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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARCIE A. REDGRAVE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff-Appellant,</p> <p style="text-align: center;">v.</p> <p>DOUG DUCEY, Governor; JAMI SNYDER, in her official capacity as Director of the Arizona Health Care Cost Containment System; ARIZONA DEPARTMENT OF ECONOMIC SECURITY; ARIZONA DIVISION OF DEVELOPMENTAL DISABILITIES,</p> <p style="text-align: center;">Defendants-Appellees.</p>
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No. 18-17150

D.C. No. 2:18-cv-01247-DLR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Douglas L. Rayes, District Judge, Presiding

Argued and Submitted February 4, 2020
Submission Withdrawn March 25, 2020
Resubmitted September 13, 2021
Phoenix, Arizona

Before: O’SCANNLAIN, GRABER, and MILLER, Circuit Judges.

Marcie Redgrave appeals the dismissal of her complaint. The district court

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

ruled that the state of Arizona did not waive its sovereign immunity from Fair Labor Standards Act (“FLSA”) claims. As the facts are known to the parties, we repeat them only as necessary to explain our decision.

Unsure if Arizona consented to damages liability for a State agency’s violation of the minimum wage or overtime provisions of the FLSA, we certified the matter to the Arizona Supreme Court. *Redgrave v. Ducey*, 953 F.3d 1123 (9th Cir. 2020). In answering our question, the court noted that “[t]he Arizona Constitution gives the legislature the authority to waive Arizona’s sovereign immunity.” *Redgrave v. Ducey*, No. CV-20-0082-CQ, 2021 WL 3673222, at *1 (Ariz. Aug. 19, 2021). However, because “the legislature has not unequivocally consented to federal damages liability,” the court held that “Arizona has not consented to . . . liability under the FLSA.” *Id.*

In light of the Arizona Supreme Court’s decision, we conclude that Arizona has not abrogated its sovereign immunity against FLSA claims.¹

AFFIRMED.

¹Redgrave has waived the argument that Arizona waived its immunity by removing this case to federal court. *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).