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Paul V. Avelar (AZ Bar No. 023078)

398 South Mill Avenue, Suite 301

Tempe, AZ 85281

Telephone: 480.557.8300

Email: pavelar@ij.org

Adam Griffin (NC Bar No. 55075)*

901 North Glebe Road, Suite 900

Arlington, VA 22203

Telephone: 703.682.9320

Email: agriffin@ij.org

*Motion for admission pro hac vice pending

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
MARICOPA COUNTY**

GREG MILLS AND SOUTHWEST
ENGINEERING CONCEPTS, LLC,

Plaintiffs,

v.

ARIZONA BOARD OF TECHNICAL
REGISTRATION; MELISSA CORNELIUS, in
her official capacity as Executive
Director of the Arizona Board of
Technical Registration; JASON FOOSE,
JACK GILMORE, NEAL JONES, CARMEN
WYCKOFF, STEPHEN NOEL, JASON
MADISON, EUGENE MONTGOMERY, DR.
ALEJANDRO ANGEL, and ANDREW
EVERROAD, all in their official capacities
as members of the Arizona Board of
Technical Registration,

Defendants.

Case No. CV2019-013509

COMPLAINT

(Declaratory and Injunctive Relief
and Nominal Damages)

INTRODUCTION

1. This is a civil rights action to vindicate the rights of Plaintiffs Greg Mills and his company, Southwest Engineering Concepts, LLC (“SOENCO”), to speak truthfully about Greg’s occupation and to earn an honest living in the career he has practiced for more than thirty years, free from unreasonable government restrictions. Both rights are protected by the Declaration of Rights and structural provisions of the Arizona Constitution.
2. After spending more than twenty years employed as an engineer for a variety of manufacturing companies, Greg became an entrepreneur and opened his own engineering consulting firm, SOENCO, where he is the “Principal Engineer.” Since 2008, employing his years of experience designing, analyzing, testing, and building electronic circuits for products, Greg has designed, analyzed, tested, and built electronic circuits to bring his clients’ consumer-product ideas into reality.
3. After more than 10 years in business, the Arizona Board of Technical Registration (“the Board”) launched an investigation into Greg and SOENCO. The Board investigates and enforces various statutes governing, *inter alia*, “engineering practice.” Without a hearing, the Board has determined that Greg violated certain of these statutes—A.R.S. §§ 32-141(A), 32-145(1), and 32-145(2)—by calling himself an engineer, by designing and building electronic circuits for products, and by owning an “engineering firm.” Through its agents, the Board has pressured Greg to agree to a “Consent Agreement and Order of Discipline” that would fine Greg \$6,000, assess the “cost of investigation” of Greg’s

- case, and prevent him from calling himself an engineer and continuing to work in his chosen occupation, without any judicial review. Greg could also face criminal sanctions.
4. Greg does not engineer buildings, bridges, public works, or other construction projects. Nothing Greg works on requires “signed and stamped plans.”
 5. It is perfectly legal for Greg to do the same work he currently does and to hold the job title “engineer” if he works for a manufacturing company, like he did previously. It is only because he started his own engineering consulting business that the Board has threatened him with fines and criminal charges.
 6. The Board’s actions violate Greg’s and SOENCO’s rights to truthfully describe Greg as an engineer and their work as engineering, which is protected by Article II, Section 6 of the Arizona Constitution, and to earn an honest living free from unreasonable, arbitrary, oppressive, or monopolistic regulations, which is protected by Article II, Sections 4 and 13, and Article IV, Part 2, Section 19(13) of the Arizona Constitution.
 7. The Board’s actions against Greg and SOENCO further violate the structural and due process provisions of the Arizona Constitution that exist to protect individual rights. The statutes the Board is enforcing are unconstitutionally vague, which means they deny Greg the ability to conform his actions to the dictates of the law, in violation of the due process guarantee in Article II, Section 4, of the Arizona Constitution, and they delegate the legislative power to define the scope of regulated and criminal activity to the Board, in violation of Articles III and IV of the Arizona Constitution. Moreover, the Board employs enforcement mechanisms to determine and adjudicate Greg’s private rights

without a meaningful or unbiased recourse to the courts, in violation of the due process guarantee in Article II, Section 4, and the separation of powers guarantee in Articles III and VI, of the Arizona Constitution.

8. Because application of the Board's laws to Plaintiffs violates the Arizona Constitution, the court should declare them unconstitutional and enjoin Defendants from continuing to enforce these laws against Plaintiffs.

PARTIES

9. Plaintiff Greg Mills is a citizen of the United States, residing in Maricopa County, Arizona. He is the owner and principal engineer at Southwest Engineering Concepts, LLC. Greg has long been an engineer and has extensive experience working as an engineer for a variety of companies, but Greg is not registered as a "professional engineer" pursuant to Chapter 1, Title 32 of the Arizona Revised Statutes, A.R.S. §§ 32-101, *et seq.*
10. Plaintiff Southwest Engineering Concepts, LLC ("SOENCO") is a registered Arizona limited liability corporation with its principal place of business in Maricopa County, Arizona. It is wholly owned by Greg Mills and his wife.
11. Defendant Arizona Board of Technical Registration ("the Board") is a self-sustaining regulatory board established by statute. A.R.S. § 32-102. The Board has been given authority to enforce Chapter 1 of Title 32 of the Arizona Revised Statutes. A.R.S. § 32-106.

12. Defendant Melissa Cornelius is the Executive Director of the Board. She is sued only in her official capacity.
13. By law, the Board must consist of nine members. These nine members must include two architects; three professional engineers, one of whom is a civil engineer and two of whom are representatives of branches of engineering other than civil engineering and are registered in those branches; one landscape architect; one geologist; one land surveyor; and one public member. A.R.S. § 32-102.
14. Defendants Jason Foose, Jack Gilmore, Neal Jones, Carmen Wyckoff, Stephen Noel, Jason Madison, Eugene Montgomery, Dr. Alejandro Angel, and Andrew Everroad (collectively, the “Board Members”) are the current members of the Board. Each of the Board Members is sued only in his or her official capacity.

JURISDICTION AND VENUE

15. Plaintiffs bring this civil rights lawsuit pursuant to Article II, Sections 4, 6, and 13; Article III; Article IV, Part 1, Section 1; Article IV, Part 2, Section 19(13); and Article VI of the Arizona Constitution; the Arizona Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831, *et seq.*; and the authority of this Court to provide injunctive relief pursuant to A.R.S. §§ 22-1801, *et seq.*
16. This Court has jurisdiction over this action pursuant to Article VI, Section 14, of the Arizona Constitution and A.R.S. § 12-123.
17. Venue in Maricopa County is proper under A.R.S. § 12-401(16).

FACTS

Plaintiffs Greg Mills and SOENCO

18. Plaintiff Greg Mills is an engineer with more than 30 years' experience.
19. Greg has always been interested in electronics. He got his first job in the electronics field in 1987 as a laboratory technician at the Rayovac Corporation in Wisconsin. Greg was later promoted to Senior Technician and Lab Manager at Rayovac.
20. During his roughly ten years at Rayovac, Greg worked on various circuit designs related to flashlights. Greg designed, analyzed, tested, and built electronic circuits for touchpad switches, charge control electronics, test systems, and a number of projects related to lithium-ion battery technology. Greg has his name on two Rayovac patents.
21. In 1996, Greg took a job as an "Engineer" at Unitech Industries in Scottsdale, Arizona.
22. As an engineer at Unitech, Greg designed, analyzed, tested, and built electronic circuits for phone and accessory power adapters that plugged into automobile charge-ports and cigarette lighters.
23. The same year Greg began working as an engineer at Unitech, he was recruited by Spectrum Astro, an aerospace company operating one of the most advanced satellite manufacturing facilities in the world, located in Gilbert, Arizona.
24. Greg was hired by Spectrum Astro as an "Engineer Technologist" to design, analyze, test, and build electronic circuits for spacecraft.

25. In 2004, Spectrum Astro was acquired by General Dynamics. Greg initially retained his position as “Engineer Technologist” but was later promoted to “Responsible Design Engineer.”
26. As a “Responsible Design Engineer,” Greg led the development of a test program to evaluate high capacity lithium-ion batteries for use as the primary power source for space missions. He designed, analyzed, tested, and built various spacecraft electronics components—including electrical design, circuit analysis, mechanical design, and fabrication—for various military and commercial programs.
27. Among the projects Greg was responsible for designing, developing, analyzing, testing and building at Spectrum Astro and General Dynamics were electronic subsystems in the GeoEye-1 satellite, the highest-resolution commercial Earth-imaging satellite put in orbit at the time.
28. Greg left General Dynamics in 2006 to become the “Principal Engineer” at AZ Electronic APPS.
29. At AZ Electronic APPS, Greg designed, developed, analyzed, tested, and built automated electronic test equipment for integrated circuits (microchips) and modules, including for semiconductor fabrication plants. Greg designed and assembled hardware and electronics (and some software) into automated off-the-shelf test products that were as small as possible.
30. In September 2007, at the beginning of the great recession, AZ Electronic APPS experienced economic hardships, and Greg left with a severance package.

31. At no time during his engineering career to this point had Greg ever held a professional engineer (“PE”) license.
32. At no time during his engineering career to this point had Greg ever been required to be supervised by PEs or have PEs review his work.
33. At no time during his engineering career to this point had Greg ever been supervised by PEs or had PEs review his work.
34. Greg was offered an engineering job at Black & Decker in Maryland to work on lithium-ion battery development. But Greg and his family had lived in Arizona for years and did not want to leave. Greg chose, instead, to stay in Arizona and become an entrepreneur.
35. In October 2007, Greg started a business called Big Byte Engineering. In February 2017 he registered a new LLC and changed the name of his business to Southwest Engineering Concepts, LLC (“SOENCO”). Greg’s work at SOENCO is the same as his work at Big Byte.
36. Greg is the “Principal Engineer” at SOENCO where he continues to engage in the type of engineering work that he has done in all his prior jobs—designing, analyzing, testing, and building electronic circuits for various products.
37. Greg works as a consultant to small businesses, start-ups, and entrepreneurs to help them design and develop their products for market. He designs, analyzes, tests, and builds electronic circuits to develop product ideas from concept to prototype and works with manufacturers to implement the production of those products.

38. Greg also designs, analyzes, tests, and builds “structures,” which are just housings and mechanisms for his electronic circuit designs. More frequently, however, he subcontracts these out to other (non-registered) engineers.
39. Greg thus describes his services as product development and manufacturing support, economical design cycle, electrical engineering, mechanical engineering, and project management.
40. Examples of Greg’s work at SOENCO include the designing, analyzing, testing, and building of LED arrays and color and intensity controls for those LED arrays, spin rate and direction sensors for basketball shot training tools, and a high speed ranging and timing system to accurately measure the distance and flight time of a ball throw for sports training.
41. Greg does not design, analyze, test, or build buildings, bridges, public works, or other construction projects. He does not design, analyze, test, or build any electronics that are incorporated into buildings, bridges, public works, or other construction projects. He does not design, analyze, test, or build anything that legally requires “signed and stamped plans” to build.
42. Neither Greg nor SOENCO has ever claimed that Greg is a “certified,” “registered,” “professional,” “professional certified,” “registered professional” or “professional registered” engineer or ever claimed that Greg is a “PE.”

43. In his 12 years in business at SOENCO, Greg has never received a complaint about his work until the present suit, and even the complaint that initiated this action pertained to cost rather than the health, safety, or quality of Greg's engineering.

The Arizona Board of Technical Registration

44. The Arizona Board of Technical Registration is created by statute to promulgate and enforce "standards of qualification for those individuals who are registered or certified and seeking registration or certification" of an occupation covered by Chapter 1 of Title 32 of the Arizona Revised Statutes, A.R.S. §§ 32-101 *et seq.*
45. Any "person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate of registration" from the Board. A.R.S. § 32-121.
46. Engineering is an occupation covered by Chapter 1 of Title 32 of the Arizona Revised Statutes.
47. For purposes of Chapter 1 of Title 32 of the Arizona Revised Statutes, "engineering practice" is defined as:

any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 22, subdivisions (d) and (e) of this subsection, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if the person practices any branch of the profession of engineering, or by verbal claim, sign, advertisement,

letterhead, card or any other manner represents that the person is a professional engineer or is able to perform or does perform any engineering service or other service recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer.

A.R.S. § 32-101(B)(11).

48. For purposes of Chapter 1 of Title 32 of the Arizona Revised Statutes, “engineer” is defined as: “a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.” A.R.S. § 32-101(B)(10).
49. The Board promulgates regulations, administers examinations, and approves (or disapproves) applications for the occupations it regulates. A.R.S. §§ 32-102 to -106.
50. The Board’s own regulations further define specific “branches of engineering” that include, *inter alia*, mechanical, electrical, structural, and control systems. A.A.C. § R4-30-221(A).
51. There are numerous statutory exceptions to the statutes administered by the Board.
52. Among these statutory exceptions, the requirements of Chapter 1, Title 32 of the Arizona Revised Statutes do not apply to:

work done by any communications common carrier or its affiliates or any public service corporation or manufacturing industry or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or nonengineering services of such communications common carrier or its affiliates or public service corporation or manufacturing industry, and provided that the engineering service is not offered directly to the public.

A.R.S. § 32-144(C).

53. This “manufacturing industry exception” applied to Greg while he was an engineer designing, analyzing, testing, and building electronic circuits at Unitech, Spectrum Astro, General Dynamics, and AZ Electronic APPS.

The Board Investigates Greg and Determines He Violated the Board’s Laws

54. The Board is empowered to investigate and adjudicate violations of the statutes it administers and its own rules. A.R.S. § 32-106(A)(5).
55. On May 2, 2019, an investigator for the Board informed Greg that he was being investigated for violating the

following provision(s) of the Board’s Practice Act:

- Practiced, offered to practice or by implication held himself out as qualified to Practice a Board regulated profession without registration in possible violation of A.R.S. 32-145(1);
- Advertised or displayed a device that may indicate to the public that he is registered or qualified to practice a Board regulation (sic) profession without registration in possible violation of A.R.S. 32-145(2);
- Firm engaged in the practice of a Board regulated profession without firm registration in possible violation of A.R.S. 32-141.

56. A complaint had been filed against Greg by a disgruntled customer over a price dispute. The customer had wanted Greg “to do some work for my Coolbrella invention.” The “Coolbrella” is an umbrella with an incorporated misting system. Greg was hired to develop a recharging unit for the misting system’s battery-powered pump.
57. Greg had estimated the project would cost \$4,000, but when the customer insisted it be USB-charger compatible, Greg increased that estimate by \$800 based on equipment costs.
58. The customer refused to pay, complained to the Board that Greg was not a registered engineer, and asked that the Board get him “a full refund of all payments made.”
59. Greg responded to the Board investigator’s letter on May 9, 2019, stating:
- [SOENCO] is an engineering consulting firm specializing in the fields of physics and technology, electrical engineering and mechanical engineering for clients in aerospace, medical and consumer electronics product development. We have never done any work in any board regulated profession. We don't claim to do any work in any board-regulated profession, and would have no reason to register my business or person with the state for such work. Nobody at Southwest Engineering Concepts has ever worked in any board-regulated profession, nor has any owner or employee advertised or indicated that the company or individual is a licensed or registered Professional Engineer. I am certain that your investigation will prove this out to be true, as there can be no evidence to indicate otherwise.
60. On June 24, the investigator for the Board sent a letter informing Greg that he was the subject of a preliminary investigation process on the three charges previously identified.
61. The June 24 letter contained legal opinion letters from two “professional engineers,” i.e., engineers registered with the Board, opining that Greg and SOENCO were violating the

three statutes identified in the investigator's May 2 letter: A.R.S. §§ 32-141, 32-145(1), and 32-145(2).

62. The first legal opinion came from Lisa Nelson, a registered civil engineer. She opined that Greg:

(1) violated A.R.S. § 32-145(1)'s practice restrictions by "providing a circuit design/plan which is electrical engineering. Per A.R.S. 31-101 (sic) and (sic) 'Engineer' is defined by (sic) someone with professional education and registration as an engineer," but Greg is not registered;

(2) violated A.R.S. § 32-145(2)'s advertising restrictions because SOENCO's website "solicit[ed] engineering services for electrical, mechanical, and structural design and analysis" and because the website called Greg the "principal engineer," but Greg is not registered; and

(3) violated A.R.S. § 32-141's firm registration requirements because SOENCO was not registered and there was no registered individual as a principal in the firm.

63. The second legal opinion came from Ronald Sterling, a registered structural engineer. He opined that Greg:

(1) was offering or advertising board-regulated services without being registered, in violation of the Board's laws; and

(2) that SOENCO was not properly registered with the Board prior to offering or advertising Board-regulated engineering services; but

- (3) Mr. Sterling admitted he was “not qualified to opine on whether the specific electrical circuitry services provided by [Greg/SOENCO] were competently performed or fell under services that are specifically required to be performed by a professional electrical or mechanical engineer” and recommended further evaluation “by an experienced electrical and/or mechanical engineering subject expert.”
64. On August 2, 2019, the investigator for the Board sent Greg a proposed Consent Agreement and Order and asked Greg to sign it.
65. Based on the two legal opinions, the Board’s Consent Agreement and Order determined that Greg had violated A.R.S. §§ 32-145(1) & (2) and 32-141(A).
66. The Consent Agreement and Order imposed a \$3,000 fine, assessed an additional \$375 as the costs of the investigation, and required Greg to follow the laws related to the practice of engineering, which would mean Greg was prohibited from calling himself an engineer and continuing his work at SOENCO unless he became a registered engineer.
67. The investigator asked Greg to sign the Consent Agreement and Order by August 23, 2019. Greg did not sign the Consent Agreement and Order.
68. On October 1, 2019, the investigator for the Board again contacted Greg to invite him to the Board’s meeting on October 22, 2019. This was just an invitation, Greg’s “attendance was not mandatory.” Greg declined the invitation.
69. On October 22, 2019, the Board was read a summary of Greg’s case at its meeting. A member of the Board moved to amend the Consent Agreement and Order to double the

amount of the fine imposed on Greg to \$6,000. The Board voted to approve this amendment to the Consent Agreement and Order.

70. On October 23, the investigator for the Board sent Greg the amended Consent and Agreement Order. Consistent with the Board's vote, this amended Consent and Agreement Order imposes a \$6,000 fine, assesses \$465 as the cost of investigation, and requires Greg to follow the laws related to the practice of engineering, which means Greg would still be prohibited from calling himself an engineer and continuing his work at SOENCO unless he becomes a registered engineer.
71. The investigator for the Board asked Greg to sign the amended Consent Agreement and Order by November 13, 2019. Greg did not sign the amended Consent Agreement and Order.

Penalties for the Unregistered Practice of Engineering

72. Chapter 1 of Title 32 of the Arizona Revised Statutes threatens Greg with penalties still greater than those approved by the Board.
73. Any person who violates A.R.S. § 32-145(1) is guilty of a class 2 misdemeanor.
74. Any person who violates A.R.S. § 32-145(2) is guilty of a class 2 misdemeanor.
75. Any person who violates A.R.S. § 32-141 is guilty of a class 2 misdemeanor.
76. Class 2 misdemeanors are punishable by a maximum of four months in prison, A.R.S. § 13-707(A)(2), a fine not more than \$750, A.R.S. § 13-802(B), and can be raised to a higher misdemeanor offense after multiple violations. A.R.S. § 13-707.

The Board's Enforcement of the Engineering Practice Laws

77. The Board has been delegated the authority to “[h]ear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.” A.R.S. § 32-106(5).
78. Board hearings (and hearings before an administrative law judge) are governed by Arizona’s Administrative Procedure Act, A.R.S. §§ 41-1001, *et seq.*
79. If the administrative law judge holds the hearing, the Board has the authority to overrule the administrative law judge’s findings and conclusions. A.R.S. § 41-1092.08.
80. If the Board holds the hearing, an appeal can be taken to an administrative law judge, but the Board maintains the authority to overrule the administrative law judge’s findings and conclusions. A.R.S. § 41-1092.08.
81. An aggrieved party may then appeal an adverse Board decision to the superior court. The scope of review of that appeal is governed by A.R.S. § 12-910.

Engineers and “Professional Engineers” in Practice

82. As set forth above, when Greg practiced engineering under the “manufacturing industry exemption” in A.R.S. § 32-144(C), he was not a “registered” or “professional” engineer, he was not supervised by a “registered” or “professional” engineer, and his work was not reviewed or approved by a “registered” or “professional” engineer. Greg’s experience is typical of the vast majority of engineers, including engineers who, like Greg, design, analyze, test, and build electronic circuits for manufactured products.

83. Outside of the construction industry, the vast majority of engineers working in America today are not “registered” or “professional” engineers and have no need to be a “registered” or “professional” engineer to practice their occupation.
84. Outside of the construction industry, the vast majority of engineers working in America today are not supervised by a “registered” or “professional” engineer, nor does any such engineer review or approve their work.
85. “Registered” or “professional” engineers, most often designated by the title “PE,” primarily work in the construction industry. This is because international building codes and other government regulations require certain construction documents—including plans for buildings, bridges, public works, and the like to be approved—“signed and stamped”—by “registered design professionals,” including PEs, before construction permits are issued.
86. These “sign and stamp” requirements do not apply outside of the construction industry.
87. Instead of “sign and stamp” requirements, public health and safety is protected in these other engineering fields by third-party testing, products-liability laws, and other legal requirements.
88. There are thousands of “unlicensed” engineers working in Arizona today, at some of the biggest companies in the world, including Intel, Raytheon, General Dynamics, ON semiconductor, Honeywell, Medtronic, and others.

89. These “unlicensed” engineers design, analyze, test, and build electronic circuits for aerospace, medical, consumer, and other products, like Greg does, and numerous other component parts of these products.
90. Because “PE” registration is irrelevant to most engineers, an overwhelming majority of engineers—somewhere around 80% nationwide—do not pursue licensing as a PE.

Engineer Registration Requirements

91. Given that PE status is irrelevant to the vast majority of engineers, there is no reason for these engineers to undergo the lengthy and burdensome requirements to become a PE.
92. The PE-registration requirements fall into three primary categories: (1) good moral character, (2) eight years of education or experience, and (3) passing two examinations. A.R.S. § 32-122.01(A).
93. According to the Board, if Greg wants to continue to work at SOENCO, he must get registered as a PE.

The First Requirement: Good Moral Character

94. The first requirement for registration is that the applicant be of “good moral character and repute.” This is defined in the Arizona Administrative Code as a list of activities or conduct the applicant must not have engaged in. A.A.C. § R4-30-101(12).
95. Among the list of disqualifying activities are having “practiced without the required technical registration or certification in this state or in another jurisdiction within the two years immediately preceding the filing of the application for registration or certification.” A.A.C. § R4-30-101(12)(g).

96. Because the Board has determined that Greg has engaged in engineering practice without the required license, he cannot apply for a license for two years. During this time, he would be forced to close SOENCO.
97. As set forth below, however, the Board's definition of engineering practice is unconstitutionally vague and/or cannot be constitutionally applied to Greg's designing, analyzing, testing, and building of electronic circuits. Therefore, Greg cannot be required to register as a PE to practice his occupation.

The Second Requirement: Education or Experience

98. The second requirement for registration is to "[b]e actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years." A.R.S. § 32-122.01(A)(2).
99. Generally, the experience requirement can be satisfied only through experience with a registered or licensed engineer. Arizona law requires that experience "be attained under the direct supervision of a professional who is satisfactory to the board and registered in this state, another state or a foreign country in the profession in which the applicant is seeking registration, except that up to one year's experience may be attained under the direct supervision of a professional who is satisfactory to the board and registered in another profession regulated under this chapter in this state, another state or a foreign country." A.R.S. § 32-122.01(D).

100. Because Greg, like most engineers, does not work in the construction industry, he has never been supervised by a “registered” engineer or any other “registered professional” regulated by the Board.
101. The Board has discretion to exempt an applicant from the experience that must be gained under a licensed professional “[b]y a two-thirds majority vote . . . crediting comparable experience satisfactory to the board that the applicant attained without direct supervision of a registered professional.” A.R.S. § 32-122.01(E).
102. The code assigns and defines four classifications for experience: (1) subprofessional experience, (2) professional experience, (3) responsible charge experience, and (4) design experience. A.A.C. § R4-30-101(10).
103. “Subprofessional experience” is entry-level engineering such as technician work and “task work done under direct supervision and not falling within the definition of professional experience.” A.A.C. § R4-30-101(10)(a).
104. “Professional experience” is medium-level engineering, requiring “a diversity of work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision necessary to ensure that good judgment is applied to protect the public during the course and scope of projects.” A.A.C. § R4-30-101(10)(b).
105. “Responsible charge experience” is experience gained through work that is self-supervised or minimally supervised, “work in the field or in the office, where the applicant/registrant had responsibility for the direction of the work and its successful accomplishment and where the applicant/registrant had to make professional decisions

without relying on advice or instructions from or first referring the decisions for approval to a superior.” A.A.C. § R4-30-101(10)(c).

106. “Design experience” is “professional experience, including work defined under ‘responsible charge experience,’ where the applicant/registrant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.” A.A.C. § R4-30-101(10)(d).
107. The education and experience requirement can also be satisfied through a college degree or education, but that requirement is not in issue in this case because Greg would seek to qualify with work experience only.
108. The code further sets out a list of and defines 11 non-exclusive types of experience that satisfy the experience requirement for non-college degree applicants applying for the Fundamentals Examination. A.A.C. § R4-30-222(B).
109. Credit, in hours per month, is determined as follows: 130 hours or more of work per month equals one-month of experience, 85-129 hours of work per month is half a month of experience, and no credit is given for less than 85 hours of work a month. A.A.C. § R4-30-208.
110. Employers are required to verify an applicant’s experience before the Board grants credit. A.A.C. § R4-30-208(4).

111. Because Greg's experience was not earned under the supervision of any registered engineer, Greg's three decades of experience likely do not meet the registration requirements.

The Third Requirement: The Examinations

112. The third requirement for registration is that an applicant "pass the applicable in-training and professional examinations in the profession in which registration is sought." A.R.S. § 32-122.01(A)(3).
113. The in-training examination is the Fundamentals Examination. A.A.C. § R4-30-222(C).
114. The Fundamentals Examination is a 110-question, 5 hour and 20 minute, computer-based exam. The exam is specific to the branch of engineering for which the applicant seeks proficiency.
115. The Electrical and Computer Fundamentals Examination covers 18 areas: (1) Mathematics, (2) Probability and Statistics, (3) Ethics and Professional Practice, (4) Engineering Economics, (5) Properties of Electrical Materials, (6) Engineering Sciences, (7) Circuit Analysis (DC and AC Steady State), (8) Linear Systems, (9) Signal Processing, (10) Electronics, (11) Power, (12) Electromagnetics, (13) Control Systems, (14) Communications, (15) Computer Networks, (16) Digital Systems, (17) Computer Systems, and (18) Software Development.
116. The Fundamentals Examination exam fee is \$175.
117. The second examination required is the Professional Examination. A.A.C. § R4-30-204(A).

118. The Professional Examination is offered twice a year and is an eight-hour, open-book exam, consisting of two four-hour sessions, each of which features forty multiple-choice questions. The questions include design, analysis, and application as well as test a variety of approaches and methodologies, including testing knowledge of engineering economics.
119. The Professional Examination is administered by discipline, including Electrical and Computer, which is further subdivided into Computer Engineering, Electrical and Electronics, and Power.
120. The major categories of non-exclusive subjects that will be tested are: (1) General Electrical Engineering Knowledge, (2) Digital Systems, (3) Electromagnetics, (4) Electronics, (5) Control Systems, and (6) Communications. Each subject is further divided into numerous subparts.
121. The exam fee for the Professional Examination is \$350-375.
122. Because Greg would have to meet certain experience requirements before he would be allowed to apply to take these examinations, and because Greg's experience was not earned under the supervision of any registered engineer, Greg likely cannot qualify to even sit for the exams.

Engineer Registration Process

123. The Board is charged with implementing "standards of qualification for those individuals who are ... seeking registration or certification pursuant to this chapter." A.R.S. § 32-101(A).

124. The Board does this through a series of applications that verify an applicant's character and repute, education and experience, and test passage. A.A.C. §§ R4-30-201(A), -202(B), -204(A).
125. An applicant for professional registration as an engineer who does not have a college degree, like Greg, must submit three applications to the Board, one authorizing the applicant to take the Fundamentals Examination, one authorizing the applicant to take the Professional Examination, and one for professional registration.
126. The Fundamentals Examination application takes the Board an average of eight to twelve weeks to approve. That application further requires a \$100 application fee, a completed proof-of-citizenship form, a copy of a government-issued photo ID, college transcripts, three Certificates of Experience Record and Reference forms, and any required disciplinary or criminal documents. A.A.C. §§ R4-30-202, 204.
127. An applicant for the Fundamentals Examination must have 48 months of education or experience directly related to the practice of engineering. A.A.C. § R4-30-202(D).
128. An applicant for the Fundamentals Examination must verify his experience by having Certificates of Experience Record and Reference forms from "the applicant's current or former supervisors *who are registered in the same profession for which the applicant is applying* to demonstrate that the applicant meets the experience criteria for registration." Supervisors are required to complete a minimum of two of the three Certificate of Experience Record and Reference forms. *Engineer Instructions for Completing an*

Application for NCEES Fundamentals Exam Authorization at 2 (emphasis added)
(“*Fundamentals Exam Packet*”).

129. If an applicant cannot supply Certificates of Experience Record and Reference forms from at least two supervisors, the application allows submission of “a letter of explanation as to the reason why that requirement cannot be met and three Certificate of Experience Record and Reference forms submitted by professional references for consideration.” However, unlike recommendations from licensed engineers, “these alternate forms will be considered but may not be accepted as demonstrating necessary experience.” *Id.* at 2.
130. “Registered Professionals in the applicant’s specific field must complete a minimum of two of the three Certificate of Experience Record and Reference forms. If the third reference is not registered in the applicant’s specific field, is not registered at all, or is registered in a foreign jurisdiction, he or she must submit their personal resume.” *Id.* at 3.
131. Because Greg has long been his own supervisor and has never been supervised by any registered engineer in his entire career, he cannot submit the required Certificate of Experience Record and Reference forms.
132. Only if the Fundamentals Examination Application is approved by the Board may the applicant take the Fundamentals Examination.
133. After passing the Fundamentals Examination, an applicant must submit another application to the Board to take the Professional Exam.

134. The Professional Exam Application requires another \$100 application fee, a proof-of-citizenship form, a copy of a government-issued photo ID, college transcripts, three Certificate of Experience Record and Reference forms, and any required disciplinary or criminal documents.
135. An applicant for the Professional Exam must have 60 months of education or experience. A.A.C. § R4-30-204(A) (7).
136. An applicant for the Professional Exam must again submit three Certificates of Experience Record and Reference forms “from the applicant’s current or former supervisors who are registered in the same profession for which the applicant is applying to demonstrate that the applicant meets the experience criteria for registration.” *Engineer Instructions for Completing an Application for NCEES Professional Exam Authorization*, at 2 (“*Professional Exam Packet*”).
137. Supervisors are again required to complete a minimum of two of the three Certificate of Experience Record and Reference forms. *Id.* at 3
138. If the applicant cannot supply Certificate of Experience Record and Reference forms from at least two supervisors, the application allows submission of “a letter of explanation as to the reason why that requirement cannot be met and three Certificate of Experience Record and Reference forms submitted by professional references for consideration.” However, unlike recommendations from licensed engineers, “these alternate forms will be considered but may not be accepted as demonstrating necessary experience.” *Professional Exam Packet* at 3.

139. “Registered Professionals in the applicant’s specific field must [again] complete a minimum of two of the three Certificate of Experience Record and Reference forms. If the third reference is not registered in the applicant’s specific field, is not registered at all, or is registered in a foreign jurisdiction, he or she must submit their personal resume.” *Id.*
140. Although the Professional Exam Application is virtually identical to the Fundamentals Exam Application, “[d]ocumentation from a previously submitted application will not be used for a new application” and all previously submitted documents will only be maintained by the Board “for a maximum of one year.” *Professional Exam Packet* at 2.
141. Again, because Greg has long been his own supervisor and has never been supervised by any registered engineer in his entire career, he cannot submit the required Certificates of Experience Record and Reference forms.
142. The cost to submit the Professional Exam Application is \$100. *Professional Exam Packet* at 1.
143. Only if the Professional Exam Application is approved by the Board may the applicant take the Professional Examination.
144. After passing the Professional Examination, an applicant must submit the third application to the Board, the Application for Professional Registration.
145. The applicant must again complete the application with pedigree information (name, address, etc.), a \$100 application fee, a proof-of-citizenship form, a copy of a government-issued photo ID, college transcripts, three Certificate of Experience Record and Reference forms, and any required disciplinary or criminal documents.

146. An applicant for professional registration must have 96 months of either experience or education. This is the full eight-year statutory requirement. A.R.S. § 32-122.01(A)(2).
147. The Board shall approve an applicant only if the Board determines that an “applicant meets all requirements in statute and rule.” A.A.C. § R4-30-209(B)(1).
148. The registration requirements also provide that firms practicing a Board-registered occupation must obtain a separate registration. A.R.S. § 32-141.
149. Firm registration is a one-page form filled out by the principal registrant. Registration requires a firm to have a registered engineer in each branch of engineering in which the firm practices. The application fee is \$50. Firm registration must be renewed annually. *Id.*

Practical Effects of the Engineer Registration Requirements on Greg

150. In sum, Greg cannot “register” SOENCO until and unless he becomes a registered engineer. To become a registered engineer, Greg would have to: complete three applications verifying his character and repute with documentation; demonstrate that he has greater than 8 years of qualifying experience with three registered engineer supervisors or other registered professionals recommending him; and pass two examinations. Because Greg has never been supervised by any “registered” engineer in his entire career, he cannot submit the required Certificates of Experience Record and Reference forms or take the required examinations.
151. It would take Greg months, if not years, to complete this application process, even assuming he were eligible to complete it in the first place. During these months or years, he would be forced to close SOENCO and find other work to support himself and family,

on top of spending the time and money necessary to apply. And if the Board determines he was practicing engineering without a license, Greg would have to wait *another* two years just to begin the process.

152. As a practical matter, therefore, the Board's application of its "practice of engineering" regulations would force Greg out of business.

Injury to Plaintiffs

153. Defendants' actions threaten Plaintiffs' freedom of speech—their right to truthfully describe Greg and his occupation.
154. Greg is an engineer as the term is commonly used and understood. He has been professionally employed as an engineer for decades, and the terms "engineer" and "engineering" truthfully describe his work in a way that the public understands.
155. Nevertheless, the Board prohibits Greg and SOENCO—under pain of criminal and civil penalties—from truthfully describing Greg as an engineer or his work as engineering.
156. Defendants' actions threaten Greg's economic liberty—his right to earn an honest living free from unreasonable, arbitrary, oppressive, or monopolistic government restrictions.
157. Greg has had a long career at a variety of manufacturing companies safely designing, analyzing, testing, and building electronic circuits for products, none of which required "signed and stamped plans" to produce.
158. For the last 12 years, Greg has safely designed, analyzed, tested, and built circuits for products, none of which required "signed and stamped plans" to produce, at his own company, SOENCO.

159. Greg wishes to continue to safely design, analyze, test, and build electronic circuits for products—none of which require “signed and stamped plans” to produce—as his own boss at SOENCO.
160. Nevertheless, the Board prohibits Greg from safely designing, analyzing, testing, and building electronic circuits for products, none of which require “signed and stamped plans” to produce, working for himself at SOENCO—under pain of criminal and civil penalties—unless Greg spends months or years becoming a “registered engineer,” even though that status is not relevant to Greg’s practice, is not held by or relevant to the vast majority of engineers, is not held by or relevant to the vast majority of engineers engaged in identical work to Greg, and the process of obtaining that status would effectively put him out of business.
161. Moreover, the “engineering practice” definition that underlies the Board’s prohibition of Greg’s earning a living is unconstitutionally vague. It provides no guidance to Greg on how to conform his actions to the dictates of the law. This lack of “notice” threatens Greg’s constitutionally protected rights to speak and to earn an honest living.
162. Moreover, the “engineering practice” definition is unconstitutionally vague because it does not constrain the discretion of the Board, it unlawfully delegates legislative power to the Board to define the scope of regulated and criminal activity. This unconstitutional combination of government powers threatens Greg’s constitutionally protected rights to speak and to earn an honest living.

163. Defendants' actions threaten Greg with a class 2 misdemeanor and \$6,000 or more in fines for operating and for continuing to operate, SOENCO.
164. Defendants' actions threaten Plaintiffs with a class 2 misdemeanor and \$6,000 or more in fines for truthfully describing Greg as an engineer and his services as engineering.
165. Defendants' actions threaten Plaintiffs with a class 2 misdemeanor and \$6,000 or more in fines for pursuing an honest living providing engineering services consistent with Greg's decades of engineering experience.
166. Defendants' proposed Consent Agreement and Order would cost Greg more than \$6,000 and require him to close his business or obtain registration as a professional engineer.
167. The requirements, cost, and time of compliance with the process to register as a professional engineer would force Greg to close SOENCO.
168. Greg's rejection of the Consent Agreement and Order means that the Board will attempt to enforce its laws through its own administrative adjudication. A.R.S. §§ 12-910(E), 32-106(5)
169. Because the Board consists mostly of market participants, Greg will face a biased adjudicator in the Board.
170. In that administrative adjudication, Greg and SOENCO will be judged by an executive branch agency without the traditional guarantees of due process that apply in a court of law.
171. The Board's adjudication could adversely affect Greg's and SOENCO's rights to speak, to earn a living, and to be free from monetary fines.

172. In potential appeal from the Board's adjudication of Greg's rights, the courts will be constrained by the scope of appeal set forth in A.R.S. § 12-910(E).
173. Among these constraints, the courts must defer to the Board's findings of fact. This means there is no independent check on the Board's adjudication and the courts will be biased in favor of one party to the appeal: The Board.

FIRST CAUSE OF ACTION

The Right to Freely Speak, Write, and Publish (Article II, Section 6, of the Arizona Constitution)

174. Plaintiffs incorporate and re-allege Paragraphs 1 to 173.
175. Both on its face and as applied, A.R.S. § 32-145(1) & (2) prohibit Greg from speaking, writing, or publishing any advertisement or device that may indicate to the public that he is an engineer or qualified to do engineering.
176. It is a class 2 misdemeanor to violate either A.R.S. § 32-145(1) or (2).
177. The Board has threatened to fine Greg at least \$6,000 for his and SOENCO's alleged violations of A.R.S. § 32-145(1) & (2) and to seeks prevent Greg and SOENCO from continuing to speak, write, or publish any advertisement or device that may indicate to the public that Greg is an engineer or qualified to do engineering.
178. As demonstrated by his long work history, Greg is an engineer and qualified to do the kind of engineering that he does.
179. Article II, Section 6 of the Arizona Constitution guarantees that "[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

180. Article II, Section 6 provides greater protection for speaking, writing, and publishing than does the First Amendment.
181. Greg and SOENCO are “persons” protected by Article II, Section 6 of the Arizona Constitution.
182. Greg’s job title, client services, and qualifications are all “subjects” within the protections for “all subjects” protected by Article II, Section 6 of the Arizona Constitution.
183. Neither Greg nor SOENCO is “abusing” the right protected by Article II, Section 6 of the Arizona Constitution because they are truthfully describing Greg’s job title, client services, and qualifications.
184. Neither Greg nor SOENCO has ever claimed that Greg is a “certified,” “registered,” “professional,” “professional certified,” “registered professional,” or “professional registered” engineer or a “PE.”
185. A.R.S. § 32-145(1) & (2) are unconstitutional as applied to Greg and SOENCO because Greg can truthfully be described as an engineer and his work as engineering as those terms are commonly understood. But A.R.S. § 32-145(1) & (2) prohibit Greg and SOENCO from truthfully calling Greg an engineer and truthfully describing his work as engineering.
186. Defendants lack a state interest, compelling or otherwise, in penalizing Greg and SOENCO for, or prohibiting them from, speaking, writing, and publishing truthfully that Greg is an engineer and that the services he offers are engineering.

187. Defendants' penalizing and prohibiting Greg's and SOENCO's truthful speaking, writing, and publishing is not sufficiently tailored to any state interest, much less a compelling state interest, in preventing people from hearing and reading about Greg's occupation.
188. Defendants have available to them more narrowly tailored alternatives to a flat prohibition on the use of the title "engineer," such as regulating the use of the terms "certified," "registered," "professional," "professional certified," "registered professional," or "professional registered" in conjunction with "engineer," or the use of the title "PE."
189. Unless A.R.S. § 32-145(1) & (2) are declared unconstitutional and Defendants are enjoined from enforcing them against Plaintiffs Greg Mills and SOENCO, Plaintiffs will suffer irreparable harm by being unable to exercise their Article II, Section 6 rights to truthfully describe Greg as an engineer and the work he does as engineering without fear of investigation and punishment by the Board.

SECOND CAUSE OF ACTION

Due Process, Separation of Powers, Nondelegation, and Vagueness (Article II, Section 4; Article III; and Article IV, Part 1, Section 1, of the Arizona Constitution)

190. Plaintiffs incorporate and re-allege Paragraphs 1 to 189.
191. The Board has determined that Greg violated A.R.S. § 32-145(1) by practicing or offering to practice a Board-regulated profession without Board registration.

192. The Board has determined that SOENCO violated A.R.S. § 32-141(A) when Greg practiced or offered to practice a Board-regulated profession without Board registration.
193. The “Board-regulated profession” the Board has determined Greg and SOENCO to be practicing is “engineering.”
194. A.R.S. § 32-145 makes it a class 2 misdemeanor for a person to engage in engineering practice without a license or for a firm to engage in engineering practice without a licensed engineer.
195. The Board has threatened to fine Greg at least \$6,000 for his and SOENCO’s alleged violations of A.R.S. §§ 32-145(1) and 32-141(A) and seeks to prevent Greg and SOENCO from continuing to engage in the practice of engineering.
196. A.R.S. § 32-101(11) defines “Engineering practice.”
197. The Board enlisted two registered professional engineers to determine if Greg was in violation of the engineering practice restrictions. These engineers could not agree as to whether Greg’s designing, analyzing, testing, and building electronic circuits constituted the practice of engineering. It was therefore left to the Board’s unguided discretion to determine if Greg’s actions violated Arizona law.
198. Article II, Section 4 of the Arizona Constitution guarantees “[n]o person shall be deprived of life, liberty, or property without due process of law.”
199. Article III of the Arizona Constitution ensures “[t]he powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments

shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.”

200. Article IV, Part 1, Section 1 of the Arizona Constitution provides “[t]he legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve 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; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.”
201. A vague law is no law at all; it violates the related constitutional guarantees of due process of law and separation of powers.
202. A.R.S. § 32-101(11) is void for vagueness. It both denies an individual the ability to conform his actions to the dictates of the law and unlawfully delegates legislative power to the Board to define the scope of regulated and criminal activity.
203. Although the Board determined that Greg and SOENCO have illegally engaged in engineering practice, the term “engineering practice” is defined so vaguely as to be incomprehensible and impossible for Greg to conform his actions to.
204. Although the Board determined that Greg and SOENCO have illegally engaged in engineering practice, the term “engineering practice” is defined so vaguely that the Board has the authority to define what practices are and are not illegal—a power that can only belong to the Legislature or the people.

205. The vague definition of “engineering practice” at A.R.S. § 32-101(11) thus violates both the guarantee of due process of law in Article II, Section 4, and the express separation of powers provision in Article III of the Arizona Constitution.
206. Unless the definition of “engineering practice” at A.R.S. § 32-101(11) is declared void for vagueness and Defendants are enjoined from enforcing A.R.S. §§ 32-145(1)’s and 32-141(A)’s restrictions on the practice of engineering against Plaintiffs Greg Mills and SOENCO, Plaintiffs will suffer irreparable harm in being fined for violating a vague law and will be unable to continue their work without risk of further punishment by the Board.

THIRD CAUSE OF ACTION

Economic Liberty, Due Process, and Equal Privileges or Immunities (Article II, Sections 4 and 13, and Article IV, Part 2, Section 19 (13) of the Arizona Constitution)

207. Plaintiffs incorporate and re-allege Paragraphs 1 to 206.
208. The Board has determined that Greg violated A.R.S. § 32-145(1) by practicing or offering to practice a Board-regulated profession without Board registration.
209. The Board has determined that SOENCO violated A.R.S. § 32-141(A) by Greg practicing or offering to practice a Board-regulated profession without Board registration.
210. The “Board-regulated profession” the Board has determined Greg and SOENCO to be practicing is “engineering.”

211. A.R.S. § 32-145 makes it a class 2 misdemeanor for a person to engage in engineering practice without a license or for a firm to engage in engineering practice without a licensed engineer.
212. The Board has threatened to fine Greg at least \$6,000 for his and SOENCO's alleged violations of A.R.S. §§ 32-145(1) and 32-141(A) and seeks to prevent Greg and SOENCO from continuing to engage in engineering practice.
213. Article II, Section 4 of the Arizona Constitution guarantees that "[n]o person shall be deprived of life, liberty, or property without due process of law."
214. Article II, Section 13 of the Arizona Constitution guarantees that "[n]o law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."
215. Article IV, Part 2, Section 19 (13) of the Arizona Constitution prohibits the enactment of any local or special laws "[g]ranting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises."
216. The Arizona Constitution, through its Due Process and Equal Privileges or Immunities Clauses, protects the right to earn a living.
217. Regulations that affect the right of people to work and earn a living must have an obvious and real connection to a sufficient avowed purpose.
218. The safety, health and welfare of the public are valid concerns, but these concerns do not always justify an economic regulation on its face or as applied.

219. Regulatory measures that affect the right of people to work and earn a living must be drawn as to not unnecessarily hamper or destroy that right.
220. Regulatory measures that affect the right of people to work and earn a living must not be unreasonable, arbitrary, oppressive, or monopolistic.
221. Regulatory measures that affect the right of people to work and earn a living must not favor special competitors, effect unjust discrimination, or grant a monopoly to a special class under conditions which do not benefit the public.
222. Greg earns a living at SOENCO by consulting with clients and by designing, analyzing, testing, and building electronic circuits for products, as well as designing and constructing structures and mechanisms to house those electronic circuits.
223. Greg does not design, analyze, test, or build buildings, bridges, public works, or other construction projects. He does not design, analyze, test, or build any electronics that are incorporated into buildings, bridges, public works or other construction projects. He does not design, analyze, test, or build anything that requires “stamped plans” to build.
224. Greg’s services are safe.
225. None of Greg’s products have ever caused any person any harm.
226. The public is protected from any potential harm from a product that Greg has worked on through various product-testing requirements, such as UL or FCC certification.
227. The public is protected from any potential harm from a product that Greg has worked on through ordinary tort rules, including product liability laws, which impose liability on the manufacturers of products.

228. Greg's practice at SOENCO is the same kind of engineering he practiced for more than 20 years as an employee of various manufacturing companies.
229. While an engineer employee of these manufacturing companies, Greg was free to practice engineering pursuant to the "manufacturing industry exemption" in A.R.S. § 32-144(C).
230. Now that Greg seeks to engage in this same practice while working for himself, he is denied the right to continue his occupation.
231. When Greg practiced engineering under the "manufacturing industry exemption" in A.R.S. § 32-144(C), he was not a "registered" or "professional" engineer.
232. When Greg practiced engineering under the "manufacturing industry exemption" in A.R.S. § 32-144(C), he was neither supervised by a "registered" or "professional" engineer, nor did any such engineer review or approve his work.
233. Outside of the construction industry, the vast majority of engineers working in America today are not "registered" or "professional" engineers. This is because they have no need to be "registered" or "professional" engineers to practice their occupation.
234. Outside of the construction industry, the vast majority of engineers working in America today are neither supervised by a "registered" or "professional" engineer, nor does any such engineer review or approve their work.
235. There are thousands of "unlicensed" engineers working in Arizona today—designing, analyzing, testing, and building electronic circuits—like Greg does—for aerospace,

medical, consumer, and other products, and numerous other component parts of these products.

236. Given the limited scope of Greg's work and his three decades of experience, there is no obvious and real connection between the Board's prohibiting Greg from continuing his work and a sufficient avowed purpose for the Board's prohibition.
237. The Board's prohibition of Greg's work unnecessarily hampers or destroys Greg's right to earn an honest living.
238. The Board's prohibition of Greg's work is unreasonable, arbitrary, oppressive, or monopolistic.
239. The Board's prohibition of Greg's work favors special competitors, effects unjust discrimination, or grants a monopoly to a special class under conditions which do not benefit the public.
240. The Board's prohibition of Greg's work at SOENCO grants a special privilege or immunity to "registered" or "professional" engineers that is not equally granted to Greg.
241. There is no obvious and real distinction between Greg's engineering work for his previous employers and Greg's engineering work for his clients at SOENCO.
242. The "manufacturing industry exemption" in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any "registered" or "professional" engineer) but prohibits him from doing this same work at SOENCO, demonstrates that, as applied to Greg, no "obvious and real connection" exists

between A.R.S. §§ 32-145(1) and 32-141(A) and any sufficient avowed purpose of those regulations.

243. The “manufacturing industry exemption” in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any “registered” or “professional” engineer) but prohibits him from doing this same work at SOENCO, demonstrates that A.R.S. §§ 32-145(1) and 32-141(A) unnecessarily hamper or destroy Greg’s right to earn an honest living.
244. The “manufacturing industry exemption” in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any “registered” or “professional” engineer) but prohibits him from doing this same work at SOENCO, demonstrates that A.R.S. §§ 32-145(1) and 32-141(A) are unreasonable, arbitrary, and oppressive as applied to Greg.
245. The “manufacturing industry exemption” in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any “registered” or “professional” engineer) but prohibits him from doing this same work at SOENCO, demonstrates that A.R.S. §§ 32-145(1) and 32-141(A), as applied by the Board to Greg, favor special competitors, effect unjust discrimination, or grant a monopoly to a special class of “registered” or “professional” engineers that does not benefit the public.
246. The “manufacturing industry exemption” in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any

“registered” or “professional” engineer) but prohibits him from doing this same work at SOENCO, demonstrates A.R.S. §§ 32-145(1) and 32-141(A), as applied by the Board to Greg, effects unjust discrimination against Greg. Specifically, the exemption discriminates between an engineer working as an entrepreneur, as compared to engineers working as employees who benefit from the exception in A.R.S. § 32-144(C).

247. The “manufacturing industry exemption” in A.R.S. § 32-144(C) that permitted Greg to engage in unlicensed engineering as an employee (without the supervision of any “registered” or “professional” engineer) but prohibits him from doing this same work at SOENCO, demonstrates that A.R.S. §§ 32-145(1) and 32-141(A), as applied by the Board to Greg, grants a special privilege or immunity to employee engineers that is not equally granted to Greg.
248. Unless A.R.S. §§ 32-145(1) and 32-141(A) are declared unconstitutional as applied to Plaintiffs, and Defendants are enjoined from enforcing A.R.S. §§ 32-145(1)’s and 32-141(A)’s restrictions on the practice of engineering against Plaintiffs Greg Mills and SOENCO, Plaintiffs will suffer irreparable harm; specifically by being fined for earning an honest living in the occupation of their choosing and by being prohibited from continuing to design, analyze, test, and build electrical circuits for products to earn a living.

FOURTH CAUSE OF ACTION

Due Process, Separation of Powers, and Nondelegation (Article II, Section 4; Article III; and Article VI of the Arizona Constitution)

249. Plaintiffs incorporate and re-allege Paragraphs 1 to 248.

250. The Board has determined to fine Greg and SOENCO at least \$6,000 for exercising their rights to speak and to earn an honest living.
251. Greg's and SOENCO's right to speak freely is a private right protected by the Arizona Constitution.
252. Greg's right to earn an honest living, free from unreasonable, arbitrary, oppressive, or monopolistic government regulations is a private right protected by the Arizona Constitution.
253. Greg's and SOENCO's property right to their \$6,000 that the Board seeks to fine them is a private right protected by the Arizona Constitution.
254. Article II, Section 4 of the Arizona Constitution guarantees "[n]o person shall be deprived of life, liberty, or property without due process of law."
255. Article III of the Arizona Constitution ensures "[t]he powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others."
256. Article VI, Section 1 of the Arizona Constitution provides "[t]he judicial power shall be vested in an integrated judicial department consisting of a supreme court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts."
257. The determination and adjudication of private rights lies solely within the judicial power.

258. Due process and separation of powers guarantees therefore require private rights, like the ones at issue here, to be adjudicated solely by independent judges exercising the judicial power. Private rights cannot be adjudicated by executive branch administrative agencies like the Board.
259. The Board exercises more than one of the three “separate and distinct” powers of the government outside of the provisions of the Arizona Constitution.
260. The Board exercises executive powers when it enforces A.R.S. §§ 32-101, *et seq.* and exercises legislative powers when it makes substantive rules related to A.R.S. §§ 32-101, *et seq.*, that have the force of law.
261. Moreover, the Board adjudicates cases involving its own substantive rules and enforcement actions. A.R.S. § 32-106(5).
262. Fact finding—the examination of evidence, the making of factual findings, and the resolution of factual disputes—are essential features of adjudication and are exercises of judicial power.
263. Because the Board’s exercise of judicial power is expressly prohibited by Articles III and VI of the Arizona Constitution, Board adjudication is only supposed to be a “quasi-judicial” proceeding meant to hear and determine facts and apply the law thereto as an exercise of executive enforcement action.
264. Administrative fact findings occur without traditional guarantees of due process that must be followed in court.

265. The scope of appeals from the Board's "quasi-judicial" adjudication to Arizona's Article VI courts is governed by A.R.S. § 12-910.
266. As interpreted by Arizona courts, A.R.S. § 12-910(E) requires deference to the Board's findings of fact. A.R.S. § 12-910(E) requires Arizona's Article VI courts to defer to findings of fact on an administrative record and to uphold agency action if it is supported by "substantial evidence." The Arizona Supreme Court has interpreted "substantial evidence" to mean any evidence.
267. Under A.R.S. § 12-910(E) as interpreted by the Arizona courts, the Board is, in fact, adjudicating, not "quasi-adjudicating," Greg's and SOENCO's private rights because Article VI courts must defer to the Board. This violates the strict separation of powers guarantees of Article III.
268. The deferential review of "quasi-judicial" adjudications mandated by A.R.S. § 12-910(E) violates Greg's and SOENCO's right—protected by Article II, Section 4's due process of laws guarantee and Article III's separation of powers guarantee—to have an independent Article VI judge determine and adjudicate his private rights to speak, to earn an honest living, and to not have his property taken from him through a Board-imposed fine, which includes allowing him to test the government's "fact-finding" in an actual adjudication.
269. The deferential review of "quasi-judicial" adjudications mandated by A.R.S. § 12-910(E) violates Article III's separation of powers because it strips the Article VI courts of their sole authority to determine and adjudicate private rights.

270. Under A.R.S. § 12-910(E) as interpreted by the Arizona courts, courts are to be biased in favor of the Board because they are to defer to the Board's own determination of the facts in its own "quasi-judicial" proceeding. This violates the due process of law guarantee in Article II, Section 4, of the Arizona Constitution.
271. Unless A.R.S. §§ 12-910(E) and 32-106(5) are declared unconstitutional as applied to the adjudication of Plaintiffs' private rights and Defendants are enjoined from determining and adjudicating Plaintiffs' private rights to speak, private rights to earn a living, and private rights to their property (money) subject to fine, Plaintiffs Greg Mills and SOENCO will suffer irreparable harm; specifically, in being fined for and prohibited from speaking and earning an honest living in the occupation of their choosing without meaningful recourse to the courts, thereby being denied Article VI judges—the independent decisionmakers seeking to declare the law's meaning as fairly as possible, the decisionmakers promised to them by law.

PRAYER FOR RELIEF REQUESTED


WHEREFORE, Plaintiffs pray for relief as follows:

- A. For a declaratory judgment that A.R.S. § 32-145(1) & (2) both on their face and as applied violate the Plaintiffs' right to freely speak guaranteed by Article II, Section 6 of the Arizona Constitution;
- B. For a permanent injunction barring Defendants from enforcing A.R.S. § 32-145(1) & (2) against Plaintiffs;

- C. For a declaratory judgment that A.R.S. § 32-101(11)'s definition of "Engineering practice" is unconstitutionally vague in violation of Article II, Section 4; Article III; and Article IV, Part 1, Section 1, of the Arizona Constitution and therefore void;
- D. For a permanent injunction barring Defendants from enforcing A.R.S. §§ 32-145(1)'s and 32-141(A)'s restrictions on engineering practice against Plaintiffs;
- E. For a declaratory judgment that A.R.S. §§ 32-145(1)'s and 32-141(A)'s restrictions on engineering practice, as applied to Plaintiffs, violate their right to earn a living guaranteed by Article II, Sections 4 and 13, and Article IV, Part 2, Section 19(13) of the Arizona Constitution;
- F. For a permanent injunction barring Defendants from enforcing A.R.S. §§ 32-145(1) and 32-141(A) against Plaintiffs;
- G. For a declaratory judgment that, as applied to the determination and adjudication of private rights, A.R.S. §§ 12-910(E) and 32-106(5) applied together establish an unconstitutional delegation of judicial power to an administrative board in violation of Article II, Section 4; Article III; and Article VI, Section 1, of the Arizona Constitution;
- H. For a permanent injunction barring Defendants from enforcing A.R.S. § 32-106(5) against Plaintiffs;
- I. Award nominal damages in the amount of \$1.00;
- J. Award attorneys' fees and costs in this action pursuant to A.R.S. §§ 12-341, -348, and the private attorney doctrine;
- K. Such additional relief as the Court deems just, equitable, and proper.

Respectfully submitted, this 5th Day of December, 2019

INSTITUTE FOR JUSTICE

By: 
Paul V. Avelar (AZ Bar No. 023078)
398 South Mill Avenue, Suite 301
Tempe, AZ 85281

Adam Griffin (NC Bar No. 55075)*
901 North Glebe Road, Suite 900
Arlington, VA 22203

*motion for admission pro hac vice pending

*Attorneys for Plaintiffs Greg Mills and Southwest
Engineering Concepts, LLC*