IN THE

SUPREME COURT OF THE STATE OF ARIZONA

KAYLA WILLIAMS,
Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, AN AGENCY,

AND

LAMONT MORTUARY, INCORPORATED,
Appellees.

No. CV-25-0157-PR
Filed August 18, 2026

Appeal from the A.D.E.S. Appeals Board
No. U-1900373-001-B

Opinion of the Court of Appeals, Division One
261 Ariz. 303 (App. 2025)
VACATED IN PART AND REMANDED

COUNSEL:

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VICE CHIEF JUSTICE LOPEZ authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER and JUSTICES BOLICK, BEENE, MONTGOMERY, KING, and CRUZ joined.

VICE CHIEF JUSTICE LOPEZ, Opinion of the Court:

¶1 In Arizona, the Arizona Department of Economic Security ("Department") administers the state's unemployment insurance program. A Department deputy determines in the first instance whether a claimant is eligible for benefits. A.R.S. § 23-773(A). The claimant or another interested party may appeal the deputy's determination to one of the Department's "impartial appeal tribunals" ("Tribunal"), A.R.S. §§ 23-671(A), -773(B), and, subsequently, may petition the unemployment insurance appeals board ("Board") to review the Tribunal's decision, § 23-671(D). A party aggrieved by the Board's decision may then file an application for appeal with the court of appeals, which grants or denies it. A.R.S. § 41-1993(B).

¶2 Related to this process, § 41-1993(B) entitles the Department to notice of that appeal and an opportunity to appear in it. We must resolve two issues: (1) whether the Department has standing to defend the Board's decision in the court of appeals; and (2) whether A.R.S. § 12-348(H)(1) precludes a fee award against the Department when it appears in that proceeding.

¶3 We hold that § 41-1993(B) confers standing on the Department to appear and defend the Board's decision, and that subsection, rather than our standing jurisprudence, sets the limits on what the Department may argue. We further hold that § 12-348(H)(1) bars a fee award against the Department. That exclusion turns on the character of the administrative proceeding from which the court action arose, not on the state's litigation conduct in the action.

BACKGROUND

¶4 The issues before us involve statutory construction, and we leave the merits of Kayla Williams's ("Williams") benefits eligibility for the court of appeals to address on remand. Therefore, we recite only the facts and procedural history necessary to frame those legal issues. We express no view on any disputed factual issue.

¶5 Lamont Mortuary, Inc., ("Lamont") employed Williams for about two years before discharging her. Following her termination, Williams applied for unemployment insurance benefits, and a Department deputy determined she was eligible for benefits.

¶6 After a hearing, the Tribunal reversed the deputy's determination, finding that the testimony of Lamont's representatives was more credible, and concluding that Williams was insubordinate during her employment. The Tribunal denied Williams's claim because, under A.R.S. § 23-775(2), discharge for "wilful or negligent misconduct connected with the employment" disqualifies a claimant from receiving benefits. Williams petitioned the Board for review. *See* § 23-671(D). The Board adopted the Tribunal's findings, reasoning, and conclusions as its own, added that Williams had failed to give Lamont the passwords established for its billing program, and affirmed.

¶7 Williams filed an application for appeal, and the court of appeals granted it. *Williams v. Ariz. Dep't of Econ. Sec.*, 261 Ariz. 303, 308 ¶ 13 (App. 2025). Lamont did not appear. *Id.* The Department filed an answering brief defending the Board's decision, and Williams argued in reply that it lacked standing to do so. *Id.* The court held that the Department lacked standing, declined to consider its brief, concluded that Williams was entitled to benefits, and awarded Williams fees under § 12-348(A)(2). *Id.* at 315 ¶ 51, 318 ¶ 74.

¶8 The Department petitioned for review. We granted review because whether the Department has standing to defend a Board decision in the court of appeals and is subject to an attorney fee award if it does are issues of statewide importance that are likely to recur. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

¶9 We review both issues de novo because each involves statutory interpretation. *State v. Serrato*, 259 Ariz. 493, 496 ¶ 9 (2025). When construing statutes, "we begin with the text." *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8 (2023). Importantly, "[w]e interpret statutory language in view of the entire text, considering the context and related statutes on the same subject." *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019). We read the text as "a cohesive whole so that 'no word or provision

is rendered superfluous.'" *Serrato*, 259 Ariz. at 497 ¶ 16 (quoting *In re Riggins*, 257 Ariz. 28, 31 ¶ 12 (2024)). We apply that language unless it brings about an "absurd or unconstitutional result." *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9 (2016).

I.

A.

¶10 The Arizona Constitution contains no case-or-controversy requirement, but we require standing "[a]s a matter of sound judicial policy." *Bennett v. Brownlow*, 211 Ariz. 193, 195 ¶ 14 (2005). We impose it as a prudential requirement "to [e]nsure that our courts do not issue mere advisory opinions, that the case is not moot and that the issues will be fully developed by true adversaries." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985).

¶11 A party may satisfy the standing requirement in two ways. The Legislature may confer standing by statute, *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 523 ¶ 12 (2021), or the party may "allege a distinct and palpable injury," *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998). Where the Legislature has conferred standing, the question is whether the statute applies to the litigant. *See Welch*, 251 Ariz. at 523–24 ¶¶ 13–14.[1] Accordingly, to determine whether the Department has standing, we first consider whether the Legislature conferred it by statute.

B.

¶12 Section 41-1993(B), which addresses judicial review of Board decisions, names the Department twice. It provides that "[t]he [D]epartment and all parties before the appeals board shall be given notice of the appeal and an opportunity to appear," and that "[t]he cost of providing the record is a taxable cost if the [D]epartment prevails." § 41-1993(B).

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[1] Importantly, even if a party has standing under a statute, a court generally does not issue an advisory opinion or decide a moot question. *Bennett*, 211 Ariz. at 196 ¶ 16. Nor does a grant of standing entitle its holder to advance every argument. *Kerr v. Killian*, 197 Ariz. 213, 216 ¶ 11 (App. 2000).

¶13 Together, these two provisions contemplate the Department's participation in the appeal proceedings. The first affords the Department the same notice and opportunity to appear that the parties receive. The second necessarily contemplates the Department's participation by awarding the Department taxable costs if it "prevails" in an appeal.[2] The definition of "prevail" is "[t]o succeed" or "to win." *Prevail*, Black's Law Dictionary (5th ed. 1979); *see also ACLU of Ariz. v. Ariz. Dep't of Child Safety*, 251 Ariz. 458, 461 ¶ 14 (2021) ("Prevail is defined as to obtain the relief sought in an action." (citation modified) (quoting *Prevail*, Black's Law Dictionary (11th ed. 2019))). When the Department appears to defend the Board's decision, it seeks affirmance and succeeds when the decision is affirmed.

¶14 Based on the Legislature's inclusion of these provisions, we conclude that subsection (B) confers standing upon the Department because it specifically anticipates the Department's active involvement in the court of appeals proceedings. The Legislature's decision to confer standing on the Department in § 41-1993(B) is consistent with its other enactments involving the Department. For example, the Legislature created "a special fund known as the unemployment compensation fund" that the Department administers "exclusively for the purposes of this chapter," A.R.S. § 23-701(A), and that fund is "to be used for the benefit of persons unemployed through no fault of their own," A.R.S. § 23-601. Moreover, if an employer does not appear when a claimant appeals a Board decision (as the Department contends is common), the Legislature's choice to confer standing upon the Department allows two parties to appear before the court of appeals to argue the merits of the Board's decision.

¶15 The court of appeals, however, dismissed the statute's prevailing-party sentence. *See* § 41-1993(B) ("The cost of providing the record is a taxable cost if the department prevails."). Noting that § 41-1993 previously required an aggrieved party to "take an appeal against the

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[2] Although the statute does not define the word "prevail," we may use a dictionary to "discern the word's common meaning and usage, respectively, at the time the [L]egislature enacted the statute." *See Garibay v. Johnson*, 259 Ariz. 248, 255 ¶ 24 (2025). In 1979, the Legislature amended § 41-1993 and added, among other provisions, the provision awarding the Department taxable costs if it prevails. 1979 Ariz. Sess. Laws ch. 179, § 29 (1st Reg. Sess.).

[D]epartment," the court surmised that the prevailing-party sentence survived from that earlier version of the statute and, as vestigial text, no longer described the Department's role. *Williams*, 261 Ariz. at 314 ¶ 46. The court correctly acknowledged that the Legislature enacted both phrases concurrently in its 1979 amendment. *Id.*; *see also* 1979 Ariz. Sess. Laws ch. 179, § 29 (1st Reg. Sess.). However, the Legislature did not leave the subsection in that form. Two years later, in 1981, it deleted "against the department" while leaving the prevailing-party sentence untouched, and it expanded the notice sentence from "[a]ll parties before the appeals board" by adding "[t]he department and" at its beginning. 1981 Ariz. Sess. Laws ch. 65, § 2 (1st Reg. Sess.). This statutory history illustrates that the Legislature deliberately revisited the Department's role in this statutory scheme rather than making an isolated correction. *See State v. Sweet*, 143 Ariz. 266, 270 (1985) ("It is an accepted rule of statutory construction that when 'determining the intent of the [L]egislature, the court may consider both prior and subsequent statutes *in pari materia*.'" (quoting *Automatic Registering Mach. Co. v. Pima County*, 36 Ariz. 367, 373–74 (1930))). In fact, § 1 of the 1981 act, immediately preceding the section that amended § 41-1993, amended § 23-672, the statute governing the Board itself. 1981 Ariz. Sess. Laws ch. 65, § 1 (1st Reg. Sess.).

¶16 The court of appeals' conclusion that § 41-1993's prevailing-party sentence is a mere incidental legislative drafting artifact nullifies the Legislature's purposeful act and contravenes a fundamental rule of statutory interpretation. The statute's evolution reflects that the Legislature returned to § 41-1993, removed the language contemplating an appeal "against the department," but still retained the prevailing-party sentence—necessarily contemplating the Department's ability to appear on appeal. *See* 1981 Ariz. Sess. Laws ch. 65, § 2 (1st Reg. Sess.). Fundamentally, reading that sentence as a mere artifact would deprive it of any operative effect, which would transgress the principle that we construe statutes to avoid rendering any word or provision superfluous. *See Serrato*, 259 Ariz. at 497 ¶ 16.

¶17 Moreover, we presume that "by amending a statute, the [L]egislature intends to change the existing law." *State v. Garza Rodriguez*, 164 Ariz. 107, 111 (1990). The Legislature's addition of "[t]he department and" to the sentence allowing "all parties before the appeals board . . . an opportunity to appear" changed the law. *See* 1981 Ariz. Sess. Laws ch. 65, § 2 (1st Reg. Sess.). Absent the amendment, the Department would lack

statutory standing because it does not appear before the Board. Appeals from a deputy's determination and petitions for review of a Tribunal's decision belong to the claimant and other "interested part[ies]," while the Department is the entity that receives and acts on those filings. *See* A.R.S. §§ 23-671(D), -672(B), -674(A) (distinguishing throughout between "interested part[ies]" and "the [D]epartment").

¶18 The Legislature made that distinction explicit in 1980. Section 23-672(C) had permitted the Board to act on a petition for review filed "by an interested party or by the deputy whose determination has been overruled or modified," but the Legislature struck the reference to the deputy, leaving only "an interested party." 1980 Ariz. Sess. Laws ch. 104, § 1 (2d Reg. Sess.). Section 23-773(A) provides, as it has since 1972, that a deputy is "[a] representative designated by the [D]epartment." *See* 1972 Ariz. Sess. Laws ch. 142, § 48 (2d Reg. Sess.). Thus, in 1980, the Legislature treated the Department's representative as distinct from an interested party and then eliminated that representative's authority to seek Board review at all. Additionally, the Department's own remedy for a deputy's determination it believes to be incorrect is to issue a reconsidered determination on its own initiative rather than to appeal. § 23-773(E). The Board itself sits within the Department and is staffed by the director's appointees. § 23-672(A).

¶19 The analysis underpinning our conclusion is not novel. In *Evertsen v. Industrial Commission*, the court of appeals considered the Industrial Commission's standing to file briefs for an unrepresented claimant. 117 Ariz. 378, 379 (App. 1977), *approved and adopted*, 117 Ariz. 342 (1977). The statute at issue there was A.R.S. § 23-951(C), which provided that "[t]he commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding," until a 1968 amendment struck the statute's reference to "the commission." *Evertsen*, 117 Ariz. at 382. The court concluded that after the amendment, the Industrial Commission could only appear when it had "a legitimate interest to defend" because the removal of "the commission" from the statute "delet[ed] the Commission's [statutory] authority to appear." *Id.* Here, Williams and the court of appeals read *Evertsen*'s refusal to bar the Industrial Commission entirely to mean that the statute's reference to "the commission" never mattered. It means the opposite. Describing the amendment as "deleting" authority presupposes that the words conferred that authority in the first instance. *See id.*

¶20 Even so, the court of appeals here concluded that "a statute merely giving an agency an opportunity to appear does not—by itself—confer standing on the agency to argue 'I-ruled-correctly' in individual cases." *Williams*, 261 Ariz. at 313 ¶ 44. We disagree. The court overlooked the structure of the sentence. The Legislature did not give the Department a provision of its own. It placed the Department and the parties who appeared before the Board in a single clause on the same terms. § 41-1993(B). Thus, whatever that clause confers on those parties, it necessarily also confers on the Department—including the opportunity to appear and argue in favor of or against the Board's ruling.

¶21 The court of appeals also reasoned that "[s]tanding is not a one-sided requirement," so a party defending a judgment must possess an interest in the outcome. *Williams*, 261 Ariz. at 310 ¶ 25. We do not dispute that premise. *See Armory Park*, 148 Ariz. at 6 (noting that restraint in the standing context requires "at a minimum that each party possess an interest in the outcome"). However, it does not command the court of appeals' conclusion. A litigant the Legislature designates to participate, and whose success it contemplates, possesses the interest *Armory Park* requires. Section 41-1993(B) permits the Department to appear and contemplates that it may prevail, so the Department possesses that interest. On this record, no further showing is required.

¶22 The court of appeals relied on two inapposite cases—*Kerr* and *Miller*. It cited *Kerr* for the proposition that "even when aggrieved, a party 'may nevertheless lack standing to assert particular arguments.'" *Williams*, 261 Ariz. at 310 ¶ 24 (quoting *Kerr v. Killian*, 197 Ariz. 213, 216 ¶ 11 (App. 2000)). It cited *Miller* for the rule that "[w]hen an error applies to only one party who does not appeal, another party cannot make that argument on its own behalf." *Williams*, 261 Ariz. at 310 ¶ 24 (quoting *Miller v. Ariz. Corp. Comm'n*, 227 Ariz. 21, 27 ¶ 22 (App. 2011)). Neither case supports the court's conclusion because they address a question that arises only once standing is established—which arguments a party already in the case may make. *Kerr* held that a department aggrieved by a fee award, and, therefore, entitled to appeal, nevertheless lacked standing to seek reversal on the ground that non-party taxpayers had received inadequate notice, because the due process right asserted belonged to those taxpayers rather than to the department. 197 Ariz. at 216 ¶ 11, 217 ¶ 16. *Miller* held that utility customers who properly challenged the Corporation Commission's

jurisdiction lacked standing to invoke the managerial interference doctrine, because that doctrine protects the regulated utilities from Commission overreach and no utility claimed interference. 227 Ariz. at 27 ¶¶ 22–23. Neither case involved a legislative grant of participatory rights.

¶23 Similarly, the court of appeals misplaced reliance upon *Hurles v. Superior Court*, 174 Ariz. 331 (App. 1993), for the proposition that a trial judge has "no personal stake—and surely no justiciable stake—in whether they are ultimately affirmed or reversed." *Williams*, 261 Ariz. at 311 ¶ 27. On this basis, the court concluded that the Department has no justiciable stake because it stands in the same position as a trial judge. *Id.* But *Hurles* turned on how the respondent judge entered the case, where a rule of procedure named the trial court as a nominal respondent in any special action challenging its rulings. 174 Ariz. at 333–34; *see* Ariz. R.P. Spec. Act. 2(a). *Hurles* held that a judge so named lacked standing to file a pleading when her only purpose was to argue she had ruled correctly. 174 Ariz. at 333–34. We distinguish *Hurles* because the Department's role is distinct from a judge's for the same reasons that unemployment insurance proceedings are not properly characterized as an adjudication between private parties. Moreover, *Hurles* involved a procedural rule concerning a nominal appearance, not a statutory provision reflecting a legislative grant of participatory rights. *Id.* at 332.

¶24 Ultimately, the court of appeals considered whether the Department had "identified a justiciable stake." *Williams*, 261 Ariz. at 313 ¶ 38. That question arises from our standing jurisprudence rather than statute. *See Bennett*, 211 Ariz. at 196 ¶ 17. It is not the question here. Because § 41-1993(B) confers standing on the Department, we need not consider whether it could also show a distinct and palpable injury.

C.

¶25 We briefly address the scope of the arguments the Department may advance and the court of appeals' concerns about neutrality. Williams contends that, even if the Department may appear, its opportunity to appear is "not an opportunity to prosecute." Although Williams's argument does not persuade us, we acknowledge that it raises an important issue: what the Department may argue when it appears.

¶26 Section 41-1993(B) explicitly delineates the scope of the Department's permissible arguments on appeal. All appeals "are limited to the record before the [D]epartment unless the court orders otherwise," and "[a]n issue may not be raised on appeal that has not been raised in the petition for review" before the Board. § 41-1993(B). This Court has construed that second limit to "unambiguously prevent[] any party from raising an issue on appeal that was not raised in the petition for review" before the Board, while noting that limited scope "may adversely affect a party's right to appeal under different circumstances." *Barriga v. Ariz. Dep't of Econ. Sec.*, 256 Ariz. 543, 550 ¶ 27 (2024). *Barriga* did not address whether that limit is constitutional in every application, and, because it is not before us, we decline to do so here. *See id.* ¶ 26.

¶27 The nature of appellate review further limits the Department's arguments on appeal. *See* § 41-1993(B). The Department may base its arguments on the administrative record, but it may not ask the court of appeals to sustain the decision based on facts beyond the Board's factual findings. *See id.* The Legislature required the Board to accompany every adverse decision with findings of fact stating "the conclusions upon each contested issue of fact," § 23-674(E), and those are the findings the court of appeals reviews. *Cf. Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983) (holding that "courts may not accept appellate counsel's *post hoc* rationalizations for agency action"). Nothing here forecloses affirmance on a legal rationale that the record supports.

¶28 The statute's limits on the Department's arguments on appeal also address the court of appeals' concern, reiterated by Williams in her briefing, that allowing the Department "to make all arguments" would compromise its impartiality in later adjudications. *See Williams*, 261 Ariz. at 313 ¶¶ 39–40. That concern sounds in due process, not standing. The Legislature has addressed impartiality by requiring the Department to establish "impartial appeal tribunals to hear and decide disputed claims" and barring anyone from participating on the Department's behalf in a case in which the person is an interested party. § 23-671(A). But it declined to impose a comparable constraint on the Department's appearance in the court of appeals, and we decline to read one into the statute. Moreover, beyond the concern related to impartiality—which relied upon a mischaracterization of the Department's statutory framework—Williams did not otherwise argue that the Department's participation infringed her

due process rights. Accordingly, we do not address any other due process implications of the Department's appearance in appellate proceedings.

¶29 The court of appeals declined to consider the Department's appellate brief and resolved Williams's benefits eligibility without the adversarial presentation the statute contemplates and authorizes. Whether the Department's arguments strayed beyond the permissible scope is a separate inquiry that the court of appeals did not reach and may consider on remand. To be clear, if a court concludes that a party may not advance an argument on appeal, it should decline to consider the argument rather than remove the party for want of standing. *See Kerr*, 197 Ariz. at 216 ¶ 11 ("Lack of aggrievement is a jurisdictional defect, but lack of standing to urge a particular argument is not.").

¶30 Accordingly, we hold that § 41-1993(B) grants the Department standing to appear in the court of appeals to defend the Board's decision.

II.

¶31 We consider whether § 12-348(H)(1) precludes a fee award against the Department when it appears in an appeal of a Board decision.

¶32 The court of appeals awarded Williams fees under § 12-348(A)(2), which directs that a court "shall award fees and other expenses" to a party other than the state that prevails in a proceeding to review a state agency decision. Section 12-348 includes various exclusions to the fee award, two of which are relevant here.

A.

¶33 Paragraph (H)(1) provides that § 12-348 does not:

> Apply to an action arising from a proceeding before this state . . . in which the role of this state . . . was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent, to adjudicate a dispute or issue between private parties or to establish or fix a rate.

§ 12-348(H)(1). The parties' arguments and the court of appeals' opinion implicate two of those three exclusions: when the role of the state was to determine the eligibility or entitlement of an individual to a monetary

benefit or its equivalent ("Monetary-Benefits Clause"), and when the role of the state was to adjudicate a dispute or issue between private parties ("Private-Dispute Clause"). A third exclusion, which appears in the fourth paragraph of the same subsection, withholds fees in proceedings in which the state "is a nominal party" ("Nominal-Party Exclusion"). § 12-348(H)(4).

¶34 As a threshold matter, paragraph (H)(1)'s phrase "in which the role of this state . . . was to" modifies "a proceeding before this state," not "an action," so the inquiry traces to the administrative proceeding and the state's role in it. *See Mission Hardwood Co. v. Registrar of Contractors*, 149 Ariz. 12, 17 (App. 1986) (construing the same language, then codified at § 12-348(F)(1), to determine whether the agency's role in the underlying proceeding was adjudicative in nature). Fees are, therefore, unavailable when an appeal "aris[es] from" a qualifying administrative proceeding. *See* § 12-348(H)(1). Because the statute directs the inquiry to the administrative proceeding, the state's role in the appeal does not bear on whether paragraph (H)(1) applies.

¶35 The Legislature knew how to condition an exclusion on litigation conduct and did so in the same subsection. In contrast to paragraph (H)(1), the Nominal-Party Exclusion turns entirely on the state's conduct in court. Our interpretation reflects that paragraph (4) includes a litigation-conduct condition and paragraph (1) does not. *See Sharpe v. Ariz. Health Care Cost Containment Sys.*, 220 Ariz. 488, 496 ¶ 25 (App. 2009) ("[W]hen the [L]egislature makes a requirement in one provision of the statute but does not include it in another, we assume the absence of the requirement was intentional.").

B.

¶36 The Department contends that paragraph (H)(1) excludes this action from a fee award, and we agree. The Monetary-Benefits Clause is satisfied on this record. This action arose from the administrative determination of Williams's claim, and the Department's role there was to determine Williams's eligibility for unemployment insurance benefits. § 23-773(A). Unemployment benefits are payments from a government agency, as the clause describes. *See Rosas v. Ariz. Dep't of Econ. Sec.*, 249 Ariz. 26, 31 ¶ 27 (2020); *see also Cortaro Water Users' Ass'n v. Steiner*, 148 Ariz. 314, 319 (1986) (reaching "cases where an applicant is seeking the payment of money or its equivalent from a government agency").

¶37 We have already applied the Monetary-Benefits Clause to similar facts. *See, e.g.*, *Rosas*, 249 Ariz. at 31 ¶ 27. In *Rosas*, claimants challenged a Board decision denying unemployment benefits, prevailed in the court of appeals, and were awarded fees there. *Id.* at 27–28 ¶¶ 5–6, 31 ¶ 27. On appeal, we reversed that award because "§ 12-348(H)(1) precludes attorney fees against the state where its role 'was to determine the eligibility or entitlement of an individual to a monetary benefit.'" *Id.* at 31 ¶ 27. The Department appeared and argued, and that participation did not affect the applicability of the exclusion. *See id.* at 26 ¶ 1, 31 ¶ 27. *Rosas* is dispositive here.

¶38 Williams, nonetheless, asserts that no Arizona decision applying the clause "was the subject of full adversarial briefing on the applicability of the exclusion." Not so. The court of appeals has considered it. In *Johnson*, the Department raised the clause, and the court resolved the question by asking what the claimant had sought, holding the clause inapplicable to developmental disability services because they "are broader than a monetary benefit or its equivalent." *See Johnson v. Ariz. Dep't of Econ. Sec.*, 247 Ariz. 351, 359 ¶¶ 26–29 (App. 2019); *see also Simmons v. Ariz. Dep't of Econ. Sec.*, 254 Ariz. 109, 113–14 ¶ 25 (App. 2022) (applying the clause to deny fees to an unemployment claimant who "has only established his eligibility for a 'monetary benefit'").

¶39 Accordingly, we hold that the Monetary-Benefits Clause precludes Williams from recovering an attorney fee award, regardless of her appeal's outcome.

C.

¶40 Nonetheless, the court of appeals concluded that Williams was entitled to a fee award, in part, by characterizing the proceeding as one resolving an "individual dispute between [Lamont] and Williams" and relying on *Cortaro* to conclude that the Department's participation on appeal defeated any exclusion. *Williams*, 261 Ariz. at 313 ¶ 41, 317 ¶ 72. Those two premises depend on each other. Both premises are wrong, and we address each in turn.

i.

¶41 We begin with the flawed characterization of the proceeding. Claimants applying for benefits are not utilizing the Department to resolve a dispute with another private party because involuntary unemployment is "a subject of general interest and concern" requiring legislative action, § 23-601, and benefits are paid from a state-administered fund rather than directly by an employer, § 23-701. Moreover, even hearings before the Tribunal are "non-adversarial proceedings" whose purpose is to gather information sufficient for a fair and intelligent decision on the claim. *Dynometrics Inc. v. Ariz. Dep't of Econ. Sec.*, 257 Ariz. 283, 289–90 ¶ 27 (App. 2024). Such a proceeding is far from an adjudication of a dispute between private parties.

¶42 Certainly, the employer is not indifferent to the outcome, because benefits charged to its account affect its future contribution rate. A.R.S. § 23-729. But that interest runs to the state. Each employer's account is a record within a fund whose monies are "commingled and undivided," § 23-701(C), but nothing in the chapter grants an employer "prior claims or rights to the amounts paid by the employer into the fund," A.R.S. § 23-727(A)–(B). What the employer stands to gain or lose is its own contribution rate, a matter between it and the state. Consequently, proceedings arising from a Department deputy's determination of benefits do not amount to an adjudication of a private dispute.

ii.

¶43 We next clarify the proper reading of *Cortaro*. The court of appeals read *Cortaro* to establish that an agency that "actively participated" in judicial review proceedings forfeits the exclusion, whatever its administrative role. *Williams*, 261 Ariz. at 317 ¶ 72. The court reasoned that, although the Department's only administrative role was to determine Williams's eligibility, the Department "assumed a different role once the case arrived" on appeal, *id.* at 318 ¶ 73, and it, therefore, awarded Williams fees under § 12-348(A)(2), *id.* at 318 ¶ 74. In effect, the court of appeals carried *Cortaro*'s forfeiture rule from the Private-Dispute Clause to the Monetary-Benefits Clause. While that step was sound—because a condition defeating one clause of paragraph (H)(1) must defeat each of them—the rule it carried was not.

¶44 *Cortaro* addressed three exclusions and held none were applicable there. It held the Monetary-Benefits Clause did not apply because a decision limiting the right to use groundwater is not a payment of money or its equivalent. *Cortaro*, 148 Ariz. at 319. The Nominal-Party Exclusion did not apply because the agency had taken "an active part in the superior court proceedings, appealing to the court of appeals and petitioning this Court for review." *Id.* at 318 ("[I]f the agency takes the role of an advocate it ceases to be a nominal party and may lose its statutory protection."). That exclusion turns on litigation conduct by its terms, so conduct was the right measure there. As to the Private-Dispute Clause, the Court reasoned it did not apply because, even if the agency "may have been" an adjudicator at the administrative level, its "active role in the case" caused it to lose the exemption in subsequent proceedings. *Id.* at 319.

¶45 *Cortaro*'s discussion of the Private-Dispute Clause supplied the forfeiture rule that the court of appeals applied here. Having concluded that the agency's active participation defeated the Nominal-Party Exclusion, which then appeared in the fourth paragraph of subsection (G), *Cortaro* asserted that the agency had "lost any protection afforded it by A.R.S. § 12-348(G)." *Id.* at 318. It then carried that reasoning into the Private-Dispute Clause, which appeared in the first paragraph of the same subsection,[3] stating that the agency's adjudicative role "may have been true at the administrative level, but due to the [agency's] active role in the case[,] it lost this exemption in the subsequent proceedings." *Id.* at 319.

¶46 We cannot reconcile that construction—read to make an agency's conduct in the reviewing court relevant to the Private-Dispute Clause—with the statutory paragraph it construes. The first paragraph of the subsection lists three roles in parallel inside a single modifier attaching to the administrative proceeding, so a construction permitting later conduct to defeat one would defeat all three. *Cortaro*'s litigation-conduct reasoning properly fits the Nominal-Party Exclusion, and this Court has used it there. *See Estate of Walton*, 164 Ariz. 498, 500 (1990). In *Estate of Walton*, the

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[3] *Cortaro* referred to the Private-Dispute Clause as "subsection (G)(2)." 148 Ariz. at 319. That reference appears to be in error. The opinion had earlier recited the agency's argument that "subsection (G)(1) provides two exemptions." *Id.* Subsection (G)(2) then excluded proceedings brought by this state pursuant to title 13 or 28. 1986 Ariz. Sess. Laws ch. 232, § 24 (2d Reg. Sess.) (setting out subsection (G) without change to paragraph (2)).

Department of Revenue claimed nominal-party status after contesting an heirship claim through trial and appeal. *Id.* This Court quoted *Cortaro*'s statement that "if the agency takes the role of an advocate it ceases to be a nominal party and may lose its statutory protection," and answered the nominal-party claim on that basis alone. *Id.*

¶47 To the extent *Cortaro* may be construed to condition the exclusions now in paragraph (H)(1) on an agency's conduct in the reviewing court, we disavow that reading. Those exclusions are fixed by the character of the administrative proceeding from which the action arose. Importantly, our clarification leaves *Cortaro*'s judgment undisturbed because the Private-Dispute Clause never protected the agency there, regardless of its conduct on review. That clause asks whether the state's role was to adjudicate a dispute between private parties, and the proceeding in *Cortaro* resolved competing claims to a public resource, raised by a municipal applicant—the City of Tucson—and opposed by an intervenor—Cortaro Water Users' Association. *Cortaro*, 148 Ariz. at 315. *Cortaro* itself observed as much, though it did not rest there, describing the agency as "a stakeholder or acting as the guardian of the state's groundwater supply" that had an "adversary and partisan" role. *Id.* at 319–20. That posture, and not merely the agency's participation in the reviewing court, is why the clause supplied no exemption.

¶48 The Monetary-Benefits Clause applies here because the appeal arises out of administrative proceedings related to Williams's eligibility for unemployment insurance. Consequently, the court of appeals erred in awarding fees under § 12-348(A)(2).

CONCLUSION

¶49 We vacate ¶¶ 23–75 of the court of appeals' opinion, reverse the fee award, and remand to the court of appeals to decide whether the Board erred in concluding that Williams was discharged for insubordination, considering the Department's arguments drawn from the administrative record and confining its review to that record.