

**ARIZONA SUPREME COURT**

ARIZONA SCHOOL BOARDS  
ASSOCIATION, INC., et al.,

Plaintiffs/Appellees,

v.

STATE OF ARIZONA, a body politic,

Defendant/Appellant.

) No. CV-21-0234-T/AP  
)

) Court of Appeals, Division One  
) No. 1 CA-CV 21-0555  
)

) Maricopa County Superior Court  
) No. CV2021-012741  
)

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**APPELLEES' COMBINED RESPONSE TO BRIEFS OF *AMICI CURIAE* (1) SPEAKER RUSSELL BOWERS, SENATE PRESIDENT KAREN FANN, AND GOVERNOR DOUGLAS DUCEY; AND (2) SENATOR VINCE LEACH, SENATOR DAVID GOWAN, AND REPRESENTATIVE REGINA COBB**

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## Introduction

¶1 Amici Speaker Bowers, President Fann, and Governor Ducey (“Leader and Governor Amici”) and Senator Leach, Senator Gowan, and Representative Cobb (“Legislator Amici”) try to erase words from the titles of the challenged bills and brush aside the Court’s vital role within our government. But the clear dictates of article IV, part 2, § 13 of the Arizona Constitution require that every act of the Legislature: (1) cover only one subject; and (2) give adequate notice of the bill’s contents in the title. And there’s no dispute that this Court can determine whether the Legislature complied with those dictates when passing legislation.

¶2 The Leader and Governor Amici argue that the Legislature’s budget “process” generally complies with article IV, part 2, § 13, that the challenged bills’ titles suffice under the title requirement of that provision, and that any “concerns” about the constitutionality of those bills “can be vindicated by an exclusively prospective ruling.” For their part, the Legislator Amici raise single-subject arguments that are both internally inconsistent and contradict the State’s arguments. They also vaguely suggest that the Court lacks authority to review the challenged bills. Because adopting Amici’s arguments would be unprecedented and

“render the constitutional provision nugatory,” *State v. Sutton*, 115 Ariz. 417, 419 (1977), the Court should reject them.

¶3 Article IV, part 2, § 13 isn’t new, and is a crucial guardrail that protects our representative democracy. It prevents “the surprise and evils of omnibus bills and surreptitious legislation,” *State v. Espinosa*, 101 Ariz. 474, 476 (1966), and ensures that legislation reflects the majority’s views. The trial court carefully analyzed each of the challenged laws and correctly held that the Legislature passed them in violation of this constitutional mandate. This Court should affirm.

### **Argument**

#### **I. The Challenged Bills Violate the Title Requirement.**

¶4 The title requirement in Article IV, part 2, § 13 “enable[s] legislators and the public upon reading the title to know what to expect in the body of the act so that no one would be surprised as to the subjects dealt with by the act.” *Sutton*, 115 Ariz. at 419 (quotation omitted). “By confining the legislation to the subject contained in the title, neither the members of the legislature nor the people can be misled to vote for something not known to them or intended to be voted for.” *White v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209, 212 (1976). While the “act’s

title need not be a synopsis or a complete index of the act's provisions," *Hoyle v. Superior Ct.*, 161 Ariz. 224, 230 (App. 1989), it "must be worded so that it puts people on notice as to the contents of the act." *White*, 113 Ariz. at 211. When part of an act is not reflected in the title, the act is "void only as to so much thereof as shall not be embraced in the title." Ariz. Const. art. IV, pt. 2, § 13.

¶5 Plaintiffs do not claim, as the Leader and Governor Amici suggest [at 15], that the Legislature must craft "exhaustive narrative titles." A title may be a short description, but it cannot mislead. The titles here all list many statutes being amended, then say the bills relate to "[K-12, higher education, and health] budget reconciliation" and "budget procedures." When, as here, the title of an amendatory act "particularizes some of the changes to be made by the amendment, the legislation is limited to the matters specified and anything beyond them is void, however germane it may be to the subject of the original act." *Hoyle*, 161 Ariz. at 230.

¶6 The Leader and Governor Amici argue [at 10] that the contents of HB2898, SB1824, and SB1825 need only relate to "K-12 education," "higher education" or "health" because "every provision of a

BRB is *by definition* related to carrying out the budget.” The trial court properly rejected this argument:

The Legislature has discretion to title a bill but, having picked a title, it must confine the contents to measures that reasonably relate to the title and to each other to form one general subject. By pairing “budget reconciliation” to a specific aspect of state government, the Legislature limited the subject matter to budget reconciliation provisions for appropriations for that area. The Legislature cannot simply delete words from the title to justify non-budget reconciliation provisions. Nor can the Court. “A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.”

[APP240<sup>1</sup> (emphasis added) (citations omitted)]; *see also White*, 113 Ariz. at 212 (“The courts cannot enlarge the scope of the title[.]”) (quotation omitted). And Amici’s argument that a BRB “by definition” relates to “carrying out the budget” only proves the point: substantive policies with no connection to the budget don’t belong in a bill titled “budget reconciliation.”

¶7 Beyond that, the Leader and Governor Amici are wrong when they argue [at 13-14] that the titles gave sufficient notice of non-budget related provisions because they list all the statute numbers being

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<sup>1</sup> “APP” refers to Appellees’ Appendix to their Answering Brief.

amended. When a title provides a description of what the act addresses – even if it also lists all the statute numbers being amended – any provision in the act that doesn’t relate to that description is void. *E.g.*, *Am. Est. Life Ins. Co. v. State, Dept. of Ins.*, 116 Ariz. 240, 242 (App. 1977). By claiming that the bills relate to “[K-12, higher education, or health] budget reconciliation” and “budget procedures,” the titles give no notice that the bills include legislation that has nothing to do with the budget.<sup>2</sup>

¶8 The trial court correctly found that the title of each bill “gave notice that the contents of the bills concerned budget reconciliation matters,” but “the challenged provisions do not reasonably relate to budget reconciliation matters.” [APP245]

## II. SB1819 Violates the Single Subject Rule.

¶9 The “single subject rule” requires that “[e]very act shall embrace but one subject and matters properly connected therewith.”

Ariz. Const. art. IV, pt. 2, § 13. The rule is “intended to prevent the

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<sup>2</sup> Amici also argue [at 14] that the public is on notice of the content of the bills if they read the “fact sheets.” But the Constitution requires that the title put legislators and the public on notice, not separate documents. And the fact sheets themselves claim on the very first page that the BRBs “[c]ontain[] budget reconciliation provisions . . . needed for implementing the FY 2022 budget,” which is untrue. [Lead. and Gov. App 2]

pernicious practice of ‘logrolling,’” where a legislator is “forced, in order to secure the enactment of the proposition which he considers the most important, to vote for others of which he disapproves.” *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 37 (2003) (citations omitted); cf. *Caldwell v. Bd. of Regents of Univ. of Arizona*, 54 Ariz. 404, 408–09 (1939) (if the Legislature could put non-appropriations in an appropriation bill, “then all sorts of ill conceived, questionable, if not vicious, legislation could be proposed with the threat, too, that, if not assented to and passed, the appropriations would be defeated”).

¶10 The “subject” of legislation includes “all matters having a logical or natural connection.” *Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980). While, as Amici argue, these constitutional requirements “should be interpreted liberally so as not to impede or embarrass the legislature in its business,” they should not be interpreted “so ‘foolishly liberal’ as to render the constitutional requirements nugatory.” *Id.* Yet that’s exactly what Amici ask the Court to do.

¶11 The Leader and Governor Amici contend [at 8] that the Court need only hold that the Legislature’s general budget “process” of breaking

BRBs into multiple bills is constitutional, without even looking at the acts themselves or any particular provisions in those acts. The Constitution demands more; the Court must consider the content of SB1819 and decide whether it “embrace[s] but one subject and matters properly connected therewith.” Ariz. Const. art. IV, pt. 2 § 13.

¶12 The Leader and Governor Amici also admit [at 9] that SB1819 “may not be a paragon of legislative workmanship,” but conclude without analysis that it “submits to the constraints of the Single Subject Rule.”<sup>3</sup> Wrong again. As the trial court held: “No matter how liberally one construes the concept of ‘subject’ for the single subject rule, the array of provisions are in no way related to nor connected with each other or to an identifiable ‘budget procedure.’” [APP246] Amici’s only explanation for the miscellany of subjects in SB1819 (ranging from voter registration to COVID mitigation measures) is that separating these subjects would be hard work. [Lead. and Gov. Amici at 9 (arguing that “segment[ing]” these

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<sup>3</sup> They also argue [at 9] that Plaintiffs “fault S.B. 1819 for encompassing a ‘hodgepodge’ of subjects,” but “are notably at a loss to proffer an alternative codification scheme.” Separating the provisions into standalone bills – as required by Section 13 – would suffice. But it’s not Plaintiffs’ burden to manufacture hypothetical laws that would have been constitutional, nor can Plaintiffs (or this Court) speculate about which provisions would have passed if not for the logrolling.

subjects “into separate compartmentalized bills would convert Arizona’s relatively short legislative session into a full-time undertaking, with stacks of bills languishing in legislative gridlock”); Leg. Amici at 12 (“It is simply not possible for the Legislature to adopt a single BRB for every single plausible ‘subject’” given the “realities of modern day governing”)] That’s no excuse for disregarding the Constitution.

¶13 The Legistator Amici first argue [at 6] that the relevant “subject” of SB1819 is “budget,” not “budget procedures.” They then pivot to arguing [at 7] that the relevant subject is “the general appropriations bill.” These arguments contradict the State and the other Amici’s arguments, and ignore the trial court’s findings that many provisions in SB1819 have nothing to do with the budget or any “budget procedures,” citing many examples. [APP244, 246] They next contend [at 8] that the trial court shouldn’t have considered whether SB1819’s provisions relate to “each other.” The trial court did not, as Amici suggest [at 9], adopt a test requiring that every provision be “dependent on one another.” Rather, the trial court held that “the array of provisions [in SB1819] are in no way related to nor connected with each other or to an identifiable ‘budget procedure.’” That is the correct test. *See Litchfield*, 125 Ariz. at

224 (“matters treated should fall under some one general idea, be so connected with or related to each other, . . . as to be parts of, or germane to, one general subject.”) (emphasis added); see also *Hoffman v. Reagan*, 245 Ariz. 313, 317 ¶ 16 (2018) (provisions must be “reasonably related”), ¶ 14 (citing *Litchfield* with approval).

¶14 The Legislator Amici also try to tie provisions in SB1819 to the “budget” [at 11], citing as an example that the feed bill “appropriates \$23 million to the Department of Gaming’s Division of Racing,” and that Section 1 of SB1819 requires the Department to convert a dog racing permit to a harness racing permit. They also point [at 10, Leg. Amici APP’X0003] to the feed bill’s appropriation of \$47.6 million to the Game and Fish Department, because Section 4 of SB1819 directs the Department to provide permit applicants with voter registration information. In other words, the Legislator Amici claim that any provision in SB1819 that involves any state agency (which is funded by the state) is automatically tied to the “budget.” Accepting that argument would mean that the Legislature could pass one bill with the subject of “budget” and include any substantive legislation it wants, as long as it

somehow involves or relates to any state agency.<sup>4</sup> Accepting that argument would nullify the single subject rule.

¶15 Finally, the Legislator Amici advance the bizarre argument [at 5] that it is unfair to allow initiatives to have multiple subjects, but not legislative acts. This is irrelevant; the Framers differentiated between the two, and the Constitution means what it says. *Arizona Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶¶ 31, 33 (2017) (“[T]he Single Subject Rule applies only to acts by the legislature; it does not apply to initiatives.”).

¶16 In the end, the trial court correctly held that SB1819 is “classic logrolling – a medley of special interests cobbled together to force a vote for all or none.” [APP246]

### **III. The Court Can Rule on Plaintiffs’ Claims.**

¶17 Amici all make vague arguments that the Court lacks power to determine whether BRBs are constitutional. The Legislator Amici

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<sup>4</sup> For example, the Legislature could pass a bill that outlaws firearms and authorizes the Attorney General to prosecute anyone who owns one, authorizes the Secretary of State to remove anyone from the voter registration database who didn’t vote in the last election, and eliminates income taxes and directs the Treasurer to stop collecting them. The single subject, in the Legislator Amici’s view, would be “budget” because the general appropriations bill funds all these offices.

make a passing argument [at 2] that the “Legislature has broad discretion, dictated by the separation of powers, to determine what provision should fall into what BRB.” And they go even further in claiming [at 12] that, “[f]or whatever reason, the Legislature determined that each of S.B. 1819’s 52 provisions fell into the category of ‘Budget Procedures,’” and “it is not the Judiciary’s authority to second-guess that decision.” (Emphasis added). The Leader and Governor Amici similarly argue [at 1] that the exercise of “legislative function is measured by the power of absolute sovereignty,” and the trial court’s ruling “portends . . . inordinate judicial policing of two coordinate branches.” Not true.

¶18 Determining “whether a branch of state government has exceeded the powers granted by the Arizona Constitution requires that [courts] construe the language of the constitution and declare what the constitution requires. Such questions traditionally fall to the courts to resolve.” *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 8 (2006) (citing *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”)). The trial court exercised its power to determine the

Legislature’s compliance with the title and single-subject requirements, and this Court can affirm.

#### **IV. The Court Should Reject Amici’s Request for Prospective-Only Application.**

¶19 The Leader and Governor Amici also ask the Court [at 16-18] to apply its ruling prospectively, but they offer no convincing reason to do so.<sup>5</sup> Prospective-only application would ignore longstanding precedent and the Court’s clear warning in *Bennett* that Section 13 applies to budget bills. As the Leader and Governor Amici concede [at 16], the Court considers “reliance, purpose, and inequity” in the rare case when it applies a ruling prospectively. None of those factors supports prospective application here.

¶20 First, the Leader and Governor Amici claim [at 16] that Plaintiffs’ injuries are “of the most tenuous variant imaginable.” That is absurd. Plaintiffs submitted several uncontested declarations establishing the specific injuries each of them faces because of the unconstitutional legislation. [APP111-120, 134-166 (among other things,

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<sup>5</sup> The Legislator Amici also make a passing request [at 13] for prospective-only application, except Senator Gowan, who claims this Court “lacks any authority” to say whether the Legislature complied with the constitution when passing BRBs.

describing harm to Plaintiffs’ missions and diversion of resources to combat the destructive policies logrolled into budget bills, lack of adequate notice of substantive policies unrelated to the budget, inability to meaningfully participate in the lawmaking process, and increased risk of contracting a deadly virus)] The irreparable harm was so obvious that the State didn’t contest it in the trial court. [APP168-184]<sup>6</sup>

¶21 Next, the Leader and Governor Amici argue [at 17-18] – without pointing to a single piece of the state budget that would be affected – that affirming the trial court would “engender substantial legal and regulatory uncertainty” in the budget, “destabilize funding streams” to agencies, and “possibly require hastily convening a special session to effectively redo the entire budget process.” [See also Legislator Amici at 12 (arguing with no further explanation that the ruling will “throw the budgeting process into disarray”)] These vague and unsupported “sky is falling” arguments don’t hold water. Amici rely on *Campbell v. White*, 856 P.2d 255, 262 (Ok. 1993), which applied its single-subject ruling

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<sup>6</sup> Amici also suggest [at 16] that Plaintiffs “generally concede that the various challenged provisions are, in substance, constitutionally sound, and would be valid and enforceable if enacted separately.” That Plaintiffs raised only the most obvious constitutional violations is not a “conce[ssion]” that the substance of the laws is otherwise valid.

prospectively “to avoid disruption” because the challenged laws appropriated funds to state agencies, “the majority of the monies appropriated [had] been expended,” and “a mid-year adjustment to agency funds in the face of the current fiscal climate would cause severe disruption to the State agencies involved.” That is not even remotely the case here. The challenged laws have never taken effect, and Amici point to no state functions that are “disrupted” by the trial court’s ruling.

¶22 Last, the Leader and Governor Amici claim [at 18] that prospective application will allow the Court to answer questions like “how many separate reconciliation measures would be appropriate” and “what titling paradigm the Court expects will replace” the “California Format of bill titling.” But the trial court’s ruling doesn’t prompt these contrived questions. Affirming the trial court will have no impact on “how many” BRBs are appropriate in passing a budget, nor would it have any impact on the propriety of bill titling generally. The only question before the Court is whether these challenged bills – as the Legislature chose to title them and with the substance the Legislature chose to include – comply with article IV, part 2, § 13. The answer is no, and the Court should not let these constitutional violations slide.

## Conclusion

¶23 The Court should reject Amici's arguments and affirm the trial court. Our Constitution demands no less.

RESPECTFULLY SUBMITTED this 20th day of October, 2021.

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