word "wages." *See* Scalia & Garner, *supra*, at 195 ("When several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar."). The most obvious and commonly understood relationship between the word "wages" and "benefits," especially in the broader context of a labor law such as this, is that both represent two complimentary parts of employee compensation. *See* Black's Law Dictionary p. 343 (10th Ed. 2014) ("*Compensation* consists of wages and benefits in return for services ... [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement."). Thus, based upon the immediate syntactic setting and the application of the *noscitur a sociis* canon, the meaning which should be assigned to "benefits" in order to accurately and fairly represent the commonality and relationship between the two words is that of non-wage benefits received by an employee from an employer.

While the State in fact relies upon the *noscitur a sociis* canon in support of its position, the Court finds the State's application of this canon to be inherently flawed. The United States Supreme Court has observed that it is inappropriate to apply "the *noscitur a sociis* canon only to the immediately surrounding words, to the exclusion of the rest of the statute." *Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 409, 131 S. Ct. 1885, 1891–92, 179 L. Ed. 2d 825 (2011). Due to the nature of the canon, however, the reverse would also be true: it is inappropriate to apply the *noscitur a sociis* canon only to the rest of the statute, to the exclusion of the immediately surrounding words. This is precisely what occurs pursuant to the State's argument. The State ignores the obvious and naturally understood similarity between the ordinary meaning of "wages" and "benefits," as well as the obvious and natural meaning seen within the broader context of a labor statute such as this, and instead assigns "benefits" an unnatural meaning based solely upon the eight preceding subparts of A.R.S. § 23-364. This effectively turns the canon on its head and defies common sense.

The Court's conclusion is significantly reinforced by the historical associations acquired from recurrent patterns of past usage of "benefits". The State has failed to cite to a single example of the usage of the word "benefits" in the manner it proposes when included as part of the phrase "minimum wages and benefits" or even when part of the more general phrase "wages

and benefits." Nor can this Court find any such example. Instead, non-wage benefits received by an employee from an employer is the consistent historical meaning of the word "benefits" when used in the syntactic setting of either "minimum wages and benefits" or "wages and benefits", a fact conceded by the State at oral argument. *See, e.g.,* Me. Rev. Stat. tit. 26, § 1303, *et seq.* (2017) (establishing and regulating "minimum wages and benefits" for construction of public works); Minn. Stat. § 383B.126 (West 2017) (requiring a lessee of corrections facility building for use as a factory to "pay wages and benefits to the inmates employed at the prevailing minimum wages and benefits for work of a similar nature performed by employees with similar skills in the county; … ."); N.Y. Comp. Codes R. & Regs. tit. 12, § 1500.2 (2017) (defining the "prevailing rate" to be paid on public works projects as "[t]he minimum wages and benefits that can be paid to construction workers on public work projects as defined in article 8 section 220 of the Labor Law."); N.M. Admin. Code 11.1.2 (2017) (observing that in relation to public works, "[i]f a collective bargaining agreement is in effect governing the service sought, that agreement will define minimum wages and benefits that must be paid … ."); *see also U.S. ex rel. Sutton v. Double Day Office Servs., Inc.*, 121 F.3d 531, 533 (9th Cir. 1997) (observing that "[t]he Service Contract Act, 41 U.S.C. §§ 351–58, requires government contractors to pay service employees minimum wages and benefits determined by the Secretary of Labor."); 6 No. 3 Fed. Emp. L. Insider 4 (November 2008) (same); *Fed. Labor Standards,* US DOE 3220.6A (May 14, 1992), *cancelled by Contractor Human Resource Management Programs,* U.S. Dept. of Energy, January 1, 2014 (observing that "Title 40 United States Code (U.S.C.) 276a to 276a-7, Davis-Bacon Act, … provides for minimum wages and benefits for laborers and mechanics on Federally funded contracts in excess of $2,000 for the construction, alteration or repair of a public building or work" and "Title 41 U.S.C. 351, Service Contract Act, … provides for minimum wages and benefits for various classes of service employees employed on contracts in excess of $2,500 to provide services to the Government."). This is true both universally, as well as within the specific setting of the language of Arizona statutes. *See* A.R.S. § 38-1107(C) (2017); A.R.S. § 28-7006 (2017). There is no justifiable reason to depart from this consistent historical association and find this present usage to be the one and only exception.

The Court finds unpersuasive the State's argument that this interpretation is contradicted by the syntactic setting of the second use of the word "benefits" in A.R.S. § 23-364(I). Specifically, the statute provides that "[t]his article … shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article." The Court agrees with the State that "the term 'benefits' in the second and fourth sentences of A.R.S. § 23-364(I) must mean the same thing." Response & Cross-Motion at p. 9; *see also State v. Oehlerking,* 147 Ariz. 266, 268, 709 P.2d 900, 902 (App. 1985), *disavowed in part by State v. Wilson,* 150 Ariz. 602, 724 P.2d 1271 (App.1986) ("Where the same words or phrases appear in the same statute, they should be given a consistent meaning unless there is a clearly expressed legislative intention to the contrary."); *Wyatt v. Wehmueller,*

167 Ariz. 281, 284, 806 P.2d 870, 873 (1991) ("A court also should interpret two sections of the same statute consistently, especially when they use identical language."). Nevertheless, the contextual clues as to the meaning of the second use of "benefits" do not support the interpretation of "benefits" proposed by the State either.

For example, the State argues that use of the subsequent phrase "such protections" supports the State's interpretation of benefits because "[o]nly the State's interpretation of 'benefits' encompasses the minimum wage protections provided by Prop. 202." Response & Cross-Motion at p. 9. This argument presupposes that the only "protections" to which it could be referring are the minimum wage enforcement provisions contained in the eight preceding subparts in A.R.S. § 23-364. Because, according to the State, the only word which could encompass these protections is the word "benefits", its interpretation is the only one consistent with the "such protections" language.

Both logically and grammatically, however, "such protections" refers to everything that was in the preceding list, i.e., both laws that require payment of higher or supplemental "wages" and laws that require payment of higher or supplemental "benefits". The phrase "such protections", therefore, dictates that the minimum wage itself is deemed to be a protection. The establishment of a guaranteed minimum wage has, in fact, been consistently referred to and viewed as a "protection", as admitted by the State in its Reply. State's Reply at p. 6. *See also, e.g., Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1086 (D.C. Cir. 2015) ("The Fair Labor Standards Act's protections include the guarantees of a minimum wage and overtime pay."); *Davis v. Sulcowe*, 416 Pa. 138, 141, 205 A.2d 89, 90 (1964) (observing that "the [Minimum Wage Act of 1961] is intended to supplement and enlarge the scope of minimum wage protection which was originally afforded only to women and minors under the Minimum Wage Act of May 27, 1937, … ."). Rather than being unnatural as asserted by the State, it is only logical then that any law establishing a benefit guarantee would likewise be considered a "protection." Thus, the phrase "such protections" fails to provide any support to the State's proposed meaning of "benefits".

The use of the word "payment" preceding this second use of the word "benefits" in the statute similarly fails to bolster the State's argument. Instead, by using the phrase "payment of higher or supplemental wages or benefits", the natural and commonsense meaning of "benefits" continues to be non-wage benefits received by an employee from an employer rather than the "advantages or privileges" of the preceding eight minimum wage enforcement provisions subparts. Again, grammatically this provision applies to both laws that require payment of higher or supplemental "wages" and laws that require payment of higher or supplemental "benefits". Thus, the "benefits" must be payable in nature.

Most of the State's suggested "advantages or privileges" are not of such a nature that they can be paid. A prohibition against employer retaliation is not payable. A.R.S. § 23-364(B). Nor is the filing of an administrative complaint, the posting of notices in the workplace, maintaining payroll records, allowing inspections, or the filing of a civil enforcement action. *See* A.R.S. § 23-364(C)-(E). The only aspect of these enforcement provisions which may be paid are the wages owed, including interest, and related penalties. *See* A.R.S. § 23-364(F)-(G). Because most of these items are not payable in nature, the use of the word "payment" in reference to "benefits" under the meaning proposed by the State would be unnatural.

In contrast, non-wage benefits received by an employee from an employer, which form one part of an employee's overall compensation, are all of such a nature that they are "paid" in some form. Paid vacation, paid sick leave, paid holidays, supplementary pay such as overtime and bonuses, retirement plans, employer-subsidized insurance, and legally required benefits such as Social Security, Medicare, unemployment insurance taxes, and workers' compensation are all paid to, for, or on behalf of the employee by the employer. Thus, contrary to the assertions of the State, the use of the word "payment" undercuts the interpretation it has proposed and instead further substantiates the conclusion that the obvious and natural meaning of "benefits" is non-wage benefits received by an employee from an employer.

The State further argues that the words "higher or supplemental" as used in the phrase "payment of higher or supplemental wages or benefits" would be rendered superfluous by the interpretation adopted by this Court because the statute did not at the time of passage establish any guarantee of non-wage benefits. As such, the State contends that "there is no need to use the comparative adjective 'higher' when there is nothing to be compared." State's Reply at pp. 6-7. The Court finds this argument unavailing.

Based again on the understanding that this provision applies to both laws that require payment of higher or supplemental "wages" and laws that require payment of higher or supplemental "benefits", the words "higher or supplemental" cannot be accurately described as superfluous in light of their undisputed effect relative to "wages," irrespective of their effect relative to "benefits." In any case, the Court finds the words "higher and supplemental" to have meaning and effect relative to "benefits," especially in light of the fact that the entire phrase is "*payment* of higher or supplemental wages or benefits". As discussed at more length above, whereas non-wage benefits received by an employee from an employer are all capable of being described as "paid" in some form, the same cannot be said of the "advantages or privileges" of the preceding eight minimum wage enforcement subparts of A.R.S. § 23-364. Stated differently, while there is nothing inherently inaccurate about describing a new law which requires payment of benefits as being "higher or supplemental" where no benefits were previously required, it is a practical impossibility to have a law requiring "payment of [a] higher or supplemental" prohibition against employer retaliation, filing of an administrative complaint, posting of notices

in the workplace, maintaining payroll records, allowing inspections, or the filing of a civil enforcement action. *See* A.R.S. § 23-364(B)-(E). The syntactic setting of this second use of "benefits", therefore, does not allow for the meaning proposed by the State.

Finally, the Court notes that the State spends a significant amount of time addressing secondary factors outside of the plain language of the statute such as the title of Prop. 202, the history of Prop. 202, and interpretational consequences. The Court must reiterate, however, that such secondary factors are only to be considered when the language is ambiguous. *See Premier Physicians*, 240 Ariz. at 195, 377 P.3d at 990. The Court finds no ambiguity in this case. To summarize, the obvious and natural meaning of the word "benefits" as used in the context of A.R.S. § 23-364(I) is non-wage benefits received by an employee from an employer. While the meaning proposed by the State may be a *permissible* meaning of "benefits" according to a dictionary definition of the word, it is a not a *reasonable* meaning in light of the context of the word.

Consistent with this conclusion, A.R.S. § 23-204, as amended by H.B. 2579, implicitly repeals portions of A.R.S. § 23-364(I). "Although the finding of an implied repeal or amendment is generally disfavored, it is required when conflicting statutes cannot be harmonized to give each effect and meaning." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 7, ¶ 24, 308 P.3d 1152, 1158 (2013); *see also Hounshell v. White*, 219 Ariz. 381, 385-86, ¶¶ 12-13, 199 P.3d 636, 640-41 (App. 2008); *UNUM Life Ins. Co. of America v. Craig*, 200 Ariz. 327, 333, ¶¶ 28-29, 26 P.3d 510, 516 (2001). As a matter of law and common sense, the amendments made to A.R.S. § 23-204 by H.B. 2579 cannot be harmonized with the regulating authority given to counties, cities, and towns in A.R.S. § 23-364(I). A.R.S. § 23-364(I) provides that "[a] county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries", which, as discussed above, includes regulation of non-wage benefits received by an employee from an employer. A.R.S. § 23-204(A) provides that "[t]he regulation of nonwage employee benefits pursuant to this chapter and federal law is not subject to further regulation by a city, town or other political subdivision of this state." These two statutes cannot be harmonized because A.R.S. § 23-204(A) expressly prohibits what A.R.S. § 23-364(I) expressly permits.

Because A.R.S. § 23-204, as amended by H.B. 2579, implicitly repeals the regulating authority given to counties, cities, and towns in A.R.S. § 23-364(I) and H.B. 2579 failed to receive the required three-fourths vote in the legislature, it violated the VPA's express limitations on legislative changes to voter-approved laws. A.R.S. § 23-204, as amended by H.B. 2579, is therefore unconstitutional.

Therefore,

IT IS ORDERED granting Plaintiffs' *Motion for Summary Judgment*.

IT IS FURTHER ORDERED denying *Defendant State of Arizona's Cross-Motion for Summary Judgment*.