IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

GREG MILLS, AN INDIVIDUAL; AND SOUTHWEST ENGINEERING CONCEPTS, LLC, AN ARIZONA COMPANY,
Plaintiffs/Appellants,

v.

STATE OF ARIZONA, A BODY POLITIC,
Defendant/Appellee.

No. 2 CA-CV 2023-0240
Filed December 23, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. CV2019013509
The Honorable Susanna C. Pineda, Judge

AFFIRMED

COUNSEL

Institute for Justice
By Elizabeth Sanz, Pro Hac Vice, Arlington, Virginia, and
Paul V. Avelar, Phoenix
Counsel for Plaintiffs/Appellants

Kristin K. Mayes, Arizona Attorney General
By Hayleigh S. Crawford, Joshua M. Whitaker, and Emma H. Mark,
Assistant Attorneys General, Phoenix
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Chief Judge Staring authored the decision of the Court, in which Presiding Judge Gard and Judge Eckerstrom concurred.

S T A R I N G, Chief Judge:

¶1 Greg Mills and Southwest Engineering Concepts, LLC, ("Appellants") appeal from the superior court's grant of the state's motion to dismiss their claims that Arizona's engineering registration statutes are unconstitutional. For the following reasons, we affirm.

Factual and Procedural Background

¶2 The relevant facts in this case are undisputed. After working many years in various engineering roles for employers in Arizona, Greg Mills started his own engineering consulting firm in 2007. Mills and his firm publicly offered engineering work including designing, analyzing, testing, and building electronic circuits. However, neither Mills nor his firm were registered with the state to practice engineering professionally.

¶3 The Arizona Board of Technical Registration ("the Board") regulates the practice of technical professions such as architecture, geology, landscaping, and engineering. *See* A.R.S. §§ 32-101 to 32-113. It requires members of regulated technical professions to be registered with the state or otherwise exempted when offering, practicing, or advertising any board-regulated service. *See* A.R.S. § 32-145. In 2019, after receiving a consumer complaint, the Board began an investigation into whether Appellants had engaged in the unauthorized practice of engineering. It concluded that Appellants had violated the state's engineering practice statutes by offering and advertising engineering services while unregistered. The Board then made two unsuccessful attempts to resolve the issue by consent decree.

¶4 Appellants subsequently brought an action against the Board, claiming the engineering registration statutes are unconstitutional. In response, the Board filed a motion to dismiss Appellants' complaint pursuant to Rules 12(b)(1) and 12(b)(6), Ariz. R. Civ. P. The superior court granted the motion after concluding Appellants lacked standing and their claims were unripe. On appeal, this court affirmed the dismissal.

Appellants then sought review from our supreme court, which concluded the constitutional challenges were ripe and Appellants had standing in three of the issues presented. The case was subsequently remanded back to superior court for further proceedings.

¶5 On remand, the parties stipulated to the substitution of the state as defendant for the Board. The state then moved for dismissal pursuant to Rule 12(b)(6), arguing the engineering regulation statutes were not void for vagueness and did not infringe upon Appellants' constitutional rights. The superior court granted the state's motion and dismissed Appellants' claims. This appeal followed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

I. Vagueness

¶6 Appellants assert the superior court erred in granting the state's motion to dismiss, arguing that A.R.S. § 32-101(B)(11) is unconstitutionally vague as to whether the definition of "engineering practice" applies to their work. They contend the statute fails to provide "fair notice of what is prohibited" by law and is "so standardless that it authorizes or encourages seriously discriminatory enforcement." *State v. Holle*, 240 Ariz. 300, ¶ 46 (2016) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)). And because the statute may also implicate criminal liability, they assert that even greater specificity in the statute is required. *See State v. Cota,* 99 Ariz. 233, 235 (1965). "We review the dismissal of a complaint under Rule 12(b)(6) de novo," assuming all well-pleaded facts and the reasonable inferences from those facts as true. *Satamian v. Great Divide Ins. Co.*, 257 Ariz. 136, ¶ 10 (2024). We also review de novo issues of statutory interpretation. *BMO Harris Bank, N.A. v. Wildwood Creek Ranch, LLC*, 236 Ariz. 363, ¶ 7 (2015).

¶7 The superior court dismissed Appellants' claim of statutory vagueness after reviewing § 32-101(11) and comparing the definition of "[e]ngineering practice" to the facts of this case. The court reasoned that because Appellants had "admittedly [held] themselves out . . . as engineer[s] by experience and practice and [had] they engage[d] in the conduct/practice proscribed by the statute," they fell "squarely . . . into the language of those who are obligated to be registered" pursuant to the engineering registration statutes. And "because [Appellants'] conduct is

clearly prohibited," the court concluded, "they cannot challenge the statute for vagueness."

¶8 Appellants argue the statute, as written, "does not clearly advise whether [Mills's] engineering is the kind that requires" professional engineer (PE) qualifications and, thus, registration with the Board. They assert the statute is so vague that "[t]he Board's own reviewers could not agree" whether Mills's work was "[a] regulated 'engineering practice,'" claiming one reviewer concluded Mills's circuit design qualified as electrical engineering, while another did not know whether Mills's services were required to be performed by a professional electrical or mechanical engineer.

¶9 Appellants contend the superior court "ignored the facts as pleaded," namely, Mills's assertion that the same work he did while working at other companies—"design[ing], analyz[ing], test[ing], and build[ing] electronics circuits for various products"—never required him to be a PE or be supervised by a PE. Moreover, they assert that PEs generally work in construction engineering—an area in which neither Mills nor his company is involved. Appellants argue that "thousands of engineers do the same work as [Mills] without being PEs" and "80% nationwide" do not pursue licensing because it is unnecessary to perform their jobs.

¶10 Additionally, Appellants claim "[i]t is not enough to say, as the [superior] court did, that the definition [of 'engineering practice'] now includes 'products.'" Instead, they contend, to meet the current statutory definitions, the requirement of PE qualifications for product engineering must be "necessary to protect the health, safety and welfare of the public."[1] § 32-101(B)(11).

---

[1]Appellants also argue the superior court erred in relying on *Board of Technical Registration v. McDaniel*, 84 Ariz. 223, 233 (1958), in concluding they were "obliged to show 'beyond a reasonable doubt' that . . . § 32-101(B)(11) is unconstitutionally vague." They maintain that this standard is "outdated" and abrogated. Further, they contend *McDaniel* is inapplicable to the facts of the instant case. However, the court applied *McDaniel* only *after* it had applied the statute to Appellants' facts and concluded they lacked standing to challenge the statute as vague. Thus, as the court did not rely on it or the reasonable doubt standard for its analysis, we do not address this argument. *See Progressive Specialty Ins. Co. v. Farmers*

¶11 In response, the state claims Mills "clearly practices engineering" and thus lacks standing for his vagueness claim. Quoting *State v. George*, the state argues that a party "whose conduct clearly falls within the legitimate purview of the statute has no standing to challenge the statute as vague." 233 Ariz. 400, ¶ 8 (App. 2013) (quoting *State v. Anderson*, 199 Ariz. 187, ¶ 15 (App. 2000)). It asserts that Appellants admit to offering to "practice 'electrical engineering' and 'mechanical engineering'" publicly while not being registered. Mills, the state asserts, "holds himself out as the 'Principal Engineer' at his company" while performing "the type of engineering work that he has done in all of his prior jobs," such as building electronic circuits. Further, the state argues that Appellants admit Mills knew the reason he was not required to register at his prior jobs was a statutory exemption for manufacturer employees. The state contends that, collectively, Appellants' admissions show they practiced or offered to practice, advertised, and engaged in the practice of engineering without registration in violation of statute. And as this conduct "falls 'squarely within the statute's ambit,'" the state claims Appellants "cannot argue that the statute is vague."

¶12 A statute is void for vagueness when "it does not give persons of ordinary intelligence a reasonable opportunity to learn what it prohibits and does not provide explicit standards for those who will apply it." *SAL Leasing, Inc. v. State ex rel. Napolitano*, 198 Ariz. 434, ¶ 34 (2000) (quoting *State v. Takacs,* 169 Ariz. 392, 394 (App. 1991)). The party who challenges the validity of a statute bears the burden of establishing the statute is constitutionally invalid. *See Takacs*, 169 Ariz. at 395; *see also State v. Delgado*, 232 Ariz. 182, ¶ 4 (App. 2013).

¶13 Statutes are not required to be drafted with "absolute precision," nor are they unconstitutional "because [they are] susceptible to more than one interpretation." *Takacs*, 169 Ariz. at 395. The key to determining whether a statute is constitutional is whether it was "reasonably clear at the relevant time that a party's conduct was prohibited." *SAL Leasing*, 198 Ariz. 434, ¶ 35; *see State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239, ¶ 35 (2020). A party may not challenge a statute as impermissibly vague when the statute has given fair notice of the criminality of particular conduct. *See State v. Burke*, 238 Ariz. 322, ¶ 5 (App. 2015).

Ins. Co., 143 Ariz. 547, 548 (App. 1985) (noting appellate courts should not decide questions unnecessary to disposition of appeal).

¶14 As relevant here, "[e]ngineering 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, [and] planning . . . in connection with any public or private utility, structure, building, machine, equipment, process, work or project. . . . 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*. (Emphasis added.)

2016 Ariz. Sess. Laws, ch. 371, § 8.[2]

¶15 A person violates the engineering registration statute's prohibition on advertising when he "offers to practice or by any implication holds himself out as qualified to practice any board regulated profession or occupation if the person is not registered or certified," or he "[a]dvertises or displays any card, sign or other device that may indicate to the public that the person is certified or registered or is qualified to practice any board regulated profession." § 32-145(1)-(2). The registration requirement makes an exemption for "full-time employees" of a manufacturer, "provided such work is in connection with or incidental to the products, systems or nonengineering services" of the manufacturer

[2]Because the original actions taken by the Board against Appellants occurred in May 2019, we apply the version of registration statute in effect at that time. *See* 2016 Ariz. Sess. Laws, ch. 371, § 8 (amending § 32-101(B)(17)).

and the "engineering service is not offered directly to the public." A.R.S. § 32-144(C).

¶16 On appeal, Appellants admit they continue to offer the same type of engineering work Mills had done in previous jobs where he held the title of "Engineer," "Engineer Technologist," "Responsible Design Engineer," and "Principal Engineer"—a title Mills currently uses in connection with his company. However, Appellants claim Mills has never used the title of "professional engineer" or claimed to be "registered." Further, Appellants point to the statutory definition not including "products" until after the Board's actions were filed against them, and as they are product engineers, as opposed to construction engineers, they maintain the statute does not pertain to their work. We disagree.

¶17 As stated above, the registration statute's definition for "[e]ngineering practice" includes "professional services," "consultation," and "design" in connection with any "machine, equipment, process, work or project." 2016 Ariz. Sess. Laws, ch. 371, § 8. Appellants admit to, among other things, "designing" and "building" electronic circuits and helping a client develop a misting umbrella. While an electronic circuit or misting umbrella may be considered a "product" as Appellants claim, a person of ordinary intelligence may also reasonably consider circuits to be "equipment," a misting umbrella to be a "machine," and any "design" thereof to be a "process, work, or project." *Cf. SAL Leasing*, 198 Ariz. 434, ¶ 34 (statute is vague when it does not give persons of ordinary intelligence notice of what is prohibited). Additionally, Appellants admit to offering services to the public as experienced engineers in various industries, implying that they were qualified to perform such work. *See* § 32-145(1) (unregistered professional may not "*by any implication* hold[] himself out as qualified to practice any board regulated profession or occupation") (emphasis added).

¶18 The Board member's confusion over whether Appellants' electrical circuitry work was required to be performed by a professional electrical or mechanical engineer is irrelevant. As mentioned above, the statutory definition of "[e]ngineering practice" broadly encompasses "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" for work in the "design . . . development or review" of any "machine, equipment, process, work or project." § 32-101(11). Further, despite his uncertainty on whether the work required an electrical or mechanical engineer, the Board reviewer

concluded that Appellants had offered board-regulated engineering services "in violation of the Board's laws."

¶19 Appellants have admitted Mills did not need to be a PE in his previous work because he was performing work for manufacturers under the statute's exemption. *See* § 32-144(C). Such is not the case here, where Mills described his work as an "independent" engineer and Appellants admit neither he nor his firm are registered. Moreover, what other engineers may be doing and how long Appellants had been practicing unregistered are of no consequence as to whether they were required to register with the Board. *See Am. Smelting & Ref. Co. v. Wusich*, 92 Ariz. 159, 166 (1962) (evidence of a custom or practice not admissible when offered for purpose of excusing or justifying conduct that violates statute); *State Bar of Ariz. v. Ariz. Land Title & Trust Co*., 90 Ariz. 76, 93 (1961) (rejecting argument that lax enforcement of long-standing practices excuses licensing requirements).

¶20 Appellants' work falls squarely into the ambit of "engineering practice." Thus, we find no error in the superior court's conclusion that Appellants lacked standing to challenge the statute as vague. *See George*, 233 Ariz. 400, ¶ 8 (where conduct falls "squarely within the statute's ambit," party cannot argue statute is vague).

II. Free Speech

¶21 Appellants assert the speech restrictions in § 32-145(1) and (2) are unconstitutional, as they prevent Mills from using the term "engineer." Mills claims he "truthfully" calls himself an "engineer" and his work at his company "engineering," but Appellants assert he does not claim that he is a PE or that he does "the kind of work that PEs do." Because Mills's speech is "truthful" and "non-misleading," Appellants maintain the state "cannot justify" restricting it. If the dismissal of their free speech claim is upheld, Appellants contend the state would have a monopoly over the title "engineer" and no one in Arizona could use the title unless they were registered as a PE—an outcome that has been "rejected by every court to consider it."[3] We review de novo the

[3]Appellants cite cases from the Fifth Circuit, the District of Oregon, and other states to support their assertion. However, cases from other jurisdictions are not binding authority. *See Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, ¶ 29 (App. 2015) (state courts not bound by federal circuit court decisions); *Kotterman v. Killian*, 193 Ariz. 273, ¶ 68 (1999) ("We alone

constitutional implications of a statute. *State v. Burgess*, 245 Ariz. 275, ¶ 12 (App. 2018).

¶22 In its July 2023 ruling, the superior court concluded the statutes requiring registration for engineering were "not a broad regulation of speech, but a narrowly tailored set of rules aimed *at conduct* by persons who offer services that may impact public safety." And as conduct, the court reasoned that "if it can be shown that a statute is directed at a legitimate legislative purpose" and the means used by the state to achieve that purpose are reasonable, "then the statute is a proper exercise of the police power."

¶23 The superior court concluded that Appellants' ads "w[ere] nothing more than an attempt to facilitate unlawful conduct" and that while they technically qualified as commercial speech under the First Amendment, deceptive commercial speech was also constitutionally objectionable.

¶24 Appellants contend the superior court "erroneously applied federal commercial speech caselaw to [their] free speech claim." They argue that their claim "rests entirely on the free speech provision of the Arizona Constitution, Article II, section 6," which is "more protective of speech than the federal First Amendment." Moreover, they assert that "no Arizona court has ever adopted the less-protective commercial speech doctrine" that the federal law provides. Appellants cite this court's decision in *Sign Here Petitions LLC v. Chavez*, 243 Ariz. 99, ¶ 10 (App. 2017), and a footnote in *State ex rel. Corbin v. Tolleson*, 160 Ariz. 385, 389 n.3 (App. 1989), for the proposition that Arizona has yet to decide whether the state constitution's free speech provision allows any distinction between commercial and non-commercial speech. And any Arizona decision that has discussed commercial speech, Appellants contend, "d[id] so *only* in the context of a federal First Amendment claim, not the Arizona Constitution." Thus, Appellants conclude, "[b]ecause the broader speech protections of the Arizona Constitution textually reject content- and speaker-based laws, this Court should reject the [superior] court's

---

must decide how persuasive the legal opinions of other jurisdictions will be to our holdings.").

importation of federal commercial speech doctrine into the Arizona constitution."[4]

¶25 The state argues the professional registration requirements were aimed primarily at conduct and not speech and thus did not violate Appellants' free speech rights. And the state contends that "to the extent the registration requirement is deemed to regulate speech," it was permissible to protect the public from being misled by Mills's qualifications. According to the state, the issue was not that Mills merely called himself an "engineer" or did "engineering"; instead, the issue was that Mills advertised specific branches of engineering that are regulated, his company is named "Southwest Engineering Concepts," and he publicly called himself the "Principal Engineer" of his company, despite the registration statute requiring a "principal of the firm" to be registered pursuant to A.R.S. § 32-141(A). "[T]aken together," the state argues, Mills's public statements "implied that he met the qualifications for registering as an engineer, even though he did not."

¶26 Both the United States and Arizona Constitutions protect speech from abridgment by the government. *See* U.S. Const. amend. I; Ariz. Const. art. II, § 6; *State v. Stummer*, 219 Ariz. 137, ¶ 14 (2008). The protection under the Arizona Constitution has been described as broader than that under the First Amendment's right to free speech. *Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm'n,* 160 Ariz. 350, 354-55 (1989). Specifically, the Arizona Constitution provides that "[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Ariz. Const. art. II, § 6.

¶27 However, Arizona's freedom of speech is not absolute. *See Yetman v. English*, 168 Ariz. 71, 82 (1991) (recognizing defamation as unprotected speech); *Salib v. City of Mesa*, 212 Ariz. 446, ¶ 24 (App. 2006) (Arizona Constitution allows reasonable time, place, and manner restrictions). Illegal conduct, for example, does not implicate freedom of speech rights, even if that conduct was carried out through speaking,

---

[4]Appellants also argue that the superior court erred in not accepting their pleaded facts as "'susceptible of proof' that [Appellants'] work is entirely legal," which precluded the court from concluding otherwise. While the court must accept all reasonable, well-pleaded facts as true in a Rule 12(b)(6) motion, it should not accept the party's legal conclusions alleged as fact or any inferences or deductions not implied by well-pleaded facts. *Hammer Homes, LLC v. City of Phoenix*, 256 Ariz. 472, ¶ 10 (App. 2023).

writing, or printing. *See State v. Lycett*, 133 Ariz. 185, 191 (App. 1982) (illegally encouraging others to join pyramid scheme not constitutionally protected speech).

¶28 Appellants are correct in their assertion that no Arizona court has directly addressed whether commercial and non-commercial speech require different treatment under the Arizona Constitution. *See Tolleson*, 160 Ariz. at 389 n.3; *but see Phelps Dodge Corp. v. Ariz. Elec. Power Co-op, Inc.*, 207 Ariz. 95, ¶¶ 123-29 (App. 2004) (applying federal commercial speech doctrine to resolve free speech question presented under both United States and Arizona Constitutions). We conclude there is no need for this court to do so here.

¶29 In their opening brief, Appellants admit to offering "engineering" services in multiple fields and holding Mills out as an "engineer" who is "qualified to do . . . engineering work." On the company website,[5] Appellants publicly advertised that they had "the expertise" to move projects "through any phase of design, engineering, test and manufacturing," including "[e]xpert consulting" work. Further, the company stated they had "all the resources to develop any electronics hardware" their customers might need and listed numerous technical "[a]reas of [e]xpertise" offered.

¶30 Appellants argue that the statute punishes their speech and is therefore unconstitutional. We disagree. Appellants' actions—namely, soliciting and advertising unregistered professional services to the public—are what violated the statute. As they did not have the proper registration, their solicitations were prohibited by law. *See* § 32-145 (prohibiting practicing, claiming, or advertising as qualified to practice board-regulated profession while unregistered). Thus, the superior court

[5]Screenshots taken in February 2023 of Appellants' website were attached as an exhibit to the state's motion to dismiss. Appellants did not challenge this exhibit below or on appeal, and the website, although updated, has remained publicly available and continues to advertise Appellants' engineering services to the public. *See Southwest Engineering Concepts,* https://www.soenco.com/ (last visited 9/19/24); Ariz. R. Evid. 201(b) (permitting judicial notice); *Pedersen v. Bennett*, 230 Ariz. 556, ¶ 15 (2012) (applying Rule 201(b)'s judicial notice to contents of publicly available websites).

did not err in concluding Appellants' conduct did not implicate any freedom of speech provisions. *See Lycett*, 133 Ariz. at 191.

¶31 Moreover, Appellants acknowledge in their opening brief that false claims to effect fraud are "historically outside of speech protections." Given the language used by Appellants in their advertising, a person of average intelligence could reasonably assume that the repeated use of "expert" and "expertise" and the company's claims to have "all the resources" to develop hardware in areas such as biomedical and robotics technology meant that Appellants were engineers who were legally able to perform those services for the public. As they are admittedly unregistered, they are not legally able to advertise or perform such services, making their speech false and misleading—a conclusion the superior court reached before dismissing their claim. Thus, because Appellants' actions constitute prohibited conduct and the advertisements could be reasonably considered false or misleading, the superior court did not err in granting the state's motion to dismiss Appellants' free speech claim. *See Sw. Non-Profit Hous. Corp. v. Nowak*, 234 Ariz. 387, ¶ 10 (App. 2014) (affirming dismissal by Rule 12(b)(6) if it "is correct for any reason").

III. Right to Earn a Living

¶32 Appellants contend that §§ 32-145(1) and 32-141(A)'s restrictions on the practice of engineering "violate [their] right to earn an honest living as protected by the Due Process[] and Equal Privileges or Immunities guarantees . . . of the Arizona Constitution." "Arizona constitutional standards," Appellants argue, "are more protective of economic liberty" than federal law, and the constitutionality of laws restricting economic liberty, they assert, "depends on the facts of each case." Appellants concede that "the State can generally regulate occupations or engineering specifically." But quoting *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957), they argue that the state's "standards of qualification" to practice an occupation "must have a rational connection with the applicant's fitness or capacity to practice [his occupation]." They claim the superior court "did not attempt a due process analysis at all" and therefore could not make such a connection between Mills's work and the statutes' restrictions.

¶33 In response, the state asserts the engineering registration statute does not prevent Appellants from practicing engineering; it simply requires that Mills and his company first register, which can be accomplished with a combination of experience or education and passing the applicable examinations. Further, the state contends that "Mills does

not argue that the registration requirement impacts a fundamental right." And since the statute does not implicate any fundamental rights, the state argues this court must use a rational review basis, which it contends has been applied "in similar contexts," such as the registration and renewal requirements for the practice of dentistry. We review de novo challenges under the Due Process and Equal Protection provisions of the Arizona Constitution. *See Governale v. Lieberman*, 226 Ariz. 443, ¶ 7 (App. 2011); *Vong v. Aune*, 235 Ariz. 116, ¶ 16 (App. 2014).

¶34 In its ruling, the superior court concluded that the registration statute did not affect a "fundamental right" or "suspect class" because Appellants had "not allege[d] [they were] being treated any differently than any other individual under the statute." The court reasoned the manufacturer exception did not create different treatment because the excepted employees were not similarly situated to Appellants; quoting § 32-144(C), it explained that the exemption was only for those whose services were "*not* offered directly to the public." (Emphasis added.) Further, as the statute involved "legislation that is a form of economic regulation," the court concluded only a rational basis review was required.

¶35 Under its rational basis review, the superior court reasoned the regulation's stated purpose was to "protect the public" when professional engineering services were offered directly to the public. *See* § 32-101(A) (purpose of engineering registration statute "is to provide for the safety, health and welfare of the public"). Thus, it concluded the registration requirement, which excluded those who did not serve the public with engineering services directly, was rational in its application.

¶36 "[C]onceptually, the review of due process and equal protection claims is similar." *Governale*, 226 Ariz. 443, ¶ 13 (quoting *Church v. Rawson Drug & Sundry Co.*, 173 Ariz. 342, 348 (App. 1992)). If a statute involves either a suspect class under equal protection or limits an individual's fundamental rights under due process, we will apply strict scrutiny; if it involves neither a fundamental right nor a suspect class, we must apply the rational basis test. *See id*. Under the rational basis test, a "statute will be upheld if it has *any* conceivable rational basis to further a legitimate governmental interest." *Phx. Newspapers, Inc. v. Purcell*, 187 Ariz. 74, 78 (App. 1996) (emphasis added) (quoting *Ariz. Downs v. Ariz. Horseman's Found.*, 130 Ariz. 550, 555 (1981)).

¶37 Appellants cite *Buehman v. Bechtel*, 57 Ariz. 363, 372 (1941), for the proposition that a registration statute may amount to deprivation

of the right to earn a living in violation of due process. In *Buehman*, the legislature enacted a registration requirement for all photographers selling their photographs, with the aim of ensuring photographer competency and ability. *Id.* at 364-66. Our supreme court reasoned that photography was "not inherently dangerous" and could not harm either the photographer or anyone else, making regulation of it "unreasonable" and thus not supported by a legitimate government interest. *Id*. at 372-73, 376. Accordingly, the photography statute was found unconstitutional. *Id*. at 376-77.

¶38 *Buehman* is inapposite to the instant case, where the engineering registration statute is explicitly intended to protect "the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification." § 32-101(A). Further, our supreme court previously concluded that where the state has a legitimate interest, entry into a regulated industry is not a fundamental right. *See Ariz. Downs*, 130 Ariz. at 555-56;[6] *Hansson v. State Bd. of Dental Exam'rs*, 195 Ariz. 66, ¶ 12 (App. 1998) (right to pursue profession is subject to regulations that protect public health and welfare); *State v. Watson*, 198 Ariz. 48, ¶ 15 (App. 2000) (recognizing public safety as legitimate government interest). Thus, the engineering registration statute did not implicate Appellants' due process rights.[7]

---

[6]Appellants assert the superior court erred in relying on *Arizona Downs v. Arizona Horsemen's Foundation*, 130 Ariz. 550 (1981), as it "impose[d] the federal rational basis test" on an "Arizona-constitution economic liberty claim." And since their claim is "grounded in the Arizona Constitution alone," Appellants claim earlier caselaw should have been applied. However, *Arizona Downs* addresses a primary question of law in this case: whether the right to make a living in a regulated industry is a fundamental right. *See id*. at 555. Moreover, *Arizona Downs* is still relied upon by our supreme court for guidance and has never been overruled in whole or in part. *See State v. Arevalo*, 249 Ariz. 370, ¶ 15 (2020) (citing *Ariz. Downs*, 130 Ariz. at 555).

[7]Appellants claim the superior court erred in not properly analyzing their due process claim. Even assuming the court's lack of explicit findings on Appellants' due process claim were erroneous, any such error would be harmless as there is no indication from the record that a substantial right was implicated. *See Creach v. Angulo*, 189 Ariz. 212, 214 (1997) (error must be prejudicial to substantial rights of party to justify reversal); *Francine C. v.*

¶39 Likewise, Appellants' equal protection argument is unpersuasive. Generally, "[a] suspect class is one which has historically suffered from discrimination, such as race, nationality or alienage," *Church*, 173 Ariz. at 349, but equal protection may also be implicated when a party shows it has been treated differently than others in a similarly situated class, *see Vong*, 235 Ariz. 116, ¶ 32. Appellants assert differential treatment by the Board compared to similarly situated engineers—namely, those who fall under the manufacturer's exception. However, by their own admission, Appellants provide services directly to the public and thus their work does not fall under the manufacturer's exception. *See* § 32-144(C). As such, the superior court did not err in finding they were not similarly situated. We conclude that the registration statute was rationally related to a legitimate government purpose and that the court did not err in dismissing Appellants' Due Process and Equal Protection claims. *See Phx. Newspapers*, 187 Ariz. at 78.

Disposition

¶40 For the foregoing reasons, we affirm the superior court's dismissal of Appellants' claims.

Dep't of Child Safety, 249 Ariz. 289, ¶ 27 (App. 2020) (court may decide appeal despite insufficient findings where facts are undisputed and record "is so clear that the appellate court does not need the aid of findings").