IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ROBERT MARC STAMPER AND GRETCHEN JACOBS,
DBA AZ DESIGN GROUP, A SOLE PROPRIETORSHIP,
Plaintiffs/Appellants,

v.

CITY OF SCOTTSDALE AND ARIZONA DEPARTMENT OF REVENUE,
Defendants/Appellees.

No. 2 CA-CV 2025-0449
Filed October 23, 2026

Appeal from the Superior Court in Maricopa County
No. CV2025018956
The Honorable Adele G. Ponce, Judge

AFFIRMED

COUNSEL

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OPINION

Presiding Judge Vásquez authored the opinion of the Court, in which Chief Judge Staring and Vice Chief Judge Eppich concurred.

V Á S Q U E Z, Presiding Judge:

¶1 This case arises from a voter-approved City of Scottsdale transaction-privilege and use tax ("the Tax") placed on the ballot as Proposition 490. Appellants Robert Stamper and Gretchen Jacobs, doing business as AZ Design Group, appeal from the superior court's dismissal of their complaint seeking a declaration that the Tax did not receive the required supermajority approval to become law, as well as the court's denial of their motion to enjoin the Tax's enforcement. Appellants argue the court erred by determining that they were required to exhaust their administrative remedies before filing the action and that Prop. 490 was not a referendum. For the following reasons, we affirm.

Factual and Procedural Background

¶2 The undisputed facts are as follows. In 2024, the Scottsdale City Council adopted a resolution that sought voter approval to increase Scottsdale's existing transaction-privilege and use tax rate. The resolution was placed on the ballot as Prop. 490 under article 6, § 9 of Scottsdale's charter. In November 2024, the voters passed Prop. 490 with 58.25 percent of the vote. The Tax took effect on July 1, 2025.

¶3 Before the Tax became effective, Appellants filed a complaint in superior court against the City of Scottsdale and the Arizona Department of Revenue (ADOR) seeking declaratory and injunctive relief to preclude the implementation and enforcement of the Tax.[1] Appellants alleged that the Tax is unconstitutional because it did not receive sixty percent voter approval, as required under Arizona's constitution for referred tax measures to become law. *See* Ariz. Const. art. IV, pt. 1, § 1(5). The City and ADOR moved to dismiss the action on several grounds, including that the

[1]Appellants also sued the members of the Scottsdale City Council, the city's treasurer and manager, and ADOR's director, all in their official capacities. These defendants were dismissed from the action and are not part of the present appeal.

court lacked jurisdiction because Appellants had not exhausted their administrative remedies and that Prop. 490 was not subject to the sixty-percent voter approval threshold because it was not a referendum. After a hearing on Appellants' application for a preliminary injunction and the City's and ADOR's motions to dismiss, the court dismissed the complaint and denied the motion for a preliminary injunction as moot. This appeal followed, and we have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), (5)(b).

Discussion

¶4 The superior court dismissed the complaint on two independent grounds: (1) Appellants had failed to exhaust their administrative remedies and (2) Prop. 490 was not a referendum. Appellants argue the court was "incorrect as a matter of law" and the error constitutes reversible error. We review a superior court's grant of a motion to dismiss de novo. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, ¶ 10 (2022).

I. The Superior Court's Jurisdiction

¶5 Before addressing these arguments, however, we address the superior court's jurisdiction and consider the threshold question of whether the court's judgment must be vacated because this action was not assigned to the Arizona tax court. *See Morgan v. Hays*, 102 Ariz. 150, 152-53 (1967) (courts have ongoing, independent power and duty to examine and determine subject matter jurisdiction, subject to appellate review). We do so because in *Valencia v. Allen*, this court determined that the tax court has exclusive subject matter jurisdiction over cases involving the legality of any tax, impost, or assessment. 262 Ariz. 38, ¶ 13 (App. 2026). In that case, we vacated the superior court's judgment and remanded the matter with instructions to assign it to the tax court. *Id.* ¶ 20.

¶6 Article VI, § 14 of the Arizona Constitution provides that the "superior court shall have original jurisdiction" of "[c]ases and proceedings in which exclusive jurisdiction is not vested by law in another court." In 1988, our legislature passed the act that created the Arizona tax court, 1988 Ariz. Sess. Laws, ch. 330, § 2, which is a department of the Maricopa County Superior Court when that court is "exercising the original jurisdiction . . . over cases of equity and at law which involve the legality of any tax, impost or assessment," A.R.S. § 12-161; *see* Ariz. Const. art. VI, § 14 (superior court has original jurisdiction over cases involving "legality of any tax, impost, [or] assessment").

¶7 Section 12-163(A), A.R.S., requires the presiding judge of the superior court to assign actions to the tax court when "it appears from the pleadings . . . that an action involves the imposition, assessment or collection of a tax, including all questions of law and fact relating to disputes about taxes . . . arising under title . . . 42." We must therefore determine whether § 12-163 grants exclusive subject matter jurisdiction over this case to the tax court such that the superior court's judgment is void. *Shinn v. Ariz. Bd. of Exec. Clemency*, 254 Ariz. 255, ¶ 27 (2022) (judgment void if court entering judgment lacks subject matter jurisdiction over case). We conclude that although the tax court has exclusive authority to decide tax matters, it does not have exclusive subject matter jurisdiction that rendered the superior court's judgment void.

¶8 Although the Arizona tax court is responsible for "exercising the original jurisdiction of the superior court" in cases involving tax matters, it is not a separate, discrete court; rather, it is a department of the superior court. § 12-161(A); *see Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 101-02 (1995) ("That we may sometimes refer to the[tax] department[] as [a] court[] does not make [it a] discrete court[]."). The superior court has jurisdiction, conferred to it by the Arizona Constitution, over cases involving "the legality of any tax," Ariz. Const. art. VI, § 14, and its specialized departments are merely "in-house administrative mechanisms that do not affect the jurisdiction of the superior court," *Marvin Johnson, P.C.*, 184 Ariz. at 102. Although § 12-163(A) directs the presiding judge to assign actions involving the "imposition, assessment or collection of a tax" to the tax court, that "department[is an] in-house administrative mechanism[] that do[es] not affect the jurisdiction of the superior court," *Marvin Johnson, P.C.*, 184 Ariz. at 102. Notably, § 12-163(D) contemplates that if another department of the superior court entered a judgment in a tax case before the assignment of that matter to the tax court, the tax court would lack the authority to reconsider the judgment.[2] Indeed, in Arizona, the superior court is "a single unified trial court of general jurisdiction." *Marvin Johnson, P.C.*, 184 Ariz. at 102. Accordingly, there is no "subject

[2]Further, an action "involving the imposition, assessment or collection of a tax" brought under certain chapters of title 42 can be filed in "either the tax court or the superior court," § 12-163(B), and if a party in that action "exercises its right to a change of judge, the action shall not be reassigned to the tax court," A.R.S. § 12-165(C).

matter jurisdictional bar" that precluded the superior court from hearing this tax matter.[3] *Id.*

¶9 Relatedly, as they did below, Appellants challenge the validity of the Tax on the ground that the City failed to obtain the votes required to enact it. Despite a tax being the subject of the dispute, the core issue in this case is the enactment of a tax and not the operation or administration of a tax. Therefore, this is arguably not a case involving the "imposition, assessment or collection of a tax." § 12-163(A). Even assuming that the underlying enactment of a tax amounts to the "imposition" of a tax such that this case should have been administratively assigned to the tax court, none of the parties requested such assignment below, nor have they raised the issue on appeal. We therefore deem any error related to the lack of the assignment to the tax court waived and do not address it further. *See Cont'l Lighting & Contracting, Inc. v. Premier Grading & Utils., LLC*, 227 Ariz. 382, ¶ 12 (App. 2011) (failure to raise argument below waives appellate argument); *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived."); *see also Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987) ("It is not incumbent upon the court to develop an argument for a party."). We therefore return to the issues presented on appeal.

II. Administrative Remedy Exhaustion

¶10 Appellants challenge the superior court's determination that it lacked jurisdiction to consider their claims because they failed to exhaust their administrative remedies. Appellees counter that the "exclusive path for challenging a tax" required Appellants to first file a refund claim with ADOR and, if their claim was denied, either petition for a hearing before ADOR or directly appeal to the Arizona Board of Tax Appeals (BOTA) or to the tax court. *See* A.R.S. §§ 42-1118(E), 42-1119, 42-1251(B), 42-1253, 42-1254(C). The City and ADOR argue that Appellants "jumped straight to superior court" instead of complying with the "bedrock requirement for challenges to taxes."

¶11 "The question whether the failure to exhaust administrative remedies bars a civil action is a question of law that we review *de novo*." *Bailey-Null v. ValueOptions*, 221 Ariz. 63, ¶ 7 (App. 2009). A litigant must

[3]Nevertheless, had one of the parties objected to the superior court hearing the matter, it should have been transferred to the tax court.

generally "exhaust a statutorily prescribed administrative remedy before seeking judicial relief from actual or threatened injuries." *Mills*, 253 Ariz. 415, ¶ 11. The exhaustion doctrine's purpose is to allow an agency to "perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Id.* (quoting *Moulton v. Napolitano*, 205 Ariz. 506, ¶ 9 (App. 2003)). To determine whether exhaustion of administrative remedies is required, we must examine whether the agency is "specifically empowered to act by the Legislature." *Moulton*, 205 Ariz. 506, ¶ 10 (quoting *Hamilton v. State*, 186 Ariz. 590, 593 (App. 1996)). "This court has unfailingly held that tax matters must be exhausted within ADOR before being brought in superior court." *Id.* ¶ 14.

¶12 Exhaustion is required, however, only when the agency has authority to grant appropriate relief. *See McMichael-Gombar v. Phx. Civ. Serv. Bd.*, 256 Ariz. 343, ¶ 22 (2023); *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, ¶ 16 (2013) ("Exhaustion is not required when the pursuit of administrative remedies would be futile."). When constitutional questions are "'inextricably intertwined' with government benefits for which administrative remedies exist," ADOR "may apply constitutional doctrines when resolving [such] claims." *Mills*, 253 Ariz. 415, ¶ 19. However, ADOR lacks the authority to declare an act unconstitutional. "[O]nly courts may declare laws and rules unconstitutional, either facially or as applied, and enjoin their application." *McMichael-Gombar*, 256 Ariz. 343, ¶ 23; *see Mills*, 253 Ariz. 415, ¶ 18. Although "claims for declaratory and injunctive relief [are] subject to the exhaustion of administrative remedies as well," *Kerr v. Waddell*, 185 Ariz. 457, 463 (App. 1996), that requirement applies only when the statutorily prescribed remedy is available to the litigant, *Mills*, 253 Ariz. 415, ¶ 14.

¶13 Here, Appellants sought both a declaration that the Tax was unconstitutionally enacted and an injunction precluding the City and ADOR from implementing and enforcing it. The City and ADOR argue that, because this "constitutional challenge cannot be untangled from the tax-administration scheme," exhaustion was required. We disagree.

¶14 The cases the City and ADOR cite in support of their position are distinguishable. In those cases, the plaintiffs sought refunds of taxes owed or challenged a tax assessment stemming from otherwise validly enacted laws. *See Moulton*, 205 Ariz. 506, ¶¶ 1-6; *Kerr*, 185 Ariz. at 460-61; *Estate of Bohn v. Waddell*, 174 Ariz. 239, 241-42 (App. 1992); *Valley Vendors Corp. v. City of Phoenix*, 126 Ariz. 491, 492-93 (App. 1980). In contrast,

Appellants in this case filed the action nearly one month before the Tax was to take effect, seeking to "enjoin state and local authorities from implementing and collecting the Tax and enforcing any penalties related to its nonpayment." In other words, unlike in *Moulton*, *Kerr*, *Estate of Bohn*, and *Valley Vendors Corp.*, this case strictly raised constitutional questions unrelated to the administration of the Tax. *Cf. Tucson Mech. Contracting, Inc. v. Ariz. Dep't of Revenue*, 175 Ariz. 176, 177 (App. 1992) (addressing appeal arising from direct challenge to constitutionality of transaction privilege tax in Arizona tax court). If ADOR had been able to provide some relief to Appellants, exhaustion would have been required. *See Moulton*, 205 Ariz. 506, ¶ 24. But, as the City and ADOR acknowledge, "[w]hat [ADOR] cannot do is enter a declaration that prevents the tax from being collected at all." *See Estate of Bohn*, 174 Ariz. at 249 (BOTA "does not have the power to declare statutes unconstitutional"); *Moulton*, 205 Ariz. 506, ¶ 20 (ADOR "unable to declare a law unconstitutional"); *see also Mills*, 253 Ariz. 415, ¶¶ 18-20 (explaining that litigant can raise constitutional challenges without exhausting administrative remedies when litigant "has no statutorily prescribed administrative remedy to pursue").

¶15 The City and ADOR assert that Appellants' requested relief was an effort to "escape exhaustion" by "craft[ing] their pleading to seek 'their desired form of declaratory relief,' rather than a refund." *Moulton*, 205 Ariz. 506, ¶ 21. We disagree. Arizona's administrative refund process provides mechanisms for contesting deficiency assessments and seeking refunds of taxes already paid. A.R.S. §§ 42-1116 to 42-1124, 42-1251. But a refund cannot be owed for a tax that has not yet taken effect. *See* A.R.S. § 42-1118(A) (ADOR determines refund "in excess of amount actually due"), (E) ("Each [refund] claim shall provide the amount of refund requested, the specific tax period involved and the specific grounds on which the claim is founded."). Therefore, Appellants were not required to exhaust administrative remedies, and the superior court had the authority to consider their claims for declaratory and injunctive relief.

III. Referendum Power

¶16 Appellants argue the superior court erred by determining that Prop. 490 was not a referendum because the Scottsdale City Council had submitted it "*for enactment by the electors*." They maintain that the "referral form of referendum power" was adopted by the City and therefore that the constitutionally required sixty-percent approval threshold for enactment of tax measures applied to Prop. 490. We review questions of law concerning the interpretation and application of referendum statutes

and the Arizona Constitution de novo. *Arrett v. Bower*, 237 Ariz. 74, ¶ 7 (App. 2015).

¶17 In Arizona, the power of referendum is reserved for qualified electors of incorporated cities. Ariz. Const. art. IV, pt. 1, § 1(8). A referendum, by its nature, is a check on legislation already passed, and it "permits qualified electors to submit city council actions to a popular vote." *Voice of Surprise v. Skip Hall*, 257 Ariz. 101, ¶ 18 (App. 2024). Arizona's constitutional and statutory referendum process does not authorize a city council to submit an unadopted measure to the voters for enactment as a referendum. *See* Ariz. Const. art. IV, pt. 1, § 1(8) ("[T]en percent of the electors may propose the referendum on legislation *enacted* within and by such city . . . ." (emphasis added)); A.R.S. §§ 19-101(A) (proscribing form "for referring to the people by referendum petition a measure or item . . . *enacted by* . . . an incorporated city" (emphasis added)), 19-142(A) (municipal referendum petition must be filed within thirty days "*after passage* of the ordinance, resolution or franchise" (emphasis added)). A city council can "enact the ordinance or amendment and refer it to the people," or enact it without referral. A.R.S. § 19-143(B). Under this provision, the referendum process is only triggered after the council has adopted an ordinance, not by the council's desire to seek voter approval of a measure it is merely considering.

¶18 Our supreme court recognized this distinction in *City of Scottsdale v. Superior Court*, 103 Ariz. 204, 206 (1968). In that case, the court noted that, under Arizona's constitution, the legislature may order the submission to the people at the polls of any measure enacted by the legislature. *Id.* However, the court held that neither the constitution nor the general laws of the state authorize a city to "voluntarily" refer matters before it to the electors. *Id.* In discussing a prior version of A.R.S. § 19-141, the court stated:

> [The statute] concerns itself strictly with procedural matters and advises that "In cities and towns which do not provide by ordinance or charter for the manner of exercising the initiative and referendum powers reserved by the constitution to the people thereof, the provisions of this chapter shall apply to the legislation of such municipalities . . . ."

Id. (quoting 1986 Ariz. Sess. Laws, ch. 376, § 24). The court noted that Scottsdale's charter did not expressly authorize the city council to

voluntarily refer an ordinance and that article IV, pt. 1, § 1(8) of the Arizona Constitution, "which deals with local, city, town or county matters makes no such proviso for voluntary referral by their respective legislative authorities." *Id.* However, as this case demonstrates, that limitation does not preclude a city from submitting a measure being considered for adoption to voters under an independent source of authority.

¶19 Here, the superior court found that the City's authority to seek voter approval of the Tax was statutory. Relying on *Clay v. Town of Gilbert*, 160 Ariz. 335, 340 (App. 1989), the court concluded that A.R.S. § 42-6006 authorized the city council to submit any issue relating to such tax to the electors. The court reasoned that "this was not an exercise of the referendum power and therefore not subject to all the restrictions of referenda." We agree. Under that statute, "[a] city or town may submit any issue relating to a transaction privilege tax . . . [and] use [tax] . . . to the qualified electors of the city or town at any regular or special municipal election." § 42-6006. Unlike the referendum process, § 42-6006 does not require a city council to enact the measure before referring it to the people. In *Clay*, this court determined that the questions submitted by the town to the voters could not have been a referendum because, as in this case, "the Town was statutorily required to submit [the questions] to its qualified voters." 160 Ariz. at 341. We concluded that there was no express authority for a "local legislative body[] . . . to *voluntarily* refer matters to the electorate," and that the superior court "erred in holding that the election was a 'referendum.'" *Id.* at 340-41.

¶20 Since *City of Scottsdale* was decided, Scottsdale has amended its charter to authorize its city council to submit matters voluntarily to the electorate. Scottsdale City Charter, art. 10, § 1. That amendment presumably supplies the authority that was absent in *City of Scottsdale*. *See* 103 Ariz. at 206. But that authority under Scottsdale's charter does not make a council-initiated submission part of the referendum process established by the Arizona Constitution or Title 19.[4] Section 19-141(A) has also been amended since *City of Scottsdale*. It no longer distinguishes between cities "which do not provide by ordinance or charter for the manner of exercising the initiative and referendum powers reserved by the Constitution to the people" and those that do so. *See* 1989 Ariz. Sess. Laws,

[4]Notably, in passing Prop. 490, the Scottsdale City Council cited article 6, § 9 of Scottsdale's charter, which requires a majority vote to approve a transaction-privilege tax for a tax rate change over one percent.

ch. 10, § 4. The initiative and referendum statutes now apply generally "to the legislation of cities, towns and counties, except as specifically provided to the contrary in this article." § 19-141(A). Accordingly, there is no mechanism under the initiative-referendum process for any city council to submit an unadopted measure to voters for enactment as a referendum. *See* §§ 19-142, 19-143; *City of Scottsdale*, 103 Ariz. at 206; *Clay*, 160 Ariz. at 340-41. Thus, the superior court did not err by dismissing Appellants' complaint on the basis that Prop. 490 was not a referendum.[5]

Attorney Fees on Appeal

¶21 Appellants request an award of attorney fees under the private attorney general doctrine. Because they have not "vindicat[ed] an important public policy," we decline their request. *See Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609 (1989). We likewise decline their request for costs under A.R.S. § 12-341 because they are not the successful party on appeal.

Disposition

¶22 We affirm the superior court's dismissal of Appellants' complaint.

[5]Because our determination that Prop. 490 was not a referendum is dispositive and they were not addressed by the superior court below, we need not reach Appellants' arguments concerning whether the sixty-percent threshold applies to Prop. 490; the application of A.R.S. §§ 16-672, 42-11006, and 42-1254(D)(1); whether laches apply; or whether Appellants have standing. *See Schwab v. Matley*, 164 Ariz. 421, 422 (1990) (where one issue dispositive, court need not reach other issues presented in appeal); *Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, ¶ 15 (App. 2014) (appellate court can affirm dismissal of complaint on "any applicable basis" but is "reluctant to rule on grounds that the trial court did not address").